

1 A bill to be entitled

2 An act relating to natural resources; creating part IV of
3 ch. 161, F.S., consisting of ss. 161.70, 161.71, 161.72,
4 161.73, 161.74, 161.75, and 161.76, F.S.; providing
5 definitions; providing findings and intent; requiring that
6 the Department of Environmental Protection, the Fish and
7 Wildlife Conservation Commission, and the Department of
8 Agriculture and Consumer Services to establish the Florida
9 Oceans and Coastal Council; providing for membership of
10 the council; providing for the Secretary of Environmental
11 Protection and the executive director of the Fish and
12 Wildlife Conservation Commission to jointly chair the
13 council; providing responsibilities of the council;
14 requiring that the council undertake a research review;
15 providing for content and access to the review; requiring
16 the council to prepare a research plan that recommends
17 research priorities; providing for annual updates of the
18 plan; providing for distribution of the plan to the
19 Legislature; prepare an oceans and coastal resource
20 assessment; providing for contents of the assessment;
21 requiring the council to establish objectives for research
22 projects; providing for a pilot project; authorizing
23 rulemaking by the Department of Environmental Protection
24 and the Fish and Wildlife Conservation Commission;
25 preserving authority otherwise granted to the commission
26 and state agencies; amending s. 376.121, F.S.; providing
27 an alternative to the compensation schedule for
28 calculating natural resources damages; revising procedures

29 relating to damage assessment; removing a restriction on
30 amount of compensation; amending s. 380.06, F.S.; revising
31 factors for determining a substantial deviation in
32 developments of regional impact; amending s. 380.23, F.S.;
33 revising the federally licensed or permitted activities
34 subject to consistency review under the coastal management
35 program; requiring certain environmental impact reports to
36 be data and information for the state's consistency
37 reviews; amending s. 403.067, F.S.; providing that initial
38 allocation of allowable pollutant loads between point and
39 nonpoint sources may be developed as part of a total
40 maximum daily load; establishing criteria for establishing
41 initial and detailed allocations to attain pollutant
42 reductions; authorizing the Department of Environmental
43 Protection to adopt phased total maximum daily loads that
44 establish incremental total maximum daily loads under
45 certain conditions; requiring the development of basin
46 management action plans; requiring that basin management
47 action plans integrate the appropriate management
48 strategies to achieve the total maximum daily loads;
49 requiring that the plans establish a schedule for
50 implementing management strategies; requiring that a basin
51 management action plan equitably allocate pollutant
52 reductions to individual basins or to each identified
53 point source or category of nonpoint sources; authorizing
54 that plans may provide pollutant load reduction credits to
55 dischargers that have implemented strategies to reduce
56 pollutant loads prior to the development of the basin

57 management action plan; requiring that the plan identify
58 mechanisms by which potential future sources of pollution
59 will be addressed; requiring that the department assure
60 key stakeholder participation in the basin management
61 action planning process; requiring that the department
62 hold at least one public meeting to discuss and receive
63 comments during the planning process; providing notice
64 requirements; requiring that the department adopt all or
65 part of a basin management action plan by secretarial
66 order pursuant to ch. 120, F.S.; requiring that basin
67 management action plans that alter that calculation or
68 initial allocation of a total maximum daily load, the
69 revised calculation, or initial allocation must be adopted
70 by rule; requiring periodic evaluation of basin management
71 action plans; requiring that revisions to plans be made by
72 the department in cooperation with stakeholders; providing
73 for basin plan revisions regarding nonpoint pollutant
74 sources; requiring that adopted basin management action
75 plans be included in subsequent NPDES permits or permit
76 modifications; providing that implementation of a total
77 maximum daily load or basin management action plan for
78 holders of an NPDES municipal separate stormwater sewer
79 system permit may be achieved through the use of best
80 management practices; providing that basin management
81 action plans do not relieve a discharger from the
82 requirement to obtain, renew, or modify an NPDES permit or
83 to abide by other requirements of the permit; requiring
84 that plan management strategies be completed pursuant to

85 the schedule set forth in the basin management action plan
86 and providing that the implementation schedule may extend
87 beyond the term of an NPDES permit; providing that
88 management strategies and pollution reduction requirements
89 in a basin management action plan for a specific pollutant
90 of concern are not subject to a challenge under ch. 120,
91 F.S., at the time they are incorporated, in identical
92 form, into a subsequent NPDES permit or permit
93 modification; requiring timely adoption and implementation
94 of pollutant reduction actions for nonagricultural
95 pollutant sources not subject to NPDES permitting but
96 regulated pursuant to other state, regional, or local
97 regulatory programs; requiring timely implementation of
98 best management practices for nonpoint pollutant source
99 dischargers not subject to permitting at the time a basin
100 management action plan is adopted; providing for
101 presumption of compliance under certain circumstances;
102 providing for enforcement action by the department or a
103 water management district; requiring that a landowner,
104 discharger, or other responsible person that is
105 implementing management strategies specified in an adopted
106 basin management action plan will not be required by
107 permit, enforcement action, or otherwise to implement
108 additional management strategies to reduce pollutant
109 loads; providing that the authority of the department to
110 amend a basin management plan is not limited; requiring
111 that the department verify at representative sites the
112 effectiveness of interim measures, best management

113 practices, and other measures adopted by rule; requiring
114 that the department use its best professional judgment in
115 making initial verifications that best management
116 practices are not effective; requiring notice to the
117 appropriate water management district and the Department
118 of Agriculture and Consumer Services under certain
119 conditions; establishing a presumption of compliance for
120 implementation of practices initially verified to be
121 effective or verified to be effective at representative
122 sites; limiting the institution of proceedings by the
123 department against the owner of a source of pollution to
124 recover costs or damages associated with the contamination
125 of surface water or groundwater caused by those
126 pollutants; requiring the Department of Agriculture and
127 Consumer Services to institute a reevaluation of best
128 management practices or other measures where water quality
129 problems are detected or predicted during the development
130 or amendment of a basin management action plan; providing
131 for rule revisions; providing the department with
132 rulemaking authority; requiring that a report be submitted
133 to the Governor, the President of the Senate, and the
134 Speaker of the House of Representatives containing
135 recommendations on rules for pollutant trading prior to
136 the adoption of those rules; requiring that
137 recommendations be developed in cooperation with a
138 technical advisory committee containing experts in
139 pollutant trading and representatives of potentially
140 affected parties; deleting a requirement that no pollutant

141 trading program shall become effective prior to review and
 142 ratification by the Legislature; amending ss. 373.4595 and
 143 570.085, F.S.; correcting cross-references; providing an
 144 effective date.

145
 146 WHEREAS, Florida's coastline is the second longest
 147 coastline of the fifty states, and

148 WHEREAS, the oceans and coastal resources of the state are
 149 held in trust for the people of the state and should be
 150 protected and managed for the benefit of current and future
 151 generations, and

152 WHEREAS, it is imperative for the state, regional, and
 153 local governments, academic and environmental communities, and
 154 agricultural and fishery interests to commit to working together
 155 to manage, rehabilitate, and protect Florida's oceans and
 156 coastal resources, NOW, THEREFORE,

157
 158 Be It Enacted by the Legislature of the State of Florida:

159
 160 Section 1. Part IV of chapter 161, Florida Statutes,
 161 consisting of sections 161.70, 161.71, 161.72, 161.73, 161.74,
 162 161.75, and 161.76, is created to read:

163 PART IV

164 OCEANS AND COASTAL RESOURCES MANAGEMENT ACT

165 161.70 Short title.--This part may be cited as the "Oceans
 166 and Coastal Resources Act."

167 161.71 Definitions.--As used in this part, the term:

168 (1) "Commission" means the Fish and Wildlife Conservation

169 Commission created in s. 9, Art. IV of the State Constitution.

170 (2) "Council" means the Florida Oceans and Coastal Council
 171 created by this act.

172 (3) "Department" means the Department of Environmental
 173 Protection.

174 (4) "Executive director" means the Executive Director of
 175 the Fish and Wildlife Conservation Commission.

176 (5) "Oceans" means those waters from the mean high-water
 177 line outward to the state's jurisdictional boundary and those
 178 United States waters in which this state has an interest.

179 (6) "Secretary" means the Secretary of the Department of
 180 Environmental Protection.

181 161.72 Findings and intent.--

182 (1) The Legislature finds that:

183 (a) The oceans and coastal resources of the United States
 184 are of national importance;

185 (b) The U.S. Commission on Ocean Policy has made 212
 186 recommendations and the President has responded with an Ocean
 187 Action Plan to better protect and preserve our oceans;

188 (c) Florida's ocean and coastal resources contribute
 189 significantly to the state economy by supporting multiple
 190 beneficial uses and a wide range of economic value that requires
 191 balancing of competing considerations;

192 (d) Florida's oceans and coastal resources comprise
 193 habitats that support endangered and threatened species and
 194 extraordinary marine biodiversity;

195 (e) The coral reefs of southeast Florida and the barrier
 196 reef of the Florida Keys, the only barrier reef in the United

197 States, are a national treasure and must continue to be
198 protected;

199 (f) It is Florida's responsibility to be a national leader
200 on oceans and coastal protection;

201 (g) It is in the state's best interest to ensure the
202 productivity and health of our oceans and coastal resources;

203 (h) Florida's marine biodiversity at the species, natural
204 community, seascape, and regional levels must be protected by
205 restoring, rehabilitating, and maintaining the quality and
206 natural function of oceans and coastal resources through an
207 ecosystem-based management approach, as recommended by the U.S.
208 Commission on Ocean Policy;

209 (i) The quality of our beaches and fisheries resources
210 must be protected to ensure the public health;

211 (j) Protection must be provided to highly migratory marine
212 species, such as sea turtles and sea birds;

213 (k) Opportunities must be increased to provide natural
214 resource-based recreation and encourage responsibility and
215 stewardship through educational opportunities;

216 (l) Oceans and coastal research must be prioritized to
217 ensure coordination among researchers and managers and long-term
218 programs to observe, monitor, and assess oceans, and coastal
219 resources must be developed and implemented;

220 (m) Development of coastal areas should be both
221 economically and environmentally sustainable, and inappropriate
222 growth in ecologically fragile or hazard-prone areas should be
223 discouraged; and

224 (n) Conservation and restoration of coastal habitat could

225 be enhanced through the development of regional and local goals,
226 the institution of a program dedicated to coastal and estuarine
227 conservation, better coordination of the state's activities
228 relating to habitat, and improved research, monitoring, and
229 assessment.

230 (2) It is the intent of the Legislature to create the
231 Oceans and Coastal Resources Council to assist the state in
232 identifying new management strategies to achieve the goal of
233 maximizing the protection and conservation of ocean and coastal
234 resources while recognizing their economic benefits.

235 (3) It is further the intent of the Legislature that the
236 council shall encourage and support the development of creative
237 public-private partnerships, pursue opportunities to leverage
238 funds, and work in coordination with federal agencies and
239 programs to maximize opportunities for the state's receipt of
240 federal funds.

241 161.73 Composition.--The Florida Oceans and Coastal
242 Council is created within the Department of Environmental
243 Protection and shall consist of 18 members. The secretary, the
244 executive director, and the commissioner of the Department of
245 Agriculture and Consumer Services, or their designees, shall
246 serve as ex-officio members of the council. The council shall be
247 jointly chaired by the secretary and the executive director. The
248 15 voting members of the council shall be appointed, within 60
249 days after this act becomes law, in the following manner:

250 (1) Five members shall be appointed by the Secretary of
251 the Department of Environmental Protection which will be
252 comprised of one scientist specializing in each of the following

253 fields: wetlands and watersheds; nearshore waters or estuaries;
 254 offshore waters or open oceans; hydrology and aquatic systems;
 255 and coastal geology or coastal erosion and shorelines.

256 (2) Five members shall be appointed by the Executive
 257 Director of the Fish and Wildlife Conservation Commission which
 258 will be comprised of one scientist specializing in each of the
 259 following fields: resource management; wildlife habitat
 260 management; fishery habitat management; coastal and pelagic
 261 birdlife; and marine biotechnology.

262 (3) Five members shall be appointed by the Commissioner of
 263 the Department of Agriculture and Consumer Services. These
 264 appointments shall be selected from a list of at least eight
 265 individuals submitted to the commissioner by the Florida Ocean
 266 Alliance. The individuals selected by the Florida Ocean Alliance
 267 shall be chosen from the following disciplines or groups:
 268 sportsfishing; ports; cruise industry; energy industry;
 269 ecotourism; private marine research institutes; universities;
 270 aquaculture; maritime law; commercial fisheries; socioeconomics;
 271 marine science education; and environmental groups.

272 (4) Appointments made by the secretary and executive
 273 director shall be to terms of 4 years each. Appointments made by
 274 the Commissioner of the Department of Agriculture and Consumer
 275 Services shall be to terms of 2 years. Members shall serve until
 276 their successors are appointed. Vacancies shall be filled in the
 277 manner of the original appointment for the remainder of the term
 278 that is vacated.

279 (5) Members shall serve without compensation, but are
 280 entitled to reimbursement of travel and per diem expenses

281 pursuant to s. 112.061, relating to completing their duties and
282 responsibilities.

283 161.74 Responsibilities.--

284 (1) RESEARCH REVIEW.--Prior to the development of the
285 research plan the council shall review and compile the existing,
286 ongoing, and planned ocean and coastal research and monitoring
287 activities relevant to this state. Included in this review shall
288 be the "Florida's Ocean Strategies Final Report to the Governor"
289 by the Florida Governor's Oceans Committee dated June 1999. To
290 aid the council in fulfilling this requirement, all public
291 agencies must submit the information requested by the council,
292 and private research institutes are encouraged to submit
293 relevant information to the maximum extent practicable. Upon
294 receiving the information required by this subsection, the
295 council shall develop a library to serve as a repository of
296 information for use by those involved in ocean and coastal
297 research. The council shall develop an index of this
298 information to assist researchers in accessing the information.

299 (2) RESEARCH PLAN.--The council must complete a Florida
300 Oceans and Coastal Scientific Research Plan which shall be used
301 by the Legislature in making funding decisions. The plan must
302 recommend priorities for scientific research projects. The plan
303 must be submitted to the President of the Senate and the Speaker
304 of the House of Representatives by January 15, 2006. Thereafter,
305 annual updates to the plan must be submitted to the President of
306 the Senate and the Speaker of the House of Representatives by
307 February 1 of each year. The research projects contained in the
308 plan must meet at least one of the following objectives:

309 (a) Exploring opportunities to improve coastal ecosystem
310 functioning and health through watershed approaches to managing
311 freshwater and improving water quality.

312 (b) Evaluating current habitat conservation, restoring and
313 maintaining programs, and recommending improvements in the areas
314 of research, monitoring and assessment.

315 (c) Promoting marine biomedical or biotechnology research
316 and product discovery and development to enhance Florida's
317 opportunity to maximize the beneficial uses of marine-derived
318 bioproducts and reduce negative health impacts of marine
319 organisms.

320 (d) Creating consensus and strategies on how Florida can
321 contribute to sustainable management of ocean wildlife and
322 habitat.

323 (e) Documenting through examination of existing and new
324 research the impact of marine and coastal debris and current
325 best practices to reduce debris.

326 (f) Providing methods to achieve sustainable fisheries
327 through better science, governance, stock enhancements and
328 consideration of habitat and secondary impacts such as bycatch.

329 (g) Documenting gaps in current protection strategies for
330 marine mammals.

331 (h) Promoting research and new methods to preserve and
332 restore coral reefs and other coral communities.

333 (i) Achieving sustainable marine aquaculture.

334 (j) Reviewing existing and ongoing studies on preventing
335 and responding to the spread of invasive and nonnative marine
336 and estuarine species.

337 (k) Exploring ocean-based renewable energy technologies
338 and climate change-related impacts to Florida's coastal area.

339 (l) Enhancing science education opportunities such as
340 virtual marine technology centers.

341 (m) Sustaining abundant birdlife and encouraging the
342 recreational and economic benefits associated with ocean and
343 coastal wildlife observation and photography.

344 (n) Developing a statewide analysis of the economic value
345 associated with ocean and coastal resources, developing economic
346 baseline data, methodologies, and consistent measures of oceans
347 and coastal resource economic activity and value, and developing
348 reports that educate Floridians, the National Ocean Policy
349 Commission, local, state, and federal agencies and others on the
350 importance of ocean and coastal resources.

351 (3) RESOURCE ASSESSMENT.--By December 1, 2006, the council
352 shall prepare a comprehensive oceans and coastal resource
353 assessment that shall serve as a baseline of information to be
354 used in assisting in its research plan. The resource assessment
355 must include:

356 (a) Patterns of use of oceans and coastal resources;

357 (b) Natural resource features, including, but not limited
358 to, habitat, bathymetry, surficial geology, circulation, and
359 tidal currents;

360 (c) The location of current and proposed oceans and
361 coastal research and monitoring infrastructure;

362 (d) Industrial, commercial, coastal observing system,
363 ships, subs, and recreational transit patterns; and

364 (e) Socioeconomic trends of the state's oceans and coastal

365 resources and oceans and coastal economy.

366 161.75 Rulemaking authority.--The department and the
 367 commission may adopt rules, pursuant to ss. 120.536(1) and
 368 120.54, to administer this part.

369 161.76 Preservation of authority.--This part does not
 370 restrict or limit the authority otherwise granted to the
 371 commission, or other state agencies by law.

372 Section 2. In order to protect, conserve, and restore
 373 declining recreational fisheries, stimulate economic growth, and
 374 help meet the state's seafood needs, the council created in
 375 section 161.73, Florida Statutes, shall, as a pilot project to
 376 demonstrate the feasibility of collaborative research efforts,
 377 direct research by two or more marine science research entities
 378 to evaluate the potential for inland, recirculating, and
 379 aquaculture technology to produce marine species and to
 380 implement new marine stock enhancement initiatives. This project
 381 shall be designed to expand new aquaculture and marine stock
 382 enhancement technology to include additional species and
 383 evaluate the potential to successfully enhance those marine
 384 stocks. The council shall present to the Governor, the
 385 President of the Senate, and the Speaker of the House of
 386 Representatives the results of this research project by February
 387 1, 2007.

388 Section 3. Section 376.121, Florida Statutes, is amended
 389 to read:

390 376.121 Liability for damage to natural resources.--The
 391 Legislature finds that extensive damage to the state's natural
 392 resources is the likely result of a pollutant discharge and that

393 it is essential that the state adequately assess and recover the
394 cost of such damage from responsible parties. It is the state's
395 goal to recover the costs of restoration from the responsible
396 parties and to restore damaged natural resources to their
397 pre-discharge condition. In many instances, however, restoration
398 is not technically feasible. In such instances, the state has
399 the responsibility to its citizens to recover the cost of all
400 damage to natural resources. To ensure that the public does not
401 bear a substantial loss as a result of the destruction of
402 natural resources, the procedures set out in this section shall
403 be used to assess the cost of damage to such resources. Natural
404 resources include coastal waters, wetlands, estuaries, tidal
405 flats, beaches, lands adjoining the seacoasts of the state, and
406 all living things except human beings. The Legislature
407 recognizes the difficulty historically encountered in
408 calculating the value of damaged natural resources. The value of
409 certain qualities of the state's natural resources is not
410 readily quantifiable, yet the resources and their qualities have
411 an intrinsic value to the residents of the state, and any damage
412 to natural resources and their qualities should not be dismissed
413 as nonrecoverable merely because of the difficulty in
414 quantifying their value. In order to avoid unnecessary
415 speculation and expenditure of limited resources to determine
416 these values, the Legislature hereby establishes a schedule for
417 compensation for damage to the state's natural resources and the
418 quality of said resources. As an alternative to the compensation
419 schedule described in subsections (4), (5), (6), and (9), the
420 department, when no responsible party is identified, when a

421 responsible party opts out of the formula pursuant to paragraph
422 (10) (a), or when the department conducts a cooperative damage
423 assessment with federal agencies, may use methods of calculating
424 natural resources damages in accordance with federal rules
425 implementing the Oil Pollution Act of 1990, as amended.

426 (1) The department shall assess and recover from
427 responsible parties the compensation for the injury or
428 destruction of natural resources, including, but not limited to,
429 the death or injury of living things and damage to or
430 destruction of habitat, resulting from pollutant discharges
431 prohibited by s. 376.041. The amount of compensation and any
432 costs of assessing damage and recovering compensation received
433 by the department shall be deposited into the Florida Coastal
434 Protection Trust Fund pursuant to s. 376.12 and disbursed
435 according to subsection (11). Whoever violates, or causes to be
436 violated, s. 376.041 shall be liable to the state for damage to
437 natural resources.

438 (2) The compensation schedule for damage to natural
439 resources is based upon the cost of restoration and the loss of
440 ecological, consumptive, intrinsic, recreational, scientific,
441 economic, aesthetic, and educational values of such injured or
442 destroyed resources. The compensation schedule takes into
443 account:

444 (a) The volume of the discharge.

445 (b) The characteristics of the pollutant discharged. The
446 toxicity, dispersibility, solubility, and persistence
447 characteristics of a pollutant as affects the severity of the
448 effects on the receiving environment, living things, and

449 recreational and aesthetic resources. Pollutants have varying
450 propensities to injure natural resources based upon their
451 potential exposure and effects. Exposure to natural resources is
452 determined by the dispersibility and degradability of the
453 pollutant. Effects to natural resources result from mechanical
454 injury and toxicity and include physical contamination,
455 smothering, feeding prevention, immobilization, respiratory
456 distress, direct mortality, lost recruitment of larvae and
457 juveniles killed, changes in the food web, and chronic effects
458 of sublethal levels of contaminates in tissues or the
459 environment. For purposes of the compensation schedule,
460 pollutants have been ranked for their propensity to cause injury
461 to natural resources based upon a combination of their acute
462 toxicity, mechanical injury, degradability, and dispersibility
463 characteristics on a 1-to-3 relative scale with Category 1
464 containing the pollutants with the greatest propensity to cause
465 injury to natural resources. The following pollutants are
466 categorized:

- 467 1. Category 1: bunker and residual fuel.
- 468 2. Category 2: waste oils, crude oil, lubricating oil,
469 asphalt, and tars.
- 470 3. Category 3: hydraulic fluids, numbers 1 and 2 diesel
471 fuels, heating oil, jet aviation fuels, motor gasoline,
472 including aviation gasoline, kerosene, stationary turbine fuels,
473 ammonia and its derivatives, and chlorine and its derivatives.

474

475 The department shall adopt rules establishing the pollutant
476 category of pesticides and other pollutants as defined in s.

477 376.031 and not listed in this paragraph.

478 (c) The type and sensitivity of natural resources affected
479 by a discharge, determined by the following factors:

480 1. The location of a discharge. Inshore discharges are
481 discharges that occur within waters under the jurisdiction of
482 the department and within an area extending seaward from the
483 coastline of the state to a point 1 statute mile seaward of the
484 coastline. Nearshore discharges are discharges that occur more
485 than 1 statute mile, but within 3 statute miles, seaward of the
486 coastline. Offshore discharges are discharges that occur more
487 than 3 statute miles seaward of the coastline.

488 2. The location of the discharge with respect to special
489 management areas designated because of their unique habitats;
490 living resources; recreational use; aesthetic importance; and
491 other ecological, educational, consumptive, intrinsic,
492 scientific, and economic values of the natural resources located
493 therein. Special management areas are state parks; recreation
494 areas; national parks, seashores, estuarine research reserves,
495 marine sanctuaries, wildlife refuges, and national estuary
496 program water bodies; state aquatic preserves and reserves;
497 classified shellfish harvesting areas; areas of critical state
498 concern; federally designated critical habitat for endangered or
499 threatened species; and outstanding Florida waters.

500 3. The areal or linear extent of the natural resources
501 impacted.

502 (3) Compensation for damage to natural resources for any
503 discharge of less than 25 gallons of gasoline or diesel fuel
504 shall be \$50.

505 (4) Compensation schedule:

506 (a) The amount of compensation assessed under this
507 schedule is calculated by: multiplying \$1 per gallon or its
508 equivalent measurement of pollutant discharged, by the number of
509 gallons or its equivalent measurement, times the location of the
510 discharge factor, times the special management area factor.

511 (b) Added to the amount obtained in paragraph (a) is the
512 value of the observable natural resources damaged, which is
513 calculated by multiplying the areal or linear coverage of
514 impacted habitat by the corresponding habitat factor, times the
515 special management area factor.

516 (c) The sum of paragraphs (a) and (b) is then multiplied
517 by the pollutant category factor.

518 (d) The final damage assessment figure is the sum of the
519 amount calculated in paragraph (c) plus the compensation for
520 death of endangered or threatened species, plus the cost of
521 conducting the damage assessment as determined by the
522 department.

523 (5) (a) The factors used in calculating the damage
524 assessment are:

525 1. Location of discharge factor:

526 a. Discharges that originate inshore have a factor of
527 eight. Discharges that originate nearshore have a factor of
528 five. Discharges that originate offshore have a factor of one.

529 b. Compensation for damage to natural resources resulting
530 from discharges that originate outside of state waters but that
531 traverse the state's boundaries and therefore have an impact
532 upon the state's natural resources shall be calculated using a

533 location factor of one.

534 c. Compensation for damage to natural resources resulting
535 from discharges of less than 10,000 gallons of pollutants which
536 originate within 100 yards of an established terminal facility
537 or point of routine pollutant transfer in a designated port
538 authority as defined in s. 315.02 shall be assessed a location
539 factor of one.

540 2. Special management area factor: Discharges that
541 originate in special management areas described in subparagraph
542 (2)(c)2. have a factor of two. Discharges that originate outside
543 a special management area described in subparagraph (2)(c)2.
544 have a location factor of one. For discharges that originate
545 outside of a special management area but impact the natural
546 resources within a special management area, the value of the
547 natural resources damaged within the area shall be multiplied by
548 the special management area factor of two.

549 3. Pollutant category factor: Discharges of category 1
550 pollutants have a factor of eight. Discharges of category 2
551 pollutants have a factor of four. Discharges of category 3
552 pollutants have a factor of one.

553 4. Habitat factor: The amount of compensation for damage
554 to the natural resources of the state is established as follows:

- 555 a. \$10 per square foot of coral reef impacted.
556 b. \$1 per square foot of mangrove or seagrass impacted.
557 c. \$1 per linear foot of sandy beach impacted.
558 d. \$0.50 per square foot of live bottom, oyster reefs,
559 worm rock, perennial algae, saltmarsh, or freshwater tidal marsh
560 impacted.

561 e. \$0.05 per square foot of sand bottom or mud flats, or
562 combination thereof, impacted.

563 (b) The areal and linear coverage of habitat impacted
564 shall be determined by the department using a combination of
565 field measurements, aerial photogrammetry, and satellite
566 imagery. An area is impacted when the pollutant comes in contact
567 with the habitat.

568 (6) It is understood that a pollutant will, by its very
569 nature, result in damage to the flora and fauna of the waters of
570 the state and the adjoining land. Therefore, compensation for
571 such resources, which is difficult to calculate, is included in
572 the compensation schedule. Not included, however, in this base
573 figure is compensation for the death of endangered or threatened
574 species directly attributable to the pollutant discharged.
575 Compensation for the death of any animal designated by rule as
576 endangered by the Fish and Wildlife Conservation Commission is
577 \$10,000. Compensation for the death of any animal designated by
578 rule as threatened by the Fish and Wildlife Conservation
579 Commission is \$5,000. These amounts are not intended to reflect
580 the actual value of said endangered or threatened species, but
581 are included for the purposes of this section.

582 (7) The owner or operator of the vessel or facility
583 responsible for a discharge may designate a representative or
584 agent to work with the department in assessing the amount of
585 damage to natural resources resulting from the discharge.

586 (8) When assessing the amount of damages to natural
587 resources, the department shall be assisted, if requested by the
588 department, by representatives of other state agencies and local

589 governments that would enhance the department's damage
590 assessment. The Fish and Wildlife Conservation Commission shall
591 assist the department in the assessment of damages to wildlife
592 impacted by a pollutant discharge and shall assist the
593 department in recovering the costs of such damages.

594 (9) Compensation for damage resulting from the discharge
595 of two or more pollutants shall be calculated for the volume of
596 each pollutant discharged. If the separate volume for each
597 pollutant discharged cannot be determined, the highest
598 multiplier for the pollutants discharged shall be applied to the
599 entire volume of the spill. Compensation for commingled
600 discharges that contact habitat shall be calculated on a
601 proportional basis of discharged volumes. The highest multiplier
602 for such commingled pollutants may only be applied if a
603 reasonable proportionality of the commingled pollutants cannot
604 be determined at the point of any contact with natural
605 resources.

606 (10) For cases in which the department is authorized to
607 use a method of natural resources damage assessment other than
608 the compensation schedules described in subsections (4), (5),
609 (6), and (9), the department may use the methods described in
610 federal rules implementing the Oil Pollution Act of 1990, as
611 amended ~~discharges of more than 30,000 gallons, the department~~
612 ~~shall, in consultation with the Game and Fresh Water Fish~~
613 ~~Commission, adopt rules by July 1, 1994, to assess compensation~~
614 ~~for the damage to natural resources based upon the cost of~~
615 ~~restoring, rehabilitating, replacing, or acquiring the~~
616 ~~equivalent of the damaged natural resources; the diminution in~~

617 ~~the value of those resources pending restoration; and the~~
618 ~~reasonable cost of assessing those damages. The person~~
619 ~~responsible for a discharge shall be given an opportunity to~~
620 ~~consult with the department on the assessment design and~~
621 ~~restoration program.~~

622 (a) When a responsible party is identified and the
623 department is not conducting a cooperative damage assessment
624 with federal agencies ~~For discharges greater than 30,000~~
625 ~~gallons~~, the person responsible has the option to pay the amount
626 of compensation calculated pursuant to the compensation schedule
627 established in subsection (4) or pay the amount determined by a
628 damage assessment performed by the department. If the person
629 responsible for the discharge elects to have a damage assessment
630 performed, then such person shall notify the department in
631 writing of such decision within 30 ~~15~~ days after identification
632 ~~the discovery~~ of the discharge by the department. The decision
633 to have a damage assessment performed to determine compensation
634 for a discharge shall be final; the person responsible for a
635 discharge may not later elect to use the compensation schedule
636 for computing compensation. Failure to make such notice shall
637 result in the amount of compensation for the total damage to
638 natural resources being calculated based on the compensation
639 schedule. The compensation shall be paid within 90 days after
640 receipt of a written request from the department.

641 (b) In the event the person responsible for a discharge
642 ~~greater than 30,000 gallons~~ elects to have a damage assessment
643 performed, said person shall pay to the department an amount
644 equal to the compensation calculated pursuant to subsection (4)

645 for the discharge using the lesser of the volume of the
646 discharge or a volume of 30,000 gallons. The payment shall be
647 made within 90 days after receipt of a written request from the
648 department.

649 (c) After completion of the damage assessment, the
650 department shall advise the person responsible for the discharge
651 of the amount of compensation due to the state. A credit shall
652 be given for the amount paid pursuant to paragraph (b). Payment
653 shall be made within 90 days after receipt of a written request
654 from the department. ~~In no event shall the total compensation~~
655 ~~paid pursuant to this section be less than the dollar amount~~
656 ~~calculated pursuant to paragraph (b).~~

657 (11) (a) Moneys recovered by the department as compensation
658 for damage to natural resources shall be expended only for the
659 following purposes:

660 1. To the maximum extent practicable, the restoration of
661 natural resources damaged by the discharge for which
662 compensation is paid.

663 2. Restoration of damaged resources.

664 3. Developing restoration and enhancement techniques for
665 natural resources.

666 4. Investigating methods for improving and refining
667 techniques for containment, abatement, and removal of pollutants
668 from the environment, especially from mangrove forests, corals,
669 seagrasses, benthic communities, rookeries, nurseries, and other
670 habitats which are unique to Florida's coastal environment.

671 5. Developing and updating the "Sensitivity of Coastal
672 Environments and Wildlife to Spilled Oil in Florida" atlas.

673 6. Investigating the long-term effects of pollutant
674 discharges on natural resources, including pelagic organisms,
675 critical habitats, and marine ecosystems.

676 7. Developing an adequate wildlife rescue and
677 rehabilitation program.

678 8. Expanding and enhancing the state's pollution
679 prevention and control education program.

680 9. Restoring natural resources previously impacted by
681 pollutant discharges, but never completely restored.

682 10. Funding alternative projects selected by the Board of
683 Trustees of the Internal Improvement Trust Fund. Any such
684 project shall be selected on the basis of its anticipated
685 benefits to the marine natural resources available to the
686 residents of this state who previously benefited from the
687 injured or destroyed nonrestorable natural resources.

688 (b) All interest earned from investment of moneys
689 recovered by the department for damage to natural resources
690 shall be expended only for the activities described in paragraph
691 (a).

692 (c) The person or parties responsible for a discharge for
693 which the department has requested compensation for damage
694 pursuant to this section shall pay the department, within 90
695 days after receipt of the request, the entire amount due to the
696 state. In the event that payment is not made within the 90 days,
697 the person or parties are liable for interest on the outstanding
698 balance, which interest shall be calculated at the rate
699 prescribed under s. 55.03.

700 (12) Any determination or assessment of damage to natural

701 resources for the purposes of this section by the department in
 702 accordance with the compensation sections or in accordance with
 703 the rules adopted under subsection (10) shall have the force and
 704 effect of rebuttable presumption on behalf of the department in
 705 any administrative or judicial proceeding.

706 (13) There shall be no double recovery under this law for
 707 natural resource damage resulting from a discharge, including
 708 the costs of damage assessment or restoration, rehabilitation,
 709 replacement, or acquisition for the same incident and natural
 710 resource. The department shall meet with and develop memoranda
 711 of understanding with appropriate federal trustees as defined in
 712 Pub. L. No. 101-380 (Oil Pollution Act of 1990) to provide
 713 further assurances of no double recovery.

714 (14) The department must review the amount of compensation
 715 assessed pursuant to the damage assessment formula established
 716 in this section and report its findings to the 1995 Legislature.
 717 Thereafter, the department must conduct such a review and report
 718 its findings to the Legislature biennially.

719 (15) The department shall adopt rules necessary or
 720 convenient for carrying out the duties, obligations, powers, and
 721 responsibilities set forth in this section.

722 Section 4. Paragraph (b) of subsection (19) of section
 723 380.06, Florida Statutes, is amended to read:

724 380.06 Developments of regional impact.--

725 (19) SUBSTANTIAL DEVIATIONS.--

726 (b) Any proposed change to a previously approved
 727 development of regional impact or development order condition
 728 which, either individually or cumulatively with other changes,

729 exceeds any of the following criteria shall constitute a
 730 substantial deviation and shall cause the development to be
 731 subject to further development-of-regional-impact review without
 732 the necessity for a finding of same by the local government:

733 1. An increase in the number of parking spaces at an
 734 attraction or recreational facility by 5 percent or 300 spaces,
 735 whichever is greater, or an increase in the number of spectators
 736 that may be accommodated at such a facility by 5 percent or
 737 1,000 spectators, whichever is greater.

738 2. A new runway, a new terminal facility, a 25-percent
 739 lengthening of an existing runway, or a 25-percent increase in
 740 the number of gates of an existing terminal, but only if the
 741 increase adds at least three additional gates. However, if an
 742 airport is located in two counties, a 10-percent lengthening of
 743 an existing runway or a 20-percent increase in the number of
 744 gates of an existing terminal is the applicable criteria.

745 3. An increase in the number of hospital beds by 5
 746 percent or 60 beds, whichever is greater.

747 4. An increase in industrial development area by 5
 748 percent or 32 acres, whichever is greater.

749 5. An increase in the average annual acreage mined by 5
 750 percent or 10 acres, whichever is greater, or an increase in the
 751 average daily water consumption by a mining operation by 5
 752 percent or 300,000 gallons, whichever is greater. An increase in
 753 the size of the mine by 5 percent or 750 acres, whichever is
 754 less. An increase in the size of a heavy mineral mine as defined
 755 in s. 378.403(7) will only constitute a substantial deviation if

756 the average annual acreage mined is more than 500 acres and
757 consumes more than 3 million gallons of water per day.

758 6. An increase in land area for office development by 5
759 percent or an increase of gross floor area of office development
760 by 5 percent or 60,000 gross square feet, whichever is greater.

761 7. An increase in the storage capacity for chemical or
762 petroleum storage facilities by 5 percent, 20,000 barrels, or 7
763 million pounds, whichever is greater.

764 8. An increase of development at a waterport of wet
765 storage for 20 watercraft, dry storage for 30 watercraft, or
766 wet/dry storage for 60 watercraft in an area identified in the
767 state marina siting plan as an appropriate site for additional
768 waterport development or a 5-percent increase in watercraft
769 storage capacity, whichever is greater.

770 9. An increase in the number of dwelling units by 5
771 percent or 50 dwelling units, whichever is greater.

772 10. An increase in commercial development by 50,000
773 square feet of gross floor area or of parking spaces provided
774 for customers for 300 cars or a 5-percent increase of either of
775 these, whichever is greater.

776 11. An increase in hotel or motel facility units by 5
777 percent or 75 units, whichever is greater.

778 12. An increase in a recreational vehicle park area by 5
779 percent or 100 vehicle spaces, whichever is less.

780 13. A decrease in the area set aside for open space of 5
781 percent or 20 acres, whichever is less.

782 14. A proposed increase to an approved multiuse
783 development of regional impact where the sum of the increases of

784 each land use as a percentage of the applicable substantial
785 deviation criteria is equal to or exceeds 100 percent. The
786 percentage of any decrease in the amount of open space shall be
787 treated as an increase for purposes of determining when 100
788 percent has been reached or exceeded.

789 15. A 15-percent increase in the number of external
790 vehicle trips generated by the development above that which was
791 projected during the original development-of-regional-impact
792 review.

793 16. Any change which would result in development of any
794 area which was specifically set aside in the application for
795 development approval or in the development order for
796 preservation or special protection of endangered or threatened
797 plants or animals designated as endangered, threatened, or
798 species of special concern and their habitat, primary dunes, or
799 archaeological and historical sites designated as significant by
800 the Division of Historical Resources of the Department of State.
801 The further refinement of such areas by survey shall be
802 considered under sub-subparagraph (e)5.b.

803
804 The substantial deviation numerical standards in subparagraphs
805 4., 6., 10., 14., excluding residential uses, and 15., are
806 increased by 100 percent for a project certified under s.
807 403.973 which creates jobs and meets criteria established by the
808 Office of Tourism, Trade, and Economic Development as to its
809 impact on an area's economy, employment, and prevailing wage and
810 skill levels. The substantial deviation numerical standards in
811 subparagraphs 4., 6., 9., 10., 11., and 14. are increased by 50

812 percent for a project located wholly within an urban infill and
 813 redevelopment area designated on the applicable adopted local
 814 comprehensive plan future land use map and not located within
 815 the coastal high hazard area.

816 Section 5. Subsections (3) and (4) of section 380.23,
 817 Florida Statutes, are amended to read:

818 380.23 Federal consistency.--

819 (3) Consistency review shall be limited to review of the
 820 following activities, uses, and projects to ensure that such
 821 activities, ~~and uses, and projects~~ are conducted in accordance
 822 with the state's coastal management program:

823 (a) Federal development projects and activities of
 824 federal agencies which significantly affect coastal waters and
 825 the adjacent shorelands of the state.

826 (b) Federal assistance projects that ~~which~~ significantly
 827 affect coastal waters and the adjacent shorelands of the state
 828 and that ~~which~~ are reviewed as part of the review process
 829 developed pursuant to Presidential Executive Order 12372.

830 (c) Federally licensed or permitted activities affecting
 831 land or water uses when such activities are in or seaward of the
 832 jurisdiction of local governments required to develop a coastal
 833 zone protection element as provided in s. 380.24 and when such
 834 activities involve:

835 1. Permits and licenses required under the Rivers and
 836 Harbors Act of 1899, 33 U.S.C. ss. 401 et seq., as amended.

837 2. Permits and licenses required under the Marine
 838 Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. ss.
 839 1401-1445 and 16 U.S.C. ss. 1431-1445, as amended.

840 3. Permits and licenses required under the Federal Water
 841 Pollution Control Act of 1972, 33 U.S.C. ss. 1251 et seq., as
 842 amended, unless such permitting activities have been delegated
 843 to the state pursuant to said act.

844 4. Permits and licenses relating to the transportation of
 845 hazardous substance materials or transportation and dumping
 846 which are issued pursuant to the Hazardous Materials
 847 Transportation Act, 49 U.S.C. ss. 1501 et seq., as amended, or
 848 33 U.S.C. s. 1321, as amended.

849 5. Permits and licenses required under 15 U.S.C. ss. 717-
 850 717w, 3301-3432, 42 U.S.C. ss. 7101-7352, and 43 U.S.C. ss.
 851 1331-1356 for construction and operation of interstate gas
 852 pipelines and storage facilities.

853 6. Permits and licenses required for the siting and
 854 construction of any new electrical power plants as defined in s.
 855 403.503(12), as amended, and the licensing and relicensing of
 856 hydroelectric power plants under the Federal Power Act, 16
 857 U.S.C. ss. 791a et seq., as amended.

858 7. Permits and licenses required under the Mining Law of
 859 1872, 30 U.S.C. ss. 21 et seq., as amended; the Mineral Lands
 860 Leasing Act, 30 U.S.C. ss. 181 et seq., as amended; the Mineral
 861 Leasing Act for Acquired Lands, 30 U.S.C. ss. 351 et seq., as
 862 amended; the Federal Land Policy and Management Act, 43 U.S.C.
 863 ss. 1701 et seq., as amended; the Mining in the Parks Act, 16
 864 U.S.C. ss. 1901 et seq., as amended; and the OCS Lands Act, 43
 865 U.S.C. ss. 1331 et seq., as amended, for drilling, mining,
 866 pipelines, geological and geophysical activities, or rights-of-
 867 way on public lands and permits and licenses required under the

868 Indian Mineral Development Act, 25 U.S.C. ss. 2101 et seq., as
 869 amended for drilling and mining on public lands.

870 8. Permits and licenses for areas leased under the OCS
 871 Lands Act, 43 U.S.C. ss. 1331 et seq., as amended, including
 872 leases and approvals of exploration, development, and production
 873 plans.

874 ~~9. Permits for pipeline rights-of-way for oil and gas~~
 875 ~~transmissions.~~

876 9.10. Permits and licenses required under the for
 877 Deepwater Port Act of 1974, ports under 33 U.S.C. ss. 1501 et
 878 seq. s. 1503, as amended.

879 ~~10.11.~~ Permits required for the taking of marine mammals
 880 under the Marine Mammal Protection Act of 1972, as amended, 16
 881 U.S.C. s. 1374.

882 (d) Federal activities within the territorial limits of
 883 neighboring states when the Governor and the department
 884 determine that significant individual or cumulative impact to
 885 the land or water resources of the state would result from the
 886 activities.

887 (4) The department may ~~is authorized to~~ adopt rules
 888 establishing procedures for conducting consistency reviews of
 889 activities, uses, and projects for which consistency review is
 890 required pursuant to subsections (1), (2), and (3). Such rules
 891 shall include procedures for the expeditious handling of
 892 emergency repairs to existing facilities for which consistency
 893 review is required. The department may ~~is also authorized to~~
 894 adopt rules prescribing the data and information needed for the
 895 review of consistency certifications and determinations. When an

896 environmental impact statement or environmental assessment
 897 required by the National Environmental Policy Act has been
 898 prepared for a specific activity, use, or project subject to
 899 federal consistency review under this section, the environmental
 900 impact statement or environmental assessment shall be data and
 901 information necessary for the state's consistency review of that
 902 federal activity, use, or project under this section.

903 Section 6. Paragraph (d) of subsection (2) and subsections
 904 (6), (7), (8), and (11) of section 403.067, Florida Statutes,
 905 are amended to read:

906 403.067 Establishment and implementation of total maximum
 907 daily loads.--

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

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

924 (6) CALCULATION AND ALLOCATION.--

925 (a) Calculation of total maximum daily load.

926 1. Prior to developing a total maximum daily load
927 calculation for each water body or water body segment on the
928 list specified in subsection (4), the department shall
929 coordinate with applicable local governments, water management
930 districts, the Department of Agriculture and Consumer Services,
931 other appropriate state agencies, local soil and water
932 conservation districts, environmental groups, regulated
933 interests, and affected pollution sources to determine the
934 information required, accepted methods of data collection and
935 analysis, and quality control/quality assurance requirements.
936 The analysis may include mathematical water quality modeling
937 using approved procedures and methods.

938 2. The department shall develop total maximum daily load
939 calculations for each water body or water body segment on the
940 list described in subsection (4) according to the priority
941 ranking and schedule unless the impairment of such waters is due
942 solely to activities other than point and nonpoint sources of
943 pollution. For waters determined to be impaired due solely to
944 factors other than point and nonpoint sources of pollution, no
945 total maximum daily load will be required. A total maximum daily
946 load may be required for those waters that are impaired
947 predominantly due to activities other than point and nonpoint
948 sources. The total maximum daily load calculation shall
949 establish the amount of a pollutant that a water body or water
950 body segment may receive from all sources without exceeding
951 water quality standards, and shall account for seasonal

952 variations and include a margin of safety that takes into
953 account any lack of knowledge concerning the relationship
954 between effluent limitations and water quality. The total
955 maximum daily load may be based on a pollutant load reduction
956 goal developed by a water management district, provided that
957 such pollutant load reduction goal is promulgated by the
958 department in accordance with the procedural and substantive
959 requirements of this subsection.

960 (b) Allocation of total maximum daily loads. The total
961 maximum daily loads shall include establishment of reasonable
962 and equitable allocations of the total maximum daily load
963 between or among point and nonpoint sources that will alone, or
964 in conjunction with other management and restoration activities,
965 provide for the attainment of the pollutant reductions
966 established pursuant to paragraph (a) to achieve water quality
967 standards for the pollutant causing impairment ~~water quality~~
968 ~~standards and the restoration of impaired waters.~~ The
969 allocations may establish the maximum amount of the water
970 pollutant ~~from a given source or category of sources~~ that may be
971 discharged or released into the water body or water body segment
972 in combination with other discharges or releases. Allocations
973 may also be made to individual basins and sources or as a whole
974 to all basins and sources or categories of sources of inflow to
975 the water body or water body segments. An initial allocation of
976 allowable pollutant loads among point and nonpoint sources may
977 be developed as part of the total maximum daily load. However,
978 in such cases, the detailed allocation to specific point sources
979 and specific categories of nonpoint sources shall be established

980 in the basin management action plan pursuant to subsection (7).
981 The initial and detailed allocations shall be designed to attain
982 the pollutant reductions established pursuant to paragraph (a)
983 ~~water quality standards~~ and shall be based on consideration of
984 the following:

985 1. Existing treatment levels and management practices;
986 2. Best management practices established and implemented
987 pursuant to paragraph (7) (c);

988 3. Enforceable treatment levels established pursuant to
989 state or local law or permit;

990 ~~4.2.~~ Differing impacts pollutant sources and forms of
991 pollutant may have on water quality;

992 ~~5.3.~~ The availability of treatment technologies,
993 management practices, or other pollutant reduction measures;

994 ~~6.4.~~ Environmental, economic, and technological
995 feasibility of achieving the allocation;

996 ~~7.5.~~ The cost benefit associated with achieving the
997 allocation;

998 ~~8.6.~~ Reasonable timeframes for implementation;

999 ~~9.7.~~ Potential applicability of any moderating provisions
1000 such as variances, exemptions, and mixing zones; and

1001 ~~10.8.~~ The extent to which nonattainment of water quality
1002 standards is caused by pollution sources outside of Florida,
1003 discharges that have ceased, or alterations to water bodies
1004 prior to the date of this act.

1005 ~~(c) Not later than February 1, 2001, the department shall~~
1006 ~~submit a report to the Governor, the President of the Senate,~~
1007 ~~and the Speaker of the House of Representatives containing~~

1008 ~~recommendations, including draft legislation, for any~~
1009 ~~modifications to the process for allocating total maximum daily~~
1010 ~~loads, including the relationship between allocations and the~~
1011 ~~watershed or basin management planning process. Such~~
1012 ~~recommendations shall be developed by the department in~~
1013 ~~cooperation with a technical advisory committee which includes~~
1014 ~~representatives of affected parties, environmental~~
1015 ~~organizations, water management districts, and other appropriate~~
1016 ~~local, state, and federal government agencies. The technical~~
1017 ~~advisory committee shall also include such members as may be~~
1018 ~~designated by the President of the Senate and the Speaker of the~~
1019 ~~House of Representatives.~~

1020 (c)-(d) Adoption of rules. The total maximum daily load
1021 calculations and allocations established under this subsection
1022 for each water body or water body segment shall be adopted by
1023 rule by the secretary pursuant to ss. 120.536(1), 120.54, and
1024 403.805. Where additional data collection and analysis are
1025 needed to increase the scientific precision and accuracy of the
1026 total maximum daily load, the department is authorized to adopt
1027 phased total maximum daily loads that are subject to change as
1028 additional data becomes available. Where phased total maximum
1029 daily loads are proposed, the department shall, in the detailed
1030 statement of facts and circumstances justifying the rule,
1031 explain why the data are inadequate so as to justify a phased
1032 total maximum daily load. The rules adopted pursuant to this
1033 paragraph shall not be subject to approval by the Environmental
1034 Regulation Commission. As part of the rule development process,
1035 the department shall hold at least one public workshop in the

1036 vicinity of the water body or water body segment for which the
1037 total maximum daily load is being developed. Notice of the
1038 public workshop shall be published not less than 5 days nor more
1039 than 15 days before the public workshop in a newspaper of
1040 general circulation in the county or counties containing the
1041 water bodies or water body segments for which the total maximum
1042 daily load calculation and allocation are being developed.

1043 (7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND
1044 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

1045 (a) Basin management action plans.--

1046 1. In developing and implementing the total maximum daily
1047 load for a water body, the department, or the department in
1048 conjunction with a water management district, may develop a
1049 basin management action plan that addresses some or all of the
1050 watersheds and basins tributary to the water body. Such a plan
1051 shall integrate the appropriate management strategies available
1052 to the state through existing water quality protection programs
1053 to achieve the total maximum daily loads and may provide for
1054 phased implementation of these management strategies to promote
1055 timely, cost-effective actions as provided for in s. 403.151.
1056 The plan shall establish a schedule for implementing the
1057 management strategies, establish a basis for evaluating the
1058 plan's effectiveness, and identify feasible funding strategies
1059 for implementing the plan's management strategies. The
1060 management strategies may include regional treatment systems or
1061 other public works, where appropriate, to achieve the needed
1062 pollutant load reductions.

1063 2. A basin management action plan shall equitably

1064 allocate, pursuant to paragraph (6)(b), pollutant reductions to
1065 individual basins, as a whole to all basins, or to each
1066 identified point source or category of nonpoint sources, as
1067 appropriate. For nonpoint sources for which best management
1068 practices have been adopted, the initial requirement specified
1069 by the plan shall be those practices developed pursuant to
1070 paragraph (c). Where appropriate, the plan may provide
1071 pollutant-load-reduction credits to dischargers that have
1072 implemented management strategies to reduce pollutant loads,
1073 including best management practices, prior to the development of
1074 the basin management action plan. The plan shall also identify
1075 the mechanisms by which potential future increases in pollutant
1076 loading will be addressed.

1077 3. The basin management action planning process is
1078 intended to involve the broadest possible range of interested
1079 parties, with the objective of encouraging the greatest amount
1080 of cooperation and consensus possible. In developing a basin
1081 management action plan, the department shall assure that key
1082 stakeholders, including, but not limited to, applicable local
1083 governments, water management districts, the Department of
1084 Agriculture and Consumer Services, other appropriate state
1085 agencies, local soil and water conservation districts,
1086 environmental groups, regulated interests, and affected
1087 pollution sources, are invited to participate in the process.
1088 The department shall hold at least one public meeting in the
1089 vicinity of the watershed or basin to discuss and receive
1090 comments during the planning process and shall otherwise
1091 encourage public participation to the greatest practicable

1092 extent. Notice of the public meeting shall be published in a
 1093 newspaper of general circulation in each county in which the
 1094 watershed or basin lies not less than 5 days nor more than 15
 1095 days before the public meeting. A basin management action plan
 1096 shall not supplant or otherwise alter any assessment made under
 1097 subsection (3) or subsection (4) or any calculation or initial
 1098 allocation.

1099 4. The department shall adopt all or any part of a basin
 1100 management action plan by secretarial order pursuant to chapter
 1101 120 to implement the provisions of this section.

1102 5. The basin management action plan shall include
 1103 milestones for implementation and water quality improvement, and
 1104 an associated water quality monitoring component sufficient to
 1105 evaluate whether reasonable progress in pollutant load
 1106 reductions is being achieved over time. An assessment of
 1107 progress toward these milestones shall be conducted every 5
 1108 years, and revisions to the plan shall be made as appropriate.
 1109 Revisions to the basin management action plan shall be made by
 1110 the department in cooperation with basin stakeholders. Revisions
 1111 to the management strategies required for nonpoint sources shall
 1112 follow the procedures set forth in subparagraph (c)4. Revised
 1113 basin management action plans shall be adopted pursuant to
 1114 subparagraph 4.

1115 (b)(a) Total maximum daily load implementation.--

1116 1. The department shall be the lead agency in coordinating
 1117 the implementation of the total maximum daily loads through
 1118 existing water quality protection programs. Application of a
 1119 total maximum daily load by a water management district shall be

1120 consistent with this section and shall not require the issuance
1121 of an order or a separate action pursuant to s. 120.536(1) or s.
1122 120.54 for adoption of the calculation and allocation previously
1123 established by the department. Such programs may include, but
1124 are not limited to:

1125 ~~a.1.~~ Permitting and other existing regulatory programs,
1126 including water-quality-based effluent limitations;

1127 ~~b.2.~~ Nonregulatory and incentive-based programs, including
1128 best management practices, cost sharing, waste minimization,
1129 pollution prevention, agreements established pursuant to s.
1130 403.061(21), and public education;

1131 ~~c.3.~~ Other water quality management and restoration
1132 activities, for example surface water improvement and management
1133 plans approved by water management districts ~~or watershed~~ or
1134 basin management action plans developed pursuant to this
1135 subsection;

1136 ~~d.4.~~ Pollutant trading or other equitable economically
1137 based agreements;

1138 ~~e.5.~~ Public works including capital facilities; or

1139 ~~f.6.~~ Land acquisition.

1140 2. For a basin management action plan adopted pursuant to
1141 subparagraph (a)4., any management strategies and pollutant
1142 reduction requirements associated with a pollutant of concern
1143 for which a total maximum daily load has been developed,
1144 including effluent limits set forth for a discharger subject to
1145 NPDES permitting, if any, shall be included in a timely manner
1146 in subsequent NPDES permits or permit modifications for that
1147 discharger. The department shall not impose limits or conditions

1148 implementing an adopted total maximum daily load in an NPDES
1149 permit until the permit expires, the discharge is modified, or
1150 the permit is reopened pursuant to an adopted basin management
1151 action plan.

1152 a. Absent a detailed allocation, total maximum daily loads
1153 shall be implemented through NPDES permit conditions that afford
1154 a compliance schedule. In such instances, a facility's NPDES
1155 permit shall allow time for the issuance of an order adopting
1156 the basin management action plan. The time allowed for the
1157 issuance of an order adopting the plan shall not exceed five
1158 years. Upon issuance of an order adopting the plan, the permit
1159 shall be reopened, as necessary, and permit conditions
1160 consistent with the plan shall be established. Notwithstanding
1161 the other provisions of this subparagraph, upon request by a
1162 NPDES permittee, the department as part of a permit issuance,
1163 renewal or modification may establish individual allocations
1164 prior to the adoption of a basin management action plan.

1165 b. For holders of NPDES municipal separate storm sewer
1166 system permits and other stormwater sources, implementation of a
1167 total maximum daily load or basin management action plan shall
1168 be achieved, to the maximum extent practicable, through the use
1169 of best management practices or other management measures.

1170 c. The basin management action plan does not relieve the
1171 discharger from any requirement to obtain, renew, or modify an
1172 NPDES permit or to abide by other requirements of the permit.

1173 d. Management strategies set forth in a basin management
1174 action plan to be implemented by a discharger subject to
1175 permitting by the department shall be completed pursuant to the

1176 schedule set forth in the basin management action plan. This
 1177 implementation schedule may extend beyond the 5-year term of an
 1178 NPDES permit.

1179 e. Management strategies and pollution reduction
 1180 requirements set forth in a basin management action plan for a
 1181 specific pollutant of concern shall not be subject to challenge
 1182 under chapter 120 at the time they are incorporated, in an
 1183 identical form, into a subsequent NPDES permit or permit
 1184 modification.

1185 f. For nonagricultural pollutant sources not subject to
 1186 NPDES permitting but permitted pursuant to other state,
 1187 regional, or local water quality programs, the pollutant
 1188 reduction actions adopted in a basin management action plan
 1189 shall be implemented to the maximum extent practicable as part
 1190 of those permitting programs.

1191 g. A nonpoint source discharger included in a basin
 1192 management action plan shall demonstrate compliance with the
 1193 pollutant reductions established pursuant to subsection (6) by
 1194 either implementing the appropriate best management practices
 1195 established pursuant to paragraph (c) or conducting water
 1196 quality monitoring prescribed by the department or a water
 1197 management district.

1198 h. A nonpoint source discharger included in a basin
 1199 management action plan may be subject to enforcement action by
 1200 the department or a water management district based upon a
 1201 failure to implement the responsibilities set forth in sub-
 1202 subparagraph g.

1203 i. A landowner, discharger, or other responsible person

1204 who is implementing applicable management strategies specified
1205 in an adopted basin management action plan shall not be required
1206 by permit, enforcement action, or otherwise to implement
1207 additional management strategies to reduce pollutant loads to
1208 attain the pollutant reductions established pursuant to
1209 subsection (6) and shall be deemed to be in compliance with this
1210 section. This subparagraph does not limit the authority of the
1211 department to amend a basin management action plan as specified
1212 in subparagraph (a) 5.

1213 ~~(b) In developing and implementing the total maximum daily~~
1214 ~~load for a water body, the department, or the department in~~
1215 ~~conjunction with a water management district, may develop a~~
1216 ~~watershed or basin management plan that addresses some or all of~~
1217 ~~the watersheds and basins tributary to the water body. These~~
1218 ~~plans will serve to fully integrate the management strategies~~
1219 ~~available to the state for the purpose of implementing the total~~
1220 ~~maximum daily loads and achieving water quality restoration. The~~
1221 ~~watershed or basin management planning process is intended to~~
1222 ~~involve the broadest possible range of interested parties, with~~
1223 ~~the objective of encouraging the greatest amount of cooperation~~
1224 ~~and consensus possible. The department or water management~~
1225 ~~district shall hold at least one public meeting in the vicinity~~
1226 ~~of the watershed or basin to discuss and receive comments during~~
1227 ~~the planning process and shall otherwise encourage public~~
1228 ~~participation to the greatest practical extent. Notice of the~~
1229 ~~public meeting shall be published in a newspaper of general~~
1230 ~~circulation in each county in which the watershed or basin lies~~
1231 ~~not less than 5 days nor more than 15 days before the public~~

1232 ~~meeting. A watershed or basin management plan shall not supplant~~
1233 ~~or otherwise alter any assessment made under s. 403.086(3) and~~
1234 ~~(4), or any calculation or allocation made under s. 403.086(6).~~

1235 (c) Best management practices.--

1236 1. The department, in cooperation with the water
1237 management districts and other interested parties, as
1238 appropriate, may develop suitable interim measures, best
1239 management practices, or other measures necessary to achieve the
1240 level of pollution reduction established by the department for
1241 nonagricultural nonpoint pollutant sources in allocations
1242 developed pursuant to subsection (6) and this subsection
1243 ~~paragraph (6)(b)~~. These practices and measures may be adopted by
1244 rule by the department and the water management districts
1245 pursuant to ss. 120.536(1) and 120.54, and, where adopted by
1246 rule, shall ~~may~~ be implemented by those parties responsible for
1247 nonagricultural nonpoint source pollution ~~pollutant sources~~ and
1248 ~~the department and the water management districts shall assist~~
1249 ~~with implementation. Where interim measures, best management~~
1250 ~~practices, or other measures are adopted by rule, the~~
1251 ~~effectiveness of such practices in achieving the levels of~~
1252 ~~pollution reduction established in allocations developed by the~~
1253 ~~department pursuant to paragraph (6)(b) shall be verified by the~~
1254 ~~department. Implementation, in accordance with applicable rules,~~
1255 ~~of practices that have been verified by the department to be~~
1256 ~~effective at representative sites shall provide a presumption of~~
1257 ~~compliance with state water quality standards and release from~~
1258 ~~the provisions of s. 376.307(5) for those pollutants addressed~~
1259 ~~by the practices, and the department is not authorized to~~

1260 ~~institute proceedings against the owner of the source of~~
 1261 ~~pollution to recover costs or damages associated with the~~
 1262 ~~contamination of surface or ground water caused by those~~
 1263 ~~pollutants. Such rules shall also incorporate provisions for a~~
 1264 ~~notice of intent to implement the practices and a system to~~
 1265 ~~assure the implementation of the practices, including~~
 1266 ~~recordkeeping requirements. Where water quality problems are~~
 1267 ~~detected despite the appropriate implementation, operation, and~~
 1268 ~~maintenance of best management practices and other measures~~
 1269 ~~according to rules adopted under this paragraph, the department~~
 1270 ~~or the water management districts shall institute a reevaluation~~
 1271 ~~of the best management practice or other measures.~~

1272 2.(d)1. The Department of Agriculture and Consumer
 1273 Services may develop and adopt by rule pursuant to ss.
 1274 120.536(1) and 120.54 suitable interim measures, best management
 1275 practices, or other measures necessary to achieve the level of
 1276 pollution reduction established by the department for
 1277 agricultural pollutant sources in allocations developed pursuant
 1278 to subsection (6) and this subsection ~~paragraph (6)(b)~~. These
 1279 practices and measures may be implemented by those parties
 1280 responsible for agricultural pollutant sources and the
 1281 department, the water management districts, and the Department
 1282 of Agriculture and Consumer Services shall assist with
 1283 implementation. ~~Where interim measures, best management~~
 1284 ~~practices, or other measures are adopted by rule, the~~
 1285 ~~effectiveness of such practices in achieving the levels of~~
 1286 ~~pollution reduction established in allocations developed by the~~
 1287 ~~department pursuant to paragraph (6)(b) shall be verified by the~~

1288 ~~department. Implementation, in accordance with applicable~~
 1289 ~~rules, of practices that have been verified by the department to~~
 1290 ~~be effective at representative sites shall provide a presumption~~
 1291 ~~of compliance with state water quality standards and release~~
 1292 ~~from the provisions of s. 376.307(5) for those pollutants~~
 1293 ~~addressed by the practices, and the department is not authorized~~
 1294 ~~to institute proceedings against the owner of the source of~~
 1295 ~~pollution to recover costs or damages associated with the~~
 1296 ~~contamination of surface or ground water caused by those~~
 1297 ~~pollutants. In the process of developing and adopting rules for~~
 1298 ~~interim measures, best management practices, or other measures,~~
 1299 ~~the Department of Agriculture and Consumer Services shall~~
 1300 ~~consult with the department, the Department of Health, the water~~
 1301 ~~management districts, representatives from affected farming~~
 1302 ~~groups, and environmental group representatives. Such rules~~
 1303 ~~shall also incorporate provisions for a notice of intent to~~
 1304 ~~implement the practices and a system to assure the~~
 1305 ~~implementation of the practices, including recordkeeping~~
 1306 ~~requirements. Where water quality problems are detected despite~~
 1307 ~~the appropriate implementation, operation, and maintenance of~~
 1308 ~~best management practices and other measures according to rules~~
 1309 ~~adopted under this paragraph, the Department of Agriculture and~~
 1310 ~~Consumer Services shall institute a reevaluation of the best~~
 1311 ~~management practice or other measure.~~

1312 3. Where interim measures, best management practices, or
 1313 other measures are adopted by rule, the effectiveness of such
 1314 practices in achieving the levels of pollution reduction
 1315 established in allocations developed by the department pursuant

1316 to subsection (6) and this subsection shall be verified at
1317 representative sites by the department. The department shall use
1318 best professional judgment in making the initial verification
1319 that the best management practices are effective and, where
1320 applicable, shall notify the appropriate water management
1321 district and the Department of Agriculture and Consumer Services
1322 of its initial verification prior to the adoption of a rule
1323 proposed pursuant to this paragraph. Implementation, in
1324 accordance with rules adopted under this paragraph, of practices
1325 that have been initially verified to be effective, or verified
1326 to be effective by monitoring at representative sites, by the
1327 department, shall provide a presumption of compliance with state
1328 water quality standards and release from the provisions of s.
1329 376.307(5) for those pollutants addressed by the practices, and
1330 the department is not authorized to institute proceedings
1331 against the owner of the source of pollution to recover costs or
1332 damages associated with the contamination of surface water or
1333 groundwater caused by those pollutants.

1334 4. Where water quality problems are demonstrated, despite
1335 the appropriate implementation, operation, and maintenance of
1336 best management practices and other measures according to rules
1337 adopted under this paragraph, the department, a water management
1338 district, or the Department of Agriculture and Consumer
1339 Services, in consultation with the department, shall institute a
1340 reevaluation of the best management practice or other measure.
1341 Should the reevaluation determine that the best management
1342 practice or other measure requires modification, the department,
1343 a water management district, or the Department of Agriculture

1344 and Consumer Services, as appropriate, shall revise the rule to
 1345 require implementation of the modified practice within a
 1346 reasonable time period as specified in the rule.

1347 ~~5.2-~~ Individual agricultural records relating to processes
 1348 or methods of production, or relating to costs of production,
 1349 profits, or other financial information which are otherwise not
 1350 public records, which are reported to the Department of
 1351 Agriculture and Consumer Services pursuant to subparagraphs 3.
 1352 and 4. ~~this paragraph~~ or pursuant to any rule adopted pursuant
 1353 to subparagraph 2. ~~this paragraph~~ shall be confidential and
 1354 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 1355 Constitution. Upon request of the department or any water
 1356 management district, the Department of Agriculture and Consumer
 1357 Services shall make such individual agricultural records
 1358 available to that agency, provided that the confidentiality
 1359 specified by this subparagraph for such records is maintained.
 1360 This subparagraph is subject to the Open Government Sunset
 1361 Review Act of 1995 in accordance with s. 119.15, and shall stand
 1362 repealed on October 2, 2006, unless reviewed and saved from
 1363 repeal through reenactment by the Legislature.

1364 ~~6.(e)~~ The provisions of subparagraphs 1. and 2. ~~paragraphs~~
 1365 ~~(c) and (d)~~ shall not preclude the department or water
 1366 management district from requiring compliance with water quality
 1367 standards or with current best management practice requirements
 1368 set forth in any applicable regulatory program authorized by law
 1369 for the purpose of protecting water quality. Additionally,
 1370 subparagraphs 1. and 2. ~~paragraphs (c) and (d)~~ are applicable
 1371 only to the extent that they do not conflict with any rules

1372 adopted ~~promulgated~~ by the department that are necessary to
 1373 maintain a federally delegated or approved program.

1374 (8) RULES.--The department is authorized to adopt rules
 1375 pursuant to ss. 120.536(1) and 120.54 for:

1376 (a) Delisting water bodies or water body segments from the
 1377 list developed under subsection (4) pursuant to the guidance
 1378 under subsection (5);

1379 (b) Administration of funds to implement the total maximum
 1380 daily load and basin management action planning programs
 1381 ~~program;~~

1382 (c) Procedures for pollutant trading among the pollutant
 1383 sources to a water body or water body segment, including a
 1384 mechanism for the issuance and tracking of pollutant credits.
 1385 Such procedures may be implemented through permits or other
 1386 authorizations and must be legally binding. Prior to adopting
 1387 rules for pollutant trading under this paragraph, and no later
 1388 than November 30, 2006, the Department of Environmental
 1389 Protection shall submit a report to the Governor, the President
 1390 of the Senate, and the Speaker of the House of Representatives
 1391 containing recommendations on such rules, including the proposed
 1392 basis for equitable economically based agreements and the
 1393 tracking and accounting of pollution credits or other similar
 1394 mechanisms. Such recommendations shall be developed in
 1395 cooperation with a technical advisory committee that includes
 1396 experts in pollutant trading and representatives of potentially
 1397 affected parties; ~~No rule implementing a pollutant trading~~
 1398 ~~program shall become effective prior to review and ratification~~
 1399 ~~by the Legislature; and~~

1400 (d) The total maximum daily load calculation in accordance
 1401 with paragraph (6) (a) immediately upon the effective date of
 1402 this act, for those eight water segments within Lake Okeechobee
 1403 proper as submitted to the United States Environmental
 1404 Protection Agency pursuant to subsection (2); and-

1405 (e) Implementation of other specific provisions.

1406 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

1407 (a) The department shall not implement, without prior
 1408 legislative approval, any additional regulatory authority
 1409 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part
 1410 130, if such implementation would result in water quality
 1411 discharge regulation of activities not currently subject to
 1412 regulation.

1413 (b) Interim measures, best management practices, or other
 1414 measures may be developed and voluntarily implemented pursuant
 1415 to subparagraphs paragraph (7) (c) 1. and 2. ~~or paragraph (7) (d)~~
 1416 for any water body or segment for which a total maximum daily
 1417 load or allocation has not been established. The implementation
 1418 of such pollution control programs may be considered by the
 1419 department in the determination made pursuant to subsection (4).

1420 Section 7. Paragraph (c) of subsection (3) of section
 1421 373.4595, Florida Statutes, is amended to read:

1422 373.4595 Lake Okeechobee Protection Program.--

1423 (3) LAKE OKEECHOBEE PROTECTION PROGRAM.--A protection
 1424 program for Lake Okeechobee that achieves phosphorus load
 1425 reductions for Lake Okeechobee shall be immediately implemented
 1426 as specified in this subsection. The program shall address the
 1427 reduction of phosphorus loading to the lake from both internal

1428 and external sources. Phosphorus load reductions shall be
1429 achieved through a phased program of implementation. Initial
1430 implementation actions shall be technology-based, based upon a
1431 consideration of both the availability of appropriate technology
1432 and the cost of such technology, and shall include phosphorus
1433 reduction measures at both the source and the regional level.
1434 The initial phase of phosphorus load reductions shall be based
1435 upon the district's Technical Publication 81-2 and the
1436 district's WOD program, with subsequent phases of phosphorus
1437 load reductions based upon the total maximum daily loads
1438 established in accordance with s. 403.067. In the development
1439 and administration of the Lake Okeechobee Protection Program,
1440 the coordinating agencies shall maximize opportunities provided
1441 by federal cost-sharing programs and opportunities for
1442 partnerships with the private sector.

1443 (c) Lake Okeechobee Watershed Phosphorus Control Program.-
1444 -The Lake Okeechobee Watershed Phosphorus Control Program is
1445 designed to be a multifaceted approach to reducing phosphorus
1446 loads by improving the management of phosphorus sources within
1447 the Lake Okeechobee watershed through continued implementation
1448 of existing regulations and best management practices,
1449 development and implementation of improved best management
1450 practices, improvement and restoration of the hydrologic
1451 function of natural and managed systems, and utilization of
1452 alternative technologies for nutrient reduction. The
1453 coordinating agencies shall facilitate the application of
1454 federal programs that offer opportunities for water quality
1455 treatment, including preservation, restoration, or creation of

1456 wetlands on agricultural lands.

1457 1. Agricultural nonpoint source best management practices,
 1458 developed in accordance with s. 403.067 and designed to achieve
 1459 the objectives of the Lake Okeechobee Protection Program, shall
 1460 be implemented on an expedited basis. By March 1, 2001, the
 1461 coordinating agencies shall develop an interagency agreement
 1462 pursuant to ss. 373.046 and 373.406(5) that assures the
 1463 development of best management practices that complement
 1464 existing regulatory programs and specifies how those best
 1465 management practices are implemented and verified. The
 1466 interagency agreement shall address measures to be taken by the
 1467 coordinating agencies during any best management practice
 1468 reevaluation performed pursuant to sub-subparagraph d. The
 1469 department shall use best professional judgment in making the
 1470 initial determination of best management practice effectiveness.

1471 a. As provided in s. 403.067(7)(c) ~~s. 403.067(7)(d)~~, by
 1472 October 1, 2000, the Department of Agriculture and Consumer
 1473 Services, in consultation with the department, the district, and
 1474 affected parties, shall initiate rule development for interim
 1475 measures, best management practices, conservation plans,
 1476 nutrient management plans, or other measures necessary for Lake
 1477 Okeechobee phosphorus load reduction. The rule shall include
 1478 thresholds for requiring conservation and nutrient management
 1479 plans and criteria for the contents of such plans. Development
 1480 of agricultural nonpoint source best management practices shall
 1481 initially focus on those priority basins listed in subparagraph
 1482 (b)1. The Department of Agriculture and Consumer Services, in
 1483 consultation with the department, the district, and affected

1484 parties, shall conduct an ongoing program for improvement of
1485 existing and development of new interim measures or best
1486 management practices for the purpose of adoption of such
1487 practices by rule.

1488 b. Where agricultural nonpoint source best management
1489 practices or interim measures have been adopted by rule of the
1490 Department of Agriculture and Consumer Services, the owner or
1491 operator of an agricultural nonpoint source addressed by such
1492 rule shall either implement interim measures or best management
1493 practices or demonstrate compliance with the district's WOD
1494 program by conducting monitoring prescribed by the department or
1495 the district. Owners or operators of agricultural nonpoint
1496 sources who implement interim measures or best management
1497 practices adopted by rule of the Department of Agriculture and
1498 Consumer Services shall be subject to the provisions of s.
1499 403.067(7). The Department of Agriculture and Consumer Services,
1500 in cooperation with the department and the district, shall
1501 provide technical and financial assistance for implementation of
1502 agricultural best management practices, subject to the
1503 availability of funds.

1504 c. The district or department shall conduct monitoring at
1505 representative sites to verify the effectiveness of agricultural
1506 nonpoint source best management practices.

1507 d. Where water quality problems are detected for
1508 agricultural nonpoint sources despite the appropriate
1509 implementation of adopted best management practices, the
1510 Department of Agriculture and Consumer Services, in consultation
1511 with the other coordinating agencies and affected parties, shall

1512 institute a reevaluation of the best management practices and
1513 make appropriate changes to the rule adopting best management
1514 practices.

1515 2. Nonagricultural nonpoint source best management
1516 practices, developed in accordance with s. 403.067 and designed
1517 to achieve the objectives of the Lake Okeechobee Protection
1518 Program, shall be implemented on an expedited basis. By March 1,
1519 2001, the department and the district shall develop an
1520 interagency agreement pursuant to ss. 373.046 and 373.406(5)
1521 that assures the development of best management practices that
1522 complement existing regulatory programs and specifies how those
1523 best management practices are implemented and verified. The
1524 interagency agreement shall address measures to be taken by the
1525 department and the district during any best management practice
1526 reevaluation performed pursuant to sub-subparagraph d.

1527 a. The department and the district are directed to work
1528 with the University of Florida's Institute of Food and
1529 Agricultural Sciences to develop appropriate nutrient
1530 application rates for all nonagricultural soil amendments in the
1531 watershed. As provided in s. 403.067(7)(c), by January 1, 2001,
1532 the department, in consultation with the district and affected
1533 parties, shall develop interim measures, best management
1534 practices, or other measures necessary for Lake Okeechobee
1535 phosphorus load reduction. Development of nonagricultural
1536 nonpoint source best management practices shall initially focus
1537 on those priority basins listed in subparagraph (b)1. The
1538 department, the district, and affected parties shall conduct an
1539 ongoing program for improvement of existing and development of

1540 new interim measures or best management practices. The district
1541 shall adopt technology-based standards under the district's WOD
1542 program for nonagricultural nonpoint sources of phosphorus.

1543 b. Where nonagricultural nonpoint source best management
1544 practices or interim measures have been developed by the
1545 department and adopted by the district, the owner or operator of
1546 a nonagricultural nonpoint source shall implement interim
1547 measures or best management practices and be subject to the
1548 provisions of s. 403.067(7). The department and district shall
1549 provide technical and financial assistance for implementation of
1550 nonagricultural nonpoint source best management practices,
1551 subject to the availability of funds.

1552 c. The district or the department shall conduct monitoring
1553 at representative sites to verify the effectiveness of
1554 nonagricultural nonpoint source best management practices.

1555 d. Where water quality problems are detected for
1556 nonagricultural nonpoint sources despite the appropriate
1557 implementation of adopted best management practices, the
1558 department and the district shall institute a reevaluation of
1559 the best management practices.

1560 3. The provisions of subparagraphs 1. and 2. shall not
1561 preclude the department or the district from requiring
1562 compliance with water quality standards or with current best
1563 management practices requirements set forth in any applicable
1564 regulatory program authorized by law for the purpose of
1565 protecting water quality. Additionally, subparagraphs 1. and 2.
1566 are applicable only to the extent that they do not conflict with
1567 any rules promulgated by the department that are necessary to

1568 maintain a federally delegated or approved program.

1569 4. Projects which reduce the phosphorus load originating
1570 from domestic wastewater systems within the Lake Okeechobee
1571 watershed shall be given funding priority in the department's
1572 revolving loan program under s. 403.1835. The department shall
1573 coordinate and provide assistance to those local governments
1574 seeking financial assistance for such priority projects.

1575 5. Projects that make use of private lands, or lands held
1576 in trust for Indian tribes, to reduce nutrient loadings or
1577 concentrations within a basin by one or more of the following
1578 methods: restoring the natural hydrology of the basin, restoring
1579 wildlife habitat or impacted wetlands, reducing peak flows after
1580 storm events, increasing aquifer recharge, or protecting range
1581 and timberland from conversion to development, are eligible for
1582 grants available under this section from the coordinating
1583 agencies. For projects of otherwise equal priority, special
1584 funding priority will be given to those projects that make best
1585 use of the methods outlined above that involve public-private
1586 partnerships or that obtain federal match money. Preference
1587 ranking above the special funding priority will be given to
1588 projects located in a rural area of critical economic concern
1589 designated by the Governor. Grant applications may be submitted
1590 by any person or tribal entity, and eligible projects may
1591 include, but are not limited to, the purchase of conservation
1592 and flowage easements, hydrologic restoration of wetlands,
1593 creating treatment wetlands, development of a management plan
1594 for natural resources, and financial support to implement a
1595 management plan.

1596 6.a. The department shall require all entities disposing
 1597 of domestic wastewater residuals within the Lake Okeechobee
 1598 watershed and the remaining areas of Okeechobee, Glades, and
 1599 Hendry Counties to develop and submit to the department an
 1600 agricultural use plan that limits applications based upon
 1601 phosphorus loading. By July 1, 2005, phosphorus concentrations
 1602 originating from these application sites shall not exceed the
 1603 limits established in the district's WOD program.

1604 b. Private and government-owned utilities within Monroe,
 1605 Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River,
 1606 Okeechobee, Highlands, Hendry, and Glades Counties that dispose
 1607 of wastewater residual sludge from utility operations and septic
 1608 removal by land spreading in the Lake Okeechobee watershed may
 1609 use a line item on local sewer rates to cover wastewater
 1610 residual treatment and disposal if such disposal and treatment
 1611 is done by approved alternative treatment methodology at a
 1612 facility located within the areas designated by the Governor as
 1613 rural areas of critical economic concern pursuant to s.
 1614 288.0656. This additional line item is an environmental
 1615 protection disposal fee above the present sewer rate and shall
 1616 not be considered a part of the present sewer rate to customers,
 1617 notwithstanding provisions to the contrary in chapter 367. The
 1618 fee shall be established by the county commission or its
 1619 designated assignee in the county in which the alternative
 1620 method treatment facility is located. The fee shall be
 1621 calculated to be no higher than that necessary to recover the
 1622 facility's prudent cost of providing the service. Upon request
 1623 by an affected county commission, the Florida Public Service

1624 Commission will provide assistance in establishing the fee.
 1625 Further, for utilities and utility authorities that use the
 1626 additional line item environmental protection disposal fee, such
 1627 fee shall not be considered a rate increase under the rules of
 1628 the Public Service Commission and shall be exempt from such
 1629 rules. Utilities using the provisions of this section may
 1630 immediately include in their sewer invoicing the new
 1631 environmental protection disposal fee. Proceeds from this
 1632 environmental protection disposal fee shall be used for
 1633 treatment and disposal of wastewater residuals, including any
 1634 treatment technology that helps reduce the volume of residuals
 1635 that require final disposal, but such proceeds shall not be used
 1636 for transportation or shipment costs for disposal or any costs
 1637 relating to the land application of residuals in the Lake
 1638 Okeechobee watershed.

1639 c. No less frequently than once every 3 years, the Florida
 1640 Public Service Commission or the county commission through the
 1641 services of an independent auditor shall perform a financial
 1642 audit of all facilities receiving compensation from an
 1643 environmental protection disposal fee. The Florida Public
 1644 Service Commission or the county commission through the services
 1645 of an independent auditor shall also perform an audit of the
 1646 methodology used in establishing the environmental protection
 1647 disposal fee. The Florida Public Service Commission or the
 1648 county commission shall, within 120 days after completion of an
 1649 audit, file the audit report with the President of the Senate
 1650 and the Speaker of the House of Representatives and shall
 1651 provide copies to the county commissions of the counties set

1652 forth in sub-subparagraph b. The books and records of any
1653 facilities receiving compensation from an environmental
1654 protection disposal fee shall be open to the Florida Public
1655 Service Commission and the Auditor General for review upon
1656 request.

1657 7. The Department of Health shall require all entities
1658 disposing of septage within the Lake Okeechobee watershed and
1659 the remaining areas of Okeechobee, Glades, and Hendry Counties
1660 to develop and submit to that agency, by July 1, 2003, an
1661 agricultural use plan that limits applications based upon
1662 phosphorus loading. By July 1, 2005, phosphorus concentrations
1663 originating from these application sites shall not exceed the
1664 limits established in the district's WOD program.

1665 8. The Department of Agriculture and Consumer Services
1666 shall initiate rulemaking requiring entities within the Lake
1667 Okeechobee watershed and the remaining areas of Okeechobee,
1668 Glades, and Hendry Counties which land-apply animal manure to
1669 develop conservation or nutrient management plans that limit
1670 application, based upon phosphorus loading. Such rules may
1671 include criteria and thresholds for the requirement to develop a
1672 conservation or nutrient management plan, requirements for plan
1673 approval, and recordkeeping requirements.

1674 9. Prior to authorizing a discharge into works of the
1675 district, the district shall require responsible parties to
1676 demonstrate that proposed changes in land use will not result in
1677 increased phosphorus loading over that of existing land uses.

1678 10. The district, the department, or the Department of
1679 Agriculture and Consumer Services, as appropriate, shall

HB 1855, Engrossed 2

2005

1680 implement those alternative nutrient reduction technologies
1681 determined to be feasible pursuant to subparagraph (d)6.

1682 Section 8. Subsection (1) of section 570.085, Florida
1683 Statutes, is amended to read:

1684 570.085 Department of Agriculture and Consumer Services;
1685 agricultural water conservation.--The department shall establish
1686 an agricultural water conservation program that includes the
1687 following:

1688 (1) A cost-share program, coordinated where appropriate
1689 with the United States Department of Agriculture and other
1690 federal, state, regional, and local agencies, for irrigation
1691 system retrofit and application of mobile irrigation laboratory
1692 evaluations for water conservation as provided in this section
1693 and, where applicable, for water quality improvement pursuant to
1694 s. 403.067(7)(c) ~~s. 403.067(7)(d)~~.

1695 Section 9. This act shall take effect upon becoming a law.