

Bill No. SB 2322

Barcode 391664

CHAMBER ACTION

Senate

House

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11 The Committee on Agriculture (Haridopolos) recommended the  
12 following amendment:

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

15 Delete everything after the enacting clause

17 and insert:

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

21 403.067 Establishment and implementation of total  
22 maximum daily loads.--

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

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1 established, subject to the provisions of subsection (4). The  
2 department shall establish a priority ranking and schedule for  
3 analyzing such waters.

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

10 (6) CALCULATION AND ALLOCATION.--

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

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

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

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

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

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

- 10       1. Existing treatment levels and management practices;
- 11       2. Best management practices established and  
 12 implemented pursuant to paragraph (7)(c);
- 13       3. Enforceable treatment levels established pursuant  
 14 to state or local law or permit;
- 15       ~~4.2.~~ Differing impacts pollutant sources and forms of  
 16 pollution may have on water quality;
- 17       ~~5.3.~~ The availability of treatment technologies,  
 18 management practices, or other pollutant reduction measures;
- 19       ~~6.4.~~ Environmental, economic, and technological  
 20 feasibility of achieving the allocation;
- 21       ~~7.5.~~ The cost benefit associated with achieving the  
 22 allocation;
- 23       ~~8.6.~~ Reasonable timeframes for implementation;
- 24       ~~9.7.~~ Potential applicability of any moderating  
 25 provisions such as variances, exemptions, and mixing zones;  
 26 and
- 27       ~~10.8.~~ The extent to which nonattainment of water  
 28 quality standards is caused by pollution sources outside of  
 29 Florida, discharges that have ceased, or alterations to water  
 30 bodies prior to the date of this act.

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

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

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

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

8 (7) DEVELOPMENT OF BASIN MANAGEMENT ACTION PLANS;  
 9 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS; BEST MANAGEMENT  
 10 PRACTICES.--

11 (a) Basin management action plans.--

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

29 2. A basin management action plan shall, pursuant to  
 30 paragraph (6)(b), equitably allocate pollutant reductions to  
 31 individual basins, as a whole to all basins, or to each

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

12 3. The basin management action planning process is  
13 intended to involve the broadest possible range of interested  
14 parties, with the objective of encouraging the greatest amount  
15 of cooperation and consensus possible. In developing a basin  
16 management action plan, the department shall ensure that key  
17 stakeholders, including, but not limited to, applicable local  
18 governments, water management districts, the Department of  
19 Agriculture and Consumer Services, other appropriate state  
20 agencies, local soil and water conservation districts,  
21 environmental groups, regulated interests, and affected  
22 pollution sources, are invited to participate in the process.  
23 The department shall hold at least one public meeting in the  
24 vicinity of the watershed or basin to discuss and receive  
25 comments during the planning process and shall otherwise  
26 encourage public participation to the greatest practical  
27 extent. Not fewer than 5 days or more than 15 days before the  
28 public meeting, notice of the public meeting shall be  
29 published in a newspaper of general circulation in each county  
30 in which the watershed or basin lies. A basin management  
31 action plan shall not supplant or otherwise alter any

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1 assessment made under subsection (3) or subsection (4), or any  
2 calculation or preliminary allocation made under subsection  
3 (6).

4 4. The department shall adopt all or any part of a  
5 basin management action plan by secretarial order pursuant to  
6 chapter 120 to implement this section.

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

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

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

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



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

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

10           ~~d.4.~~ Pollutant trading or other equitable economically  
 11 based agreements;

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

13           ~~f.6.~~ Land acquisition.

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

26           a. For holders of NPDES municipal separate storm sewer  
 27 system permits and other stormwater sources, implementation of  
 28 a total maximum daily load or basin management action plan  
 29 shall be achieved, to the maximum extent practicable, through  
 30 the use of best management practices or other management  
 31 measures.

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1           b. The basin management action plan does not relieve  
2 the discharger from any requirement to obtain, renew, or  
3 modify a NPDES permit or to abide by other requirements of the  
4 permit.

5           c. Management strategies set forth in a basin  
6 management action plan to be implemented by a discharger  
7 subject to permitting by the department shall be completed  
8 pursuant to the schedule set forth in the basin management  
9 action plan. This implementation schedule may extend beyond  
10 the 5-year term of a NPDES permit.

11           d. Management strategies and pollution reduction  
12 requirements set forth in a basin management action plan for a  
13 specific pollutant of concern shall not be subject to  
14 challenge under chapter 120 at the time they are incorporated,  
15 in an identical form, into a subsequent NPDES permit or permit  
16 modification.

17           e. For nonagricultural pollutant sources not subject  
18 to NPDES permitting but permitted pursuant to other state,  
19 regional, or local water quality programs, the pollutant  
20 reduction actions adopted in a basin management action plan  
21 shall be implemented to the maximum extent practicable as part  
22 of those permitting programs.

23           f. A nonpoint pollutant source discharger included in  
24 a basin management action plan shall demonstrate compliance  
25 with the pollutant reductions established pursuant to  
26 subsection (6) by implementing the appropriate best management  
27 practices established pursuant to paragraph (c) or by  
28 conducting the water quality monitoring prescribed by the  
29 department or a water management district.

30           g. A nonpoint pollutant source discharger included in  
31 a basin management action plan may be subject to enforcement

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1 action by the department or a water management district based  
2 upon the failure to implement the responsibilities in  
3 sub-subparagraph f.

4 h. A landowner, discharger, or other responsible  
5 person who is implementing applicable management strategies  
6 specified in an adopted basin management action plan shall not  
7 be required by permit, enforcement action, or otherwise to  
8 implement additional management strategies to reduce pollutant  
9 loads to attain the pollutant reductions established pursuant  
10 to subsection (6) and shall be deemed to be in compliance with  
11 this section. This subparagraph does not limit the authority  
12 of the department to amend a basin management action plan as  
13 specified in subparagraph (a)5.

14 ~~(b) In developing and implementing the total maximum~~  
15 ~~daily load for a water body, the department, or the department~~  
16 ~~in conjunction with a water management district, may develop a~~  
17 ~~watershed or basin management plan that addresses some or all~~  
18 ~~of the watersheds and basins tributary to the water body.~~  
19 ~~These plans will serve to fully integrate the management~~  
20 ~~strategies available to the state for the purpose of~~  
21 ~~implementing the total maximum daily loads and achieving water~~  
22 ~~quality restoration. The watershed or basin management~~  
23 ~~planning process is intended to involve the broadest possible~~  
24 ~~range of interested parties, with the objective of encouraging~~  
25 ~~the greatest amount of cooperation and consensus possible. The~~  
26 ~~department or water management district shall hold at least~~  
27 ~~one public meeting in the vicinity of the watershed or basin~~  
28 ~~to discuss and receive comments during the planning process~~  
29 ~~and shall otherwise encourage public participation to the~~  
30 ~~greatest practical extent. Notice of the public meeting shall~~  
31 ~~be published in a newspaper of general circulation in each~~

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1 ~~county in which the watershed or basin lies not less than 5~~  
 2 ~~days nor more than 15 days before the public meeting. A~~  
 3 ~~watershed or basin management plan shall not supplant or~~  
 4 ~~otherwise alter any assessment made under s. 403.086(3) and~~  
 5 ~~(4), or any calculation or allocation made under s.~~  
 6 ~~403.086(6).~~

7 (c) Best management practices.--

8 1. The department, in cooperation with the water  
 9 management districts and other interested parties, as  
 10 appropriate, may develop suitable interim measures, best  
 11 management practices, or other measures necessary to achieve  
 12 the level of pollution reduction established by the department  
 13 for nonagricultural nonpoint pollutant sources in allocations  
 14 developed pursuant to this subsection and subsection (6)  
 15 ~~paragraph (6)(b)~~. These practices and measures may be adopted  
 16 by rule by the department and the water management districts  
 17 pursuant to ss. 120.536(1) and 120.54, and, where adopted by  
 18 rule, shall ~~may~~ be implemented by those parties responsible  
 19 for nonagricultural nonpoint source pollution ~~pollutant~~  
 20 ~~sources and the department and the water management districts~~  
 21 ~~shall assist with implementation. Where interim measures, best~~  
 22 ~~management practices, or other measures are adopted by rule,~~  
 23 ~~the effectiveness of such practices in achieving the levels of~~  
 24 ~~pollution reduction established in allocations developed by~~  
 25 ~~the department pursuant to paragraph (6)(b) shall be verified~~  
 26 ~~by the department. Implementation, in accordance with~~  
 27 ~~applicable rules, of practices that have been verified by the~~  
 28 ~~department to be effective at representative sites shall~~  
 29 ~~provide a presumption of compliance with state water quality~~  
 30 ~~standards and release from the provisions of s. 376.307(5) for~~  
 31 ~~those pollutants addressed by the practices, and the~~

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1 ~~department is not authorized to institute proceedings against~~  
2 ~~the owner of the source of pollution to recover costs or~~  
3 ~~damages associated with the contamination of surface or ground~~  
4 ~~water caused by those pollutants. Such rules shall also~~  
5 ~~incorporate provisions for a notice of intent to implement the~~  
6 ~~practices and a system to assure the implementation of the~~  
7 ~~practices, including recordkeeping requirements. Where water~~  
8 ~~quality problems are detected despite the appropriate~~  
9 ~~implementation, operation, and maintenance of best management~~  
10 ~~practices and other measures according to rules adopted under~~  
11 ~~this paragraph, the department or the water management~~  
12 ~~districts shall institute a reevaluation of the best~~  
13 ~~management practice or other measures.~~

14       ~~2.(d)1.~~ The Department of Agriculture and Consumer  
15 Services may develop and adopt by rule pursuant to ss.  
16 120.536(1) and 120.54 suitable interim measures, best  
17 management practices, or other measures necessary to achieve  
18 the level of pollution reduction established by the department  
19 for agricultural pollutant sources in allocations developed  
20 pursuant to this subsection and subsection (6) paragraph  
21 ~~(6)(b)~~. These practices and measures may be implemented by  
22 those parties responsible for agricultural pollutant sources  
23 and the department, the water management districts, and the  
24 Department of Agriculture and Consumer Services shall assist  
25 with implementation. ~~Where interim measures, best management~~  
26 ~~practices, or other measures are adopted by rule, the~~  
27 ~~effectiveness of such practices in achieving the levels of~~  
28 ~~pollution reduction established in allocations developed by~~  
29 ~~the department pursuant to paragraph (6)(b) shall be verified~~  
30 ~~by the department. Implementation, in accordance with~~  
31 ~~applicable rules, of practices that have been verified by the~~

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~~1 department to be effective at representative sites shall~~  
~~2 provide a presumption of compliance with state water quality~~  
~~3 standards and release from the provisions of s. 376.307(5) for~~  
~~4 those pollutants addressed by the practices, and the~~  
~~5 department is not authorized to institute proceedings against~~  
~~6 the owner of the source of pollution to recover costs or~~  
~~7 damages associated with the contamination of surface or ground~~  
~~8 water caused by those pollutants. In the process of developing~~  
~~9 and adopting rules for interim measures, best management~~  
~~10 practices, or other measures, the Department of Agriculture~~  
~~11 and Consumer Services shall consult with the department, the~~  
~~12 Department of Health, the water management districts,~~  
~~13 representatives from affected farming groups, and~~  
~~14 environmental group representatives. Such rules shall also~~  
~~15 incorporate provisions for a notice of intent to implement the~~  
~~16 practices and a system to assure the implementation of the~~  
~~17 practices, including recordkeeping requirements. Where water~~  
~~18 quality problems are detected despite the appropriate~~  
~~19 implementation, operation, and maintenance of best management~~  
~~20 practices and other measures according to rules adopted under~~  
~~21 this paragraph, the Department of Agriculture and Consumer~~  
~~22 Services shall institute a reevaluation of the best management~~  
~~23 practice or other measure.~~

~~24 3. Where interim measures, best management practices,~~  
~~25 or other measures are adopted by rule, the effectiveness of~~  
~~26 such practices in achieving the levels of pollution reduction~~  
~~27 established in allocations developed by the department~~  
~~28 pursuant to this subsection and subsection (6) shall be~~  
~~29 verified at representative sites by the department. The~~  
~~30 department shall use best professional judgment in making the~~  
~~31 initial verification that the best management practices are~~

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1 effective and, where applicable, shall notify the appropriate  
2 water management district or the Department of Agriculture and  
3 Consumer Services of its initial verification prior to the  
4 adoption of a rule proposed pursuant to this paragraph.  
5 Implementation, in accordance with rules adopted under this  
6 paragraph, of practices that have been initially verified to  
7 be effective, or verified to be effective by monitoring at  
8 representative sites, by the department shall provide a  
9 presumption of compliance with state water quality standards  
10 and release from the provisions of s. 376.307(5) for those  
11 pollutants addressed by the practices, and the department is  
12 not authorized to institute proceedings against the owner of  
13 the source of pollution to recover costs or damages associated  
14 with the contamination of surface or ground water caused by  
15 those pollutants.

16 4. Where water quality problems are demonstrated  
17 during the development or amendment of a basin management  
18 action plan, despite the appropriate implementation,  
19 operation, and maintenance of best management practices and  
20 other measures according to rules adopted under this  
21 paragraph, the department, or a water management district or  
22 the Department of Agriculture and Consumer Services in  
23 consultation with the department, shall institute a  
24 reevaluation of the best management practice or other measure.  
25 Should the reevaluation determine that the best management  
26 practice or other measure requires modification, the  
27 department, a water management district, or the Department of  
28 Agriculture and Consumer Services, as appropriate, shall  
29 revise the rule to require implementation of the modified  
30 practice within a reasonable time period as specified in the  
31 rule.

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

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

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



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1 (a) Delisting water bodies or water body segments from  
2 the list developed under subsection (4) pursuant to the  
3 guidance under subsection (5).~~†~~

4 (b) Administration of funds to implement the total  
5 maximum daily load and basin management action planning  
6 program.~~†~~

7 (c) Procedures for pollutant trading among the  
8 pollutant sources to a water body or water body segment,  
9 including a mechanism for the issuance and tracking of  
10 pollutant credits. Such procedures may be implemented through  
11 permits or other authorizations and must be legally binding.  
12 Prior to adopting rules for pollutant trading under this  
13 paragraph, and no later than November 30, 2006, the Department  
14 of Environmental Protection shall submit to the Governor, the  
15 President of the Senate, and the Speaker of the House of  
16 Representatives a report containing recommendations on such  
17 rules, including the proposed basis for equitable economically  
18 based agreements and the tracking and accounting of pollution  
19 credits or other similar mechanisms. Such recommendations  
20 shall be developed in cooperation with a technical advisory  
21 committee that includes representatives of environmental  
22 organizations, industry, local government, homebuilders, water  
23 management districts, agriculture, stormwater utilities, and  
24 municipal utilities. No rule implementing a pollutant trading  
25 program shall become effective prior to review and  
26 ratification by the Legislature; and

27 (d) The total maximum daily load calculation in  
28 accordance with paragraph (6)(a) immediately upon the  
29 effective date of this act, for those eight water segments  
30 within Lake Okeechobee proper as submitted to the United  
31 States Environmental Protection Agency pursuant to subsection

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1 (2).

2 (e) Any other purpose specifically provided for in  
3 this section.

4 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

5 (a) The department shall not implement, without prior  
6 legislative approval, any additional regulatory authority  
7 pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part  
8 130, if such implementation would result in water quality  
9 discharge regulation of activities not currently subject to  
10 regulation.

11 (b) Interim measures, best management practices, or  
12 other measures may be developed and voluntarily implemented  
13 pursuant to subparagraph (7)(c)1. or subparagraph (7)(c)2.  
14 ~~paragraph (7)(c) or paragraph (7)(d)~~ for any water body or  
15 segment for which a total maximum daily load or allocation has  
16 not been established. The implementation of such pollution  
17 control programs may be considered by the department in the  
18 determination made pursuant to subsection (4).

19 Section 2. Paragraph (c) of subsection (3) of section  
20 373.4595, Florida Statutes, is amended to read:

21 373.4595 Lake Okeechobee Protection Program.--

22 (3) LAKE OKEECHOBEE PROTECTION PROGRAM.--A protection  
23 program for Lake Okeechobee that achieves phosphorus load  
24 reductions for Lake Okeechobee shall be immediately  
25 implemented as specified in this subsection. The program shall  
26 address the reduction of phosphorus loading to the lake from  
27 both internal and external sources. Phosphorus load reductions  
28 shall be achieved through a phased program of implementation.  
29 Initial implementation actions shall be technology-based,  
30 based upon a consideration of both the availability of  
31 appropriate technology and the cost of such technology, and

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1 shall include phosphorus reduction measures at both the source  
 2 and the regional level. The initial phase of phosphorus load  
 3 reductions shall be based upon the district's Technical  
 4 Publication 81-2 and the district's WOD program, with  
 5 subsequent phases of phosphorus load reductions based upon the  
 6 total maximum daily loads established in accordance with s.  
 7 403.067. In the development and administration of the Lake  
 8 Okeechobee Protection Program, the coordinating agencies shall  
 9 maximize opportunities provided by federal cost-sharing  
 10 programs and opportunities for partnerships with the private  
 11 sector.

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

26 1. Agricultural nonpoint source best management  
 27 practices, developed in accordance with s. 403.067 and  
 28 designed to achieve the objectives of the Lake Okeechobee  
 29 Protection Program, shall be implemented on an expedited  
 30 basis. By March 1, 2001, the coordinating agencies shall  
 31 develop an interagency agreement pursuant to ss. 373.046 and

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1 373.406(5) that assures the development of best management  
 2 practices that complement existing regulatory programs and  
 3 specifies how those best management practices are implemented  
 4 and verified. The interagency agreement shall address measures  
 5 to be taken by the coordinating agencies during any best  
 6 management practice reevaluation performed pursuant to  
 7 sub-subparagraph d. The department shall use best professional  
 8 judgment in making the initial determination of best  
 9 management practice effectiveness.

10       a. As provided in s. 403.067(7)(c)(~~d~~), by October 1,  
 11 2000, the Department of Agriculture and Consumer Services, in  
 12 consultation with the department, the district, and affected  
 13 parties, shall initiate rule development for interim measures,  
 14 best management practices, conservation plans, nutrient  
 15 management plans, or other measures necessary for Lake  
 16 Okeechobee phosphorus load reduction. The rule shall include  
 17 thresholds for requiring conservation and nutrient management  
 18 plans and criteria for the contents of such plans. Development  
 19 of agricultural nonpoint source best management practices  
 20 shall initially focus on those priority basins listed in  
 21 subparagraph (b)1. The Department of Agriculture and Consumer  
 22 Services, in consultation with the department, the district,  
 23 and affected parties, shall conduct an ongoing program for  
 24 improvement of existing and development of new interim  
 25 measures or best management practices for the purpose of  
 26 adoption of such practices by rule.

27       b. Where agricultural nonpoint source best management  
 28 practices or interim measures have been adopted by rule of the  
 29 Department of Agriculture and Consumer Services, the owner or  
 30 operator of an agricultural nonpoint source addressed by such  
 31 rule shall either implement interim measures or best

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1 management practices or demonstrate compliance with the  
2 district's WOD program by conducting monitoring prescribed by  
3 the department or the district. Owners or operators of  
4 agricultural nonpoint sources who implement interim measures  
5 or best management practices adopted by rule of the Department  
6 of Agriculture and Consumer Services shall be subject to the  
7 provisions of s. 403.067(7). The Department of Agriculture and  
8 Consumer Services, in cooperation with the department and the  
9 district, shall provide technical and financial assistance for  
10 implementation of agricultural best management practices,  
11 subject to the availability of funds.

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

15 d. Where water quality problems are detected for  
16 agricultural nonpoint sources despite the appropriate  
17 implementation of adopted best management practices, the  
18 Department of Agriculture and Consumer Services, in  
19 consultation with the other coordinating agencies and affected  
20 parties, shall institute a reevaluation of the best management  
21 practices and make appropriate changes to the rule adopting  
22 best management practices.

23 2. Nonagricultural nonpoint source best management  
24 practices, developed in accordance with s. 403.067 and  
25 designed to achieve the objectives of the Lake Okeechobee  
26 Protection Program, shall be implemented on an expedited  
27 basis. By March 1, 2001, the department and the district shall  
28 develop an interagency agreement pursuant to ss. 373.046 and  
29 373.406(5) that assures the development of best management  
30 practices that complement existing regulatory programs and  
31 specifies how those best management practices are implemented

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1 and verified. The interagency agreement shall address measures  
 2 to be taken by the department and the district during any best  
 3 management practice reevaluation performed pursuant to  
 4 sub-subparagraph d.

5           a. The department and the district are directed to  
 6 work with the University of Florida's Institute of Food and  
 7 Agricultural Sciences to develop appropriate nutrient  
 8 application rates for all nonagricultural soil amendments in  
 9 the watershed. As provided in s. 403.067(7)(c), by January 1,  
 10 2001, the department, in consultation with the district and  
 11 affected parties, shall develop interim measures, best  
 12 management practices, or other measures necessary for Lake  
 13 Okeechobee phosphorus load reduction. Development of  
 14 nonagricultural nonpoint source best management practices  
 15 shall initially focus on those priority basins listed in  
 16 subparagraph (b)1. The department, the district, and affected  
 17 parties shall conduct an ongoing program for improvement of  
 18 existing and development of new interim measures or best  
 19 management practices. The district shall adopt  
 20 technology-based standards under the district's WOD program  
 21 for nonagricultural nonpoint sources of phosphorus.

22           b. Where nonagricultural nonpoint source best  
 23 management practices or interim measures have been developed  
 24 by the department and adopted by the district, the owner or  
 25 operator of a nonagricultural nonpoint source shall implement  
 26 interim measures or best management practices and be subject  
 27 to the provisions of s. 403.067(7). The department and  
 28 district shall provide technical and financial assistance for  
 29 implementation of nonagricultural nonpoint source best  
 30 management practices, subject to the availability of funds.

31           c. The district or the department shall conduct

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1 monitoring at representative sites to verify the effectiveness  
2 of nonagricultural nonpoint source best management practices.

3         d. Where water quality problems are detected for  
4 nonagricultural nonpoint sources despite the appropriate  
5 implementation of adopted best management practices, the  
6 department and the district shall institute a reevaluation of  
7 the best management practices.

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

18         4. Projects which reduce the phosphorus load  
19 originating from domestic wastewater systems within the Lake  
20 Okeechobee watershed shall be given funding priority in the  
21 department's revolving loan program under s. 403.1835. The  
22 department shall coordinate and provide assistance to those  
23 local governments seeking financial assistance for such  
24 priority projects.

25         5. Projects that make use of private lands, or lands  
26 held in trust for Indian tribes, to reduce nutrient loadings  
27 or concentrations within a basin by one or more of the  
28 following methods: restoring the natural hydrology of the  
29 basin, restoring wildlife habitat or impacted wetlands,  
30 reducing peak flows after storm events, increasing aquifer  
31 recharge, or protecting range and timberland from conversion

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1 to development, are eligible for grants available under this  
2 section from the coordinating agencies. For projects of  
3 otherwise equal priority, special funding priority will be  
4 given to those projects that make best use of the methods  
5 outlined above that involve public-private partnerships or  
6 that obtain federal match money. Preference ranking above the  
7 special funding priority will be given to projects located in  
8 a rural area of critical economic concern designated by the  
9 Governor. Grant applications may be submitted by any person or  
10 tribal entity, and eligible projects may include, but are not  
11 limited to, the purchase of conservation and flowage  
12 easements, hydrologic restoration of wetlands, creating  
13 treatment wetlands, development of a management plan for  
14 natural resources, and financial support to implement a  
15 management plan.

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

25       b. Private and government-owned utilities within  
26 Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian  
27 River, Okeechobee, Highlands, Hendry, and Glades Counties that  
28 dispose of wastewater residual sludge from utility operations  
29 and septic removal by land spreading in the Lake Okeechobee  
30 watershed may use a line item on local sewer rates to cover  
31 wastewater residual treatment and disposal if such disposal



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1 and treatment is done by approved alternative treatment  
2 methodology at a facility located within the areas designated  
3 by the Governor as rural areas of critical economic concern  
4 pursuant to s. 288.0656. This additional line item is an  
5 environmental protection disposal fee above the present sewer  
6 rate and shall not be considered a part of the present sewer  
7 rate to customers, notwithstanding provisions to the contrary  
8 in chapter 367. The fee shall be established by the county  
9 commission or its designated assignee in the county in which  
10 the alternative method treatment facility is located. The fee  
11 shall be calculated to be no higher than that necessary to  
12 recover the facility's prudent cost of providing the service.  
13 Upon request by an affected county commission, the Florida  
14 Public Service Commission will provide assistance in  
15 establishing the fee. Further, for utilities and utility  
16 authorities that use the additional line item environmental  
17 protection disposal fee, such fee shall not be considered a  
18 rate increase under the rules of the Public Service Commission  
19 and shall be exempt from such rules. Utilities using the  
20 provisions of this section may immediately include in their  
21 sewer invoicing the new environmental protection disposal fee.  
22 Proceeds from this environmental protection disposal fee shall  
23 be used for treatment and disposal of wastewater residuals,  
24 including any treatment technology that helps reduce the  
25 volume of residuals that require final disposal, but such  
26 proceeds shall not be used for transportation or shipment  
27 costs for disposal or any costs relating to the land  
28 application of residuals in the Lake Okeechobee watershed.

29 c. No less frequently than once every 3 years, the  
30 Florida Public Service Commission or the county commission  
31 through the services of an independent auditor shall perform a

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1 financial audit of all facilities receiving compensation from  
2 an environmental protection disposal fee. The Florida Public  
3 Service Commission or the county commission through the  
4 services of an independent auditor shall also perform an audit  
5 of the methodology used in establishing the environmental  
6 protection disposal fee. The Florida Public Service Commission  
7 or the county commission shall, within 120 days after  
8 completion of an audit, file the audit report with the  
9 President of the Senate and the Speaker of the House of  
10 Representatives and shall provide copies to the county  
11 commissions of the counties set forth in sub-subparagraph b.  
12 The books and records of any facilities receiving compensation  
13 from an environmental protection disposal fee shall be open to  
14 the Florida Public Service Commission and the Auditor General  
15 for review upon request.

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

24         8. The Department of Agriculture and Consumer Services  
25 shall initiate rulemaking requiring entities within the Lake  
26 Okeechobee watershed and the remaining areas of Okeechobee,  
27 Glades, and Hendry Counties which land-apply animal manure to  
28 develop conservation or nutrient management plans that limit  
29 application, based upon phosphorus loading. Such rules may  
30 include criteria and thresholds for the requirement to develop  
31 a conservation or nutrient management plan, requirements for

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1 plan approval, and recordkeeping requirements.

2 9. Prior to authorizing a discharge into works of the  
3 district, the district shall require responsible parties to  
4 demonstrate that proposed changes in land use will not result  
5 in increased phosphorus loading over that of existing land  
6 uses.

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

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

13 570.085 Department of Agriculture and Consumer  
14 Services; agricultural water conservation.--The department  
15 shall establish an agricultural water conservation program  
16 that includes the following:

17 (1) A cost-share program, coordinated where  
18 appropriate with the United States Department of Agriculture  
19 and other federal, state, regional, and local agencies, for  
20 irrigation system retrofit and application of mobile  
21 irrigation laboratory evaluations for water conservation as  
22 provided in this section and, where applicable, for water  
23 quality improvement pursuant to s. 403.067(7)(c)(d).

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

26  
27

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

29 And the title is amended as follows:

30 Delete everything before the enacting clause

31

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1 and insert:

2                   A bill to be entitled

3           An act relating to total maximum daily loads;

4           amending s. 403.067, F.S.; providing for the

5           attainment of pollutant reductions for

6           achievement of certain water quality standards

7           in impaired waters; revising provisions for the

8           allocation of allowable pollutant loads;

9           authorizing the Department of Environmental

10          Protection to adopt phased total maximum daily

11          loads under certain conditions; providing for

12          the development and implementation of basin

13          management action plans in developing and

14          implementing total maximum daily loads;

15          revising provisions for the implementation of

16          and compliance with total maximum daily loads;

17          authorizing the department to adopt basin

18          management action plans by order; revising

19          provisions relating to verification by the

20          department of best management practices whose

21          implementation creates a presumption of

22          compliance with certain water quality standards

23          and a release of liability to the state for

24          pollution remediation; revising provisions

25          relating to reevaluation of best management

26          practices when water quality problems occur;

27          removing a provision specifying that provisions

28          relating to the department's verification or

29          reevaluation of best management practices do

30          not preclude authority of the department or the

31          water management districts to require

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1 compliance with water quality standards or  
2 other specified requirements; authorizing  
3 rulemaking by the department to administer  
4 funds to implement the basin management action  
5 planning program and for other purposes in the  
6 section; requiring the department to submit a  
7 report to the Governor, the President of the  
8 Senate, and the Speaker of the House of  
9 Representatives prior to adopting rules for  
10 pollutant trading; amending ss. 373.4595 and  
11 570.085, F.S.; correcting cross-references;  
12 providing an effective date.

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