

CHAMBER ACTION

1 The State Resources Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to total maximum daily loads; amending s.
7 403.067, F.S.; providing for the attainment of pollutant
8 reductions for the restoration of impaired waters;
9 revising provisions for the allocation of allowable
10 pollutant loads; deleting an obsolete reporting
11 requirement; authorizing the Department of Environmental
12 Protection to adopt phased total maximum daily loads for
13 specific purposes; providing for the development of basin
14 management action plans; revising provisions for the
15 implementation of total maximum daily loads; revising
16 provisions relating to best management practices;
17 authorizing the department to adopt rules for the
18 permitting of basin management action plans; requiring the
19 department to submit a report to the Governor, the
20 President of the Senate, and the Speaker of the House of
21 Representatives prior to adopting rules for pollutant
22 trading; amending ss. 373.4595 and 570.085, F.S.;
23 correcting cross references; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) and subsections (6), (7), (8), and (11) of section 403.067, Florida Statutes, are amended to read:

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

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

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

(6) CALCULATION AND ALLOCATION.--

(a) Calculation of total maximum daily load.--

1. Prior to developing a total maximum daily load calculation for each water body or water body segment on the

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52 list specified in subsection (4), the department shall
53 coordinate with applicable local governments, water management
54 districts, the Department of Agriculture and Consumer Services,
55 other appropriate state agencies, local soil and water
56 conservation districts, environmental groups, regulated
57 interests, and affected pollution sources to determine the
58 information required, accepted methods of data collection and
59 analysis, and quality control/quality assurance requirements.
60 The analysis may include mathematical water quality modeling
61 using approved procedures and methods.

62 2. The department shall develop total maximum daily load
63 calculations for each water body or water body segment on the
64 list described in subsection (4) according to the priority
65 ranking and schedule unless the impairment of such waters is due
66 solely to activities other than point and nonpoint sources of
67 pollution. For waters determined to be impaired due solely to
68 factors other than point and nonpoint sources of pollution, no
69 total maximum daily load will be required. A total maximum daily
70 load may be required for those waters that are impaired
71 predominantly due to activities other than point and nonpoint
72 sources. The total maximum daily load calculation shall
73 establish the amount of a pollutant that a water body or water
74 body segment may receive from all sources without exceeding
75 water quality standards, and shall account for seasonal
76 variations and include a margin of safety that takes into
77 account any lack of knowledge concerning the relationship
78 between effluent limitations and water quality. The total
79 maximum daily load may be based on a pollutant load reduction

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80 | goal developed by a water management district, provided that
81 | such pollutant load reduction goal is promulgated by the
82 | department in accordance with the procedural and substantive
83 | requirements of this subsection.

84 | (b) Allocation of total maximum daily loads.--The total
85 | maximum daily loads shall include establishment of reasonable
86 | and equitable allocations of the total maximum daily load
87 | between or among point and nonpoint sources that will alone, or
88 | in conjunction with other management and restoration activities,
89 | provide for the attainment of the pollutant reductions
90 | established pursuant to paragraph (a) to achieve water quality
91 | standards for the pollutant causing impairment and the
92 | restoration of impaired waters. The allocations may establish
93 | the maximum amount of the water pollutant ~~from a given source or~~
94 | ~~category of sources~~ that may be discharged or released into the
95 | water body or water body segment in combination with other
96 | discharges or releases. Allocations may also be made to
97 | individual basins and sources or as a whole to all basins and
98 | sources or categories of sources of inflow to the water body or
99 | water body segments. An initial allocation of allowable
100 | pollutant loads among point and nonpoint sources may be
101 | developed as part of the total maximum daily load. However, in
102 | such cases, the detailed allocation to specific point sources
103 | and specific categories of nonpoint sources shall be established
104 | in the basin management action plan pursuant to subsection (7).
105 | The initial and detailed allocations shall be designed to attain
106 | the pollutant reductions established pursuant to paragraph (a)

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107 ~~water quality standards~~ and shall be based on consideration of
108 the following:

109 1. Existing treatment levels and management practices;
110 2. Best management practices established and implemented
111 pursuant to paragraph (7)(c);

112 3. Enforceable treatment levels established pursuant to
113 state or local law or permit;

114 ~~4.2.~~ Differing impacts pollutant sources and forms of
115 pollutants may have on water quality;

116 ~~5.3.~~ The availability of treatment technologies,
117 management practices, or other pollutant reduction measures;

118 ~~6.4.~~ Environmental, economic, and technological
119 feasibility of achieving the allocation;

120 ~~7.5.~~ The cost benefit associated with achieving the
121 allocation;

122 ~~8.6.~~ Reasonable timeframes for implementation;

123 ~~9.7.~~ Potential applicability of any moderating provisions
124 such as variances, exemptions, and mixing zones; and

125 ~~10.8.~~ The extent to which nonattainment of water quality
126 standards is caused by pollution sources outside of Florida,
127 discharges that have ceased, or alterations to water bodies
128 prior to the date of this act.

129 ~~(c) Not later than February 1, 2001, the department shall~~
130 ~~submit a report to the Governor, the President of the Senate,~~
131 ~~and the Speaker of the House of Representatives containing~~
132 ~~recommendations, including draft legislation, for any~~
133 ~~modifications to the process for allocating total maximum daily~~
134 ~~loads, including the relationship between allocations and the~~

135 ~~watershed or basin management planning process. Such~~
 136 ~~recommendations shall be developed by the department in~~
 137 ~~cooperation with a technical advisory committee which includes~~
 138 ~~representatives of affected parties, environmental~~
 139 ~~organizations, water management districts, and other appropriate~~
 140 ~~local, state, and federal government agencies. The technical~~
 141 ~~advisory committee shall also include such members as may be~~
 142 ~~designated by the President of the Senate and the Speaker of the~~
 143 ~~House of Representatives.~~

144 (c)(d) Adoption of rules.--The total maximum daily load
 145 calculations and allocations established under this subsection
 146 for each water body or water body segment shall be adopted by
 147 rule by the secretary pursuant to ss. 120.536(1), 120.54, and
 148 403.805. Where additional data collection and analysis are
 149 needed to increase the scientific precision and accuracy of the
 150 total maximum daily load, the department is authorized to adopt
 151 phased total maximum daily loads that are subject to change as
 152 additional data become available. Where phased total maximum
 153 daily loads are proposed, the department shall, in the detailed
 154 statement of facts and circumstances justifying the rule,
 155 explain why the data are inadequate so as to justify a phased
 156 total maximum daily load. The rules adopted pursuant to this
 157 paragraph shall not be subject to approval by the Environmental
 158 Regulation Commission. As part of the rule development process,
 159 the department shall hold at least one public workshop in the
 160 vicinity of the water body or water body segment for which the
 161 total maximum daily load is being developed. Notice of the
 162 public workshop shall be published not less than 5 days nor more

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163 than 15 days before the public workshop in a newspaper of
164 general circulation in the county or counties containing the
165 water bodies or water body segments for which the total maximum
166 daily load calculation and allocation are being developed.

167 (7) DEVELOPMENT OF BASIN MANAGEMENT ACTION PLANS;
168 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

169 (a) Basin management action plans.--

170 1. In developing and implementing the total maximum daily
171 load for a water body, the department, or the department in
172 conjunction with a water management district, may develop a
173 basin management action plan that addresses some or all of the
174 watersheds and basins tributary to the water body. Such a plan
175 shall integrate the appropriate management strategies available
176 to the state through existing water quality protection programs
177 to achieve the total maximum daily load and may provide for
178 phased implementation of these management strategies to promote
179 timely, cost-effective actions as provided for in s. 403.151.
180 The plan shall establish a schedule for implementing the
181 management strategies, establish a basis for evaluating the
182 plan's effectiveness, and identify feasible funding strategies
183 to implement the plan's management strategies. The management
184 strategies may include regional treatment systems or other
185 public works, where appropriate, to achieve the needed pollutant
186 load reductions.

187 2. A basin management action plan shall, pursuant to
188 paragraph (6)(b), equitably allocate pollutant reductions to
189 individual basins, as a whole to all basins, or to each
190 identified point source or category of nonpoint sources, as

191 appropriate. For nonpoint sources for which best management
 192 practices have been adopted, the initial requirement specified
 193 by the plan shall be those practices developed pursuant to
 194 paragraph (c). Where appropriate, the plan may provide pollutant
 195 load reduction credit to those dischargers that have implemented
 196 management strategies to reduce pollutant loads, including best
 197 management practices, prior to the development of the basin
 198 management action plan. The plan also shall identify the
 199 mechanisms by which potential future increases in pollutant
 200 loading will be addressed.

201 3. The basin management action planning process is
 202 intended to involve the broadest possible range of interested
 203 parties, with the objective of encouraging the greatest amount
 204 of cooperation and consensus possible. In developing a basin
 205 management action plan, the department shall ensure that key
 206 stakeholders, including, but not limited to, applicable local
 207 governments, water management districts, the Department of
 208 Agriculture and Consumer Services, other appropriate state
 209 agencies, local soil and water conservation districts,
 210 environmental groups, regulated interests, and affected
 211 pollution sources, are invited to participate in the process.
 212 The department shall hold at least one public meeting in the
 213 vicinity of the watershed or basin to discuss and receive
 214 comments during the planning process and shall otherwise
 215 encourage public participation to the greatest practical extent.
 216 Notice of the public meeting shall be published in a newspaper
 217 of general circulation in each county in which the watershed or
 218 basin lies not fewer than 5 days nor more than 15 days before

219 the public meeting. A basin management action plan shall not
 220 supplant or otherwise alter any assessment made under subsection
 221 (3) or subsection (4), or any calculation or initial allocation.

222 4. The department shall adopt all or any part of a basin
 223 management action plan by secretarial order pursuant to chapter
 224 120 to implement the provisions of this section.

225 5. A basin management action plan shall include milestones
 226 for implementation and water quality improvement and an
 227 associated water quality monitoring component sufficient to
 228 evaluate whether reasonable progress in pollutant load
 229 reductions is being achieved over time. An assessment of
 230 progress toward these milestones shall be conducted every 5
 231 years, and revisions to the plan shall be made as appropriate.
 232 Revisions to the basin management action plan shall be made by
 233 the department in cooperation with basin stakeholders. Revisions
 234 to the management strategies required for nonpoint sources shall
 235 follow the procedures set forth in subparagraph (c)4. Revised
 236 basin management action plans shall be adopted pursuant to
 237 subparagraph 4.

238 (b) Total maximum daily load implementation.--

239 1.(a) The department shall be the lead agency in
 240 coordinating the implementation of the total maximum daily loads
 241 through existing water quality protection programs. Application
 242 of a total maximum daily load by a water management district
 243 shall be consistent with this section and shall not require the
 244 issuance of an order or a separate action pursuant to s.
 245 120.536(1) or s. 120.54 for adoption of the calculation and

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246 allocation previously established by the department. Such
 247 programs may include, but are not limited to:

248 ~~a.1.~~ Permitting and other existing regulatory programs,
 249 including water-quality-based effluent limitations;

250 ~~b.2.~~ Nonregulatory and incentive-based programs, including
 251 best management practices, cost sharing, waste minimization,
 252 pollution prevention, agreements established pursuant to s.
 253 403.061(21), and public education;

254 ~~c.3.~~ Other water quality management and restoration
 255 activities, for example surface water improvement and management
 256 plans approved by water management districts ~~or watershed~~ or
 257 basin management action plans developed pursuant to this
 258 subsection;

259 ~~d.4.~~ Pollutant trading or other equitable economically
 260 based agreements;

261 ~~e.5.~~ Public works including capital facilities; or
 262 ~~f.6.~~ Land acquisition.

263 2. For a basin management action plan adopted pursuant to
 264 subparagraph (a)4., any management strategies and pollutant
 265 reduction requirements associated with a pollutant of concern
 266 for which a total maximum daily load was developed, including
 267 effluent limits set forth for a discharger subject to NPDES
 268 permitting, if any, shall be included in subsequent NPDES
 269 permits or permit modifications for that discharger in a timely
 270 manner. The department shall not impose limits or conditions
 271 implementing an adopted total maximum daily load in an NPDES
 272 permit until the permit expires, the discharge is modified, or

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273 the permit is reopened pursuant to an adopted basin management
274 action plan.

275 a. Absent a detailed allocation, total maximum daily loads
276 shall be implemented through NPDES permit conditions that afford
277 a compliance schedule. In such instances, a facility's NPDES
278 permit shall allow time for the issuance of an order adopting
279 the basin management action plan. The time allowed for the
280 issuance of an order adopting the plan shall not exceed 5 years.
281 Upon the issuance of an order adopting the plan, the permit
282 shall be reopened as necessary and permit conditions consistent
283 with the plan shall be established. Notwithstanding the other
284 provisions of this sub-subparagraph, upon request by an NPDES
285 permittee, the department, as part of a permit renewal or
286 modification, may establish individual allocations prior to the
287 adoption of a basin management action plan.

288 b. For holders of NPDES municipal separate storm sewer
289 system permits and other stormwater sources, implementation of a
290 total maximum daily load or basin management action plan shall
291 be achieved, to the maximum extent practicable, through the use
292 of best management practices or other management measures.

293 c. The basin management action plan does not relieve the
294 discharger from any requirement to obtain, renew, or modify an
295 NPDES permit or to abide by other requirements of the permit.

296 d. Management strategies set forth in a basin management
297 action plan to be implemented by a discharger subject to
298 permitting by the department shall be completed pursuant to the
299 schedule set forth in the basin management action plan. This

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300 implementation schedule may extend beyond the 5-year term of an
301 NPDES permit.

302 e. Management strategies and pollution reduction
303 requirements set forth in a basin management action plan for a
304 specific pollutant of concern shall not be subject to challenge
305 under chapter 120 at the time they are incorporated, in an
306 identical form, into a subsequent NPDES permit or permit
307 modification.

308 f. For nonagricultural pollutant sources not subject to
309 NPDES permitting but permitted pursuant to other state,
310 regional, or local water quality programs, the pollutant
311 reduction actions adopted in a basin management action plan
312 shall be implemented to the maximum extent practicable as part
313 of those permitting programs.

314 g. A nonpoint pollutant source discharger included in a
315 basin management action plan shall demonstrate compliance with
316 the pollutant reductions established pursuant to subsection (6)
317 by either implementing the appropriate best management practices
318 established pursuant to paragraph (c) or conducting water
319 quality monitoring prescribed by the department or a water
320 management district.

321 h. A nonpoint source discharger included in a basin
322 management action plan may be subject to enforcement action by
323 the department or a water management district based upon a
324 failure to implement the responsibilities set forth in sub-
325 subparagraph g.

326 i. A landowner, discharger, or other responsible person
327 who is implementing applicable management strategies specified

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328 in an adopted basin management action plan shall not be required
329 by permit, enforcement action, or otherwise to implement
330 additional management strategies to reduce pollutant loads to
331 attain the pollutant reductions established pursuant to
332 subsection (6) and shall be deemed to be in compliance with this
333 section. This subparagraph does not limit the authority of the
334 department to amend a basin management action plan as specified
335 in subparagraph (a)5.

336 ~~(b) In developing and implementing the total maximum daily~~
337 ~~load for a water body, the department, or the department in~~
338 ~~conjunction with a water management district, may develop a~~
339 ~~watershed or basin management plan that addresses some or all of~~
340 ~~the watersheds and basins tributary to the water body. These~~
341 ~~plans will serve to fully integrate the management strategies~~
342 ~~available to the state for the purpose of implementing the total~~
343 ~~maximum daily loads and achieving water quality restoration. The~~
344 ~~watershed or basin management planning process is intended to~~
345 ~~involve the broadest possible range of interested parties, with~~
346 ~~the objective of encouraging the greatest amount of cooperation~~
347 ~~and consensus possible. The department or water management~~
348 ~~district shall hold at least one public meeting in the vicinity~~
349 ~~of the watershed or basin to discuss and receive comments during~~
350 ~~the planning process and shall otherwise encourage public~~
351 ~~participation to the greatest practical extent. Notice of the~~
352 ~~public meeting shall be published in a newspaper of general~~
353 ~~circulation in each county in which the watershed or basin lies~~
354 ~~not less than 5 days nor more than 15 days before the public~~
355 ~~meeting. A watershed or basin management plan shall not supplant~~

356 ~~or otherwise alter any assessment made under s. 403.086(3) and~~
 357 ~~(4), or any calculation or allocation made under s. 403.086(6).~~

358 (c) Best management practices.--

359 1. The department, in cooperation with the water
 360 management districts and other interested parties, as
 361 appropriate, may develop suitable interim measures, best
 362 management practices, or other measures necessary to achieve the
 363 level of pollution reduction established by the department for
 364 nonagricultural nonpoint pollutant sources in allocations
 365 developed pursuant to this subsection and subsection (6)
 366 ~~paragraph (6)(b)~~. These practices and measures may be adopted by
 367 rule by the department and the water management districts
 368 pursuant to ss. 120.536(1) and 120.54, and, where adopted by
 369 rule, shall ~~may~~ be implemented by those parties responsible for
 370 nonagricultural nonpoint source pollution ~~pollutant sources and~~
 371 ~~the department and the water management districts shall assist~~
 372 ~~with implementation. Where interim measures, best management~~
 373 ~~practices, or other measures are adopted by rule, the~~
 374 ~~effectiveness of such practices in achieving the levels of~~
 375 ~~pollution reduction established in allocations developed by the~~
 376 ~~department pursuant to paragraph (6)(b) shall be verified by the~~
 377 ~~department. Implementation, in accordance with applicable rules,~~
 378 ~~of practices that have been verified by the department to be~~
 379 ~~effective at representative sites shall provide a presumption of~~
 380 ~~compliance with state water quality standards and release from~~
 381 ~~the provisions of s. 376.307(5) for those pollutants addressed~~
 382 ~~by the practices, and the department is not authorized to~~
 383 ~~institute proceedings against the owner of the source of~~

384 ~~pollution to recover costs or damages associated with the~~
 385 ~~contamination of surface or ground water caused by those~~
 386 ~~pollutants. Such rules shall also incorporate provisions for a~~
 387 ~~notice of intent to implement the practices and a system to~~
 388 ~~assure the implementation of the practices, including~~
 389 ~~recordkeeping requirements. Where water quality problems are~~
 390 ~~detected despite the appropriate implementation, operation, and~~
 391 ~~maintenance of best management practices and other measures~~
 392 ~~according to rules adopted under this paragraph, the department~~
 393 ~~or the water management districts shall institute a reevaluation~~
 394 ~~of the best management practice or other measures.~~

395 2.(d)1. The Department of Agriculture and Consumer
 396 Services may develop and adopt by rule pursuant to ss.
 397 120.536(1) and 120.54 suitable interim measures, best management
 398 practices, or other measures necessary to achieve the level of
 399 pollution reduction established by the department for
 400 agricultural pollutant sources in allocations developed pursuant
 401 to this subsection and subsection (6) ~~paragraph (6)(b)~~. These
 402 practices and measures may be implemented by those parties
 403 responsible for agricultural pollutant sources and the
 404 department, the water management districts, and the Department
 405 of Agriculture and Consumer Services shall assist with
 406 implementation. ~~Where interim measures, best management~~
 407 ~~practices, or other measures are adopted by rule, the~~
 408 ~~effectiveness of such practices in achieving the levels of~~
 409 ~~pollution reduction established in allocations developed by the~~
 410 ~~department pursuant to paragraph (6)(b) shall be verified by the~~
 411 ~~department. Implementation, in accordance with applicable rules,~~

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412 ~~of practices that have been verified by the department to be~~
 413 ~~effective at representative sites shall provide a presumption of~~
 414 ~~compliance with state water quality standards and release from~~
 415 ~~the provisions of s. 376.307(5) for those pollutants addressed~~
 416 ~~by the practices, and the department is not authorized to~~
 417 ~~institute proceedings against the owner of the source of~~
 418 ~~pollution to recover costs or damages associated with the~~
 419 ~~contamination of surface or ground water caused by those~~
 420 ~~pollutants.~~ In the process of developing and adopting rules for
 421 interim measures, best management practices, or other measures,
 422 the Department of Agriculture and Consumer Services shall
 423 consult with the department, the Department of Health, the water
 424 management districts, representatives from affected farming
 425 groups, and environmental group representatives. Such rules
 426 shall also incorporate provisions for a notice of intent to
 427 implement the practices and a system to assure the
 428 implementation of the practices, including recordkeeping
 429 requirements. ~~Where water quality problems are detected despite~~
 430 ~~the appropriate implementation, operation, and maintenance of~~
 431 ~~best management practices and other measures according to rules~~
 432 ~~adopted under this paragraph, the Department of Agriculture and~~
 433 ~~Consumer Services shall institute a reevaluation of the best~~
 434 ~~management practice or other measure.~~

435 3. Where interim measures, best management practices, or
 436 other measures are adopted by rule, the effectiveness of such
 437 practices in achieving the levels of pollution reduction
 438 established in allocations developed by the department pursuant
 439 to this subsection and subsection (6) shall be verified at

440 representative sites by the department. The department shall use
 441 best professional judgment in making the initial verification
 442 that the best management practices are effective and, where
 443 applicable, shall notify the appropriate water management
 444 district or the Department of Agriculture and Consumer Services
 445 of its initial verification prior to the adoption of a rule
 446 proposed pursuant to this paragraph. Implementation, in
 447 accordance with rules adopted under this paragraph, of practices
 448 that have been initially verified to be effective, or verified
 449 to be effective by monitoring at representative sites, by the
 450 department shall provide a presumption of compliance with state
 451 water quality standards and release from the provisions of s.
 452 376.307(5) for those pollutants addressed by the practices, and
 453 the department is not authorized to institute proceedings
 454 against the owner of the source of pollution to recover costs or
 455 damages associated with the contamination of surface or ground
 456 water caused by those pollutants.

457 4. Where water quality problems are demonstrated, or
 458 predicted during the development or amendment of a basin
 459 management action plan, despite the appropriate implementation,
 460 operation, and maintenance of best management practices and
 461 other measures according to rules adopted under this paragraph,
 462 the department, or a water management district or the Department
 463 of Agriculture and Consumer Services in consultation with the
 464 department, shall institute a reevaluation of the best
 465 management practice or other measure. Should the reevaluation
 466 determine that the best management practice or other measure
 467 requires modification, the department, a water management

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468 district, or the Department of Agriculture and Consumer
 469 Services, as appropriate, shall revise the rule to require
 470 implementation of the modified practice within a reasonable time
 471 period as specified in the rule.

472 5.2- Individual agricultural records relating to processes
 473 or methods of production, or relating to costs of production,
 474 profits, or other financial information which are otherwise not
 475 public records, which are reported to the Department of
 476 Agriculture and Consumer Services pursuant to subparagraphs 3.
 477 and 4. this paragraph or pursuant to any rule adopted pursuant
 478 to subparagraph 2. this paragraph shall be confidential and
 479 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 480 Constitution. Upon request of the department or any water
 481 management district, the Department of Agriculture and Consumer
 482 Services shall make such individual agricultural records
 483 available to that agency, provided that the confidentiality
 484 specified by this subparagraph for such records is maintained.
 485 This subparagraph is subject to the Open Government Sunset
 486 Review Act of 1995 in accordance with s. 119.15, and shall stand
 487 repealed on October 2, 2006, unless reviewed and saved from
 488 repeal through reenactment by the Legislature.

489 6.(e) The provisions of subparagraphs 1. and 2. paragraphs
 490 (c) and (d) shall not preclude the department or water
 491 management district from requiring compliance with water quality
 492 standards or with current best management practice requirements
 493 set forth in any applicable regulatory program authorized by law
 494 for the purpose of protecting water quality. Additionally,
 495 subparagraphs 1. and 2. paragraphs (c) and (d) are applicable

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496 only to the extent that they do not conflict with any rules
497 adopted ~~promulgated~~ by the department that are necessary to
498 maintain a federally delegated or approved program.

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

501 (a) Delisting water bodies or water body segments from the
502 list developed under subsection (4) pursuant to the guidance
503 under subsection (5).~~+~~

504 (b) Administration of funds to implement the total maximum
505 daily load and basin management action planning program.~~+~~

506 (c) Procedures for pollutant trading among the pollutant
507 sources to a water body or water body segment, including a
508 mechanism for the issuance and tracking of pollutant credits.
509 Such procedures may be implemented through permits or other
510 authorizations and must be legally binding. Prior to adopting
511 rules for pollutant trading under this paragraph, and no later
512 than November 30, 2006, the Department of Environmental
513 Protection shall submit to the Governor, the President of the
514 Senate, and the Speaker of the House of Representatives a report
515 containing recommendations on such rules, including the proposed
516 basis for equitable economically based agreements and the
517 tracking and accounting of pollution credits or other similar
518 mechanisms. Such recommendations shall be developed in
519 cooperation with a technical advisory committee that includes
520 representatives of environmental organizations, industry, local
521 government, homebuilders, water management districts,
522 agriculture, stormwater utilities, and municipal utilities. ~~No~~
523 ~~rule implementing a pollutant trading program shall become~~

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524 ~~effective prior to review and ratification by the Legislature;~~
525 ~~and~~

526 (d) The total maximum daily load calculation in accordance
527 with paragraph (6)(a) immediately upon the effective date of
528 this act, for those eight water segments within Lake Okeechobee
529 proper as submitted to the United States Environmental
530 Protection Agency pursuant to subsection (2).

531 (e) Any other purpose specifically provided for in this
532 section.

533 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

534 (a) The department shall not implement, without prior
535 legislative approval, any additional regulatory authority
536 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part
537 130, if such implementation would result in water quality
538 discharge regulation of activities not currently subject to
539 regulation.

540 (b) Interim measures, best management practices, or other
541 measures may be developed and voluntarily implemented pursuant
542 to subparagraph (7)(c)1. or subparagraph (7)(c)2. ~~paragraph~~
543 ~~(7)(e) or paragraph (7)(d)~~ for any water body or segment for
544 which a total maximum daily load or allocation has not been
545 established. The implementation of such pollution control
546 programs may be considered by the department in the
547 determination made pursuant to subsection (4).

548 Section 2. Paragraph (c) of subsection (3) of section
549 373.4595, Florida Statutes, is amended to read:

550 373.4595 Lake Okeechobee Protection Program.--

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551 (3) LAKE OKEECHOBEE PROTECTION PROGRAM.--A protection
 552 program for Lake Okeechobee that achieves phosphorus load
 553 reductions for Lake Okeechobee shall be immediately implemented
 554 as specified in this subsection. The program shall address the
 555 reduction of phosphorus loading to the lake from both internal
 556 and external sources. Phosphorus load reductions shall be
 557 achieved through a phased program of implementation. Initial
 558 implementation actions shall be technology-based, based upon a
 559 consideration of both the availability of appropriate technology
 560 and the cost of such technology, and shall include phosphorus
 561 reduction measures at both the source and the regional level.
 562 The initial phase of phosphorus load reductions shall be based
 563 upon the district's Technical Publication 81-2 and the
 564 district's WOD program, with subsequent phases of phosphorus
 565 load reductions based upon the total maximum daily loads
 566 established in accordance with s. 403.067. In the development
 567 and administration of the Lake Okeechobee Protection Program,
 568 the coordinating agencies shall maximize opportunities provided
 569 by federal cost-sharing programs and opportunities for
 570 partnerships with the private sector.

571 (c) Lake Okeechobee Watershed Phosphorus Control
 572 Program.--The Lake Okeechobee Watershed Phosphorus Control
 573 Program is designed to be a multifaceted approach to reducing
 574 phosphorus loads by improving the management of phosphorus
 575 sources within the Lake Okeechobee watershed through continued
 576 implementation of existing regulations and best management
 577 practices, development and implementation of improved best
 578 management practices, improvement and restoration of the

579 hydrologic function of natural and managed systems, and
 580 utilization of alternative technologies for nutrient reduction.
 581 The coordinating agencies shall facilitate the application of
 582 federal programs that offer opportunities for water quality
 583 treatment, including preservation, restoration, or creation of
 584 wetlands on agricultural lands.

585 1. Agricultural nonpoint source best management practices,
 586 developed in accordance with s. 403.067 and designed to achieve
 587 the objectives of the Lake Okeechobee Protection Program, shall
 588 be implemented on an expedited basis. By March 1, 2001, the
 589 coordinating agencies shall develop an interagency agreement
 590 pursuant to ss. 373.046 and 373.406(5) that assures the
 591 development of best management practices that complement
 592 existing regulatory programs and specifies how those best
 593 management practices are implemented and verified. The
 594 interagency agreement shall address measures to be taken by the
 595 coordinating agencies during any best management practice
 596 reevaluation performed pursuant to sub-subparagraph d. The
 597 department shall use best professional judgment in making the
 598 initial determination of best management practice effectiveness.

599 a. As provided in s. 403.067(7) (c) ~~(d)~~, by October 1, 2000,
 600 the Department of Agriculture and Consumer Services, in
 601 consultation with the department, the district, and affected
 602 parties, shall initiate rule development for interim measures,
 603 best management practices, conservation plans, nutrient
 604 management plans, or other measures necessary for Lake
 605 Okeechobee phosphorus load reduction. The rule shall include
 606 thresholds for requiring conservation and nutrient management

607 | plans and criteria for the contents of such plans. Development
 608 | of agricultural nonpoint source best management practices shall
 609 | initially focus on those priority basins listed in subparagraph
 610 | (b)1. The Department of Agriculture and Consumer Services, in
 611 | consultation with the department, the district, and affected
 612 | parties, shall conduct an ongoing program for improvement of
 613 | existing and development of new interim measures or best
 614 | management practices for the purpose of adoption of such
 615 | practices by rule.

616 | b. Where agricultural nonpoint source best management
 617 | practices or interim measures have been adopted by rule of the
 618 | Department of Agriculture and Consumer Services, the owner or
 619 | operator of an agricultural nonpoint source addressed by such
 620 | rule shall either implement interim measures or best management
 621 | practices or demonstrate compliance with the district's WOD
 622 | program by conducting monitoring prescribed by the department or
 623 | the district. Owners or operators of agricultural nonpoint
 624 | sources who implement interim measures or best management
 625 | practices adopted by rule of the Department of Agriculture and
 626 | Consumer Services shall be subject to the provisions of s.
 627 | 403.067(7). The Department of Agriculture and Consumer Services,
 628 | in cooperation with the department and the district, shall
 629 | provide technical and financial assistance for implementation of
 630 | agricultural best management practices, subject to the
 631 | availability of funds.

632 | c. The district or department shall conduct monitoring at
 633 | representative sites to verify the effectiveness of agricultural
 634 | nonpoint source best management practices.

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635 | d. Where water quality problems are detected for
636 | agricultural nonpoint sources despite the appropriate
637 | implementation of adopted best management practices, the
638 | Department of Agriculture and Consumer Services, in consultation
639 | with the other coordinating agencies and affected parties, shall
640 | institute a reevaluation of the best management practices and
641 | make appropriate changes to the rule adopting best management
642 | practices.

643 | 2. Nonagricultural nonpoint source best management
644 | practices, developed in accordance with s. 403.067 and designed
645 | to achieve the objectives of the Lake Okeechobee Protection
646 | Program, shall be implemented on an expedited basis. By March 1,
647 | 2001, the department and the district shall develop an
648 | interagency agreement pursuant to ss. 373.046 and 373.406(5)
649 | that assures the development of best management practices that
650 | complement existing regulatory programs and specifies how those
651 | best management practices are implemented and verified. The
652 | interagency agreement shall address measures to be taken by the
653 | department and the district during any best management practice
654 | reevaluation performed pursuant to sub-subparagraph d.

655 | a. The department and the district are directed to work
656 | with the University of Florida's Institute of Food and
657 | Agricultural Sciences to develop appropriate nutrient
658 | application rates for all nonagricultural soil amendments in the
659 | watershed. As provided in s. 403.067(7)(c), by January 1, 2001,
660 | the department, in consultation with the district and affected
661 | parties, shall develop interim measures, best management
662 | practices, or other measures necessary for Lake Okeechobee

663 phosphorus load reduction. Development of nonagricultural
 664 nonpoint source best management practices shall initially focus
 665 on those priority basins listed in subparagraph (b)1. The
 666 department, the district, and affected parties shall conduct an
 667 ongoing program for improvement of existing and development of
 668 new interim measures or best management practices. The district
 669 shall adopt technology-based standards under the district's WOD
 670 program for nonagricultural nonpoint sources of phosphorus.

671 b. Where nonagricultural nonpoint source best management
 672 practices or interim measures have been developed by the
 673 department and adopted by the district, the owner or operator of
 674 a nonagricultural nonpoint source shall implement interim
 675 measures or best management practices and be subject to the
 676 provisions of s. 403.067(7). The department and district shall
 677 provide technical and financial assistance for implementation of
 678 nonagricultural nonpoint source best management practices,
 679 subject to the availability of funds.

680 c. The district or the department shall conduct monitoring
 681 at representative sites to verify the effectiveness of
 682 nonagricultural nonpoint source best management practices.

683 d. Where water quality problems are detected for
 684 nonagricultural nonpoint sources despite the appropriate
 685 implementation of adopted best management practices, the
 686 department and the district shall institute a reevaluation of
 687 the best management practices.

688 3. The provisions of subparagraphs 1. and 2. shall not
 689 preclude the department or the district from requiring
 690 compliance with water quality standards or with current best

691 management practices requirements set forth in any applicable
 692 regulatory program authorized by law for the purpose of
 693 protecting water quality. Additionally, subparagraphs 1. and 2.
 694 are applicable only to the extent that they do not conflict with
 695 any rules promulgated by the department that are necessary to
 696 maintain a federally delegated or approved program.

697 4. Projects which reduce the phosphorus load originating
 698 from domestic wastewater systems within the Lake Okeechobee
 699 watershed shall be given funding priority in the department's
 700 revolving loan program under s. 403.1835. The department shall
 701 coordinate and provide assistance to those local governments
 702 seeking financial assistance for such priority projects.

703 5. Projects that make use of private lands, or lands held
 704 in trust for Indian tribes, to reduce nutrient loadings or
 705 concentrations within a basin by one or more of the following
 706 methods: restoring the natural hydrology of the basin, restoring
 707 wildlife habitat or impacted wetlands, reducing peak flows after
 708 storm events, increasing aquifer recharge, or protecting range
 709 and timberland from conversion to development, are eligible for
 710 grants available under this section from the coordinating
 711 agencies. For projects of otherwise equal priority, special
 712 funding priority will be given to those projects that make best
 713 use of the methods outlined above that involve public-private
 714 partnerships or that obtain federal match money. Preference
 715 ranking above the special funding priority will be given to
 716 projects located in a rural area of critical economic concern
 717 designated by the Governor. Grant applications may be submitted
 718 by any person or tribal entity, and eligible projects may

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719 include, but are not limited to, the purchase of conservation
720 and flowage easements, hydrologic restoration of wetlands,
721 creating treatment wetlands, development of a management plan
722 for natural resources, and financial support to implement a
723 management plan.

724 6.a. The department shall require all entities disposing
725 of domestic wastewater residuals within the Lake Okeechobee
726 watershed and the remaining areas of Okeechobee, Glades, and
727 Hendry Counties to develop and submit to the department an
728 agricultural use plan that limits applications based upon
729 phosphorus loading. By July 1, 2005, phosphorus concentrations
730 originating from these application sites shall not exceed the
731 limits established in the district's WOD program.

732 b. Private and government-owned utilities within Monroe,
733 Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River,
734 Okeechobee, Highlands, Hendry, and Glades Counties that dispose
735 of wastewater residual sludge from utility operations and septic
736 removal by land spreading in the Lake Okeechobee watershed may
737 use a line item on local sewer rates to cover wastewater
738 residual treatment and disposal if such disposal and treatment
739 is done by approved alternative treatment methodology at a
740 facility located within the areas designated by the Governor as
741 rural areas of critical economic concern pursuant to s.
742 288.0656. This additional line item is an environmental
743 protection disposal fee above the present sewer rate and shall
744 not be considered a part of the present sewer rate to customers,
745 notwithstanding provisions to the contrary in chapter 367. The
746 fee shall be established by the county commission or its

747 designated assignee in the county in which the alternative
 748 method treatment facility is located. The fee shall be
 749 calculated to be no higher than that necessary to recover the
 750 facility's prudent cost of providing the service. Upon request
 751 by an affected county commission, the Florida Public Service
 752 Commission will provide assistance in establishing the fee.
 753 Further, for utilities and utility authorities that use the
 754 additional line item environmental protection disposal fee, such
 755 fee shall not be considered a rate increase under the rules of
 756 the Public Service Commission and shall be exempt from such
 757 rules. Utilities using the provisions of this section may
 758 immediately include in their sewer invoicing the new
 759 environmental protection disposal fee. Proceeds from this
 760 environmental protection disposal fee shall be used for
 761 treatment and disposal of wastewater residuals, including any
 762 treatment technology that helps reduce the volume of residuals
 763 that require final disposal, but such proceeds shall not be used
 764 for transportation or shipment costs for disposal or any costs
 765 relating to the land application of residuals in the Lake
 766 Okeechobee watershed.

767 c. No less frequently than once every 3 years, the Florida
 768 Public Service Commission or the county commission through the
 769 services of an independent auditor shall perform a financial
 770 audit of all facilities receiving compensation from an
 771 environmental protection disposal fee. The Florida Public
 772 Service Commission or the county commission through the services
 773 of an independent auditor shall also perform an audit of the
 774 methodology used in establishing the environmental protection

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775 disposal fee. The Florida Public Service Commission or the
 776 county commission shall, within 120 days after completion of an
 777 audit, file the audit report with the President of the Senate
 778 and the Speaker of the House of Representatives and shall
 779 provide copies to the county commissions of the counties set
 780 forth in sub-subparagraph b. The books and records of any
 781 facilities receiving compensation from an environmental
 782 protection disposal fee shall be open to the Florida Public
 783 Service Commission and the Auditor General for review upon
 784 request.

785 7. The Department of Health shall require all entities
 786 disposing of septage within the Lake Okeechobee watershed and
 787 the remaining areas of Okeechobee, Glades, and Hendry Counties
 788 to develop and submit to that agency, by July 1, 2003, an
 789 agricultural use plan that limits applications based upon
 790 phosphorus loading. By July 1, 2005, phosphorus concentrations
 791 originating from these application sites shall not exceed the
 792 limits established in the district's WOD program.

793 8. The Department of Agriculture and Consumer Services
 794 shall initiate rulemaking requiring entities within the Lake
 795 Okeechobee watershed and the remaining areas of Okeechobee,
 796 Glades, and Hendry Counties which land-apply animal manure to
 797 develop conservation or nutrient management plans that limit
 798 application, based upon phosphorus loading. Such rules may
 799 include criteria and thresholds for the requirement to develop a
 800 conservation or nutrient management plan, requirements for plan
 801 approval, and recordkeeping requirements.

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802 9. Prior to authorizing a discharge into works of the
803 district, the district shall require responsible parties to
804 demonstrate that proposed changes in land use will not result in
805 increased phosphorus loading over that of existing land uses.

806 10. The district, the department, or the Department of
807 Agriculture and Consumer Services, as appropriate, shall
808 implement those alternative nutrient reduction technologies
809 determined to be feasible pursuant to subparagraph (d)6.

810 Section 3. Subsection (1) of section 570.085, Florida
811 Statutes, is amended to read:

812 570.085 Department of Agriculture and Consumer Services;
813 agricultural water conservation.--The department shall establish
814 an agricultural water conservation program that includes the
815 following:

816 (1) A cost-share program, coordinated where appropriate
817 with the United States Department of Agriculture and other
818 federal, state, regional, and local agencies, for irrigation
819 system retrofit and application of mobile irrigation laboratory
820 evaluations for water conservation as provided in this section
821 and, where applicable, for water quality improvement pursuant to
822 s. 403.067(7)(c)(~~d~~).

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