

1 A bill to be entitled

2 An act relating to total maximum daily loads; amending s.
3 403.067, F.S.; providing for the attainment of pollutant
4 reductions for the restoration of impaired waters;
5 revising provisions for the allocation of allowable
6 pollutant loads; deleting an obsolete reporting
7 requirement; authorizing the Department of Environmental
8 Protection to adopt phased total maximum daily loads for
9 specific purposes; providing for the development of basin
10 management action plans; revising provisions for the
11 implementation of total maximum daily loads; revising
12 provisions relating to best management practices;
13 authorizing the department to adopt rules for the
14 permitting of basin management action plans; requiring the
15 department to submit a report to the Governor, the
16 President of the Senate, and the Speaker of the House of
17 Representatives prior to adopting rules for pollutant
18 trading; amending ss. 373.4595 and 570.085, F.S.;
19 correcting cross references; providing an effective date.

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

22
23 Section 1. Paragraph (d) of subsection (2) and subsections
24 (6), (7), (8), and (11) of section 403.067, Florida Statutes,
25 are amended to read:

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

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

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

44 (6) CALCULATION AND ALLOCATION.--

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

46 1. Prior to developing a total maximum daily load
 47 calculation for each water body or water body segment on the
 48 list specified in subsection (4), the department shall
 49 coordinate with applicable local governments, water management
 50 districts, the Department of Agriculture and Consumer Services,
 51 other appropriate state agencies, local soil and water
 52 conservation districts, environmental groups, regulated
 53 interests, and affected pollution sources to determine the
 54 information required, accepted methods of data collection and
 55 analysis, and quality control/quality assurance requirements.

56 The analysis may include mathematical water quality modeling
57 using approved procedures and methods.

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

80 (b) Allocation of total maximum daily loads.--The total
81 maximum daily loads shall include establishment of reasonable
82 and equitable allocations of the total maximum daily load
83 between or among point and nonpoint sources that will alone, or

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

- 105 1. Existing treatment levels and management practices;
- 106 2. Best management practices established and implemented
107 pursuant to paragraph (7) (c);
- 108 3. Enforceable treatment levels established pursuant to
109 state or local law or permit;
- 110 4. ~~2.~~ Differing impacts pollutant sources and forms of
111 pollutants may have on water quality;

112 5.3. The availability of treatment technologies,
113 management practices, or other pollutant reduction measures;

114 6.4. Environmental, economic, and technological
115 feasibility of achieving the allocation;

116 7.5. The cost benefit associated with achieving the
117 allocation;

118 8.6. Reasonable timeframes for implementation;

119 9.7. Potential applicability of any moderating provisions
120 such as variances, exemptions, and mixing zones; and

121 10.8. The extent to which nonattainment of water quality
122 standards is caused by pollution sources outside of Florida,
123 discharges that have ceased, or alterations to water bodies
124 prior to the date of this act.

125 ~~(c) Not later than February 1, 2001, the department shall~~
126 ~~submit a report to the Governor, the President of the Senate,~~
127 ~~and the Speaker of the House of Representatives containing~~
128 ~~recommendations, including draft legislation, for any~~
129 ~~modifications to the process for allocating total maximum daily~~
130 ~~loads, including the relationship between allocations and the~~
131 ~~watershed or basin management planning process. Such~~
132 ~~recommendations shall be developed by the department in~~
133 ~~cooperation with a technical advisory committee which includes~~
134 ~~representatives of affected parties, environmental~~
135 ~~organizations, water management districts, and other appropriate~~
136 ~~local, state, and federal government agencies. The technical~~
137 ~~advisory committee shall also include such members as may be~~
138 ~~designated by the President of the Senate and the Speaker of the~~
139 ~~House of Representatives.~~

140 ~~(c)(d)~~ Adoption of rules.--The total maximum daily load
141 calculations and allocations established under this subsection
142 for each water body or water body segment shall be adopted by
143 rule by the secretary pursuant to ss. 120.536(1), 120.54, and
144 403.805. Where additional data collection and analysis are
145 needed to increase the scientific precision and accuracy of the
146 total maximum daily load, the department is authorized to adopt
147 phased total maximum daily loads that are subject to change as
148 additional data become available. Where phased total maximum
149 daily loads are proposed, the department shall, in the detailed
150 statement of facts and circumstances justifying the rule,
151 explain why the data are inadequate so as to justify a phased
152 total maximum daily load. The rules adopted pursuant to this
153 paragraph shall not be subject to approval by the Environmental
154 Regulation Commission. As part of the rule development process,
155 the department shall hold at least one public workshop in the
156 vicinity of the water body or water body segment for which the
157 total maximum daily load is being developed. Notice of the
158 public workshop shall be published not less than 5 days nor more
159 than 15 days before the public workshop in a newspaper of
160 general circulation in the county or counties containing the
161 water bodies or water body segments for which the total maximum
162 daily load calculation and allocation are being developed.

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

165 (a) Basin management action plans.--

166 1. In developing and implementing the total maximum daily
167 load for a water body, the department, or the department in

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

183 2. A basin management action plan shall, pursuant to
184 paragraph (6) (b), equitably allocate pollutant reductions to
185 individual basins, as a whole to all basins, or to each
186 identified point source or category of nonpoint sources, as
187 appropriate. For nonpoint sources for which best management
188 practices have been adopted, the initial requirement specified
189 by the plan shall be those practices developed pursuant to
190 paragraph (c). Where appropriate, the plan may provide pollutant
191 load reduction credit to those dischargers that have implemented
192 management strategies to reduce pollutant loads, including best
193 management practices, prior to the development of the basin
194 management action plan. The plan also shall identify the

195 mechanisms by which potential future increases in pollutant
196 loading will be addressed.

197 3. The basin management action planning process is
198 intended to involve the broadest possible range of interested
199 parties, with the objective of encouraging the greatest amount
200 of cooperation and consensus possible. In developing a basin
201 management action plan, the department shall ensure that key
202 stakeholders, including, but not limited to, applicable local
203 governments, water management districts, the Department of
204 Agriculture and Consumer Services, other appropriate state
205 agencies, local soil and water conservation districts,
206 environmental groups, regulated interests, and affected
207 pollution sources, are invited to participate in the process.
208 The department shall hold at least one public meeting in the
209 vicinity of the watershed or basin to discuss and receive
210 comments during the planning process and shall otherwise
211 encourage public participation to the greatest practical extent.
212 Notice of the public meeting shall be published in a newspaper
213 of general circulation in each county in which the watershed or
214 basin lies not fewer than 5 days nor more than 15 days before
215 the public meeting. A basin management action plan shall not
216 supplant or otherwise alter any assessment made under subsection
217 (3) or subsection (4), or any calculation or initial allocation.

218 4. The department shall adopt all or any part of a basin
219 management action plan by secretarial order pursuant to chapter
220 120 to implement the provisions of this section.

221 5. A basin management action plan shall include milestones
222 for implementation and water quality improvement and an

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

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

235 1.(a) The department shall be the lead agency in
 236 coordinating the implementation of the total maximum daily loads
 237 through existing water quality protection programs. Application
 238 of a total maximum daily load by a water management district
 239 shall be consistent with this section and shall not require the
 240 issuance of an order or a separate action pursuant to s.
 241 120.536(1) or s. 120.54 for adoption of the calculation and
 242 allocation previously established by the department. Such
 243 programs may include, but are not limited to:

244 a.1- Permitting and other existing regulatory programs,
 245 including water-quality-based effluent limitations;

246 b.2- Nonregulatory and incentive-based programs, including
 247 best management practices, cost sharing, waste minimization,
 248 pollution prevention, agreements established pursuant to s.
 249 403.061(21), and public education;

250 ~~c.3.~~ Other water quality management and restoration
 251 activities, for example surface water improvement and management
 252 plans approved by water management districts ~~or watershed~~ or
 253 basin management action plans developed pursuant to this
 254 subsection;

255 ~~d.4.~~ Pollutant trading or other equitable economically
 256 based agreements;

257 ~~e.5.~~ Public works including capital facilities; or

258 ~~f.6.~~ Land acquisition.

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

271 a. Absent a detailed allocation, total maximum daily loads
 272 shall be implemented through NPDES permit conditions that afford
 273 a compliance schedule. In such instances, a facility's NPDES
 274 permit shall allow time for the issuance of an order adopting
 275 the basin management action plan. The time allowed for the
 276 issuance of an order adopting the plan shall not exceed 5 years.
 277 Upon the issuance of an order adopting the plan, the permit

278 shall be reopened as necessary and permit conditions consistent
279 with the plan shall be established. Notwithstanding the other
280 provisions of this subparagraph, upon request by an NPDES
281 permittee, the department, as part of a permit renewal or
282 modification, may establish individual allocations prior to the
283 adoption of a basin management action plan.

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

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

292 d. Management strategies set forth in a basin management
293 action plan to be implemented by a discharger subject to
294 permitting by the department shall be completed pursuant to the
295 schedule set forth in the basin management action plan. This
296 implementation schedule may extend beyond the 5-year term of an
297 NPDES permit.

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

304 f. For nonagricultural pollutant sources not subject to
305 NPDES permitting but permitted pursuant to other state,

306 regional, or local water quality programs, the pollutant
307 reduction actions adopted in a basin management action plan
308 shall be implemented to the maximum extent practicable as part
309 of those permitting programs.

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

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

322 i. A landowner, discharger, or other responsible person
323 who is implementing applicable management strategies specified
324 in an adopted basin management action plan shall not be required
325 by permit, enforcement action, or otherwise to implement
326 additional management strategies to reduce pollutant loads to
327 attain the pollutant reductions established pursuant to
328 subsection (6) and shall be deemed to be in compliance with this
329 section. This subparagraph does not limit the authority of the
330 department to amend a basin management action plan as specified
331 in subparagraph (a)5.

332 ~~(b) In developing and implementing the total maximum daily~~
333 ~~load for a water body, the department, or the department in~~

334 ~~conjunction with a water management district, may develop a~~
335 ~~watershed or basin management plan that addresses some or all of~~
336 ~~the watersheds and basins tributary to the water body. These~~
337 ~~plans will serve to fully integrate the management strategies~~
338 ~~available to the state for the purpose of implementing the total~~
339 ~~maximum daily loads and achieving water quality restoration. The~~
340 ~~watershed or basin management planning process is intended to~~
341 ~~involve the broadest possible range of interested parties, with~~
342 ~~the objective of encouraging the greatest amount of cooperation~~
343 ~~and consensus possible. The department or water management~~
344 ~~district shall hold at least one public meeting in the vicinity~~
345 ~~of the watershed or basin to discuss and receive comments during~~
346 ~~the planning process and shall otherwise encourage public~~
347 ~~participation to the greatest practical extent. Notice of the~~
348 ~~public meeting shall be published in a newspaper of general~~
349 ~~circulation in each county in which the watershed or basin lies~~
350 ~~not less than 5 days nor more than 15 days before the public~~
351 ~~meeting. A watershed or basin management plan shall not supplant~~
352 ~~or otherwise alter any assessment made under s. 403.086(3) and~~
353 ~~(4), or any calculation or allocation made under s. 403.086(6).~~

354 (c) Best management practices.--

355 1. The department, in cooperation with the water
356 management districts and other interested parties, as
357 appropriate, may develop suitable interim measures, best
358 management practices, or other measures necessary to achieve the
359 level of pollution reduction established by the department for
360 nonagricultural nonpoint pollutant sources in allocations
361 developed pursuant to this subsection and subsection (6)

362 ~~paragraph (6)(b).~~ These practices and measures may be adopted by
363 rule by the department and the water management districts
364 pursuant to ss. 120.536(1) and 120.54, and, where adopted by
365 rule, shall ~~may~~ be implemented by those parties responsible for
366 nonagricultural nonpoint source pollution ~~pollutant sources~~ and
367 ~~the department and the water management districts shall assist~~
368 ~~with implementation. Where interim measures, best management~~
369 ~~practices, or other measures are adopted by rule, the~~
370 ~~effectiveness of such practices in achieving the levels of~~
371 ~~pollution reduction established in allocations developed by the~~
372 ~~department pursuant to paragraph (6)(b) shall be verified by the~~
373 ~~department. Implementation, in accordance with applicable rules,~~
374 ~~of practices that have been verified by the department to be~~
375 ~~effective at representative sites shall provide a presumption of~~
376 ~~compliance with state water quality standards and release from~~
377 ~~the provisions of s. 376.307(5) for those pollutants addressed~~
378 ~~by the practices, and the department is not authorized to~~
379 ~~institute proceedings against the owner of the source of~~
380 ~~pollution to recover costs or damages associated with the~~
381 ~~contamination of surface or ground water caused by those~~
382 ~~pollutants. Such rules shall also incorporate provisions for a~~
383 ~~notice of intent to implement the practices and a system to~~
384 ~~assure the implementation of the practices, including~~
385 ~~recordkeeping requirements. Where water quality problems are~~
386 ~~detected despite the appropriate implementation, operation, and~~
387 ~~maintenance of best management practices and other measures~~
388 ~~according to rules adopted under this paragraph, the department~~

389 ~~or the water management districts shall institute a reevaluation~~
390 ~~of the best management practice or other measures.~~

391 2.(d)1. The Department of Agriculture and Consumer
392 Services may develop and adopt by rule pursuant to ss.
393 120.536(1) and 120.54 suitable interim measures, best management
394 practices, or other measures necessary to achieve the level of
395 pollution reduction established by the department for
396 agricultural pollutant sources in allocations developed pursuant
397 to this subsection and subsection (6) ~~paragraph (6)(b)~~. These
398 practices and measures may be implemented by those parties
399 responsible for agricultural pollutant sources and the
400 department, the water management districts, and the Department
401 of Agriculture and Consumer Services shall assist with
402 implementation. ~~Where interim measures, best management~~
403 ~~practices, or other measures are adopted by rule, the~~
404 ~~effectiveness of such practices in achieving the levels of~~
405 ~~pollution reduction established in allocations developed by the~~
406 ~~department pursuant to paragraph (6)(b) shall be verified by the~~
407 ~~department. Implementation, in accordance with applicable rules,~~
408 ~~of practices that have been verified by the department to be~~
409 ~~effective at representative sites shall provide a presumption of~~
410 ~~compliance with state water quality standards and release from~~
411 ~~the provisions of s. 376.307(5) for those pollutants addressed~~
412 ~~by the practices, and the department is not authorized to~~
413 ~~institute proceedings against the owner of the source of~~
414 ~~pollution to recover costs or damages associated with the~~
415 ~~contamination of surface or ground water caused by those~~
416 ~~pollutants.~~ In the process of developing and adopting rules for

417 interim measures, best management practices, or other measures,
418 the Department of Agriculture and Consumer Services shall
419 consult with the department, the Department of Health, the water
420 management districts, representatives from affected farming
421 groups, and environmental group representatives. Such rules
422 shall also incorporate provisions for a notice of intent to
423 implement the practices and a system to assure the
424 implementation of the practices, including recordkeeping
425 requirements. ~~Where water quality problems are detected despite~~
426 ~~the appropriate implementation, operation, and maintenance of~~
427 ~~best management practices and other measures according to rules~~
428 ~~adopted under this paragraph, the Department of Agriculture and~~
429 ~~Consumer Services shall institute a reevaluation of the best~~
430 ~~management practice or other measure.~~

431 3. Where interim measures, best management practices, or
432 other measures are adopted by rule, the effectiveness of such
433 practices in achieving the levels of pollution reduction
434 established in allocations developed by the department pursuant
435 to this subsection and subsection (6) shall be verified at
436 representative sites by the department. The department shall use
437 best professional judgment in making the initial verification
438 that the best management practices are effective and, where
439 applicable, shall notify the appropriate water management
440 district or the Department of Agriculture and Consumer Services
441 of its initial verification prior to the adoption of a rule
442 proposed pursuant to this paragraph. Implementation, in
443 accordance with rules adopted under this paragraph, of practices
444 that have been initially verified to be effective, or verified

445 to be effective by monitoring at representative sites, by the
446 department shall provide a presumption of compliance with state
447 water quality standards and release from the provisions of s.
448 376.307(5) for those pollutants addressed by the practices, and
449 the department is not authorized to institute proceedings
450 against the owner of the source of pollution to recover costs or
451 damages associated with the contamination of surface or ground
452 water caused by those pollutants.

453 4. Where water quality problems are demonstrated despite
454 the appropriate implementation, operation, and maintenance of
455 best management practices and other measures according to rules
456 adopted under this paragraph, the department, or a water
457 management district or the Department of Agriculture and
458 Consumer Services in consultation with the department, shall
459 institute a reevaluation of the best management practice or
460 other measure. Should the reevaluation determine that the best
461 management practice or other measure requires modification, the
462 department, a water management district, or the Department of
463 Agriculture and Consumer Services, as appropriate, shall revise
464 the rule to require implementation of the modified practice
465 within a reasonable time period as specified in the rule.

466 5.2- Individual agricultural records relating to processes
467 or methods of production, or relating to costs of production,
468 profits, or other financial information which are otherwise not
469 public records, which are reported to the Department of
470 Agriculture and Consumer Services pursuant to subparagraphs 3.
471 and 4. ~~this paragraph~~ or pursuant to any rule adopted pursuant
472 to subparagraph 2. ~~this paragraph~~ shall be confidential and

473 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
474 Constitution. Upon request of the department or any water
475 management district, the Department of Agriculture and Consumer
476 Services shall make such individual agricultural records
477 available to that agency, provided that the confidentiality
478 specified by this subparagraph for such records is maintained.
479 This subparagraph is subject to the Open Government Sunset
480 Review Act of 1995 in accordance with s. 119.15, and shall stand
481 repealed on October 2, 2006, unless reviewed and saved from
482 repeal through reenactment by the Legislature.

483 6.(e) The provisions of subparagraphs 1. and 2. paragraphs
484 ~~(c) and (d)~~ shall not preclude the department or water
485 management district from requiring compliance with water quality
486 standards or with current best management practice requirements
487 set forth in any applicable regulatory program authorized by law
488 for the purpose of protecting water quality. Additionally,
489 subparagraphs 1. and 2. paragraphs ~~(c) and (d)~~ are applicable
490 only to the extent that they do not conflict with any rules
491 adopted promulgated by the department that are necessary to
492 maintain a federally delegated or approved program.

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

495 (a) Delisting water bodies or water body segments from the
496 list developed under subsection (4) pursuant to the guidance
497 under subsection (5).†

498 (b) Administration of funds to implement the total maximum
499 daily load and basin management action planning program.†

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

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

525 (e) Any other purpose specifically provided for in this
 526 section.

527 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

528 (a) The department shall not implement, without prior
529 legislative approval, any additional regulatory authority
530 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part
531 130, if such implementation would result in water quality
532 discharge regulation of activities not currently subject to
533 regulation.

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

542 Section 2. Paragraph (c) of subsection (3) of section
543 373.4595, Florida Statutes, is amended to read:

544 373.4595 Lake Okeechobee Protection Program.--

545 (3) LAKE OKEECHOBEE PROTECTION PROGRAM.--A protection
546 program for Lake Okeechobee that achieves phosphorus load
547 reductions for Lake Okeechobee shall be immediately implemented
548 as specified in this subsection. The program shall address the
549 reduction of phosphorus loading to the lake from both internal
550 and external sources. Phosphorus load reductions shall be
551 achieved through a phased program of implementation. Initial
552 implementation actions shall be technology-based, based upon a
553 consideration of both the availability of appropriate technology
554 and the cost of such technology, and shall include phosphorus
555 reduction measures at both the source and the regional level.

556 The initial phase of phosphorus load reductions shall be based
557 upon the district's Technical Publication 81-2 and the
558 district's WOD program, with subsequent phases of phosphorus
559 load reductions based upon the total maximum daily loads
560 established in accordance with s. 403.067. In the development
561 and administration of the Lake Okeechobee Protection Program,
562 the coordinating agencies shall maximize opportunities provided
563 by federal cost-sharing programs and opportunities for
564 partnerships with the private sector.

565 (c) Lake Okeechobee Watershed Phosphorus Control
566 Program.--The Lake Okeechobee Watershed Phosphorus Control
567 Program is designed to be a multifaceted approach to reducing
568 phosphorus loads by improving the management of phosphorus
569 sources within the Lake Okeechobee watershed through continued
570 implementation of existing regulations and best management
571 practices, development and implementation of improved best
572 management practices, improvement and restoration of the
573 hydrologic function of natural and managed systems, and
574 utilization of alternative technologies for nutrient reduction.
575 The coordinating agencies shall facilitate the application of
576 federal programs that offer opportunities for water quality
577 treatment, including preservation, restoration, or creation of
578 wetlands on agricultural lands.

579 1. Agricultural nonpoint source best management practices,
580 developed in accordance with s. 403.067 and designed to achieve
581 the objectives of the Lake Okeechobee Protection Program, shall
582 be implemented on an expedited basis. By March 1, 2001, the
583 coordinating agencies shall develop an interagency agreement

584 | pursuant to ss. 373.046 and 373.406(5) that assures the
585 | development of best management practices that complement
586 | existing regulatory programs and specifies how those best
587 | management practices are implemented and verified. The
588 | interagency agreement shall address measures to be taken by the
589 | coordinating agencies during any best management practice
590 | reevaluation performed pursuant to sub-subparagraph d. The
591 | department shall use best professional judgment in making the
592 | initial determination of best management practice effectiveness.

593 | a. As provided in s. 403.067(7) (c) ~~(d)~~, by October 1, 2000,
594 | the Department of Agriculture and Consumer Services, in
595 | consultation with the department, the district, and affected
596 | parties, shall initiate rule development for interim measures,
597 | best management practices, conservation plans, nutrient
598 | management plans, or other measures necessary for Lake
599 | Okeechobee phosphorus load reduction. The rule shall include
600 | thresholds for requiring conservation and nutrient management
601 | plans and criteria for the contents of such plans. Development
602 | of agricultural nonpoint source best management practices shall
603 | initially focus on those priority basins listed in subparagraph
604 | (b)1. The Department of Agriculture and Consumer Services, in
605 | consultation with the department, the district, and affected
606 | parties, shall conduct an ongoing program for improvement of
607 | existing and development of new interim measures or best
608 | management practices for the purpose of adoption of such
609 | practices by rule.

610 | b. Where agricultural nonpoint source best management
611 | practices or interim measures have been adopted by rule of the

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

626 c. The district or department shall conduct monitoring at
627 representative sites to verify the effectiveness of agricultural
628 nonpoint source best management practices.

629 d. Where water quality problems are detected for
630 agricultural nonpoint sources despite the appropriate
631 implementation of adopted best management practices, the
632 Department of Agriculture and Consumer Services, in consultation
633 with the other coordinating agencies and affected parties, shall
634 institute a reevaluation of the best management practices and
635 make appropriate changes to the rule adopting best management
636 practices.

637 2. Nonagricultural nonpoint source best management
638 practices, developed in accordance with s. 403.067 and designed
639 to achieve the objectives of the Lake Okeechobee Protection

640 Program, shall be implemented on an expedited basis. By March 1,
641 2001, the department and the district shall develop an
642 interagency agreement pursuant to ss. 373.046 and 373.406(5)
643 that assures the development of best management practices that
644 complement existing regulatory programs and specifies how those
645 best management practices are implemented and verified. The
646 interagency agreement shall address measures to be taken by the
647 department and the district during any best management practice
648 reevaluation performed pursuant to sub-subparagraph d.

649 a. The department and the district are directed to work
650 with the University of Florida's Institute of Food and
651 Agricultural Sciences to develop appropriate nutrient
652 application rates for all nonagricultural soil amendments in the
653 watershed. As provided in s. 403.067(7)(c), by January 1, 2001,
654 the department, in consultation with the district and affected
655 parties, shall develop interim measures, best management
656 practices, or other measures necessary for Lake Okeechobee
657 phosphorus load reduction. Development of nonagricultural
658 nonpoint source best management practices shall initially focus
659 on those priority basins listed in subparagraph (b)1. The
660 department, the district, and affected parties shall conduct an
661 ongoing program for improvement of existing and development of
662 new interim measures or best management practices. The district
663 shall adopt technology-based standards under the district's WOD
664 program for nonagricultural nonpoint sources of phosphorus.

665 b. Where nonagricultural nonpoint source best management
666 practices or interim measures have been developed by the
667 department and adopted by the district, the owner or operator of

668 a nonagricultural nonpoint source shall implement interim
669 measures or best management practices and be subject to the
670 provisions of s. 403.067(7). The department and district shall
671 provide technical and financial assistance for implementation of
672 nonagricultural nonpoint source best management practices,
673 subject to the availability of funds.

674 c. The district or the department shall conduct monitoring
675 at representative sites to verify the effectiveness of
676 nonagricultural nonpoint source best management practices.

677 d. Where water quality problems are detected for
678 nonagricultural nonpoint sources despite the appropriate
679 implementation of adopted best management practices, the
680 department and the district shall institute a reevaluation of
681 the best management practices.

682 3. The provisions of subparagraphs 1. and 2. shall not
683 preclude the department or the district from requiring
684 compliance with water quality standards or with current best
685 management practices requirements set forth in any applicable
686 regulatory program authorized by law for the purpose of
687 protecting water quality. Additionally, subparagraphs 1. and 2.
688 are applicable only to the extent that they do not conflict with
689 any rules promulgated by the department that are necessary to
690 maintain a federally delegated or approved program.

691 4. Projects which reduce the phosphorus load originating
692 from domestic wastewater systems within the Lake Okeechobee
693 watershed shall be given funding priority in the department's
694 revolving loan program under s. 403.1835. The department shall

695 | coordinate and provide assistance to those local governments
696 | seeking financial assistance for such priority projects.

697 | 5. Projects that make use of private lands, or lands held
698 | in trust for Indian tribes, to reduce nutrient loadings or
699 | concentrations within a basin by one or more of the following
700 | methods: restoring the natural hydrology of the basin, restoring
701 | wildlife habitat or impacted wetlands, reducing peak flows after
702 | storm events, increasing aquifer recharge, or protecting range
703 | and timberland from conversion to development, are eligible for
704 | grants available under this section from the coordinating
705 | agencies. For projects of otherwise equal priority, special
706 | funding priority will be given to those projects that make best
707 | use of the methods outlined above that involve public-private
708 | partnerships or that obtain federal match money. Preference
709 | ranking above the special funding priority will be given to
710 | projects located in a rural area of critical economic concern
711 | designated by the Governor. Grant applications may be submitted
712 | by any person or tribal entity, and eligible projects may
713 | include, but are not limited to, the purchase of conservation
714 | and flowage easements, hydrologic restoration of wetlands,
715 | creating treatment wetlands, development of a management plan
716 | for natural resources, and financial support to implement a
717 | management plan.

718 | 6.a. The department shall require all entities disposing
719 | of domestic wastewater residuals within the Lake Okeechobee
720 | watershed and the remaining areas of Okeechobee, Glades, and
721 | Hendry Counties to develop and submit to the department an
722 | agricultural use plan that limits applications based upon

723 phosphorus loading. By July 1, 2005, phosphorus concentrations
724 originating from these application sites shall not exceed the
725 limits established in the district's WOD program.

726 b. Private and government-owned utilities within Monroe,
727 Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River,
728 Okeechobee, Highlands, Hendry, and Glades Counties that dispose
729 of wastewater residual sludge from utility operations and septic
730 removal by land spreading in the Lake Okeechobee watershed may
731 use a line item on local sewer rates to cover wastewater
732 residual treatment and disposal if such disposal and treatment
733 is done by approved alternative treatment methodology at a
734 facility located within the areas designated by the Governor as
735 rural areas of critical economic concern pursuant to s.
736 288.0656. This additional line item is an environmental
737 protection disposal fee above the present sewer rate and shall
738 not be considered a part of the present sewer rate to customers,
739 notwithstanding provisions to the contrary in chapter 367. The
740 fee shall be established by the county commission or its
741 designated assignee in the county in which the alternative
742 method treatment facility is located. The fee shall be
743 calculated to be no higher than that necessary to recover the
744 facility's prudent cost of providing the service. Upon request
745 by an affected county commission, the Florida Public Service
746 Commission will provide assistance in establishing the fee.
747 Further, for utilities and utility authorities that use the
748 additional line item environmental protection disposal fee, such
749 fee shall not be considered a rate increase under the rules of
750 the Public Service Commission and shall be exempt from such

751 | rules. Utilities using the provisions of this section may
752 | immediately include in their sewer invoicing the new
753 | environmental protection disposal fee. Proceeds from this
754 | environmental protection disposal fee shall be used for
755 | treatment and disposal of wastewater residuals, including any
756 | treatment technology that helps reduce the volume of residuals
757 | that require final disposal, but such proceeds shall not be used
758 | for transportation or shipment costs for disposal or any costs
759 | relating to the land application of residuals in the Lake
760 | Okeechobee watershed.

761 | c. No less frequently than once every 3 years, the Florida
762 | Public Service Commission or the county commission through the
763 | services of an independent auditor shall perform a financial
764 | audit of all facilities receiving compensation from an
765 | environmental protection disposal fee. The Florida Public
766 | Service Commission or the county commission through the services
767 | of an independent auditor shall also perform an audit of the
768 | methodology used in establishing the environmental protection
769 | disposal fee. The Florida Public Service Commission or the
770 | county commission shall, within 120 days after completion of an
771 | audit, file the audit report with the President of the Senate
772 | and the Speaker of the House of Representatives and shall
773 | provide copies to the county commissions of the counties set
774 | forth in sub-subparagraph b. The books and records of any
775 | facilities receiving compensation from an environmental
776 | protection disposal fee shall be open to the Florida Public
777 | Service Commission and the Auditor General for review upon
778 | request.

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

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

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

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

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

806 570.085 Department of Agriculture and Consumer Services;
807 agricultural water conservation.--The department shall establish
808 an agricultural water conservation program that includes the
809 following:

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

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