

By the Committee on Agriculture; and Senator Alexander

575-2141-05

1                                   A bill to be entitled  
2           An act relating to total maximum daily loads;  
3           amending s. 403.067, F.S.; providing for the  
4           attainment of pollutant reductions for  
5           achievement of certain water quality standards  
6           in impaired waters; revising provisions for the  
7           allocation of allowable pollutant loads;  
8           authorizing the Department of Environmental  
9           Protection to adopt phased total maximum daily  
10          loads under certain conditions; providing for  
11          the development and implementation of basin  
12          management action plans in developing and  
13          implementing total maximum daily loads;  
14          revising provisions for the implementation of  
15          and compliance with total maximum daily loads;  
16          authorizing the department to adopt basin  
17          management action plans by order; revising  
18          provisions relating to verification by the  
19          department of best management practices whose  
20          implementation creates a presumption of  
21          compliance with certain water quality standards  
22          and a release of liability to the state for  
23          pollution remediation; revising provisions  
24          relating to reevaluation of best management  
25          practices when water quality problems occur;  
26          removing a provision specifying that provisions  
27          relating to the department's verification or  
28          reevaluation of best management practices do  
29          not preclude authority of the department or the  
30          water management districts to require  
31          compliance with water quality standards or

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

12

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

14

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

18 403.067 Establishment and implementation of total  
19 maximum daily loads.--

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

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

7 (6) CALCULATION AND ALLOCATION.--

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

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

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

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

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

1 categories of nonpoint sources shall be established in the  
2 basin management action plan pursuant to subsection (7). The  
3 initial and detailed allocations shall be designed to attain  
4 the pollutant reductions established pursuant to paragraph (a)  
5 ~~water quality standards~~ and shall be based on consideration of  
6 the following:

7 1. Existing treatment levels and management practices;

8 2. Best management practices established and  
9 implemented pursuant to paragraph (7)(c);

10 3. Enforceable treatment levels established pursuant  
11 to state or local law or permit;

12 ~~4.2.~~ Differing impacts pollutant sources and forms of  
13 pollution may have on water quality;

14 ~~5.3.~~ The availability of treatment technologies,  
15 management practices, or other pollutant reduction measures;

16 ~~6.4.~~ Environmental, economic, and technological  
17 feasibility of achieving the allocation;

18 ~~7.5.~~ The cost benefit associated with achieving the  
19 allocation;

20 ~~8.6.~~ Reasonable timeframes for implementation;

21 ~~9.7.~~ Potential applicability of any moderating  
22 provisions such as variances, exemptions, and mixing zones;  
23 and

24 ~~10.8.~~ The extent to which nonattainment of water  
25 quality standards is caused by pollution sources outside of  
26 Florida, discharges that have ceased, or alterations to water  
27 bodies prior to the date of this act.

28 ~~(c) Not later than February 1, 2001, the department~~  
29 ~~shall submit a report to the Governor, the President of the~~  
30 ~~Senate, and the Speaker of the House of Representatives~~  
31 ~~containing recommendations, including draft legislation, for~~

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

12       (c)(d) Adoption of rules.--The total maximum daily  
13 load calculations and allocations established under this  
14 subsection for each water body or water body segment shall be  
15 adopted by rule by the secretary pursuant to ss. 120.536(1),  
16 120.54, and 403.805. Where additional data collection and  
17 analysis are needed to increase the scientific precision and  
18 accuracy of the total maximum daily load, the department may  
19 adopt phased total maximum daily loads that are subject to  
20 change as additional data becomes available. Where phased  
21 total maximum daily loads are proposed, the department shall,  
22 in the detailed statement of facts and circumstances  
23 justifying the rule, explain why the data are inadequate so as  
24 to justify a phased total maximum daily load. The rules  
25 adopted pursuant to this paragraph shall not be subject to  
26 approval by the Environmental Regulation Commission. As part  
27 of the rule development process, the department shall hold at  
28 least one public workshop in the vicinity of the water body or  
29 water body segment for which the total maximum daily load is  
30 being developed. Notice of the public workshop shall be  
31 published not less than 5 days nor more than 15 days before

1 the public workshop in a newspaper of general circulation in  
2 the county or counties containing the water bodies or water  
3 body segments for which the total maximum daily load  
4 calculation and allocation are being developed.

5 (7) DEVELOPMENT OF BASIN MANAGEMENT ACTION PLANS;  
6 IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS; BEST MANAGEMENT  
7 PRACTICES.--

8 (a) Basin management action plans.--

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

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

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

9       3. The basin management action planning process is  
10 intended to involve the broadest possible range of interested  
11 parties, with the objective of encouraging the greatest amount  
12 of cooperation and consensus possible. In developing a basin  
13 management action plan, the department shall ensure that key  
14 stakeholders, including, but not limited to, applicable local  
15 governments, water management districts, the Department of  
16 Agriculture and Consumer Services, other appropriate state  
17 agencies, local soil and water conservation districts,  
18 environmental groups, regulated interests, and affected  
19 pollution sources are invited to participate in the process.  
20 The department shall hold at least one public meeting in the  
21 vicinity of the watershed or basin to discuss and receive  
22 comments during the planning process and shall otherwise  
23 encourage public participation to the greatest practical  
24 extent. Not fewer than 5 days or more than 15 days before the  
25 public meeting, notice of the public meeting shall be  
26 published in a newspaper of general circulation in each county  
27 in which the watershed or basin lies. A basin management  
28 action plan shall not supplant or otherwise alter any  
29 assessment made under subsection (3) or subsection (4) or any  
30 calculation or preliminary allocation made under subsection  
31 (6).



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

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

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

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

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

29           b.2- Nonregulatory and incentive-based programs,  
30 including best management practices, cost sharing, waste  
31

1 minimization, pollution prevention, agreements established  
2 pursuant to s. 403.061(21), and public education;

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

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

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

11 ~~f.6.~~ Land acquisition.

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

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

30 b. The basin management action plan does not relieve  
31 the discharger from any requirement to obtain, renew, or

1 modify a NPDES permit or to abide by other requirements of the  
2 permit.

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

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

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

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

28 g. A nonpoint pollutant source discharger included in  
29 a basin management action plan may be subject to enforcement  
30 action by the department or a water management district based  
31

1 upon the failure to implement the responsibilities in  
2 sub-subparagraph f.

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

13 ~~(b) In developing and implementing the total maximum~~  
14 ~~daily load for a water body, the department, or the department~~  
15 ~~in conjunction with a water management district, may develop a~~  
16 ~~watershed or basin management plan that addresses some or all~~  
17 ~~of the watersheds and basins tributary to the water body.~~  
18 ~~These plans will serve to fully integrate the management~~  
19 ~~strategies available to the state for the purpose of~~  
20 ~~implementing the total maximum daily loads and achieving water~~  
21 ~~quality restoration. The watershed or basin management~~  
22 ~~planning process is intended to involve the broadest possible~~  
23 ~~range of interested parties, with the objective of encouraging~~  
24 ~~the greatest amount of cooperation and consensus possible. The~~  
25 ~~department or water management district shall hold at least~~  
26 ~~one public meeting in the vicinity of the watershed or basin~~  
27 ~~to discuss and receive comments during the planning process~~  
28 ~~and shall otherwise encourage public participation to the~~  
29 ~~greatest practical extent. Notice of the public meeting shall~~  
30 ~~be published in a newspaper of general circulation in each~~  
31 ~~county in which the watershed or basin lies not less than 5~~

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

6 (c) Best management practices.--

7 1. The department, in cooperation with the water  
8 management districts and other interested parties, as  
9 appropriate, may develop suitable interim measures, best  
10 management practices, or other measures necessary to achieve  
11 the level of pollution reduction established by the department  
12 for nonagricultural nonpoint pollutant sources in allocations  
13 developed pursuant to this subsection and subsection (6)  
14 ~~paragraph (6)(b)~~. These practices and measures may be adopted  
15 by rule by the department and the water management districts  
16 pursuant to ss. 120.536(1) and 120.54, and, where adopted by  
17 rule, shall ~~may~~ be implemented by those parties responsible  
18 for nonagricultural nonpoint source pollution pollutant  
19 ~~sources and the department and the water management districts~~  
20 ~~shall assist with implementation. Where interim measures, best~~  
21 ~~management practices, or other measures are adopted by rule,~~  
22 ~~the effectiveness of such practices in achieving the levels of~~  
23 ~~pollution reduction established in allocations developed by~~  
24 ~~the department pursuant to paragraph (6)(b) shall be verified~~  
25 ~~by the department. Implementation, in accordance with~~  
26 ~~applicable rules, of practices that have been verified by the~~  
27 ~~department to be effective at representative sites shall~~  
28 ~~provide a presumption of compliance with state water quality~~  
29 ~~standards and release from the provisions of s. 376.307(5) for~~  
30 ~~those pollutants addressed by the practices, and the~~  
31 ~~department is not authorized to institute proceedings against~~

1 ~~the owner of the source of pollution to recover costs or~~  
2 ~~damages associated with the contamination of surface or ground~~  
3 ~~water caused by those pollutants. Such rules shall also~~  
4 ~~incorporate provisions for a notice of intent to implement the~~  
5 ~~practices and a system to assure the implementation of the~~  
6 ~~practices, including recordkeeping requirements. Where water~~  
7 ~~quality problems are detected despite the appropriate~~  
8 ~~implementation, operation, and maintenance of best management~~  
9 ~~practices and other measures according to rules adopted under~~  
10 ~~this paragraph, the department or the water management~~  
11 ~~districts shall institute a reevaluation of the best~~  
12 ~~management practice or other measures.~~

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

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

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

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

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

31



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:

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

1 States Environmental Protection Agency pursuant to subsection  
2 (2).

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

5 (11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

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

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

20 Section 2. Paragraph (c) of subsection (3) of section  
21 373.4595, Florida Statutes, is amended to read:

22 373.4595 Lake Okeechobee Protection Program.--

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

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

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

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

1 | develop an interagency agreement pursuant to ss. 373.046 and  
2 | 373.406(5) that assures the development of best management  
3 | practices that complement existing regulatory programs and  
4 | specifies how those best management practices are implemented  
5 | and verified. The interagency agreement shall address measures  
6 | to be taken by the coordinating agencies during any best  
7 | management practice reevaluation performed pursuant to  
8 | sub-subparagraph d. The department shall use best professional  
9 | judgment in making the initial determination of best  
10 | management practice effectiveness.

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

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

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

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

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

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

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

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

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

1           c. The district or the department shall conduct  
2 monitoring at representative sites to verify the effectiveness  
3 of nonagricultural nonpoint source best management practices.

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

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

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

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



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

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

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

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

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

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

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

1 a conservation or nutrient management plan, requirements for  
2 plan approval, and recordkeeping requirements.

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

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

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

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

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

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2322

Committee Substitute for Senate Bill 2322 is different from  
Senate Bill 2322 in that it:

1. Clarifies that load allocations will be established for the purpose of achieving water quality standards and requires basin management action plans to include a monitoring component for evaluating progress in improving water quality.
2. Provides that total maximum daily load implementation will be accomplished within the structure of existing Department of Environmental Protection water quality programs.
3. Makes clarifying and technical changes.