

Bill No. HB 1855, 1st Eng.

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CHAMBER ACTION

Senate

House

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2	05/04/2005 03:50 PM	.	05/06/2005 13:53:01
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11 Senator Alexander moved the following amendment:

12

13 **Senate Amendment (with title amendment)**

14 On page 19, between lines 3 and 4,

15

16 insert:

17 Section 4. Paragraph (d) of subsection (2) and

18 subsections (6), (7), (8), and (11) of section

403.0NAME="PageLine19">19 Florida Statutes, are amended to read:

20 403.067 Establishment and
implementation of total

21 maximum daily loads.--

22 (2) LIST OF SURFACE WATERS OR
SEGMENTS.--In accordance

23 with s. 303(d) of the Clean Water Act, Pub.
L. No. 92-500, 33

24 U.S.C. ss. 1251 et seq., the department must
submit

25 periodically to the United States
Environmental Protection

26 Agency a list of surface waters or segments
for which total

27 maximum daily load assessments will be
conducted. The

28 assessments shall evaluate the water quality
conditions of the

29 listed waters and, if such waters are
determined not to meet

30 water quality standards, total maximum daily loads shall be

31 established, subject to the provisions of subsection (4). The

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1 department shall establish a priority ranking and schedule for
2 analyzing such waters.

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

9 (6) CALCULATION AND ALLOCATION.--

10 (a) Calculation of total maximum daily load.

11 1. Prior to developing a total maximum daily load
12 calculation for each water body or water body segment on the
13 list specified in subsection (4), the department shall
14 coordinate with applicable local governments, water management
15 districts, the Department of Agriculture and Consumer
16 Services, other appropriate state agencies, local soil and
17 water conservation districts, environmental groups, regulated
18 interests, and affected pollution sources to determine the
19 information required, accepted methods of data collection and
20 analysis, and quality control/quality assurance requirements.
21 The analysis may include mathematical water quality modeling
22 using approved procedures and methods.

23 2. The department shall develop total maximum daily
24 load calculations for each water body or water body segment on
25 the list described in subsection (4) according to the priority
26 ranking and schedule unless the impairment of such waters is
27 due solely to activities other than point and nonpoint sources
28 of pollution. For waters determined to be impaired due solely
29 to factors other than point and nonpoint sources of pollution,
30 no total maximum daily load will be required. A total maximum
31 daily load may be required for those waters that are impaired

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1 predominantly due to activities other than point and nonpoint
2 sources. The total maximum daily load calculation shall
3 establish the amount of a pollutant that a water body or water
4 body segment may receive from all sources without exceeding
5 water quality standards, and shall account for seasonal
6 variations and include a margin of safety that takes into
7 account any lack of knowledge concerning the relationship
8 between effluent limitations and water quality. The total
9 maximum daily load may be based on a pollutant load reduction
10 goal developed by a water management district, provided that
11 such pollutant load reduction goal is promulgated by the
12 department in accordance with the procedural and substantive
13 requirements of this subsection.

14 (b) Allocation of total maximum daily loads. The total
15 maximum daily loads shall include establishment of reasonable
16 and equitable allocations of the total maximum daily load
17 between or among point and nonpoint sources that will alone,
18 or in conjunction with other management and restoration
19 activities, provide for the attainment of the pollutant
20 reductions established pursuant to paragraph (a) to achieve
21 water quality standards for the pollutant causing impairment
22 ~~water quality standards and the restoration of impaired~~
23 ~~waters~~. The allocations may establish the maximum amount of
24 the water pollutant ~~from a given source or category of sources~~
25 that may be discharged or released into the water body or
26 water body segment in combination with other discharges or
27 releases. Allocations may also be made to individual basins
28 and sources or as a whole to all basins and sources or
29 categories of sources of inflow to the water body or water
30 body segments. An initial allocation of allowable pollutant
31 loads among point and nonpoint sources may be developed as

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1 part of the total maximum daily load. However, in such cases,
 2 the detailed allocation to specific point sources and specific
 3 categories of nonpoint sources shall be established in the
 4 basin management action plan pursuant to subsection (7). The
 5 initial and detailed allocations shall be designed to attain
 6 the pollutant reductions established pursuant to paragraph (a)
 7 ~~water quality standards~~ and shall be based on consideration of
 8 the following:

9 1. Existing treatment levels and management practices;

10 2. Best management practices established and

11 implemented pursuant to paragraph (7)(c);

12 3. Enforceable treatment levels established pursuant

13 to state or local law or permit;

14 ~~4.2.~~ Differing impacts pollutant sources and forms of

15 pollutant may have on water quality;

16 ~~5.3.~~ The availability of treatment technologies,

17 management practices, or other pollutant reduction measures;

18 ~~6.4.~~ Environmental, economic, and technological

19 feasibility of achieving the allocation;

20 ~~7.5.~~ The cost benefit associated with achieving the

21 allocation;

22 ~~8.6.~~ Reasonable timeframes for implementation;

23 ~~9.7.~~ Potential applicability of any moderating

24 provisions such as variances, exemptions, and mixing zones;

25 and

26 ~~10.8.~~ The extent to which nonattainment of water

27 quality standards is caused by pollution sources outside of

28 Florida, discharges that have ceased, or alterations to water

29 bodies prior to the date of this act.

30 ~~(c) Not later than February 1, 2001, the department~~

31 ~~shall submit a report to the Governor, the President of the~~

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

14 (c)(d) Adoption of rules. The total maximum daily load
15 calculations and allocations established under this subsection
16 for each water body or water body segment shall be adopted by
17 rule by the secretary pursuant to ss. 120.536(1), 120.54, and
18 403.805. Where additional data collection and analysis are
19 needed to increase the scientific precision and accuracy of
20 the total maximum daily load, the department is authorized to
21 adopt phased total maximum daily loads that are subject to
22 change as additional data becomes available. Where phased
23 total maximum daily loads are proposed, the department shall,
24 in the detailed statement of facts and circumstances
25 justifying the rule, explain why the data are inadequate so as
26 to justify a phased total maximum daily load. The rules
27 adopted pursuant to this paragraph shall not be subject to
28 approval by the Environmental Regulation Commission. As part
29 of the rule development process, the department shall hold at
30 least one public workshop in the vicinity of the water body or
31 water body segment for which the total maximum daily load is

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1 being developed. Notice of the public workshop shall be
 2 published not less than 5 days nor more than 15 days before
 3 the public workshop in a newspaper of general circulation in
 4 the county or counties containing the water bodies or water
 5 body segments for which the total maximum daily load
 6 calculation and allocation are being developed.

7 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
 8 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

9 (a) Basin management action plans.--

10 1. In developing and implementing the total maximum
 11 daily load for a water body, the department, or the department
 12 in conjunction with a water management district, may develop a
 13 basin management action plan that addresses some or all of the
 14 watersheds and basins tributary to the water body. Such a plan
 15 shall integrate the appropriate management strategies
 16 available to the state through existing water quality
 17 protection programs to achieve the total maximum daily loads
 18 and may provide for phased implementation of these management
 19 strategies to promote timely, cost-effective actions as
 20 provided for in s. 403.151. The plan shall establish a
 21 schedule for implementing the management strategies, establish
 22 a basis for evaluating the plan's effectiveness, and identify
 23 feasible funding strategies for implementing the plan's
 24 management strategies. The management strategies may include
 25 regional treatment systems or other public works, where
 26 appropriate, to achieve the needed pollutant load reductions.

27 2. A basin management action plan shall equitably
 28 allocate, pursuant to paragraph (6)(b), pollutant reductions
 29 to individual basins, as a whole to all basins, or to each
 30 identified point source or category of nonpoint sources, as
 31 appropriate. For nonpoint sources for which best management

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1 practices have been adopted, the initial requirement specified
 2 by the plan shall be those practices developed pursuant to
 3 paragraph (c). Where appropriate, the plan may provide
 4 pollutant-load-reduction credits to dischargers that have
 5 implemented management strategies to reduce pollutant loads,
 6 including best management practices, prior to the development
 7 of the basin management action plan. The plan shall also
 8 identify the mechanisms by which potential future increases in
 9 pollutant loading will be addressed.

10 3. The basin management action planning process is
 11 intended to involve the broadest possible range of interested
 12 parties, with the objective of encouraging the greatest amount
 13 of cooperation and consensus possible. In developing a basin
 14 management action plan, the department shall assure that key
 15 stakeholders, including, but not limited to, applicable local
 16 governments, water management districts, the Department of
 17 Agriculture and Consumer Services, other appropriate state
 18 agencies, local soil and water conservation districts,
 19 environmental groups, regulated interests, and affected
 20 pollution sources, are invited to participate in the process.
 21 The department shall hold at least one public meeting in the
 22 vicinity of the watershed or basin to discuss and receive
 23 comments during the planning process and shall otherwise
 24 encourage public participation to the greatest practicable
 25 extent. Notice of the public meeting shall be published in a
 26 newspaper of general circulation in each county in which the
 27 watershed or basin lies not less than 5 days nor more than 15
 28 days before the public meeting. A basin management action plan
 29 shall not supplant or otherwise alter any assessment made
 30 under subsection (3) or subsection (4) or any calculation or
 31 initial allocation.

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

4 5. The basin management action plan shall include
5 milestones for implementation and water quality improvement,
6 and an associated water quality monitoring component
7 sufficient to evaluate whether reasonable progress in
8 pollutant load reductions is being achieved over time. An
9 assessment of progress toward these milestones shall be
10 conducted every 5 years, and revisions to the plan shall be
11 made as appropriate. Revisions to the basin management action
12 plan shall be made by the department in cooperation with basin
13 stakeholders. Revisions to the management strategies required
14 for nonpoint sources shall follow the procedures set forth in
15 subparagraph (c)4. Revised basin management action plans shall
16 be adopted pursuant to subparagraph 4.

17 ~~(b)(a)~~ Total maximum daily load implementation.--

18 1. The department shall be the lead agency in
19 coordinating the implementation of the total maximum daily
20 loads through existing water quality protection programs.
21 Application of a total maximum daily load by a water
22 management district shall be consistent with this section and
23 shall not require the issuance of an order or a separate
24 action pursuant to s. 120.536(1) or s. 120.54 for adoption of
25 the calculation and allocation previously established by the
26 department. Such programs may include, but are not limited to:

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

29 ~~b.2.~~ Nonregulatory and incentive-based programs,
30 including best management practices, cost sharing, waste
31 minimization, pollution prevention, agreements established

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1 pursuant to s. 403.061(21), and public education;

2 ~~c.3.~~ Other water quality management and restoration
3 activities, for example surface water improvement and
4 management plans approved by water management districts or
5 ~~watershed~~ or basin management action plans developed pursuant
6 to this subsection;

7 ~~d.4.~~ Pollutant trading or other equitable economically
8 based agreements;

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

10 ~~f.6.~~ Land acquisition.

11 2. For a basin management action plan adopted pursuant
12 to subparagraph (a)4., any management strategies and pollutant
13 reduction requirements associated with a pollutant of concern
14 for which a total maximum daily load has been developed,
15 including effluent limits set forth for a discharger subject
16 to NPDES permitting, if any, shall be included in a timely
17 manner in subsequent NPDES permits or permit modifications for
18 that discharger. The department shall not impose limits or
19 conditions implementing an adopted total maximum daily load in
20 an NPDES permit until the permit expires, the discharge is
21 modified, or the permit is reopened pursuant to an adopted
22 basin management action plan.

23 a. Absent a detailed allocation, total maximum daily
24 loads shall be implemented through NPDES permit conditions
25 that afford a compliance schedule. In such instances, a
26 facility's NPDES permit shall allow time for the issuance of
27 an order adopting the basin management action plan. The time
28 allowed for the issuance of an order adopting the plan shall
29 not exceed five years. Upon issuance of an order adopting the
30 plan, the permit shall be reopened, as necessary, and permit
31 conditions consistent with the plan shall be established.

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1 Notwithstanding the other provisions of this subparagraph,
 2 upon request by a NPDES permittee, the department as part of a
 3 permit issuance, renewal or modification may establish
 4 individual allocations prior to the adoption of a basin
 5 management action plan.

6 b. For holders of NPDES municipal separate storm sewer
 7 system permits and other stormwater sources, implementation of
 8 a total maximum daily load or basin management action plan
 9 shall be achieved, to the maximum extent practicable, through
 10 the use of best management practices or other management
 11 measures.

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

16 d. Management strategies set forth in a basin
 17 management action plan to be implemented by a discharger
 18 subject to permitting by the department shall be completed
 19 pursuant to the schedule set forth in the basin management
 20 action plan. This implementation schedule may extend beyond
 21 the 5-year term of an NPDES permit.

22 e. Management strategies and pollution reduction
 23 requirements set forth in a basin management action plan for a
 24 specific pollutant of concern shall not be subject to
 25 challenge under chapter 120 at the time they are incorporated,
 26 in an identical form, into a subsequent NPDES permit or permit
 27 modification.

28 f. For nonagricultural pollutant sources not subject
 29 to NPDES permitting but permitted pursuant to other state,
 30 regional, or local water quality programs, the pollutant
 31 reduction actions adopted in a basin management action plan

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1 shall be implemented to the maximum extent practicable as part
2 of those permitting programs.

3 g. A nonpoint source discharger included in a basin
4 management action plan shall demonstrate compliance with the
5 pollutant reductions established pursuant to subsection (6) by
6 either implementing the appropriate best management practices
7 established pursuant to paragraph (c) or conducting water
8 quality monitoring prescribed by the department or a water
9 management district.

10 h. A nonpoint source discharger included in a basin
11 management action plan may be subject to enforcement action by
12 the department or a water management district based upon a
13 failure to implement the responsibilities set forth in
14 sub-subparagraph g.

15 i. A landowner, discharger, or other responsible
16 person who is implementing applicable management strategies
17 specified in an adopted basin management action plan shall not
18 be required by permit, enforcement action, or otherwise to
19 implement additional management strategies to reduce pollutant
20 loads to attain the pollutant reductions established pursuant
21 to subsection (6) and shall be deemed to be in compliance with
22 this section. This subparagraph does not limit the authority
23 of the department to amend a basin management action plan as
24 specified in subparagraph (a)5.

25 ~~(b) In developing and implementing the total maximum~~
26 ~~daily load for a water body, the department, or the department~~
27 ~~in conjunction with a water management district, may develop a~~
28 ~~watershed or basin management plan that addresses some or all~~
29 ~~of the watersheds and basins tributary to the water body.~~
30 ~~These plans will serve to fully integrate the management~~
31 ~~strategies available to the state for the purpose of~~

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1 ~~implementing the total maximum daily loads and achieving water~~
2 ~~quality restoration. The watershed or basin management~~
3 ~~planning process is intended to involve the broadest possible~~
4 ~~range of interested parties, with the objective of encouraging~~
5 ~~the greatest amount of cooperation and consensus possible. The~~
6 ~~department or water management district shall hold at least~~
7 ~~one public meeting in the vicinity of the watershed or basin~~
8 ~~to discuss and receive comments during the planning process~~
9 ~~and shall otherwise encourage public participation to the~~
10 ~~greatest practical extent. Notice of the public meeting shall~~
11 ~~be published in a newspaper of general circulation in each~~
12 ~~county in which the watershed or basin lies not less than 5~~
13 ~~days nor more than 15 days before the public meeting. A~~
14 ~~watershed or basin management plan shall not supplant or~~
15 ~~otherwise alter any assessment made under s. 403.086(3) and~~
16 ~~(4), or any calculation or allocation made under s.~~
17 ~~403.086(6).~~

18 (c) Best management practices.--

19 1. The department, in cooperation with the water
20 management districts and other interested parties, as
21 appropriate, may develop suitable interim measures, best
22 management practices, or other measures necessary to achieve
23 the level of pollution reduction established by the department
24 for nonagricultural nonpoint pollutant sources in allocations
25 developed pursuant to subsection (6) and this subsection
26 ~~paragraph (6)(b)~~. These practices and measures may be adopted
27 by rule by the department and the water management districts
28 pursuant to ss. 120.536(1) and 120.54, and, where adopted by
29 rule, shall ~~may~~ be implemented by those parties responsible
30 for nonagricultural nonpoint source pollution ~~pollutant~~
31 ~~sources and the department and the water management districts~~

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1 ~~shall assist with implementation. Where interim measures, best~~
2 ~~management practices, or other measures are adopted by rule,~~
3 ~~the effectiveness of such practices in achieving the levels of~~
4 ~~pollution reduction established in allocations developed by~~
5 ~~the department pursuant to paragraph (6)(b) shall be verified~~
6 ~~by the department. Implementation, in accordance with~~
7 ~~applicable rules, of practices that have been verified by the~~
8 ~~department to be effective at representative sites shall~~
9 ~~provide a presumption of compliance with state water quality~~
10 ~~standards and release from the provisions of s. 376.307(5) for~~
11 ~~those pollutants addressed by the practices, and the~~
12 ~~department is not authorized to institute proceedings against~~
13 ~~the owner of the source of pollution to recover costs or~~
14 ~~damages associated with the contamination of surface or ground~~
15 ~~water caused by those pollutants. Such rules shall also~~
16 ~~incorporate provisions for a notice of intent to implement the~~
17 ~~practices and a system to assure the implementation of the~~
18 ~~practices, including recordkeeping requirements. Where water~~
19 ~~quality problems are detected despite the appropriate~~
20 ~~implementation, operation, and maintenance of best management~~
21 ~~practices and other measures according to rules adopted under~~
22 ~~this paragraph, the department or the water management~~
23 ~~districts shall institute a reevaluation of the best~~
24 ~~management practice or other measures.~~

25 2.(d)1. The Department of Agriculture and Consumer
26 Services may develop and adopt by rule pursuant to ss.
27 120.536(1) and 120.54 suitable interim measures, best
28 management practices, or other measures necessary to achieve
29 the level of pollution reduction established by the department
30 for agricultural pollutant sources in allocations developed
31 pursuant to subsection (6) and this subsection ~~paragraph~~

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

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

4 3. Where interim measures, best management practices,
5 or other measures are adopted by rule, the effectiveness of
6 such practices in achieving the levels of pollution reduction
7 established in allocations developed by the department
8 pursuant to subsection (6) and this subsection shall be
9 verified at representative sites by the department. The
10 department shall use best professional judgment in making the
11 initial verification that the best management practices are
12 effective and, where applicable, shall notify the appropriate
13 water management district and the Department of Agriculture
14 and Consumer Services of its initial verification prior to the
15 adoption of a rule proposed pursuant to this paragraph.
16 Implementation, in accordance with rules adopted under this
17 paragraph, of practices that have been initially verified to
18 be effective, or verified to be effective by monitoring at
19 representative sites, by the department, shall provide a
20 presumption of compliance with state water quality standards
21 and release from the provisions of s. 376.307(5) for those
22 pollutants addressed by the practices, and the department is
23 not authorized to institute proceedings against the owner of
24 the source of pollution to recover costs or damages associated
25 with the contamination of surface water or groundwater caused
26 by those pollutants.

27 4. Where water quality problems are demonstrated,
28 despite the appropriate implementation, operation, and
29 maintenance of best management practices and other measures
30 according to rules adopted under this paragraph, the
31 department, a water management district, or the Department of

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1 Agriculture and Consumer Services, in consultation with the
 2 department, shall institute a reevaluation of the best
 3 management practice or other measure. Should the reevaluation
 4 determine that the best management practice or other measure
 5 requires modification, the department, a water management
 6 district, or the Department of Agriculture and Consumer
 7 Services, as appropriate, shall revise the rule to require
 8 implementation of the modified practice within a reasonable
 9 time period as specified in the rule.

10 ~~5.2-~~ Individual agricultural records relating to
 11 processes or methods of production, or relating to costs of
 12 production, profits, or other financial information which are
 13 otherwise not public records, which are reported to the
 14 Department of Agriculture and Consumer Services pursuant to
 15 ~~subparagraphs 3. and 4. this paragraph~~ or pursuant to any rule
 16 adopted pursuant to ~~subparagraph 2. this paragraph~~ shall be
 17 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 18 of the State Constitution. Upon request of the department or
 19 any water management district, the Department of Agriculture
 20 and Consumer Services shall make such individual agricultural
 21 records available to that agency, provided that the
 22 confidentiality specified by this subparagraph for such
 23 records is maintained. This subparagraph is subject to the
 24 Open Government Sunset Review Act of 1995 in accordance with
 25 s. 119.15, and shall stand repealed on October 2, 2006, unless
 26 reviewed and saved from repeal through reenactment by the
 27 Legislature.

28 ~~6.(e)~~ The provisions of subparagraphs 1. and 2.
 29 ~~paragraphs (c) and (d)~~ shall not preclude the department or
 30 water management district from requiring compliance with water
 31 quality standards or with current best management practice

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1 requirements set forth in any applicable regulatory program
 2 authorized by law for the purpose of protecting water quality.
 3 Additionally, subparagraphs 1. and 2. ~~paragraphs (c) and (d)~~
 4 are applicable only to the extent that they do not conflict
 5 with any rules adopted ~~promulgated~~ by the department that are
 6 necessary to maintain a federally delegated or approved
 7 program.

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

10 (a) Delisting water bodies or water body segments from
 11 the list developed under subsection (4) pursuant to the
 12 guidance under subsection (5);

13 (b) Administration of funds to implement the total
 14 maximum daily load and basin management action planning
 15 programs ~~program~~;

16 (c) Procedures for pollutant trading among the
 17 pollutant sources to a water body or water body segment,
 18 including a mechanism for the issuance and tracking of
 19 pollutant credits. Such procedures may be implemented through
 20 permits or other authorizations and must be legally binding.
 21 Prior to adopting rules for pollutant trading under this
 22 paragraph, and no later than November 30, 2006, the Department
 23 of Environmental Protection shall submit a report to the
 24 Governor, the President of the Senate, and the Speaker of the
 25 House of Representatives containing recommendations on such
 26 rules, including the proposed basis for equitable economically
 27 based agreements and the tracking and accounting of pollution
 28 credits or other similar mechanisms. Such recommendations
 29 shall be developed in cooperation with a technical advisory
 30 committee that includes experts in pollutant trading and
 31 representatives of potentially affected parties; ~~No rule~~

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1 ~~implementing a pollutant trading program shall become~~
2 ~~effective prior to review and ratification by the Legislature;~~
3 ~~and~~

4 (d) The total maximum daily load calculation in
5 accordance with paragraph (6)(a) immediately upon the
6 effective date of this act, for those eight water segments
7 within Lake Okeechobee proper as submitted to the United
8 States Environmental Protection Agency pursuant to subsection
9 (2); ~~and-~~

10 (e) Implementation of other specific provisions.

11 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

12 (a) The department shall not implement, without prior
13 legislative approval, any additional regulatory authority
14 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part
15 130, if such implementation would result in water quality
16 discharge regulation of activities not currently subject to
17 regulation.

18 (b) Interim measures, best management practices, or
19 other measures may be developed and voluntarily implemented
20 pursuant to subparagraphs paragraph (7)(c) 1. and 2. or
21 ~~paragraph (7)(d)~~ for any water body or segment for which a
22 total maximum daily load or allocation has not been
23 established. The implementation of such pollution control
24 programs may be considered by the department in the
25 determination made pursuant to subsection (4).

26 Section 5. Paragraph (c) of subsection (3) of section
27 373.4595, Florida Statutes, is amended to read:

28 373.4595 Lake Okeechobee Protection Program.--

29 (3) LAKE OKEECHOBEE PROTECTION PROGRAM.--A protection
30 program for Lake Okeechobee that achieves phosphorus load
31 reductions for Lake Okeechobee shall be immediately

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

19 (c) Lake Okeechobee Watershed Phosphorus Control
 20 Program.--The Lake Okeechobee Watershed Phosphorus Control
 21 Program is designed to be a multifaceted approach to reducing
 22 phosphorus loads by improving the management of phosphorus
 23 sources within the Lake Okeechobee watershed through continued
 24 implementation of existing regulations and best management
 25 practices, development and implementation of improved best
 26 management practices, improvement and restoration of the
 27 hydrologic function of natural and managed systems, and
 28 utilization of alternative technologies for nutrient
 29 reduction. The coordinating agencies shall facilitate the
 30 application of federal programs that offer opportunities for
 31 water quality treatment, including preservation, restoration,

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1 or creation of wetlands on agricultural lands.

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

17 a. As provided in s. 403.067(7)(c) ~~s. 403.067(7)(d)~~,
18 by October 1, 2000, the Department of Agriculture and Consumer
19 Services, in consultation with the department, the district,
20 and affected parties, shall initiate rule development for
21 interim measures, best management practices, conservation
22 plans, nutrient management plans, or other measures necessary
23 for Lake Okeechobee phosphorus load reduction. The rule shall
24 include thresholds for requiring conservation and nutrient
25 management plans and criteria for the contents of such plans.
26 Development of agricultural nonpoint source best management
27 practices shall initially focus on those priority basins
28 listed in subparagraph (b)1. The Department of Agriculture and
29 Consumer Services, in consultation with the department, the
30 district, and affected parties, shall conduct an ongoing
31 program for improvement of existing and development of new

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1 interim measures or best management practices for the purpose
2 of adoption of such practices by rule.

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

19 c. The district or department shall conduct monitoring
20 at representative sites to verify the effectiveness of
21 agricultural nonpoint source best management practices.

22 d. Where water quality problems are detected for
23 agricultural nonpoint sources despite the appropriate
24 implementation of adopted best management practices, the
25 Department of Agriculture and Consumer Services, in
26 consultation with the other coordinating agencies and affected
27 parties, shall institute a reevaluation of the best management
28 practices and make appropriate changes to the rule adopting
29 best management practices.

30 2. Nonagricultural nonpoint source best management
31 practices, developed in accordance with s. 403.067 and

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

12 a. The department and the district are directed to
 13 work with the University of Florida's Institute of Food and
 14 Agricultural Sciences to develop appropriate nutrient
 15 application rates for all nonagricultural soil amendments in
 16 the watershed. As provided in s. 403.067(7)(c), by January 1,
 17 2001, the department, in consultation with the district and
 18 affected parties, shall develop interim measures, best
 19 management practices, or other measures necessary for Lake
 20 Okeechobee phosphorus load reduction. Development of
 21 nonagricultural nonpoint source best management practices
 22 shall initially focus on those priority basins listed in
 23 subparagraph (b)1. The department, the district, and affected
 24 parties shall conduct an ongoing program for improvement of
 25 existing and development of new interim measures or best
 26 management practices. The district shall adopt
 27 technology-based standards under the district's WOD program
 28 for nonagricultural nonpoint sources of phosphorus.

29 b. Where nonagricultural nonpoint source best
 30 management practices or interim measures have been developed
 31 by the department and adopted by the district, the owner or

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1 operator of a nonagricultural nonpoint source shall implement
 2 interim measures or best management practices and be subject
 3 to the provisions of s. 403.067(7). The department and
 4 district shall provide technical and financial assistance for
 5 implementation of nonagricultural nonpoint source best
 6 management practices, subject to the availability of funds.

7 c. The district or the department shall conduct
 8 monitoring at representative sites to verify the effectiveness
 9 of nonagricultural nonpoint source best management practices.

10 d. Where water quality problems are detected for
 11 nonagricultural nonpoint sources despite the appropriate
 12 implementation of adopted best management practices, the
 13 department and the district shall institute a reevaluation of
 14 the best management practices.

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

25 4. Projects which reduce the phosphorus load
 26 originating from domestic wastewater systems within the Lake
 27 Okeechobee watershed shall be given funding priority in the
 28 department's revolving loan program under s. 403.1835. The
 29 department shall coordinate and provide assistance to those
 30 local governments seeking financial assistance for such
 31 priority projects.

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

23 6.a. The department shall require all entities
24 disposing of domestic wastewater residuals within the Lake
25 Okeechobee watershed and the remaining areas of Okeechobee,
26 Glades, and Hendry Counties to develop and submit to the
27 department an agricultural use plan that limits applications
28 based upon phosphorus loading. By July 1, 2005, phosphorus
29 concentrations originating from these application sites shall
30 not exceed the limits established in the district's WOD
31 program.

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

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1 volume of residuals that require final disposal, but such
 2 proceeds shall not be used for transportation or shipment
 3 costs for disposal or any costs relating to the land
 4 application of residuals in the Lake Okeechobee watershed.

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

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

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

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

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

19 Section 6. Subsection (1) of section 570.085, Florida
20 Statutes, is amended to read:

21 570.085 Department of Agriculture and Consumer
22 Services; agricultural water conservation.--The department
23 shall establish an agricultural water conservation program
24 that includes the following:

25 (1) A cost-share program, coordinated where
26 appropriate with the United States Department of Agriculture
27 and other federal, state, regional, and local agencies, for
28 irrigation system retrofit and application of mobile
29 irrigation laboratory evaluations for water conservation as
30 provided in this section and, where applicable, for water
31 quality improvement pursuant to s. 403.067(7)(c) ~~s.~~

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1 ~~403.067(7)(d).~~

2

3 (Redesignate subsequent sections.)

4

5

6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 On page 1, line 16, after the semicolon

9

10 and insert:

11 amending s. 403.067, F.S.; providing that

12 initial allocation of allowable pollutant loads

13 between point and nonpoint sources may be

14 developed as part of a total maximum daily

15 load; establishing criteria for establishing

16 initial and detailed allocations to attain

17 pollutant reductions; authorizing the

18 Department of Environmental Protection to adopt

19 phased total maximum daily loads that establish

20 incremental total maximum daily loads under

21 certain conditions; requiring the development

22 of basin management action plans; requiring

23 that basin management action plans integrate

24 the appropriate management strategies to

25 achieve the total maximum daily loads;

26 requiring that the plans establish a schedule

27 for implementing management strategies;

28 requiring that a basin management action plan

29 equitably allocate pollutant reductions to

30 individual basins or to each identified point

31 source or category of nonpoint sources;

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1 authorizing that plans may provide pollutant
2 load reduction credits to dischargers that have
3 implemented strategies to reduce pollutant
4 loads prior to the development of the basin
5 management action plan; requiring that the plan
6 identify mechanisms by which potential future
7 sources of pollution will be addressed;
8 requiring that the department assure key
9 stakeholder participation in the basin
10 management action planning process; requiring
11 that the department hold at least one public
12 meeting to discuss and receive comments during
13 the planning process; providing notice
14 requirements; requiring that the department
15 adopt all or part of a basin management action
16 plan by secretarial order pursuant to ch. 120,
17 F.S.; requiring that basin management action
18 plans that alter that calculation or initial
19 allocation of a total maximum daily load, the
20 revised calculation, or initial allocation must
21 be adopted by rule; requiring periodic
22 evaluation of basin management action plans;
23 requiring that revisions to plans be made by
24 the department in cooperation with
25 stakeholders; providing for basin plan
26 revisions regarding nonpoint pollutant sources;
27 requiring that adopted basin management action
28 plans be included in subsequent NPDES permits
29 or permit modifications; providing that
30 implementation of a total maximum daily load or
31 basin management action plan for holders of an

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1 NPDES municipal separate stormwater sewer
2 system permit may be achieved through the use
3 of best management practices; providing that
4 basin management action plans do not relieve a
5 discharger from the requirement to obtain,
6 renew, or modify an NPDES permit or to abide by
7 other requirements of the permit; requiring
8 that plan management strategies be completed
9 pursuant to the schedule set forth in the basin
10 management action plan and providing that the
11 implementation schedule may extend beyond the
12 term of an NPDES permit; providing that
13 management strategies and pollution reduction
14 requirements in a basin management action plan
15 for a specific pollutant of concern are not
16 subject to a challenge under ch. 120, F.S., at
17 the time they are incorporated, in identical
18 form, into a subsequent NPDES permit or permit
19 modification; requiring timely adoption and
20 implementation of pollutant reduction actions
21 for nonagricultural pollutant sources not
22 subject to NPDES permitting but regulated
23 pursuant to other state, regional, or local
24 regulatory programs; requiring timely
25 implementation of best management practices for
26 nonpoint pollutant source dischargers not
27 subject to permitting at the time a basin
28 management action plan is adopted; providing
29 for presumption of compliance under certain
30 circumstances; providing for enforcement action
31 by the department or a water management

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1 district; requiring that a landowner,
2 discharger, or other responsible person that is
3 implementing management strategies specified in
4 an adopted basin management action plan will
5 not be required by permit, enforcement action,
6 or otherwise to implement additional management
7 strategies to reduce pollutant loads; providing
8 that the authority of the department to amend a
9 basin management plan is not limited; requiring
10 that the department verify at representative
11 sites the effectiveness of interim measures,
12 best management practices, and other measures
13 adopted by rule; requiring that the department
14 use its best professional judgment in making
15 initial verifications that best management
16 practices are not effective; requiring notice
17 to the appropriate water management district
18 and the Department of Agriculture and Consumer
19 Services under certain conditions; establishing
20 a presumption of compliance for implementation
21 of practices initially verified to be effective
22 or verified to be effective at representative
23 sites; limiting the institution of proceedings
24 by the department against the owner of a source
25 of pollution to recover costs or damages
26 associated with the contamination of surface
27 water or groundwater caused by those
28 pollutants; requiring the Department of
29 Agriculture and Consumer Services to institute
30 a reevaluation of best management practices or
31 other measures where water quality problems are

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1 detected or predicted during the development or
2 amendment of a basin management action plan;
3 providing for rule revisions; providing the
4 department with rulemaking authority; requiring
5 that a report be submitted to the Governor, the
6 President of the Senate, and the Speaker of the
7 House of Representatives containing
8 recommendations on rules for pollutant trading
9 prior to the adoption of those rules; requiring
10 that recommendations be developed in
11 cooperation with a technical advisory committee
12 containing experts in pollutant trading and
13 representatives of potentially affected
14 parties; deleting a requirement that no
15 pollutant trading program shall become
16 effective prior to review and ratification by
17 the Legislature; amending ss. 373.4595 and
18 570.085, F.S.; correcting cross-references;

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