

1 A bill to be entitled
2 An act relating to surface water protection programs;
3 amending s. 373.414, F.S.; providing for the regulation of
4 peat mines in certain wetlands; providing legislative
5 intent; providing definitions; providing specific rule
6 authority to the Department of Environmental Protection;
7 providing applicability of variance provisions for
8 activities in surface waters and wetlands in the Northwest
9 Florida Water Management District; amending s. 373.4142,
10 F.S.; providing an exemption for certain water quality
11 standards in the Northwest Florida Water Management
12 District; amending s. 373.459, F.S.; exempting the
13 Suwannee River Water Management District, the Northwest
14 Florida Water Management District, and specified local
15 governments from certain funding requirements for the
16 implementation of surface water improvement and management
17 projects; eliminating provisions subject to expiration for
18 the deposit, expenditure, release, and transfer of funds
19 relating to the Ecosystem Restoration and Management Trust
20 Fund and the Water Protection and Sustainability Trust
21 Fund; amending s. 373.4595, F.S.; authorizing the
22 Department of Environmental Protection and the South
23 Florida Water Management District to adopt basin-specific
24 criteria under the Lake Okeechobee Watershed Phosphorus
25 Control Program; eliminating certain requirements for the
26 authorization of discharges related to proposed changes in
27 land use; amending s. 378.403, F.S.; revising definitions
28 relating to the regulation of surface waters; defining the

29 term "peat"; amending s. 378.503, F.S.; conforming
 30 provisions; amending s. 378.804, F.S.; revising the
 31 exemption provided to certain mine operators from the
 32 requirement to notify the secretary of the department when
 33 beginning to mine certain substances; amending s. 403.067,
 34 F.S.; providing for the trading of water quality credits
 35 in the total maximum daily load program in areas that have
 36 adopted a basin action plan; providing for rules and
 37 specifying what the rules must address; amending s.
 38 403.088, F.S.; providing for the revision of water
 39 pollution operation permits; repealing s. 403.265, F.S.,
 40 relating to the permitting of peat mining; providing an
 41 effective date.

42

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

44

45 Section 1. Paragraph (e) is added to subsection (6) of
 46 section 373.414, Florida Statutes, and subsection (17) of that
 47 section is amended to read:

48 373.414 Additional criteria for activities in surface
 49 waters and wetlands.--

50 (6)

51 (e) The Legislature recognizes that the state's
 52 horticultural industry contributes to the economic strength of
 53 Florida and that high-quality peat is a limited resource that is
 54 an important component of horticultural production. The
 55 Legislature further recognizes that obtaining high-quality peat
 56 typically and uniquely requires the mining of wetlands and other

57 surface waters and that the use of recycled and renewable
58 material to replace or reduce the use of natural peat is
59 necessary for the future of the horticultural industry.

60 1. As used in this paragraph, the term:

61 a. "High-quality peat" means peat from a freshwater
62 herbaceous wetland that grades H1 to H4 on the von Post
63 Humification Scale and has a pH less than 7.

64 b. "Horticultural industry" means the industry that
65 cultivates plants, including, but not limited to, trees, shrubs,
66 flowers, annuals, perennials, tropical foliage, liners, ferns,
67 vines, bulbs, grafts, scions, or buds, but excludes turf grasses
68 grown or kept for or capable of propagation or distribution for
69 retail, wholesale, or rewholesale purposes.

70 2. The department shall develop rules for permitting and
71 mitigation of peat mines in herbaceous or historically
72 herbaceous wetlands where high-quality peat is extracted
73 predominately for use in the horticultural industry provided:

74 a. The permitting and mitigation rules shall be applicable
75 where no less than 80 percent of the extracted peat is high-
76 quality peat and 80 percent of the high-quality peat is used by
77 the horticultural industry in products that incorporate other
78 renewable or recycled materials to replace or reduce the use of
79 natural peat;

80 b. No extraction is occurring in the underlying sand or
81 rock strata;

82 c. No portion of the extraction or mitigation area is part
83 of an existing or proposed larger plan of development; and

84 d. No portion of the mine is located in a body of water

85 designated as Outstanding Florida Waters.

86 3. In adopting rules as directed in subparagraph 2.,
87 design modifications shall not be required to reduce or
88 eliminate adverse impacts to herbaceous wetlands that score
89 below a specific value, as provided by rule using the uniform
90 mitigation assessment method of evaluation, except to require
91 that the project meet water quality standards, not cause adverse
92 offsite flooding, not adversely impact significant historical
93 and archeological resources pursuant to s. 267.061, and not
94 cause adverse impacts to listed species or their habitats. In
95 assessing mitigation for mines that are not required to reduce
96 or eliminate adverse impacts, retaining a percentage of the
97 reclaimed wetland as open water shall be deemed appropriate
98 wetland mitigation. The rules must establish the amount of open
99 water allowable as mitigation based upon a consideration of the
100 type and amount of other wetland mitigation proposed, the value
101 of those wetlands as evaluated using the uniform mitigation
102 assessment method, and the amount of preservation of wetlands.
103 The amount of open water shall not exceed 60 percent of the
104 premining wetlands within the extracted area.

105 4. Rule 62-345.600, Florida Administrative Code, shall not
106 be applied to mitigation for mines qualifying under this
107 paragraph.

108 5. The department shall initiate rulemaking within 90 days
109 after July 1, 2007, and water management districts may implement
110 the proposed rules without adoption pursuant to s. 120.54.

111 (17) The variance provisions of s. 403.201 are applicable
112 to the provisions of this section or any rule adopted pursuant

113 to this section ~~hereto~~. The governing boards and the department
 114 are authorized to review and take final agency action on
 115 petitions requesting such variances for those activities they
 116 regulate under this part and s. 373.4145.

117 Section 2. Section 373.4142, Florida Statutes, is amended
 118 to read:

119 373.4142 Water quality within stormwater treatment
 120 systems.--State surface water quality standards applicable to
 121 waters of the state, as defined in s. 403.031(13), shall not
 122 apply within a stormwater management system which is designed,
 123 constructed, operated, and maintained for stormwater treatment
 124 in accordance with a valid permit or noticed exemption issued
 125 pursuant to chapter 62-25 ~~17-25~~, Florida Administrative Code; a
 126 valid permit or exemption under s. 373.4145 within the Northwest
 127 Florida Water Management District; a valid permit issued on or
 128 subsequent to April 1, 1986, within the Suwannee River Water
 129 Management District or the St. Johns River Water Management
 130 District pursuant to this part; a valid permit issued on or
 131 subsequent to March 1, 1988, within the Southwest Florida Water
 132 Management District pursuant to this part; or a valid permit
 133 issued on or subsequent to January 6, 1982, within the South
 134 Florida Water Management District pursuant to this part. Such
 135 inapplicability of state water quality standards shall be
 136 limited to that part of the stormwater management system located
 137 upstream of a manmade water control structure permitted, or
 138 approved under a noticed exemption, to retain or detain
 139 stormwater runoff in order to provide treatment of the
 140 stormwater. The additional use of such a stormwater management

141 system for flood attenuation or irrigation shall not divest the
 142 system of the benefits of this exemption. This section shall not
 143 affect the authority of the department and water management
 144 districts to require reasonable assurance that the water quality
 145 within such stormwater management systems will not adversely
 146 impact public health, fish and wildlife, or adjacent waters.

147 Section 3. Subsection (6) of section 373.459, Florida
 148 Statutes, is amended to read:

149 373.459 Funds for surface water improvement and
 150 management.--

151 (6) ~~(a)~~ The match requirement of subsection (2) shall not
 152 apply to the Suwannee River Water Management District, the
 153 Northwest Florida Water Management District, or a financially
 154 disadvantaged small local government as defined in s.
 155 403.885(5).

156 ~~(b) Notwithstanding the requirements of subsection (3),~~
 157 ~~the Ecosystem Management and Restoration Trust Fund and the~~
 158 ~~Water Protection and Sustainability Trust Fund shall be used for~~
 159 ~~the deposit of funds appropriated by the Legislature for the~~
 160 ~~purposes of ss. 373.451-373.4595. The department shall~~
 161 ~~administer all funds appropriated to or received for surface~~
 162 ~~water improvement and management activities. Expenditure of the~~
 163 ~~moneys shall be limited to the costs of details planning and~~
 164 ~~plan and program implementation for priority surface water~~
 165 ~~bodies. Moneys from the funds shall not be expended for planning~~
 166 ~~for, or construction or expansion of, treatment facilities for~~
 167 ~~domestic or industrial waste disposal.~~

168 ~~(c) Notwithstanding the requirements of subsection (4),~~
169 ~~the department shall authorize the release of money from the~~
170 ~~funds in accordance with the provisions of s. 373.501(2) and~~
171 ~~procedures in s. 373.59(4) and (5).~~

172 ~~(d) Notwithstanding the requirements of subsection (5),~~
173 ~~moneys in the Ecosystem Restoration and Management Trust Fund~~
174 ~~that are not needed to meet current obligations incurred under~~
175 ~~this section shall be transferred to the State Board of~~
176 ~~Administration, to the credit of the trust fund, to be invested~~
177 ~~in the manner provided by law. Interest received on such~~
178 ~~investments shall be credited to the trust fund.~~

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

180 Section 4. Paragraph (c) of subsection (3) of section
181 373.4595, Florida Statutes, is amended to read:

182 373.4595 Lake Okeechobee Protection Program.--

183 (3) LAKE OKEECHOBEE PROTECTION PROGRAM.--A protection
184 program for Lake Okeechobee that achieves phosphorus load
185 reductions for Lake Okeechobee shall be immediately implemented
186 as specified in this subsection. The program shall address the
187 reduction of phosphorus loading to the lake from both internal
188 and external sources. Phosphorus load reductions shall be
189 achieved through a phased program of implementation. Initial
190 implementation actions shall be technology-based, based upon a
191 consideration of both the availability of appropriate technology
192 and the cost of such technology, and shall include phosphorus
193 reduction measures at both the source and the regional level.
194 The initial phase of phosphorus load reductions shall be based
195 upon the district's Technical Publication 81-2 and the

196 district's WOD program, with subsequent phases of phosphorus
197 load reductions based upon the total maximum daily loads
198 established in accordance with s. 403.067. In the development
199 and administration of the Lake Okeechobee Protection Program,
200 the coordinating agencies shall maximize opportunities provided
201 by federal cost-sharing programs and opportunities for
202 partnerships with the private sector.

203 (c) Lake Okeechobee Watershed Phosphorus Control
204 Program.--The Lake Okeechobee Watershed Phosphorus Control
205 Program is designed to be a multifaceted approach to reducing
206 phosphorus loads by improving the management of phosphorus
207 sources within the Lake Okeechobee watershed through continued
208 implementation of existing regulations and best management
209 practices, development and implementation of improved best
210 management practices, improvement and restoration of the
211 hydrologic function of natural and managed systems, and
212 utilization of alternative technologies for nutrient reduction.
213 The coordinating agencies shall facilitate the application of
214 federal programs that offer opportunities for water quality
215 treatment, including preservation, restoration, or creation of
216 wetlands on agricultural lands.

217 1. Agricultural nonpoint source best management practices,
218 developed in accordance with s. 403.067 and designed to achieve
219 the objectives of the Lake Okeechobee Protection Program, shall
220 be implemented on an expedited basis. The coordinating agencies
221 shall develop an interagency agreement pursuant to ss. 373.046
222 and 373.406(5) that assures the development of best management
223 practices that complement existing regulatory programs and

224 specifies how those best management practices are implemented
225 and verified. The interagency agreement shall address measures
226 to be taken by the coordinating agencies during any best
227 management practice reevaluation performed pursuant to sub-
228 subparagraph d. The department shall use best professional
229 judgment in making the initial determination of best management
230 practice effectiveness.

231 a. As provided in s. 403.067(7)(c), the Department of
232 Agriculture and Consumer Services, in consultation with the
233 department, the district, and affected parties, shall initiate
234 rule development for interim measures, best management
235 practices, conservation plans, nutrient management plans, or
236 other measures necessary for Lake Okeechobee phosphorus load
237 reduction. The rule shall include thresholds for requiring
238 conservation and nutrient management plans and criteria for the
239 contents of such plans. Development of agricultural nonpoint
240 source best management practices shall initially focus on those
241 priority basins listed in subparagraph (b)1. The Department of
242 Agriculture and Consumer Services, in consultation with the
243 department, the district, and affected parties, shall conduct an
244 ongoing program for improvement of existing and development of
245 new interim measures or best management practices for the
246 purpose of adoption of such practices by rule.

247 b. Where agricultural nonpoint source best management
248 practices or interim measures have been adopted by rule of the
249 Department of Agriculture and Consumer Services, the owner or
250 operator of an agricultural nonpoint source addressed by such
251 rule shall either implement interim measures or best management

252 practices or demonstrate compliance with the district's WOD
253 program by conducting monitoring prescribed by the department or
254 the district. Owners or operators of agricultural nonpoint
255 sources who implement interim measures or best management
256 practices adopted by rule of the Department of Agriculture and
257 Consumer Services shall be subject to the provisions of s.
258 403.067(7). The Department of Agriculture and Consumer Services,
259 in cooperation with the department and the district, shall
260 provide technical and financial assistance for implementation of
261 agricultural best management practices, subject to the
262 availability of funds.

263 c. The district or department shall conduct monitoring at
264 representative sites to verify the effectiveness of agricultural
265 nonpoint source best management practices.

266 d. Where water quality problems are detected for
267 agricultural nonpoint sources despite the appropriate
268 implementation of adopted best management practices, the
269 Department of Agriculture and Consumer Services, in consultation
270 with the other coordinating agencies and affected parties, shall
271 institute a reevaluation of the best management practices and
272 make appropriate changes to the rule adopting best management
273 practices.

274 2. Nonagricultural nonpoint source best management
275 practices, developed in accordance with s. 403.067 and designed
276 to achieve the objectives of the Lake Okeechobee Protection
277 Program, shall be implemented on an expedited basis. The
278 department and the district shall develop an interagency
279 agreement pursuant to ss. 373.046 and 373.406(5) that assures

280 the development of best management practices that complement
281 existing regulatory programs and specifies how those best
282 management practices are implemented and verified. The
283 interagency agreement shall address measures to be taken by the
284 department and the district during any best management practice
285 reevaluation performed pursuant to sub-subparagraph d.

286 a. The department and the district are directed to work
287 with the University of Florida's Institute of Food and
288 Agricultural Sciences to develop appropriate nutrient
289 application rates for all nonagricultural soil amendments in the
290 watershed. As provided in s. 403.067(7)(c), the department, in
291 consultation with the district and affected parties, shall
292 develop interim measures, best management practices, or other
293 measures necessary for Lake Okeechobee phosphorus load
294 reduction. Development of nonagricultural nonpoint source best
295 management practices shall initially focus on those priority
296 basins listed in subparagraph (b)1. The department, the
297 district, and affected parties shall conduct an ongoing program
298 for improvement of existing and development of new interim
299 measures or best management practices. The district shall adopt
300 technology-based standards under the district's WOD program for
301 nonagricultural nonpoint sources of phosphorus. Nothing in this
302 sub-subparagraph shall affect the authority of the department or
303 the district to adopt basin-specific criteria under this part to
304 prevent harm to the water resources of the district.

305 b. Where nonagricultural nonpoint source best management
306 practices or interim measures have been developed by the
307 department and adopted by the district, the owner or operator of

308 a nonagricultural nonpoint source shall implement interim
309 measures or best management practices and be subject to the
310 provisions of s. 403.067(7). The department and district shall
311 provide technical and financial assistance for implementation of
312 nonagricultural nonpoint source best management practices,
313 subject to the availability of funds.

314 c. The district or the department shall conduct monitoring
315 at representative sites to verify the effectiveness of
316 nonagricultural nonpoint source best management practices.

317 d. Where water quality problems are detected for
318 nonagricultural nonpoint sources despite the appropriate
319 implementation of adopted best management practices, the
320 department and the district shall institute a reevaluation of
321 the best management practices.

322 3. The provisions of subparagraphs 1. and 2. shall not
323 preclude the department or the district from requiring
324 compliance with water quality standards or with current best
325 management practices requirements set forth in any applicable
326 regulatory program authorized by law for the purpose of
327 protecting water quality. Additionally, subparagraphs 1. and 2.
328 are applicable only to the extent that they do not conflict with
329 any rules promulgated by the department that are necessary to
330 maintain a federally delegated or approved program.

331 4. Projects which reduce the phosphorus load originating
332 from domestic wastewater systems within the Lake Okeechobee
333 watershed shall be given funding priority in the department's
334 revolving loan program under s. 403.1835. The department shall

335 coordinate and provide assistance to those local governments
336 seeking financial assistance for such priority projects.

337 5. Projects that make use of private lands, or lands held
338 in trust for Indian tribes, to reduce nutrient loadings or
339 concentrations within a basin by one or more of the following
340 methods: restoring the natural hydrology of the basin, restoring
341 wildlife habitat or impacted wetlands, reducing peak flows after
342 storm events, increasing aquifer recharge, or protecting range
343 and timberland from conversion to development, are eligible for
344 grants available under this section from the coordinating
345 agencies. For projects of otherwise equal priority, special
346 funding priority will be given to those projects that make best
347 use of the methods outlined above that involve public-private
348 partnerships or that obtain federal match money. Preference
349 ranking above the special funding priority will be given to
350 projects located in a rural area of critical economic concern
351 designated by the Governor. Grant applications may be submitted
352 by any person or tribal entity, and eligible projects may
353 include, but are not limited to, the purchase of conservation
354 and flowage easements, hydrologic restoration of wetlands,
355 creating treatment wetlands, development of a management plan
356 for natural resources, and financial support to implement a
357 management plan.

358 6.a. The department shall require all entities disposing
359 of domestic wastewater residuals within the Lake Okeechobee
360 watershed and the remaining areas of Okeechobee, Glades, and
361 Hendry Counties to develop and submit to the department an
362 agricultural use plan that limits applications based upon

363 phosphorus loading. By July 1, 2005, phosphorus concentrations
364 originating from these application sites shall not exceed the
365 limits established in the district's WOD program.

366 b. Private and government-owned utilities within Monroe,
367 Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River,
368 Okeechobee, Highlands, Hendry, and Glades Counties that dispose
369 of wastewater residual sludge from utility operations and septic
370 removal by land spreading in the Lake Okeechobee watershed may
371 use a line item on local sewer rates to cover wastewater
372 residual treatment and disposal if such disposal and treatment
373 is done by approved alternative treatment methodology at a
374 facility located within the areas designated by the Governor as
375 rural areas of critical economic concern pursuant to s.
376 288.0656. This additional line item is an environmental
377 protection disposal fee above the present sewer rate and shall
378 not be considered a part of the present sewer rate to customers,
379 notwithstanding provisions to the contrary in chapter 367. The
380 fee shall be established by the county commission or its
381 designated assignee in the county in which the alternative
382 method treatment facility is located. The fee shall be
383 calculated to be no higher than that necessary to recover the
384 facility's prudent cost of providing the service. Upon request
385 by an affected county commission, the Florida Public Service
386 Commission will provide assistance in establishing the fee.
387 Further, for utilities and utility authorities that use the
388 additional line item environmental protection disposal fee, such
389 fee shall not be considered a rate increase under the rules of
390 the Public Service Commission and shall be exempt from such

391 rules. Utilities using the provisions of this section may
392 immediately include in their sewer invoicing the new
393 environmental protection disposal fee. Proceeds from this
394 environmental protection disposal fee shall be used for
395 treatment and disposal of wastewater residuals, including any
396 treatment technology that helps reduce the volume of residuals
397 that require final disposal, but such proceeds shall not be used
398 for transportation or shipment costs for disposal or any costs
399 relating to the land application of residuals in the Lake
400 Okeechobee watershed.

401 c. No less frequently than once every 3 years, the Florida
402 Public Service Commission or the county commission through the
403 services of an independent auditor shall perform a financial
404 audit of all facilities receiving compensation from an
405 environmental protection disposal fee. The Florida Public
406 Service Commission or the county commission through the services
407 of an independent auditor shall also perform an audit of the
408 methodology used in establishing the environmental protection
409 disposal fee. The Florida Public Service Commission or the
410 county commission shall, within 120 days after completion of an
411 audit, file the audit report with the President of the Senate
412 and the Speaker of the House of Representatives and shall
413 provide copies to the county commissions of the counties set
414 forth in sub-subparagraph b. The books and records of any
415 facilities receiving compensation from an environmental
416 protection disposal fee shall be open to the Florida Public
417 Service Commission and the Auditor General for review upon
418 request.

419 7. The Department of Health shall require all entities
420 disposing of septage within the Lake Okeechobee watershed and
421 the remaining areas of Okeechobee, Glades, and Hendry Counties
422 to develop and submit to that agency an agricultural use plan
423 that limits applications based upon phosphorus loading. By July
424 1, 2005, phosphorus concentrations originating from these
425 application sites shall not exceed the limits established in the
426 district's WOD program.

427 8. The Department of Agriculture and Consumer Services
428 shall initiate rulemaking requiring entities within the Lake
429 Okeechobee watershed and the remaining areas of Okeechobee,
430 Glades, and Hendry Counties which land-apply animal manure to
431 develop conservation or nutrient management plans that limit
432 application, based upon phosphorus loading. Such rules may
433 include criteria and thresholds for the requirement to develop a
434 conservation or nutrient management plan, requirements for plan
435 approval, and recordkeeping requirements.

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

440 9.10. The district, the department, or the Department of
441 Agriculture and Consumer Services, as appropriate, shall
442 implement those alternative nutrient reduction technologies
443 determined to be feasible pursuant to subparagraph (d)6.

444 Section 5. Section 378.403, Florida Statutes, is amended
445 to read:

446 378.403 Definitions.--As used in this part, the term:

447 (1) "Agency" means an official, committee, department,
448 commission, officer, division, authority, bureau, council,
449 board, section, or unit of government within the state,
450 including a county, municipal, or other local or regional entity
451 or special district.

452 (2) "Annual report" means a detailed report, including
453 maps and aerial photographs, submitted for each mine, which
454 describes and delineates mining operations and reclamation or
455 restoration activities undertaken in the previous calendar year.

456 (3) "Department" means the Department of Environmental
457 Protection.

458 (4) "Existing mine" means any area upon which an operation
459 is being conducted, or has been conducted, on October 1, 1986.

460 (5) "Extraction" or "resource extraction" means the
461 removal of resources from their location so as to make them
462 suitable for commercial, industrial, or construction use; but
463 does not include excavation solely in aid of onsite farming or
464 onsite construction, nor the process of searching, prospecting,
465 exploring, or investigating for resources by drilling.

466 (6) "Fuller's earth clay" means clay possessing a high
467 absorptive capacity consisting largely of montmorillonite or
468 palygorskite. Fuller's earth clay includes attapulgite.

469 (7) "Heavy minerals" means those resources found in
470 conjunction with sand deposits which have a specific gravity of
471 not less than 2.8, and includes an admixture of such resources
472 as zircon, staurolite, and titanium minerals as generally mined
473 in this state.

474 (8) "Limestone" means any extracted material composed

475 principally of calcium or magnesium carbonate.

476 (9) "Local government" means any county or municipality.

477 (10) "Mine" means an area of land upon which mining
478 operations have been conducted, are being conducted, or are
479 planned to be conducted, as the term is commonly used in the
480 trade.

481 (11) "New mine" means any mine that is not an existing
482 mine.

483 (12) "Operation" means any activity, other than
484 prospecting, necessary for site preparation, extraction, waste
485 disposal, storage, or reclamation.

486 (13) "Operator" means any person engaged in an operation.

487 (14) "Overburden" means soil and rock removed to gain
488 access to the resource in the process of extraction and means
489 such soil or rock before or after its removal.

490 (15) "Peat" means a naturally occurring substance derived
491 primarily from plant materials in a range of decomposing
492 conditions and formed in a water-saturated environment.

493 (16)~~(15)~~ "Reclamation" means the reasonable rehabilitation
494 of land where resource extraction has occurred.

495 (17)~~(16)~~ "Resource" means soil, clay, peat, stone, gravel,
496 sand, limerock, metallic ore, or any other solid substance of
497 commercial value found in natural deposits on or in the earth,
498 except phosphate, which is regulated by part III.

499 (18)~~(17)~~ "Secretary" means the Secretary of Environmental
500 Protection.

501 (19)~~(18)~~ "Wetlands" means any area as defined in s.
502 373.019, as delineated using the methodology adopted by rule and

503 ratified pursuant to s. 373.421(1). For areas included in an
 504 approved conceptual reclamation plan or modification application
 505 submitted prior to July 1, 1994, wetlands means any area having
 506 dominant vegetation as defined and listed in rule 67-301.200
 507 ~~Department of Environmental Regulation rule 17-4.022, Florida~~
 508 ~~Administrative Code, regardless of whether the area is within~~
 509 ~~the department's Department of Environmental Regulation's~~
 510 ~~jurisdiction or whether the water bodies are connected.~~

511 Section 6. Paragraph (d) of subsection (7) of section
 512 378.503, Florida Statutes, is amended to read:

513 378.503 Limestone reclamation performance standards.--

514 (7) Resource extraction which results in a water body
 515 shall provide one of the following shoreline treatments:

516 (d) Slope requirements of the United States Army Corps of
 517 Engineers or the department under part IV of chapter 373 of
 518 ~~Environmental Regulation under the Warren S. Henderson Wetlands~~
 519 ~~Protection Act of 1984.~~

520 Section 7. Section 378.804, Florida Statutes, is amended
 521 to read:

522 378.804 Exemption.--Any operator who extracts resources
 523 from ~~1 acre or less at any one site in a given year~~, not to
 524 exceed 20 ~~5~~ acres over the life of the mine, or who extracts
 525 peat for agricultural purposes is exempt from the provisions of
 526 s. 378.801.

527 Section 8. Subsections (7) and (8) of section 403.067,
 528 Florida Statutes, are amended to read:

529 403.067 Establishment and implementation of total maximum
 530 daily loads.--

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

533 (a) Basin management action plans.--

534 1. In developing and implementing the total maximum daily
535 load for a water body, the department, or the department in
536 conjunction with a water management district, may develop a
537 basin management action plan that addresses some or all of the
538 watersheds and basins tributary to the water body. Such a plan
539 must ~~shall~~ integrate the appropriate management strategies
540 available to the state through existing water quality protection
541 programs to achieve the total maximum daily loads and may
542 provide for phased implementation of these management strategies
543 to promote timely, cost-effective actions as provided for in s.
544 403.151. The plan must ~~shall~~ establish a schedule for
545 implementing the management strategies, establish a basis for
546 evaluating the plan's effectiveness, and identify feasible
547 funding strategies for implementing the plan's management
548 strategies. The management strategies may include regional
549 treatment systems or other public works, where appropriate, and
550 voluntary trading of water quality credits in areas that have
551 adopted a basin management action plan to achieve the needed
552 pollutant load reductions.

553 2. A basin management action plan must ~~shall~~ equitably
554 allocate, pursuant to paragraph (6) (b), pollutant reductions to
555 individual basins, as a whole to all basins, or to each
556 identified point source or category of nonpoint sources, as
557 appropriate. For nonpoint sources for which best management
558 practices have been adopted, the initial requirement specified

559 by the plan must ~~shall~~ be those practices developed pursuant to
560 paragraph (c). The plan shall, in accordance with rules adopted
561 pursuant to paragraph (8)(c), allow point or nonpoint sources
562 that will achieve greater pollutant load reductions than
563 required by a load or wasteload allocation in an adopted TMDL to
564 generate, register, and trade water quality credits for such
565 excess reductions to other sources as a method for the latter to
566 achieve their allocation; provided, however, that the generation
567 of water quality credits shall not remove the obligation of a
568 source or activity to meet otherwise applicable technology
569 requirements or adopted best management practices. The plan
570 shall allow trading between NPDES permittees and trading, which
571 may or may not involve NPDES permittees, where the generation or
572 use of the credits involves an entity or activity not otherwise
573 subject to department water discharge permits whose owner
574 voluntarily elects to become subject to the requirements of this
575 section. Where appropriate, the plan may take into account the
576 benefits of ~~provide~~ pollutant load reduction achieved by point
577 or nonpoint sources ~~credits to dischargers~~ that have implemented
578 management strategies to reduce pollutant loads, including best
579 management practices, prior to the development of the basin
580 management action plan. The plan must ~~shall~~ also identify the
581 mechanisms that will address ~~by which~~ potential future increases
582 in pollutant loading ~~will be addressed~~.

583 3. The basin management action planning process is
584 intended to involve the broadest possible range of interested
585 parties, with the objective of encouraging the greatest amount
586 of cooperation and consensus possible. In developing a basin

587 management action plan, the department shall assure that key
588 stakeholders, including, but not limited to, applicable local
589 governments, water management districts, the Department of
590 Agriculture and Consumer Services, other appropriate state
591 agencies, local soil and water conservation districts,
592 environmental groups, regulated interests, and affected
593 pollution sources, are invited to participate in the process.
594 The department shall hold at least one public meeting in the
595 vicinity of the watershed or basin to discuss and receive
596 comments during the planning process and shall otherwise
597 encourage public participation to the greatest practicable
598 extent. Notice of the public meeting must ~~shall~~ be published in
599 a newspaper of general circulation in each county in which the
600 watershed or basin lies not less than 5 days nor more than 15
601 days before the public meeting. A basin management action plan
602 shall not supplant or otherwise alter any assessment made under
603 subsection (3) or subsection (4) or any calculation or initial
604 allocation.

605 4. The department shall adopt all or any part of a basin
606 management action plan and any amendment to such plan by
607 secretarial order pursuant to chapter 120 to implement the
608 provisions of this section.

609 5. The basin management action plan must ~~shall~~ include
610 milestones for implementation and water quality improvement, and
611 an associated water quality monitoring component sufficient to
612 evaluate whether reasonable progress in pollutant load
613 reductions is being achieved over time. An assessment of
614 progress toward these milestones must ~~shall~~ be conducted every 5

615 years, and revisions to the plan must ~~shall~~ be made as
616 appropriate. Revisions to the basin management action plan shall
617 be made by the department in cooperation with basin
618 stakeholders. Revisions to the management strategies required
619 for nonpoint sources must ~~shall~~ follow the procedures set forth
620 in subparagraph (c)4. Revised basin management action plans must
621 ~~shall~~ be adopted pursuant to subparagraph 4.

622 6. The provisions of the department's rule relating to the
623 equitable abatement of pollutants into surface waters may not be
624 applied to water bodies or water body segments for which a basin
625 management plan that takes into account future new or expanded
626 activities or discharges has been adopted pursuant to this
627 section.

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

629 1. The department shall be the lead agency in coordinating
630 the implementation of the total maximum daily loads through
631 existing water quality protection programs. Application of a
632 total maximum daily load by a water management district must
633 ~~shall~~ be consistent with this section and shall not require the
634 issuance of an order or a separate action pursuant to s.
635 120.536(1) or s. 120.54 for the adoption of the calculation and
636 allocation previously established by the department. Such
637 programs may include, but are not limited to:

638 a. Permitting and other existing regulatory programs,
639 including water-quality-based effluent limitations;

640 b. Nonregulatory and incentive-based programs, including
641 best management practices, cost sharing, waste minimization,
642 pollution prevention, agreements established pursuant to s.

643 403.061(21), and public education;

644 c. Other water quality management and restoration
645 activities, for example surface water improvement and management
646 plans approved by water management districts or basin management
647 action plans developed pursuant to this subsection;

648 d. Trading of water quality credits ~~Pollutant trading~~ or
649 other equitable economically based agreements;

650 e. Public works including capital facilities; or

651 f. Land acquisition.

652 2. For a basin management action plan adopted pursuant to
653 paragraph (a) ~~subparagraph (a)4.~~, any management strategies and
654 pollutant reduction requirements associated with a pollutant of
655 concern for which a total maximum daily load has been developed,
656 including effluent limits set forth for a discharger subject to
657 NPDES permitting, if any, must ~~shall~~ be included in a timely
658 manner in subsequent NPDES permits or permit modifications for
659 that discharger. The department shall not impose limits or
660 conditions implementing an adopted total maximum daily load in
661 an NPDES permit until the permit expires, the discharge is
662 modified, or the permit is reopened pursuant to an adopted basin
663 management action plan.

664 a. Absent a detailed allocation, total maximum daily loads
665 must ~~shall~~ be implemented through NPDES permit conditions that
666 provide for ~~afford~~ a compliance schedule. In such instances, a
667 facility's NPDES permit must ~~shall~~ allow time for the issuance
668 of an order adopting the basin management action plan. The time
669 allowed for the issuance of an order adopting the plan must
670 ~~shall~~ not exceed 5 years. Upon issuance of an order adopting the

671 plan, the permit must ~~shall~~ be reopened, as necessary, and
672 permit conditions consistent with the plan must ~~shall~~ be
673 established. Notwithstanding ~~the~~ other provisions of this
674 subparagraph, upon request by a NPDES permittee, the department
675 as part of a permit issuance, renewal, or modification may
676 establish individual allocations prior to the adoption of a
677 basin management action plan.

678 b. For holders of NPDES municipal separate storm sewer
679 system permits and other stormwater sources, implementation of a
680 total maximum daily load or basin management action plan must
681 ~~shall~~ be achieved, to the maximum extent practicable, through
682 the use of best management practices or other management
683 measures.

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

687 d. Management strategies set forth in a basin management
688 action plan to be implemented by a discharger subject to
689 permitting by the department must ~~shall~~ be completed pursuant to
690 the schedule set forth in the basin management action plan. This
691 implementation schedule may extend beyond the 5-year term of an
692 NPDES permit.

693 e. Management strategies and pollution reduction
694 requirements set forth in a basin management action plan for a
695 specific pollutant of concern shall not be subject to challenge
696 under chapter 120 at the time they are incorporated, in an
697 identical form, into a subsequent NPDES permit or permit
698 modification.

699 f. For nonagricultural pollutant sources not subject to
700 NPDES permitting but permitted pursuant to other state,
701 regional, or local water quality programs, the pollutant
702 reduction actions adopted in a basin management action plan must
703 ~~shall~~ be implemented to the maximum extent practicable as part
704 of those permitting programs.

705 g. A nonpoint source discharger included in a basin
706 management action plan must ~~shall~~ demonstrate compliance with
707 the pollutant reductions established under ~~pursuant to~~
708 subsection (6) by either implementing the appropriate best
709 management practices established pursuant to paragraph (c) or
710 conducting water quality monitoring prescribed by the department
711 or a water management district.

712 h. A nonpoint source discharger included in a basin
713 management action plan may be subject to enforcement action by
714 the department or a water management district based upon a
715 failure to implement the responsibilities set forth in sub-
716 subparagraph g.

717 i. A landowner, discharger, or other responsible person
718 who is implementing applicable management strategies specified
719 in an adopted basin management action plan shall not be required
720 by permit, enforcement action, or otherwise to implement
721 additional management strategies to reduce pollutant loads to
722 attain the pollutant reductions established pursuant to
723 subsection (6) and must ~~shall~~ be deemed to be in compliance with
724 this section. This subparagraph does not limit the authority of
725 the department to amend a basin management action plan as
726 specified in subparagraph (a)5.

727 (c) Best management practices.--

728 1. The department, in cooperation with the water
 729 management districts and other interested parties, as
 730 appropriate, may develop suitable interim measures, best
 731 management practices, or other measures necessary to achieve the
 732 level of pollution reduction established by the department for
 733 nonagricultural nonpoint pollutant sources in allocations
 734 developed pursuant to subsection (6) and this subsection. These
 735 practices and measures may be adopted by rule by the department
 736 and the water management districts pursuant to ss. 120.536(1)
 737 and 120.54, and, where adopted by rule, shall be implemented by
 738 those parties responsible for nonagricultural nonpoint source
 739 pollution.

740 2. The Department of Agriculture and Consumer Services may
 741 develop and adopt by rule pursuant to ss. 120.536(1) and 120.54
 742 suitable interim measures, best management practices, or other
 743 measures necessary to achieve the level of pollution reduction
 744 established by the department for agricultural pollutant sources
 745 in allocations developed pursuant to subsection (6) and this
 746 subsection or for programs implemented pursuant to paragraph
 747 (11)(b). These practices and measures may be implemented by
 748 those parties responsible for agricultural pollutant sources and
 749 the department, the water management districts, and the
 750 Department of Agriculture and Consumer Services must ~~shall~~
 751 assist with implementation. In the process of developing and
 752 adopting rules for interim measures, best management practices,
 753 or other measures, the Department of Agriculture and Consumer
 754 Services shall consult with the department, the Department of

755 Health, the water management districts, representatives from
756 affected farming groups, and environmental group
757 representatives. Such rules must ~~shall~~ also incorporate
758 provisions for a notice of intent to implement the practices and
759 a system to assure the implementation of the practices,
760 including recordkeeping requirements.

761 3. Where interim measures, best management practices, or
762 other measures are adopted by rule, the effectiveness of such
763 practices in achieving the levels of pollution reduction
764 established in allocations developed by the department pursuant
765 to subsection (6) and this subsection or in programs implemented
766 pursuant to paragraph (11)(b) must ~~shall~~ be verified at
767 representative sites by the department. The department must
768 ~~shall~~ use best professional judgment in making the initial
769 verification that the best management practices are reasonably
770 expected to be effective and, where applicable, must ~~shall~~
771 notify the appropriate water management district or the
772 Department of Agriculture and Consumer Services of its initial
773 verification prior to the adoption of a rule proposed pursuant
774 to this paragraph. Implementation, in accordance with rules
775 adopted under this paragraph, of practices that have been
776 initially verified to be effective, or verified to be effective
777 by monitoring at representative sites, by the department, shall
778 provide a presumption of compliance with state water quality
779 standards and release from the provisions of s. 376.307(5) for
780 those pollutants addressed by the practices, and the department
781 is not authorized to institute proceedings against the owner of
782 the source of pollution to recover costs or damages associated

783 with the contamination of surface water or groundwater caused by
784 those pollutants. Research projects funded by the department, a
785 water management district, or the Department of Agriculture and
786 Consumer Services to develop or demonstrate interim measures or
787 best management practices shall be granted a presumption of
788 compliance with state water quality standards and a release from
789 the provisions of s. 376.307(5). The presumption of compliance
790 and release is ~~shall be~~ limited to the research site and only
791 for those pollutants addressed by the interim measures or best
792 management practices. Eligibility for the presumption of
793 compliance and release is ~~shall be~~ limited to research projects
794 on sites where the owner or operator of the research site and
795 the department, a water management district, or the Department
796 of Agriculture and Consumer Services have entered into a
797 contract or other agreement that, at a minimum, specifies the
798 research objectives, the cost-share responsibilities of the
799 parties, and a schedule that details the beginning and ending
800 dates of the project.

801 4. Where water quality problems are demonstrated, despite
802 the appropriate implementation, operation, and maintenance of
803 best management practices and other measures according to rules
804 adopted under this paragraph, the department, a water management
805 district, or the Department of Agriculture and Consumer
806 Services, in consultation with the department, shall institute a
807 reevaluation of the best management practice or other measure.
808 Should the reevaluation determine that the best management
809 practice or other measure requires modification, the department,
810 a water management district, or the Department of Agriculture

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

814 5. Agricultural records relating to processes or methods
 815 of production, costs of production, profits, or other financial
 816 information held by the Department of Agriculture and Consumer
 817 Services pursuant to subparagraphs 3. and 4. or pursuant to any
 818 rule adopted pursuant to subparagraph 2. are confidential and
 819 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 820 Constitution. Upon request, records made confidential and exempt
 821 pursuant to this subparagraph shall be released to the
 822 department or any water management district if ~~provided that~~ the
 823 confidentiality specified by this subparagraph for such records
 824 is maintained.

825 6. The provisions of subparagraphs 1. and 2. do ~~shall~~ not
 826 preclude the department or water management district from
 827 requiring compliance with water quality standards or with
 828 current best management practice requirements set forth in any
 829 applicable regulatory program authorized by law to protect ~~for~~
 830 ~~the purpose of protecting~~ water quality. Additionally,
 831 subparagraphs 1. and 2. are applicable only to the extent that
 832 they do not conflict with any rules adopted by the department
 833 which ~~that~~ are necessary to maintain a federally delegated or
 834 approved program.

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

837 (a) Delisting water bodies or water body segments from the
 838 list developed under subsection (4) pursuant to the guidance

839 under subsection (5).†

840 (b) Administering ~~Administration of~~ funds to implement the
841 total maximum daily load and basin management action planning
842 programs.†

843 (c) Water quality credit ~~Procedures for~~ pollutant trading
844 among the pollutant sources to a water body or water body
845 segment. By July 1, 2007, the department must initiate
846 rulemaking that provides for the following:~~, including a~~
847 ~~mechanism for the issuance and tracking of pollutant credits.~~
848 ~~Such procedures may be implemented through permits or other~~
849 ~~authorizations and must be legally binding. Prior to adopting~~
850 ~~rules for pollutant trading under this paragraph, and no later~~
851 ~~than November 30, 2006, the Department of Environmental~~
852 ~~Protection shall submit a report to the Governor, the President~~
853 ~~of the Senate, and the Speaker of the House of Representatives~~
854 ~~containing recommendations on such rules, including the proposed~~
855 ~~basis for equitable economically based agreements and the~~
856 ~~tracking and accounting of pollution credits or other similar~~
857 ~~mechanisms. Such recommendations shall be developed in~~
858 ~~cooperation with a technical advisory committee that includes~~
859 ~~experts in pollutant trading and representatives of potentially~~
860 ~~affected parties;~~

861 1. The process to be used to determine how credits are
862 generated, quantified, and validated;

863 2. A publicly accessible water quality credit trading
864 registry that tracks water quality credits and trades and lists
865 the prices paid for such credits; provided, however, that the
866 department shall not participate in the establishment of such

867 prices;

868 3. Limitations on the availability and use of water
869 quality credits, including a list of eligible pollutants or
870 parameters and minimum water quality requirements and, where
871 appropriate, adjustments to reflect best-management practice
872 performance uncertainties and water-segment-specific location
873 factors;

874 4. The timing and duration of credits and allowance for
875 credit transferability; and

876 5. Mechanisms for determining and ensuring compliance for
877 trades including recordkeeping, monitoring, reporting, and
878 inspections. Generators of traded credits are responsible for
879 achieving the load reductions upon which the credits are based.

880 (d) The total maximum daily load calculation in accordance
881 with paragraph (6)(a) immediately upon the effective date of
882 this act, for those eight water segments within Lake Okeechobee
883 proper as submitted to the United States Environmental
884 Protection Agency pursuant to subsection (2) ~~.7~~ and

885 (e) Implementation of other specific provisions.

886 Section 9. Paragraphs (e) and (f) of subsection (2) of
887 section 403.088, Florida Statutes, are amended to read:

888 403.088 Water pollution operation permits; conditions.--

889 (2)

890 (e) However, if the discharge will not meet permit
891 conditions or applicable statutes and rules, the department may
892 issue, renew, revise, or reissue the operation permit if:

893 1. The applicant is constructing, installing, or placing
894 into operation, or has submitted plans and a reasonable schedule

895 for constructing, installing, or placing into operation, an
 896 approved pollution abatement facility or alternative waste
 897 disposal system;

898 2. The applicant needs permission to pollute the waters
 899 within the state for a period of time necessary to complete
 900 research, planning, construction, installation, or operation of
 901 an approved and acceptable pollution abatement facility or
 902 alternative waste disposal system;

903 3. There is no present, reasonable, alternative means of
 904 disposing of the waste other than by discharging it into the
 905 waters of the state;

906 4. The granting of an operation permit will be in the
 907 public interest; ~~or~~

908 5. The discharge will not be unreasonably destructive to
 909 the quality of the receiving waters; or-

910 6. A water quality credit trade that meets the
 911 requirements of a total maximum daily load allocation has been
 912 approved in a final order issued under s. 403.067(7)(a)4.

913 (f) A permit issued, renewed, revised, or reissued
 914 pursuant to paragraph (e) shall be accompanied by an order
 915 establishing a schedule for achieving compliance with all permit
 916 conditions. Such permit may require compliance with the
 917 accompanying order.

918 Section 10. Section 403.265, Florida Statutes, is
 919 repealed.

920 Section 11. This act shall take effect July 1, 2007.