

1 A bill to be entitled
2 An act relating to pollution reduction;
3 amending s. 403.067, F.S.; authorizing the
4 development of interim measures or
5 best-management practices for specified water
6 bodies or segments for which total maximum
7 daily loads or allocations have not yet been
8 established; amending s. 403.121, F.S.;
9 providing that a professional engineer is not
10 the agent of an owner or tenant for purposes of
11 enforcing penalties for unpermitted dredging or
12 filling or mangrove trimming; amending s.
13 373.4595, F.S.; providing eligibility
14 requirements for available grants from
15 coordinating agencies; providing additional
16 requirements for land application of domestic
17 wastewater residuals and septage after a
18 certain date; providing penalties for
19 violations; providing an effective date.

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

22
23 Section 1. Subsection (11) of section 403.067, Florida
24 Statutes, is amended to read:

25 403.067 Establishment and implementation of total
26 maximum daily loads.--

27 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

28 (a) The department shall not implement, without prior
29 legislative approval, any additional regulatory authority
30 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part
31 130, if such implementation would result in water quality

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

3 (b) Interim measures, best management practices, or
4 other measures may be developed and voluntarily implemented
5 pursuant to paragraph (7)(c) or paragraph (7)(d) for any water
6 body or segment for which a total maximum daily load or
7 allocation has not been established. The implementation of
8 such pollution control programs may be considered by the
9 department in the determination made pursuant to subsection
10 (4).

11 Section 2. Paragraphs (c) and (d) of subsection (3) of
12 section 403.121, Florida Statutes, are amended to read:

13 403.121 Enforcement; procedure; remedies.--The
14 department shall have the following judicial and
15 administrative remedies available to it for violations of this
16 chapter, as specified in s. 403.161(1).

17 (3) Except for violations involving hazardous wastes,
18 asbestos, or underground injection, administrative penalties
19 must be calculated according to the following schedule:

20 (c) For a dredge and fill or stormwater violation, the
21 department shall assess a penalty of \$1,000 for unpermitted or
22 unauthorized dredging or filling or unauthorized construction
23 of a stormwater management system against the person or
24 persons responsible for the illegal dredging or filling, or
25 unauthorized construction of a stormwater management system
26 plus \$2,000 if the dredging or filling occurs in an aquatic
27 preserve, Outstanding Florida Water, conservation easement, or
28 Class I or Class II surface water, plus \$1,000 if the area
29 dredged or filled is greater than one-quarter acre but less
30 than or equal to one-half acre, and plus \$1,000 if the area
31 dredged or filled is greater than one-half acre but less than

1 or equal to one acre. The administrative penalty schedule
2 shall not apply to a dredge and fill violation if the area
3 dredged or filled exceeds one acre. The department retains the
4 authority to seek the judicial imposition of civil penalties
5 for all dredge and fill violations involving more than one
6 acre. The department shall assess a penalty of \$3,000 for the
7 failure to complete required mitigation, failure to record a
8 required conservation easement, or for a water quality
9 violation resulting from dredging or filling activities,
10 stormwater construction activities or failure of a stormwater
11 treatment facility. For stormwater management systems serving
12 less than 5 acres, the department shall assess a penalty of
13 \$2,000 for the failure to properly or timely construct a
14 stormwater management system. In addition to the penalties
15 authorized in this subsection, the department shall assess a
16 penalty of \$5,000 per violation against the contractor or
17 agent of the owner or tenant that conducts unpermitted or
18 unauthorized dredging or filling. For purposes of this
19 paragraph, the preparation or signing of a permit application
20 by a person currently licensed under chapter 471 to practice
21 as a professional engineer shall not make that person an agent
22 of the owner or tenant.

23 (d) For mangrove trimming or alteration violations,
24 the department shall assess a penalty of \$5,000 per violation
25 against the contractor or agent of the owner or tenant that
26 conducts mangrove trimming or alteration without a permit as
27 required by s. 403.9328. For purposes of this paragraph, the
28 preparation or signing of a permit application by a person
29 currently licensed under chapter 471 to practice as a
30 professional engineer shall not make that person an agent of
31 the owner or tenant.

1 Section 3. Paragraph (c) of subsection (3) of section
2 373.4595, Florida Statutes, is amended to read:

3 373.4595 Lake Okeechobee Protection Program.--

4 (3) LAKE OKEECHOBEE PROTECTION PROGRAM.--A protection
5 program for Lake Okeechobee that achieves phosphorus load
6 reductions for Lake Okeechobee shall be immediately
7 implemented as specified in this subsection. The program shall
8 address the reduction of phosphorus loading to the lake from
9 both internal and external sources. Phosphorus load reductions
10 shall be achieved through a phased program of implementation.
11 Initial implementation actions shall be technology-based,
12 based upon a consideration of both the availability of
13 appropriate technology and the cost of such technology, and
14 shall include phosphorus reduction measures at both the source
15 and the regional level. The initial phase of phosphorus load
16 reductions shall be based upon the district's Technical
17 Publication 81-2 and the district's WOD program, with
18 subsequent phases of phosphorus load reductions based upon the
19 total maximum daily loads established in accordance with s.
20 403.067. In the development and administration of the Lake
21 Okeechobee Protection Program, the coordinating agencies shall
22 maximize opportunities provided by federal cost-sharing
23 programs and opportunities for partnerships with the private
24 sector.

25 (c) Lake Okeechobee Watershed Phosphorus Control
26 Program.--The Lake Okeechobee Watershed Phosphorus Control
27 Program is designed to be a multifaceted approach to reducing
28 phosphorus loads by improving the management of phosphorus
29 sources within the Lake Okeechobee watershed through continued
30 implementation of existing regulations and best management
31 practices, development and implementation of improved best

1 management practices, improvement and restoration of the
2 hydrologic function of natural and managed systems, and
3 utilization of alternative technologies for nutrient
4 reduction. The coordinating agencies shall facilitate the
5 application of federal programs that offer opportunities for
6 water quality treatment, including preservation, restoration,
7 or creation of wetlands on agricultural lands.

8 1. Agricultural nonpoint source best management
9 practices, developed in accordance with s. 403.067 and
10 designed to achieve the objectives of the Lake Okeechobee
11 Protection Program, shall be implemented on an expedited
12 basis. By March 1, 2001, the coordinating agencies shall
13 develop an interagency agreement pursuant to ss. 373.046 and
14 373.406(5) that assures the development of best management
15 practices that complement existing regulatory programs and
16 specifies how those best management practices are implemented
17 and verified. The interagency agreement shall address measures
18 to be taken by the coordinating agencies during any best
19 management practice reevaluation performed pursuant to
20 sub-subparagraph d. The department shall use best professional
21 judgment in making the initial determination of best
22 management practice effectiveness.

23 a. As provided in s. 403.067(7)(d), by October 1,
24 2000, the Department of Agriculture and Consumer Services, in
25 consultation with the department, the district, and affected
26 parties, shall initiate rule development for interim measures,
27 best management practices, conservation plans, nutrient
28 management plans, or other measures necessary for Lake
29 Okeechobee phosphorus load reduction. The rule shall include
30 thresholds for requiring conservation and nutrient management
31 plans and criteria for the contents of such plans. Development

1 of agricultural nonpoint source best management practices
2 shall initially focus on those priority basins listed in
3 subparagraph (b)1. The Department of Agriculture and Consumer
4 Services, in consultation with the department, the district,
5 and affected parties, shall conduct an ongoing program for
6 improvement of existing and development of new interim
7 measures or best management practices for the purpose of
8 adoption of such practices by rule.

9 b. Where agricultural nonpoint source best management
10 practices or interim measures have been adopted by rule of the
11 Department of Agriculture and Consumer Services, the owner or
12 operator of an agricultural nonpoint source addressed by such
13 rule shall either implement interim measures or best
14 management practices or demonstrate compliance with the
15 district's WOD program by conducting monitoring prescribed by
16 the department or the district. Owners or operators of
17 agricultural nonpoint sources who implement interim measures
18 or best management practices adopted by rule of the Department
19 of Agriculture and Consumer Services shall be subject to the
20 provisions of s. 403.067(7). The Department of Agriculture and
21 Consumer Services, in cooperation with the department and the
22 district, shall provide technical and financial assistance for
23 implementation of agricultural best management practices,
24 subject to the availability of funds.

25 c. The district or department shall conduct monitoring
26 at representative sites to verify the effectiveness of
27 agricultural nonpoint source best management practices.

28 d. Where water quality problems are detected for
29 agricultural nonpoint sources despite the appropriate
30 implementation of adopted best management practices, the
31 Department of Agriculture and Consumer Services, in

1 consultation with the other coordinating agencies and affected
2 parties, shall institute a reevaluation of the best management
3 practices and make appropriate changes to the rule adopting
4 best management practices.

5 2. Nonagricultural nonpoint source best management
6 practices, developed in accordance with s. 403.067 and
7 designed to achieve the objectives of the Lake Okeechobee
8 Protection Program, shall be implemented on an expedited
9 basis. By March 1, 2001, the department and the district shall
10 develop an interagency agreement pursuant to ss. 373.046 and
11 373.406(5) that assures the development of best management
12 practices that complement existing regulatory programs and
13 specifies how those best management practices are implemented
14 and verified. The interagency agreement shall address measures
15 to be taken by the department and the district during any best
16 management practice reevaluation performed pursuant to
17 sub-subparagraph d.

18 a. The department and the district are directed to
19 work with the University of Florida's Institute of Food and
20 Agricultural Sciences to develop appropriate nutrient
21 application rates for all nonagricultural soil amendments in
22 the watershed. As provided in s. 403.067(7)(c), by January 1,
23 2001, the department, in consultation with the district and
24 affected parties, shall develop interim measures, best
25 management practices, or other measures necessary for Lake
26 Okeechobee phosphorus load reduction. Development of
27 nonagricultural nonpoint source best management practices
28 shall initially focus on those priority basins listed in
29 subparagraph (b)1. The department, the district, and affected
30 parties shall conduct an ongoing program for improvement of
31 existing and development of new interim measures or best

1 management practices. The district shall adopt
2 technology-based standards under the district's WOD program
3 for nonagricultural nonpoint sources of phosphorus.

4 b. Where nonagricultural nonpoint source best
5 management practices or interim measures have been developed
6 by the department and adopted by the district, the owner or
7 operator of a nonagricultural nonpoint source shall implement
8 interim measures or best management practices and be subject
9 to the provisions of s. 403.067(7). The department and
10 district shall provide technical and financial assistance for
11 implementation of nonagricultural nonpoint source best
12 management practices, subject to the availability of funds.

13 c. The district or the department shall conduct
14 monitoring at representative sites to verify the effectiveness
15 of nonagricultural nonpoint source best management practices.

16 d. Where water quality problems are detected for
17 nonagricultural nonpoint sources despite the appropriate
18 implementation of adopted best management practices, the
19 department and the district shall institute a reevaluation of
20 the best management practices.

21 3. The provisions of subparagraphs 1. and 2. shall not
22 preclude the department or the district from requiring
23 compliance with water quality standards or with current best
24 management practices requirements set forth in any applicable
25 regulatory program authorized by law for the purpose of
26 protecting water quality. Additionally, subparagraphs 1. and
27 2. are applicable only to the extent that they do not conflict
28 with any rules promulgated by the department that are
29 necessary to maintain a federally delegated or approved
30 program.

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1 4. Projects which reduce the phosphorus load
2 originating from domestic wastewater systems within the Lake
3 Okeechobee watershed shall be given funding priority in the
4 department's revolving loan program under s. 403.1835. The
5 department shall coordinate and provide assistance to those
6 local governments seeking financial assistance for such
7 priority projects.

8 5. Projects that make use of private lands to reduce
9 nutrient loadings or concentrations within a basin by one or
10 more of the following methods: restoring the natural
11 hydrology of the basin, restoring wildlife habitat or impacted
12 wetlands, reducing peak flows after storm events, increasing
13 aquifer recharge, or protecting range and timberland from
14 conversion to development are eligible for grants available
15 under this section from the coordinating agencies. For
16 projects of otherwise equal priority, funding priority will be
17 given to those projects that make best use of the methods
18 outlined above that involve public-private partnerships or
19 that obtain federal match money. Grant applications may be
20 submitted by any person, and eligible projects may include,
21 but are not limited to, the purchase of conservation and
22 flowage easements, hydrologic restoration of wetlands,
23 creating treatment wetlands, development of a management plan
24 for natural resources, and financial support to implement a
25 management plan.

26 ~~6.a.5.a.~~ The department shall require all entities
27 disposing of domestic wastewater residuals within the Lake
28 Okeechobee watershed to develop and submit to the department
29 ~~by July 1, 2001,~~ an agricultural use plan that limits
30 applications based upon phosphorus loading. By July 1, 2005,
31 phosphorus concentrations ~~loading~~ originating from these

1 application sites shall not exceed the limits established in
2 the district's WOD program.

3 b. Private and government-owned utilities within
4 Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian
5 River, Okeechobee, Highlands, Hendry, and Glades counties that
6 dispose of wastewater residual sludge from utility operations
7 and septic removal by land spreading in the Lake Okeechobee
8 watershed may use a line item on local sewer rates to cover
9 wastewater residual treatment and disposal if such disposal
10 and treatment is done by approved alternative treatment
11 methodology at a facility located within the areas designated
12 by the Governor as rural areas of critical economic concern
13 pursuant to s. 288.0656. This additional line item is an
14 environmental protection disposal fee above the present sewer
15 rate and shall not be considered a part of the present sewer
16 rate to customers, notwithstanding provisions to the contrary
17 in chapter 367. The fee shall be established by the county
18 commission or its designated assignee in the county in which
19 the alternative method treatment facility is located. The fee
20 shall be calculated to be no higher than that necessary to
21 recover the facility's prudent cost of providing the service.
22 Upon request by an affected county commission, the Florida
23 Public Service Commission will provide assistance in
24 establishing the fee. Further, for utilities and utility
25 authorities that use the additional line item environmental
26 protection disposal fee, such fee shall not be considered a
27 rate increase under the rules of the Public Service Commission
28 and shall be exempt from such rules. Utilities using the
29 provisions of this section may immediately include in their
30 sewer invoicing the new environmental protection disposal fee.
31 Proceeds from this environmental protection disposal fee shall

1 be used for treatment and disposal of wastewater residuals,
2 including any treatment technology that helps reduce the
3 volume of residuals that require final disposal, but such
4 proceeds shall not be used for transportation or shipment
5 costs for disposal or any costs relating to the land
6 application of residuals in the Lake Okeechobee watershed.

7 c. No less frequently than once every 3 years, the
8 Florida Public Service Commission or the county commission
9 through the services of an independent auditor shall perform a
10 financial audit of all facilities receiving compensation from
11 an environmental protection disposal fee. The Florida Public
12 Service Commission or the county commission through the
13 services of an independent auditor shall also perform an audit
14 of the methodology used in establishing the environmental
15 protection disposal fee. The Florida Public Service Commission
16 or the county commission shall, within 120 days after
17 completion of an audit, file the audit report with the
18 President of the Senate and the Speaker of the House of
19 Representatives and shall provide copies to the county
20 commissions of the counties set forth in sub-subparagraph b.
21 The books and records of any facilities receiving compensation
22 from an environmental protection disposal fee shall be open to
23 the Florida Public Service Commission and the Auditor General
24 for review upon request.

25 7. The Department of Health shall require all entities
26 disposing of septage within the Lake Okeechobee watershed to
27 develop and submit to that agency, by July 1, 2003, an
28 agricultural use plan that limits applications based upon
29 phosphorus loading. By July 1, 2005, phosphorus concentrations
30 originating from these application sites shall not exceed the
31 limits established in the district's WOD program.

1 8.6. ~~By July 1, 2001,~~The Department of Agriculture
2 and Consumer Services shall initiate rulemaking requiring
3 entities within the Lake Okeechobee watershed which land-apply
4 animal manure to develop conservation or nutrient management
5 plans that limit application, based upon phosphorus loading.
6 Such rules may include criteria and thresholds for the
7 requirement to develop a conservation or nutrient management
8 plan, requirements for plan approval, and recordkeeping
9 requirements.

10 9.7. Prior to authorizing a discharge into works of
11 the district, the district shall require responsible parties
12 to demonstrate that proposed changes in land use will not
13 result in increased phosphorus loading over that of existing
14 land uses.

15 10.8. The district, the department, or the Department
16 of Agriculture and Consumer Services, as appropriate, shall
17 implement those alternative nutrient reduction technologies
18 determined to be feasible pursuant to subparagraph (d)6.

19 Section 4. This act shall take effect upon becoming a
20 law.

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