

By the Committee on Natural Resources and Senator Laurent

312-1860A-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 term "total maximum daily load";  
5           creating s. 403.067, F.S.; providing  
6           legislative findings and intent; requiring the  
7           Department of Environmental Protection to  
8           periodically submit to the United States  
9           Environmental Protection Agency a list of  
10          surface waters or segments for which total  
11          maximum daily load assessments will be  
12          conducted; providing that the list cannot be  
13          used in the administration or implementation of  
14          any regulatory program; providing for public  
15          comment on the list; requiring the Department  
16          of Environmental Protection to conduct total  
17          maximum daily load assessments on water bodies  
18          based on the priority ranking and schedule;  
19          requiring the Department of Environmental  
20          Protection to adopt a methodology for  
21          determining those water bodies which are  
22          impaired by rule; specifying what the rule  
23          shall set forth; providing for the adoption of  
24          a second list of water bodies for which total  
25          maximum daily loads will be calculated under  
26          certain circumstances; providing for the  
27          removal of surface waters or segments under  
28          certain conditions; providing for the process  
29          for calculating and allocating total maximum  
30          daily loads; providing that the Department of  
31          Environmental Protection must submit a report

1 by February 1, 2000, to the Governor, the  
2 President of the Senate, and the Speaker of the  
3 House of Representatives which contains  
4 recommendations and draft legislation for any  
5 modifications to the process for allocating  
6 total maximum daily loads; requiring that the  
7 recommendations be developed by the department  
8 in cooperation with a technical committee;  
9 providing that the total maximum daily load  
10 calculations and allocations shall be adopted  
11 by rule; providing for public workshops and  
12 public notice; providing that the Department of  
13 Environmental Protection shall be the lead  
14 agency in coordinating and implementing the  
15 total maximum daily load allocation through  
16 water quality protection programs; authorizing  
17 the department to develop a basin plan;  
18 providing for public workshops and public  
19 notice regarding the basin plan; providing that  
20 certain pollutant sources shall have the  
21 opportunity to implement the total maximum  
22 daily load through nonregulatory and  
23 incentive-based programs; requiring the  
24 department, the water management districts, and  
25 others to cooperatively develop suitable  
26 interim measures, best management practices, or  
27 other measures necessary to achieve the  
28 pollution-reduction targets for nonagricultural  
29 nonpoint pollutant sources; requiring the  
30 Department of Agriculture and Consumer Services  
31 to develop, and to adopt by rule at its

1           discretion, certain interim measures or best  
2           management practices; authorizing the  
3           Department of Environmental Protection to adopt  
4           certain rules; prohibiting the Department of  
5           Environmental Protection from implementing,  
6           without prior legislative approval, any  
7           additional regulatory authority pursuant to the  
8           Clean Water Act; requiring the Department of  
9           Environmental Protection, in coordination with  
10          the water management district and the  
11          Department of Agriculture and Consumer  
12          Services, to evaluate the effectiveness of the  
13          implementation of total maximum daily loads for  
14          a specific period and to report to the Governor  
15          and the Legislature; providing an effective  
16          date.

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

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

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23           403.031 Definitions.--In construing this chapter, or  
24           rules and regulations adopted pursuant hereto, the following  
25           words, phrases, or terms, unless the context otherwise  
26           indicates, have the following meanings:

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28           (21) "Total maximum daily load" is defined as the sum  
29           of the individual wasteload allocations for point sources and  
30           the load allocations for nonpoint sources and natural  
31           background. Prior to determining individual wasteload  
          allocations and load allocations, the maximum amount of a  
          pollutant that a water body or water segment can assimilate

1 from all sources without exceeding water quality standards  
2 must first be calculated.

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

5 403.067 Establishment and implementation of total  
6 maximum loads.--

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

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

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

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

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

26 (3)(a) Based upon the priority ranking and schedule  
27 for a particular listed water body or water segment, the  
28 department shall conduct a total maximum daily load assessment  
29 of the basin in which the water body or segment is located,  
30 using methodology developed pursuant to paragraph (b). In  
31 conducting this assessment, the department shall coordinate

1 with the local water management district, the Department of  
2 Agriculture and Consumer Services, other appropriate state  
3 agencies, soil and water conservation districts, environmental  
4 groups, regulated interests, and other interested parties.

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

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

22 (4) If the department determines, based on the total  
23 maximum daily load assessment methodology described in  
24 subsection (3), that water quality standards are not being  
25 achieved and that technology-based effluent limitations and  
26 other pollution control programs under local, state, or  
27 federal authority, including Everglades restoration activities  
28 pursuant to s. 373.4592, which are designed to restore such  
29 waters from the pollutant of concern, are not sufficient to  
30 result in attainment of applicable surfacewater quality  
31 standards, it shall confirm that determination by adopting a

1 second list of those water bodies or segments for which total  
2 maximum daily loads will be calculated. In association with  
3 this list, the department shall establish priority rankings  
4 and schedules by which water bodies or segments will be  
5 subjected to total maximum daily load calculations. If a  
6 surface water or water segment is to be listed under this  
7 subsection, the department must specify the particular  
8 pollutants causing the impairment and the concentration of  
9 those pollutants causing the impairment relative to the water  
10 quality standard. If the department has adopted a rule  
11 establishing a numerical criterion for a particular pollutant,  
12 a narrative or biological criterion may not be the basis for  
13 determining an impairment in connection with that pollutant  
14 unless the department identifies specific factors as to why  
15 the numerical criterion is not adequate to protect water  
16 quality. If water quality non-attainment is based on  
17 narrative or biological criteria, the factors concerning  
18 specific pollutants shall be identified prior to a total  
19 maximum daily load being developed for those criteria for that  
20 surface water or water segment. This second list shall be  
21 adopted and amended by order of the department subsequent to  
22 completion of each basin assessment and submitted to the  
23 United States Environmental Protection Agency. These orders  
24 shall be subject to challenge under ss. 120.569 and 120.57.

25 (5) At any time throughout the total maximum daily  
26 load process, surface waters or segments evaluated or listed  
27 under this section shall be removed from the lists described  
28 in subsection (2) or subsection (4) upon demonstration that  
29 water quality criteria are being attained, based on an  
30 equivalent quantity and quality of data required by rule under  
31 subsection (3).

1           (6)(a) Calculation of total maximum daily load.  
2           1. Prior to developing a total maximum daily load  
3 calculation for each water body or water body segment on the  
4 list specified in subsection (4), the department shall  
5 coordinate with applicable local governments, water management  
6 districts, the Department of Agriculture and Consumer  
7 Services, other appropriate state agencies, local soil and  
8 water conservation districts, environmental groups, regulated  
9 interests, and affected pollution sources to determine the  
10 information required, accepted methods of data collection and  
11 analysis, and quality control/quality assurance  
12 requirements. The analysis may include mathematical water  
13 quality modeling using approved procedures and methods.  
14           2. The department shall develop total maximum daily  
15 load calculations for each water body or water body segment on  
16 the list described in subsection (4) according to the priority  
17 ranking and schedule unless the impairment of such waters is  
18 solely due to activities other than point and nonpoint sources  
19 of pollution. For waters determined to be impaired due to  
20 factors other than point and nonpoint sources of pollution, no  
21 total maximum daily load will be required. The total maximum  
22 daily load calculation shall establish the amount of a  
23 pollutant that a water body or water body segment can  
24 assimilate without exceeding water quality standards, and  
25 shall account for seasonal variations and include a margin of  
26 safety that takes into account any lack of knowledge  
27 concerning the relationship between effluent limitations and  
28 water quality. The total maximum daily load may be based on a  
29 pollutant-load-reduction goal established by a water  
30 management district and approved under this subsection.  
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1           (b) Allocation of total maximum daily loads. The total  
2 maximum daily loads shall include establishment of reasonable  
3 and equitable allocations of the total maximum daily load  
4 among point and nonpoint sources that will alone, or in  
5 conjunction with other management and restoration activities,  
6 provide for the attainment of water quality standards and the  
7 restoration of impaired waters. The allocations shall  
8 establish the maximum amount of the water pollutant from a  
9 given source or category of sources which may be discharged or  
10 released into the water body or water body segment in  
11 combination with other discharges or releases. Such  
12 allocations shall assure the attainment of water quality  
13 standards and shall be based upon the following:  
14           1. Existing treatment levels and management practices;  
15           2. Differing impacts that pollutant sources may have  
16 on water quality;  
17           3. The availability of treatment technologies,  
18 management practices, or other pollutant reduction measures;  
19           4. Environmental, economic, and technological  
20 feasibility of achieving the allocation;  
21           5. The cost benefit associated with achieving the  
22 allocation;  
23           6. Reasonable time frames for implementation;  
24           7. Potential applicability of any moderating  
25 provisions;  
26           8. The extent to which nonattainment of water quality  
27 standards is caused by pollution sources outside Florida, by  
28 discharges that have ceased, or by alterations to water bodies  
29 prior to the effective date of this act.  
30           (c) Not later than February 1, 2000, the department  
31 shall submit a report to the Governor, the President of the

1 Senate, and the Speaker of the House of Representatives  
2 containing recommendations, including draft legislation, for  
3 any modifications to the process for allocating total maximum  
4 daily loads. Such recommendations shall be developed by the  
5 department in cooperation with a technical advisory committee  
6 that includes representatives of affected parties,  
7 environmental organizations, water management districts, and  
8 other appropriate local, state, and federal government  
9 agencies. The technical advisory committee shall also include  
10 such members as may be designated by the President of the  
11 Senate and the Speaker of the House of Representatives.

12 (d) The total maximum daily load calculations and  
13 allocations for each water body or water body segment on the  
14 list shall be adopted by rule pursuant to ss. 120.54 and  
15 120.536(1). As part of the rule development process, the  
16 department shall hold at least one public workshop. Notice of  
17 the public workshop in the vicinity of the water body or water  
18 body segment for which the total maximum daily load is being  
19 developed shall be published not less than 5 days nor more  
20 than 15 days before the public workshop in a newspaper of  
21 general circulation in the county or counties where the water  
22 bodies or water body segments for which the total maximum  
23 daily load calculation and 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 programs.  
28 Such programs may include, but are not limited to:

29 1. Permitting and other existing regulatory programs;  
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1           2. Nonregulatory and incentive-based programs,  
2 including best management practices, cost sharing, waste  
3 minimization, pollution prevention, and public education;  
4           3. Other water quality management and restoration  
5 activities such as surfacewater improvement and management  
6 plans approved by water management districts under s. 373.456;  
7           4. Pollutant trading or other equitable economically  
8 based agreements;  
9           5. Public works including capital facilities; or  
10           6. Land acquisition.  
11           (b) In coordinating and implementing the total maximum  
12 daily load allocation, the department may develop a basin  
13 plan. The basin plan will serve to fully integrate all the  
14 management strategies available to the state for the purpose  
15 of achieving water quality restoration. The basin planning  
16 process is intended to involve the broadest possible range of  
17 interested parties, with the objective of encouraging the  
18 greatest amount of cooperation and consensus possible. The  
19 department shall hold at least one public meeting in the  
20 vicinity of the basin to discuss and receive comments during  
21 the basin planning process and shall otherwise encourage  
22 public participation to the greatest practicable extent.  
23 Notice of the public meeting shall be published in a newspaper  
24 of general circulation in each county in which the basin lies,  
25 not less than 5 days nor more than 15 days before the public  
26 meeting.  
27           (c) Pollutant sources that are not subject to  
28 permitting under this chapter or chapter 373 shall have the  
29 opportunity to implement the total maximum daily load through  
30 nonregulatory and incentive-based programs, including best  
31 management practices or other preventive measures.

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

30           (e) The Department of Agriculture and Consumer  
31 Services shall develop and may adopt by rule suitable interim

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

1 adopted under this paragraph, the Department of Agriculture  
2 and Consumer Services shall institute a reevaluation of the  
3 best management practice or other measure.

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

6 (a) Delisting water bodies or water body segments from  
7 the list developed under subsection (4) pursuant to the  
8 guidance under subsection (5);

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

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

18 (9) Nothing in this section shall be construed as  
19 altering any applicable state water quality standards or as  
20 restricting the authority otherwise granted to the department  
21 or a water management district under this chapter or chapter  
22 373.

23 (10) Nothing in this section shall be construed as  
24 limiting the applicability or consideration of any mixing  
25 zone, variance, exemption, site-specific alternative criteria,  
26 or other moderating provision.

27 (11) The department shall not implement, without prior  
28 legislative approval, any additional regulatory authority  
29 pursuant to the Clean Water Act, ss. 303(d), or 40 C.F.R. Part  
30 130, if such implementation would result in water quality

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1 discharge regulation of activities not currently subject to  
2 regulation.

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

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

1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   SB 2282

4 The committee substitute rewrites the bill to provide the  
5 following:

- 6       --     Technical and clarifying amendments.
- 7       --     Legislative findings and intent.
- 8       --     Defines the term "total maximum daily load."
- 9       --     Requires the Department of Environmental Protection  
10            (DEP) to periodically submit to the U.S. Environmental  
11            Protection Agency a list of surface waters or segments  
12            for which total maximum daily load assessments will be  
13            conducted and prohibits that list from being used in the  
14            administration and implementation of any regulator  
15            program. Provides for public comment on the list.
- 16       --     Requires the DEP to conduct total maximum daily load  
17            (TMDL) assessments on water bodies based on the priority  
18            ranking and schedule. Requires the DEP to adopt a  
19            methodology for determining impaired water bodies by  
20            rule.
- 21       --     Provides for the preparation of a second list under  
22            certain circumstances.
- 23       --     Provides that the DEP must submit a report to the  
24            Governor and the Legislature by February 1, 2000, which  
25            contains recommendations for modifications to the  
26            process of allocating TMDLs. Provides for a public  
27            workshop and public notice.
- 28       --     Provides for the development of interim measures, best  
29            management practices and other measures necessary to  
30            achieve the pollution reduction targets for non  
31            agricultural nonpoint sources.
- Requires the Department of Agriculture and Consumer  
          Services to develop interim measures or best management  
          practices for agriculture pollutant sources.
- Prohibits the DEP from implementing, without prior  
          legislative approval, any additional regulatory  
          authority pursuant to the Clean Water Act.
- Requires the DEP, in coordination with the Department of  
          Agriculture and Consumer Services and the water  
          management districts, to evaluate the effectiveness of  
          the implementation of TMDLs for a period of 5 years and  
          to report to the Governor and the Legislature by January  
          1, 2005.