

1 A bill to be entitled

2 An act relating to surface water protection programs;  
3 amending s. 373.414, F.S.; providing applicability of  
4 variance provisions for activities in surface waters and  
5 wetlands in the Northwest Florida Water Management  
6 District; amending s. 373.4142, F.S.; providing an  
7 exemption for certain water quality standards in the  
8 Northwest Florida Water Management District; amending s.  
9 373.459, F.S.; exempting the Suwannee River Water  
10 Management District, the Northwest Florida Water  
11 Management District, and specified local governments from  
12 certain funding requirements for the implementation of  
13 surface water improvement and management projects;  
14 eliminating provisions subject to expiration for the  
15 deposit, expenditure, release, and transfer of funds  
16 relating to the Ecosystem Restoration and Management Trust  
17 Fund and the Water Protection and Sustainability Trust  
18 Fund; amending s. 373.4595, F.S.; authorizing the  
19 Department of Environmental Protection and the South  
20 Florida Water Management District to adopt basin-specific  
21 criteria under the Lake Okeechobee Watershed Phosphorus  
22 Control Program; eliminating certain requirements for the  
23 authorization of discharges related to proposed changes in  
24 land use; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:  
27

28 Section 1. Subsection (17) of section 373.414, Florida  
 29 Statutes, is amended to read:

30 373.414 Additional criteria for activities in surface  
 31 waters and wetlands.--

32 (17) The variance provisions of s. 403.201 are applicable  
 33 to the provisions of this section or any rule adopted pursuant  
 34 hereto. The governing boards and the department are authorized  
 35 to review and take final agency action on petitions requesting  
 36 such variances for those activities they regulate under this  
 37 part and s. 373.4145.

38 Section 2. Section 373.4142, Florida Statutes, is amended  
 39 to read:

40 373.4142 Water quality within stormwater treatment  
 41 systems.--State surface water quality standards applicable to  
 42 waters of the state, as defined in s. 403.031(13), shall not  
 43 apply within a stormwater management system which is designed,  
 44 constructed, operated, and maintained for stormwater treatment  
 45 in accordance with a valid permit or noticed exemption issued  
 46 pursuant to chapter 62-25 ~~17-25~~, Florida Administrative Code; a  
 47 valid permit or exemption under s. 373.4145 within the Northwest  
 48 Florida Water Management District; a valid permit issued on or  
 49 subsequent to April 1, 1986, within the Suwannee River Water  
 50 Management District or the St. Johns River Water Management  
 51 District pursuant to this part; a valid permit issued on or  
 52 subsequent to March 1, 1988, within the Southwest Florida Water  
 53 Management District pursuant to this part; or a valid permit  
 54 issued on or subsequent to January 6, 1982, within the South  
 55 Florida Water Management District pursuant to this part. Such

56 | inapplicability of state water quality standards shall be  
 57 | limited to that part of the stormwater management system located  
 58 | upstream of a manmade water control structure permitted, or  
 59 | approved under a noticed exemption, to retain or detain  
 60 | stormwater runoff in order to provide treatment of the  
 61 | stormwater. The additional use of such a stormwater management  
 62 | system for flood attenuation or irrigation shall not divest the  
 63 | system of the benefits of this exemption. This section shall not  
 64 | affect the authority of the department and water management  
 65 | districts to require reasonable assurance that the water quality  
 66 | within such stormwater management systems will not adversely  
 67 | impact public health, fish and wildlife, or adjacent waters.

68 | Section 3. Subsection (6) of section 373.459, Florida  
 69 | Statutes, is amended to read:

70 | 373.459 Funds for surface water improvement and  
 71 | management.--

72 | (6)(a) The match requirement of subsection (2) shall not  
 73 | apply to the Suwannee River Water Management District, the  
 74 | Northwest Florida Water Management District, or a financially  
 75 | disadvantaged small local government as defined in s.  
 76 | 403.885(5).

77 | ~~(b) Notwithstanding the requirements of subsection (3),~~  
 78 | ~~the Ecosystem Management and Restoration Trust Fund and the~~  
 79 | ~~Water Protection and Sustainability Trust Fund shall be used for~~  
 80 | ~~the deposit of funds appropriated by the Legislature for the~~  
 81 | ~~purposes of ss. 373.451-373.4595. The department shall~~  
 82 | ~~administer all funds appropriated to or received for surface~~  
 83 | ~~water improvement and management activities. Expenditure of the~~

84 ~~moneys shall be limited to the costs of details planning and~~  
85 ~~plan and program implementation for priority surface water~~  
86 ~~bodies. Moneys from the funds shall not be expended for planning~~  
87 ~~for, or construction or expansion of, treatment facilities for~~  
88 ~~domestic or industrial waste disposal.~~

89 ~~(c) Notwithstanding the requirements of subsection (4),~~  
90 ~~the department shall authorize the release of money from the~~  
91 ~~funds in accordance with the provisions of s. 373.501(2) and~~  
92 ~~procedures in s. 373.59(4) and (5).~~

93 ~~(d) Notwithstanding the requirements of subsection (5),~~  
94 ~~moneys in the Ecosystem Restoration and Management Trust Fund~~  
95 ~~that are not needed to meet current obligations incurred under~~  
96 ~~this section shall be transferred to the State Board of~~  
97 ~~Administration, to the credit of the trust fund, to be invested~~  
98 ~~in the manner provided by law. Interest received on such~~  
99 ~~investments shall be credited to the trust fund.~~

100 ~~(e) This subsection expires July 1, 2007.~~

101 Section 4. Paragraph (c) of subsection (3) of section  
102 373.4595, Florida Statutes, is amended to read:

103 373.4595 Lake Okeechobee Protection Program.--

104 (3) LAKE OKEECHOBEE PROTECTION PROGRAM.--A protection  
105 program for Lake Okeechobee that achieves phosphorus load  
106 reductions for Lake Okeechobee shall be immediately implemented  
107 as specified in this subsection. The program shall address the  
108 reduction of phosphorus loading to the lake from both internal  
109 and external sources. Phosphorus load reductions shall be  
110 achieved through a phased program of implementation. Initial  
111 implementation actions shall be technology-based, based upon a

112 consideration of both the availability of appropriate technology  
113 and the cost of such technology, and shall include phosphorus  
114 reduction measures at both the source and the regional level.  
115 The initial phase of phosphorus load reductions shall be based  
116 upon the district's Technical Publication 81-2 and the  
117 district's WOD program, with subsequent phases of phosphorus  
118 load reductions based upon the total maximum daily loads  
119 established in accordance with s. 403.067. In the development  
120 and administration of the Lake Okeechobee Protection Program,  
121 the coordinating agencies shall maximize opportunities provided  
122 by federal cost-sharing programs and opportunities for  
123 partnerships with the private sector.

124 (c) Lake Okeechobee Watershed Phosphorus Control  
125 Program.--The Lake Okeechobee Watershed Phosphorus Control  
126 Program is designed to be a multifaceted approach to reducing  
127 phosphorus loads by improving the management of phosphorus  
128 sources within the Lake Okeechobee watershed through continued  
129 implementation of existing regulations and best management  
130 practices, development and implementation of improved best  
131 management practices, improvement and restoration of the  
132 hydrologic function of natural and managed systems, and  
133 utilization of alternative technologies for nutrient reduction.  
134 The coordinating agencies shall facilitate the application of  
135 federal programs that offer opportunities for water quality  
136 treatment, including preservation, restoration, or creation of  
137 wetlands on agricultural lands.

138 1. Agricultural nonpoint source best management practices,  
139 developed in accordance with s. 403.067 and designed to achieve

140 the objectives of the Lake Okeechobee Protection Program, shall  
141 be implemented on an expedited basis. The coordinating agencies  
142 shall develop an interagency agreement pursuant to ss. 373.046  
143 and 373.406(5) that assures the development of best management  
144 practices that complement existing regulatory programs and  
145 specifies how those best management practices are implemented  
146 and verified. The interagency agreement shall address measures  
147 to be taken by the coordinating agencies during any best  
148 management practice reevaluation performed pursuant to sub-  
149 subparagraph d. The department shall use best professional  
150 judgment in making the initial determination of best management  
151 practice effectiveness.

152 a. As provided in s. 403.067(7)(c), the Department of  
153 Agriculture and Consumer Services, in consultation with the  
154 department, the district, and affected parties, shall initiate  
155 rule development for interim measures, best management  
156 practices, conservation plans, nutrient management plans, or  
157 other measures necessary for Lake Okeechobee phosphorus load  
158 reduction. The rule shall include thresholds for requiring  
159 conservation and nutrient management plans and criteria for the  
160 contents of such plans. Development of agricultural nonpoint  
161 source best management practices shall initially focus on those  
162 priority basins listed in subparagraph (b)1. The Department of  
163 Agriculture and Consumer Services, in consultation with the  
164 department, the district, and affected parties, shall conduct an  
165 ongoing program for improvement of existing and development of  
166 new interim measures or best management practices for the  
167 purpose of adoption of such practices by rule.

168           b. Where agricultural nonpoint source best management  
169 practices or interim measures have been adopted by rule of the  
170 Department of Agriculture and Consumer Services, the owner or  
171 operator of an agricultural nonpoint source addressed by such  
172 rule shall either implement interim measures or best management  
173 practices or demonstrate compliance with the district's WOD  
174 program by conducting monitoring prescribed by the department or  
175 the district. Owners or operators of agricultural nonpoint  
176 sources who implement interim measures or best management  
177 practices adopted by rule of the Department of Agriculture and  
178 Consumer Services shall be subject to the provisions of s.  
179 403.067(7). The Department of Agriculture and Consumer Services,  
180 in cooperation with the department and the district, shall  
181 provide technical and financial assistance for implementation of  
182 agricultural best management practices, subject to the  
183 availability of funds.

184           c. The district or department shall conduct monitoring at  
185 representative sites to verify the effectiveness of agricultural  
186 nonpoint source best management practices.

187           d. Where water quality problems are detected for  
188 agricultural nonpoint sources despite the appropriate  
189 implementation of adopted best management practices, the  
190 Department of Agriculture and Consumer Services, in consultation  
191 with the other coordinating agencies and affected parties, shall  
192 institute a reevaluation of the best management practices and  
193 make appropriate changes to the rule adopting best management  
194 practices.

195           2. Nonagricultural nonpoint source best management  
196 practices, developed in accordance with s. 403.067 and designed  
197 to achieve the objectives of the Lake Okeechobee Protection  
198 Program, shall be implemented on an expedited basis. The  
199 department and the district shall develop an interagency  
200 agreement pursuant to ss. 373.046 and 373.406(5) that assures  
201 the development of best management practices that complement  
202 existing regulatory programs and specifies how those best  
203 management practices are implemented and verified. The  
204 interagency agreement shall address measures to be taken by the  
205 department and the district during any best management practice  
206 reevaluation performed pursuant to sub-subparagraph d.

207           a. The department and the district are directed to work  
208 with the University of Florida's Institute of Food and  
209 Agricultural Sciences to develop appropriate nutrient  
210 application rates for all nonagricultural soil amendments in the  
211 watershed. As provided in s. 403.067(7)(c), the department, in  
212 consultation with the district and affected parties, shall  
213 develop interim measures, best management practices, or other  
214 measures necessary for Lake Okeechobee phosphorus load  
215 reduction. Development of nonagricultural nonpoint source best  
216 management practices shall initially focus on those priority  
217 basins listed in subparagraph (b)1. The department, the  
218 district, and affected parties shall conduct an ongoing program  
219 for improvement of existing and development of new interim  
220 measures or best management practices. The district shall adopt  
221 technology-based standards under the district's WOD program for  
222 nonagricultural nonpoint sources of phosphorus. Nothing in this



223 sub-subparagraph shall affect the authority of the department or  
 224 the district to adopt basin-specific criteria under this part to  
 225 prevent harm to the water resources of the district.

226 b. Where nonagricultural nonpoint source best management  
 227 practices or interim measures have been developed by the  
 228 department and adopted by the district, the owner or operator of  
 229 a nonagricultural nonpoint source shall implement interim  
 230 measures or best management practices and be subject to the  
 231 provisions of s. 403.067(7). The department and district shall  
 232 provide technical and financial assistance for implementation of  
 233 nonagricultural nonpoint source best management practices,  
 234 subject to the availability of funds.

235 c. The district or the department shall conduct monitoring  
 236 at representative sites to verify the effectiveness of  
 237 nonagricultural nonpoint source best management practices.

238 d. Where water quality problems are detected for  
 239 nonagricultural nonpoint sources despite the appropriate  
 240 implementation of adopted best management practices, the  
 241 department and the district shall institute a reevaluation of  
 242 the best management practices.

243 3. The provisions of subparagraphs 1. and 2. shall not  
 244 preclude the department or the district from requiring  
 245 compliance with water quality standards or with current best  
 246 management practices requirements set forth in any applicable  
 247 regulatory program authorized by law for the purpose of  
 248 protecting water quality. Additionally, subparagraphs 1. and 2.  
 249 are applicable only to the extent that they do not conflict with

250 any rules promulgated by the department that are necessary to  
251 maintain a federally delegated or approved program.

252 4. Projects which reduce the phosphorus load originating  
253 from domestic wastewater systems within the Lake Okeechobee  
254 watershed shall be given funding priority in the department's  
255 revolving loan program under s. 403.1835. The department shall  
256 coordinate and provide assistance to those local governments  
257 seeking financial assistance for such priority projects.

258 5. Projects that make use of private lands, or lands held  
259 in trust for Indian tribes, to reduce nutrient loadings or  
260 concentrations within a basin by one or more of the following  
261 methods: restoring the natural hydrology of the basin, restoring  
262 wildlife habitat or impacted wetlands, reducing peak flows after  
263 storm events, increasing aquifer recharge, or protecting range  
264 and timberland from conversion to development, are eligible for  
265 grants available under this section from the coordinating  
266 agencies. For projects of otherwise equal priority, special  
267 funding priority will be given to those projects that make best  
268 use of the methods outlined above that involve public-private  
269 partnerships or that obtain federal match money. Preference  
270 ranking above the special funding priority will be given to  
271 projects located in a rural area of critical economic concern  
272 designated by the Governor. Grant applications may be submitted  
273 by any person or tribal entity, and eligible projects may  
274 include, but are not limited to, the purchase of conservation  
275 and flowage easements, hydrologic restoration of wetlands,  
276 creating treatment wetlands, development of a management plan

277 | for natural resources, and financial support to implement a  
278 | management plan.

279 |       6.a. The department shall require all entities disposing  
280 | of domestic wastewater residuals within the Lake Okeechobee  
281 | watershed and the remaining areas of Okeechobee, Glades, and  
282 | Hendry Counties to develop and submit to the department an  
283 | agricultural use plan that limits applications based upon  
284 | phosphorus loading. By July 1, 2005, phosphorus concentrations  
285 | originating from these application sites shall not exceed the  
286 | limits established in the district's WOD program.

287 |       b. Private and government-owned utilities within Monroe,  
288 | Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River,  
289 | Okeechobee, Highlands, Hendry, and Glades Counties that dispose  
290 | of wastewater residual sludge from utility operations and septic  
291 | removal by land spreading in the Lake Okeechobee watershed may  
292 | use a line item on local sewer rates to cover wastewater  
293 | residual treatment and disposal if such disposal and treatment  
294 | is done by approved alternative treatment methodology at a  
295 | facility located within the areas designated by the Governor as  
296 | rural areas of critical economic concern pursuant to s.  
297 | 288.0656. This additional line item is an environmental  
298 | protection disposal fee above the present sewer rate and shall  
299 | not be considered a part of the present sewer rate to customers,  
300 | notwithstanding provisions to the contrary in chapter 367. The  
301 | fee shall be established by the county commission or its  
302 | designated assignee in the county in which the alternative  
303 | method treatment facility is located. The fee shall be  
304 | calculated to be no higher than that necessary to recover the

305 facility's prudent cost of providing the service. Upon request  
306 by an affected county commission, the Florida Public Service  
307 Commission will provide assistance in establishing the fee.  
308 Further, for utilities and utility authorities that use the  
309 additional line item environmental protection disposal fee, such  
310 fee shall not be considered a rate increase under the rules of  
311 the Public Service Commission and shall be exempt from such  
312 rules. Utilities using the provisions of this section may  
313 immediately include in their sewer invoicing the new  
314 environmental protection disposal fee. Proceeds from this  
315 environmental protection disposal fee shall be used for  
316 treatment and disposal of wastewater residuals, including any  
317 treatment technology that helps reduce the volume of residuals  
318 that require final disposal, but such proceeds shall not be used  
319 for transportation or shipment costs for disposal or any costs  
320 relating to the land application of residuals in the Lake  
321 Okeechobee watershed.

322 c. No less frequently than once every 3 years, the Florida  
323 Public Service Commission or the county commission through the  
324 services of an independent auditor shall perform a financial  
325 audit of all facilities receiving compensation from an  
326 environmental protection disposal fee. The Florida Public  
327 Service Commission or the county commission through the services  
328 of an independent auditor shall also perform an audit of the  
329 methodology used in establishing the environmental protection  
330 disposal fee. The Florida Public Service Commission or the  
331 county commission shall, within 120 days after completion of an  
332 audit, file the audit report with the President of the Senate

333 and the Speaker of the House of Representatives and shall  
334 provide copies to the county commissions of the counties set  
335 forth in sub-subparagraph b. The books and records of any  
336 facilities receiving compensation from an environmental  
337 protection disposal fee shall be open to the Florida Public  
338 Service Commission and the Auditor General for review upon  
339 request.

340 7. The Department of Health shall require all entities  
341 disposing of septage within the Lake Okeechobee watershed and  
342 the remaining areas of Okeechobee, Glades, and Hendry Counties  
343 to develop and submit to that agency an agricultural use plan  
344 that limits applications based upon phosphorus loading. By July  
345 1, 2005, phosphorus concentrations originating from these  
346 application sites shall not exceed the limits established in the  
347 district's WOD program.

348 8. The Department of Agriculture and Consumer Services  
349 shall initiate rulemaking requiring entities within the Lake  
350 Okeechobee watershed and the remaining areas of Okeechobee,  
351 Glades, and Hendry Counties which land-apply animal manure to  
352 develop conservation or nutrient management plans that limit  
353 application, based upon phosphorus loading. Such rules may  
354 include criteria and thresholds for the requirement to develop a  
355 conservation or nutrient management plan, requirements for plan  
356 approval, and recordkeeping requirements.

357 ~~9. Prior to authorizing a discharge into works of the~~  
358 ~~district, the district shall require responsible parties to~~  
359 ~~demonstrate that proposed changes in land use will not result in~~  
360 ~~increased phosphorus loading over that of existing land uses.~~

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361            ~~9.10.~~ The district, the department, or the Department of  
362 Agriculture and Consumer Services, as appropriate, shall  
363 implement those alternative nutrient reduction technologies  
364 determined to be feasible pursuant to subparagraph (d)6.

365            Section 5. This act shall take effect July 1, 2007.