

Bill No. SB 594

Barcode 650500

CHAMBER ACTION

Senate

House

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The Committee on Environmental Preservation and Conservation
(Saunders) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

(6)

(e) The Legislature recognizes that the state's
horticultural industry contributes to the economic strength of
Florida and that high-quality peat is a limited resource that
is an important component of horticultural production. The
Legislature further recognizes that obtaining high-quality
peat typically and uniquely requires the mining of wetlands
and other surface waters and that the use of recycled and
renewable material to replace or reduce the use of natural

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1 peat is necessary for the future of the horticultural
2 industry.

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

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

7 b. "Horticultural industry" means the industry that
8 cultivates plants, including, but not limited to, trees,
9 shrubs, flowers, annuals, perennials, tropical foliage,
10 liners, ferns, vines, bulbs, grafts, scions, or buds, but
11 excludes turf grasses grown or kept for or capable of
12 propagation or distribution for retail, wholesale, or
13 rewholesale purposes.

14 2. The department shall develop rules for permitting
15 and mitigation of peat mines in herbaceous or historically
16 herbaceous wetlands where high quality peat is extracted
17 exclusively for use in the horticultural industry provided:

18 a. The permitting and mitigation rules shall be
19 applicable only at a mine where no less than 80 percent of the
20 extracted peat is high quality peat and the high quality peat
21 is used in products that incorporate other renewable or
22 recycled materials;

23 b. No extraction is occurring in the underlying sand
24 or rock strata;

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

28 d. No portion of the mine is located in a body of
29 water designated as Outstanding Florida Waters.

30 3. In adopting rules as directed in subparagraph 2.,
31 design modifications shall not be required to reduce or

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1 eliminate adverse impacts to herbaceous wetlands that score
2 below a specific value, as provided by rule using the uniform
3 mitigation assessment method of evaluation, except to require
4 that the project meet water quality standards, not cause
5 adverse offsite flooding, not adversely impact significant
6 historical and archeological resources pursuant to s. 267.061,
7 and not cause adverse impacts to listed species or their
8 habitats. In assessing mitigation for mines that are not
9 required to reduce or eliminate adverse impacts, retaining a
10 percentage of the reclaimed wetland as open water shall be
11 deemed appropriate wetland mitigation. The rules must
12 establish the amount of open water allowable as mitigation
13 based upon a consideration of the type and amount of other
14 wetland mitigation proposed, the value of those wetlands as
15 evaluated using the uniform mitigation assessment method, and
16 the amount of preservation of wetlands. The amount of open
17 water shall not exceed 60 percent of the premining wetlands
18 within the extracted area.

19 4. Rule 62-345.600, Florida Administrative Code, shall
20 not be applied to mitigation for mines qualifying under this
21 paragraph.

22 5. The department shall initiate rulemaking within 90
23 days after July 1, 2007, and water management districts may
24 implement the proposed rules without adoption pursuant to s.
25 120.54.

26 (17) The variance provisions of s. 403.201 are
27 applicable to the provisions of this section or any rule
28 adopted pursuant to this section ~~hereto~~. The governing boards
29 and the department are authorized to review and take final
30 agency action on petitions requesting such variances for those
31 activities they regulate under this part and s. 373.4145.

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

3 373.4142 Water quality within stormwater treatment
4 systems.--State surface water quality standards applicable to
5 waters of the state, as defined in s. 403.031(13), do ~~shall~~
6 not apply within a stormwater management system that ~~which~~ is
7 designed, constructed, operated, and maintained for stormwater
8 treatment in accordance with a valid permit or noticed
9 exemption issued pursuant to chapter 17-25, Florida
10 Administrative Code; a valid permit or exemption issued under
11 s. 373.4145 within the Northwest Florida Water Management
12 District; a valid permit issued on or subsequent to April 1,
13 1986, within the Suwannee River Water Management District or
14 the St. Johns River Water Management District pursuant to this
15 part; a valid permit issued on or subsequent to March 1, 1988,
16 within the Southwest Florida Water Management District
17 pursuant to this part; or a valid permit issued on or
18 subsequent to January 6, 1982, within the South Florida Water
19 Management District pursuant to this part. The ~~Such~~
20 inapplicability of state water quality standards is ~~shall be~~
21 limited to that part of the stormwater management system
22 located upstream of a manmade water control structure
23 permitted, or approved under a noticed exemption, to retain or
24 detain stormwater runoff in order to provide treatment of the
25 stormwater. The additional use of such a stormwater management
26 system for flood attenuation or irrigation does ~~shall~~ not
27 divest the system of the benefits of this exemption. This
28 section does ~~shall~~ not affect the authority of the department
29 and water management districts to require reasonable assurance
30 that the water quality within ~~such~~ stormwater management
31 systems will not adversely impact public health, fish and

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1 wildlife, or adjacent waters.

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

4 373.459 Funds for surface water improvement and
5 management.--

6 (6)(a) The match requirement of subsection (2) does
7 ~~shall~~ not apply to the Suwannee River Water Management
8 District, the Northwest Florida Water Management District, or
9 a financially disadvantaged small local government as defined
10 in s. 403.885(3) ~~s. 403.885(5)~~.

11 ~~(b) Notwithstanding the requirements of subsection~~
12 ~~(3), the Ecosystem Management and Restoration Trust Fund and~~
13 ~~the Water Protection and Sustainability Trust Fund shall be~~
14 ~~used for the deposit of funds appropriated by the Legislature~~
15 ~~for the purposes of ss. 373.451-373.4595. The department shall~~
16 ~~administer all funds appropriated to or received for surface~~
17 ~~water improvement and management activities. Expenditure of~~
18 ~~the moneys shall be limited to the costs of details planning~~
19 ~~and plan and program implementation for priority surface water~~
20 ~~bodies. Moneys from the funds shall not be expended for~~
21 ~~planning for, or construction or expansion of, treatment~~
22 ~~facilities for domestic or industrial waste disposal.~~

23 ~~(c) Notwithstanding the requirements of subsection~~
24 ~~(4), the department shall authorize the release of money from~~
25 ~~the funds in accordance with the provisions of s. 373.501(2)~~
26 ~~and procedures in s. 373.59(4) and (5).~~

27 ~~(d) Notwithstanding the requirements of subsection~~
28 ~~(5), moneys in the Ecosystem Restoration and Management Trust~~
29 ~~Fund that are not needed to meet current obligations incurred~~
30 ~~under this section shall be transferred to the State Board of~~
31 ~~Administration, to the credit of the trust fund, to be~~

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1 ~~invested in the manner provided by law. Interest received on~~
2 ~~such investments shall be credited to the trust fund.~~

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

4 Section 4. Paragraph (c) of subsection (3) of section
5 373.4595, Florida Statutes, is amended to read:

6 373.4595 Lake Okeechobee Protection Program.--

7 (3) LAKE OKEECHOBEE PROTECTION PROGRAM.--A protection
8 program for Lake Okeechobee that achieves phosphorus load
9 reductions for Lake Okeechobee shall be immediately
10 implemented as specified in this subsection. The program shall
11 address the reduction of phosphorus loading to the lake from
12 both internal and external sources. Phosphorus load reductions
13 shall be achieved through a phased program of implementation.
14 Initial implementation actions shall be technology-based,
15 based upon a consideration of both the availability of
16 appropriate technology and the cost of such technology, and
17 shall include phosphorus reduction measures at both the source
18 and the regional level. The initial phase of phosphorus load
19 reductions shall be based upon the district's Technical
20 Publication 81-2 and the district's WOD program, with
21 subsequent phases of phosphorus load reductions based upon the
22 total maximum daily loads established in accordance with s.
23 403.067. In the development and administration of the Lake
24 Okeechobee Protection Program, the coordinating agencies shall
25 maximize opportunities provided by federal cost-sharing
26 programs and opportunities for partnerships with the private
27 sector.

28 (c) Lake Okeechobee Watershed Phosphorus Control
29 Program.--The Lake Okeechobee Watershed Phosphorus Control
30 Program is designed to be a multifaceted approach to reducing
31 phosphorus loads by improving the management of phosphorus

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1 sources within the Lake Okeechobee watershed through continued
 2 implementation of existing regulations and best management
 3 practices, development and implementation of improved best
 4 management practices, improvement and restoration of the
 5 hydrologic function of natural and managed systems, and
 6 utilization of alternative technologies for nutrient
 7 reduction. The coordinating agencies shall facilitate the
 8 application of federal programs that offer opportunities for
 9 water quality treatment, including preservation, restoration,
 10 or creation of wetlands on agricultural lands.

11 1. Agricultural nonpoint source best management
 12 practices, developed in accordance with s. 403.067 and
 13 designed to achieve the objectives of the Lake Okeechobee
 14 Protection Program, shall be implemented on an expedited
 15 basis. The coordinating agencies shall develop an interagency
 16 agreement pursuant to ss. 373.046 and 373.406(5) that assures
 17 the development of best management practices that complement
 18 existing regulatory programs and specifies how those best
 19 management practices are implemented and verified. The
 20 interagency agreement must ~~shall~~ address measures to be taken
 21 by the coordinating agencies during any best management
 22 practice reevaluation performed pursuant to sub-subparagraph
 23 d. The department shall use best professional judgment in
 24 making the initial determination of best management practice
 25 effectiveness.

26 a. As provided in s. 403.067(7)(c), the Department of
 27 Agriculture and Consumer Services, in consultation with the
 28 department, the district, and affected parties, shall initiate
 29 rule development for interim measures, best management
 30 practices, conservation plans, nutrient management plans, or
 31 other measures necessary for Lake Okeechobee phosphorus load

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1 reduction. The rule must ~~shall~~ include thresholds for
 2 requiring conservation and nutrient management plans and
 3 criteria for the contents of such plans. Development of
 4 agricultural nonpoint source best management practices shall
 5 initially focus on those priority basins listed in
 6 subparagraph (b)1. The Department of Agriculture and Consumer
 7 Services, in consultation with the department, the district,
 8 and affected parties, shall conduct an ongoing program for
 9 improvement of existing and development of new interim
 10 measures or best management practices for the purpose of
 11 adopting ~~adoption of~~ such practices by rule.

12 b. Where agricultural nonpoint source best management
 13 practices or interim measures have been adopted by rule of the
 14 Department of Agriculture and Consumer Services, the owner or
 15 operator of an agricultural nonpoint source addressed by such
 16 rule shall either implement interim measures or best
 17 management practices or demonstrate compliance with the
 18 district's WOD program by conducting monitoring prescribed by
 19 the department or the district. Owners or operators of
 20 agricultural nonpoint sources who implement interim measures
 21 or best management practices adopted by rule of the Department
 22 of Agriculture and Consumer Services shall be subject to the
 23 provisions of s. 403.067(7). The Department of Agriculture and
 24 Consumer Services, in cooperation with the department and the
 25 district, shall provide technical and financial assistance for
 26 implementation of agricultural best management practices,
 27 subject to the availability of funds.

28 c. The district or department shall conduct monitoring
 29 at representative sites to verify the effectiveness of
 30 agricultural nonpoint source best management practices.

31 d. Where water quality problems are detected for

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1 agricultural nonpoint sources despite the appropriate
 2 implementation of adopted best management practices, the
 3 Department of Agriculture and Consumer Services, in
 4 consultation with the other coordinating agencies and affected
 5 parties, shall institute a reevaluation of the best management
 6 practices and make appropriate changes to the rule adopting
 7 best management practices.

8 2. Nonagricultural nonpoint source best management
 9 practices, developed in accordance with s. 403.067 and
 10 designed to achieve the objectives of the Lake Okeechobee
 11 Protection Program, shall be implemented on an expedited
 12 basis. The department and the district shall develop an
 13 interagency agreement pursuant to ss. 373.046 and 373.406(5)
 14 that assures the development of best management practices that
 15 complement existing regulatory programs and specifies how
 16 those best management practices are implemented and verified.
 17 The interagency agreement must ~~shall~~ address measures to be
 18 taken by the department and the district during any best
 19 management practice reevaluation performed pursuant to
 20 sub-subparagraph d.

21 a. The department and the district are directed to
 22 work with the University of Florida's Institute of Food and
 23 Agricultural Sciences to develop appropriate nutrient
 24 application rates for all nonagricultural soil amendments in
 25 the watershed. As provided in s. 403.067(7)(c), the
 26 department, in consultation with the district and affected
 27 parties, shall develop interim measures, best management
 28 practices, or other measures necessary for Lake Okeechobee
 29 phosphorus load reduction. Development of nonagricultural
 30 nonpoint source best management practices must ~~shall~~ initially
 31 focus on those priority basins listed in subparagraph (b)1.

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1 The department, the district, and affected parties shall
 2 conduct an ongoing program for improvement of existing and
 3 development of new interim measures or best management
 4 practices. The district shall adopt technology-based standards
 5 under the district's WOD program for nonagricultural nonpoint
 6 sources of phosphorus. This sub-subparagraph does not affect
 7 the authority of the department or the districts to adopt
 8 basin-specific criteria to prevent harm to the water resources
 9 of the district under this part.

10 b. Where nonagricultural nonpoint source best
 11 management practices or interim measures have been developed
 12 by the department and adopted by the district, the owner or
 13 operator of a nonagricultural nonpoint source must ~~shall~~
 14 implement interim measures or best management practices and be
 15 subject to the provisions of s. 403.067(7). The department and
 16 district shall provide technical and financial assistance for
 17 implementation of nonagricultural nonpoint source best
 18 management practices, subject to the availability of funds.

19 c. The district or the department shall conduct
 20 monitoring at representative sites to verify the effectiveness
 21 of nonagricultural nonpoint source best management practices.

22 d. Where water quality problems are detected for
 23 nonagricultural nonpoint sources despite the appropriate
 24 implementation of adopted best management practices, the
 25 department and the district shall institute a reevaluation of
 26 the best management practices.

27 3. The provisions of subparagraphs 1. and 2. do ~~shall~~
 28 not preclude the department or the district from requiring
 29 compliance with water quality standards or with current best
 30 management practices requirements set forth in any applicable
 31 regulatory program authorized by law for the purpose of

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1 protecting water quality. Additionally, subparagraphs 1. and
 2 2. are applicable only if ~~to the extent that~~ they do not
 3 conflict with any rules adopted ~~promulgated~~ by the department
 4 that are necessary to maintain a federally delegated or
 5 approved program.

6 4. Projects which reduce the phosphorus load
 7 originating from domestic wastewater systems within the Lake
 8 Okeechobee watershed shall be given funding priority in the
 9 department's revolving loan program under s. 403.1835. The
 10 department shall coordinate and provide assistance to those
 11 local governments seeking financial assistance for such
 12 priority projects.

13 5. Projects that make use of private lands, or lands
 14 held in trust for Indian tribes, to reduce nutrient loadings
 15 or concentrations within a basin by one or more of the
 16 following methods: restoring the natural hydrology of the
 17 basin, restoring wildlife habitat or impacted wetlands,
 18 reducing peak flows after storm events, increasing aquifer
 19 recharge, or protecting range and timberland from conversion
 20 to development, are eligible for grants ~~available~~ under this
 21 section from the coordinating agencies. For projects of
 22 otherwise equal priority, special funding priority shall ~~will~~
 23 be given to those projects that make best use of the methods
 24 outlined above that involve public-private partnerships or
 25 that obtain federal match money. Preference ranking above the
 26 special funding priority will be given to projects located in
 27 a rural area of critical economic concern designated by the
 28 Governor. Grant applications may be submitted by any person or
 29 tribal entity, and eligible projects may include, but are not
 30 limited to, the purchase of conservation and flowage
 31 easements, hydrologic restoration of wetlands, creating

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1 treatment wetlands, development of a management plan for
2 natural resources, and financial support to implement a
3 management plan.

4 6.a. The department shall require all entities
5 disposing of domestic wastewater residuals within the Lake
6 Okeechobee watershed and the remaining areas of Okeechobee,
7 Glades, and Hendry Counties to develop and submit to the
8 department an agricultural use plan that limits applications
9 based upon phosphorus loading. By July 1, 2005, phosphorus
10 concentrations originating from these application sites shall
11 not exceed the limits established in the district's WOD
12 program.

13 b. Private and government-owned utilities within
14 Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian
15 River, Okeechobee, Highlands, Hendry, and Glades Counties that
16 dispose of wastewater residual sludge from utility operations
17 and septic removal by land spreading in the Lake Okeechobee
18 watershed may use a line item on local sewer rates to cover
19 wastewater residual treatment and disposal if such disposal
20 and treatment is done by approved alternative treatment
21 methodology at a facility located within the areas designated
22 by the Governor as rural areas of critical economic concern
23 under ~~pursuant to~~ s. 288.0656. This additional line item is an
24 environmental protection disposal fee above the present sewer
25 rate and shall not be considered a part of the present sewer
26 rate to customers, notwithstanding provisions to the contrary
27 in chapter 367. The fee shall be established by the county
28 commission or its designated assignee in the county in which
29 the alternative method treatment facility is located. The fee
30 shall ~~be calculated to~~ be no higher than that necessary to
31 recover the facility's prudent cost of providing the service.

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1 Upon request by an affected county commission, the Florida
2 Public Service Commission shall ~~will~~ provide assistance in
3 establishing the fee. Further, for utilities and utility
4 authorities that use the additional line item environmental
5 protection disposal fee, such fee is ~~shall~~ not ~~be considered~~ a
6 rate increase under the rules of the Public Service Commission
7 and is ~~shall be~~ exempt from such rules. Utilities using the
8 provisions of this section may immediately include in their
9 sewer invoicing the new environmental protection disposal fee.
10 Proceeds from this ~~environmental protection disposal~~ fee must
11 ~~shall~~ be used for the treatment and disposal of wastewater
12 residuals, including any treatment technology that helps
13 reduce the volume of residuals that require final disposal,
14 but such proceeds shall not be used for transportation or
15 shipment costs for disposal or any costs relating to the land
16 application of residuals in the Lake Okeechobee watershed.

17 c. No less frequently than once every 3 years, the
18 Florida Public Service Commission or the county commission
19 through the services of an independent auditor shall perform a
20 financial audit of all facilities receiving compensation from
21 an environmental protection disposal fee. The Florida Public
22 Service Commission or the county commission through the
23 services of an independent auditor shall also perform an audit
24 of the methodology used in establishing the environmental
25 protection disposal fee. The Florida Public Service Commission
26 or the county commission shall, within 120 days after
27 completion of an audit, file the audit report with the
28 President of the Senate and the Speaker of the House of
29 Representatives and shall provide copies to the county
30 commissions of the counties set forth in sub-subparagraph b.

31 The books and records of any facilities receiving compensation

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1 from an environmental protection disposal fee must ~~shall~~ be
2 open to the Florida Public Service Commission and the Auditor
3 General for review upon request.

4 7. The Department of Health shall require all entities
5 disposing of septage within the Lake Okeechobee watershed and
6 the remaining areas of Okeechobee, Glades, and Hendry Counties
7 to develop and submit to that agency an agricultural use plan
8 that limits applications based upon phosphorus loading. By
9 July 1, 2005, phosphorus concentrations originating from these
10 application sites shall not exceed the limits established in
11 the district's WOD program.

12 8. The Department of Agriculture and Consumer Services
13 shall initiate rulemaking requiring entities within the Lake
14 Okeechobee watershed and the remaining areas of Okeechobee,
15 Glades, and Hendry Counties which land-apply animal manure to
16 develop conservation or nutrient management plans that limit
17 manure application, based upon phosphorus loading. Such rules
18 may include criteria and thresholds for the requirement to
19 develop a conservation or nutrient management plan,
20 requirements for plan approval, and recordkeeping
21 requirements.

22 ~~9. Prior to authorizing a discharge into works of the~~
23 ~~district, the district shall require responsible parties to~~
24 ~~demonstrate that proposed changes in land use will not result~~
25 ~~in increased phosphorus loading over that of existing land~~
26 ~~uses.~~

27 ~~9.10.~~ The district, the department, or the Department
28 of Agriculture and Consumer Services, as appropriate, shall
29 implement ~~those~~ alternative nutrient reduction technologies
30 determined to be feasible pursuant to subparagraph (d)6.

31 Section 5. Section 378.403, Florida Statutes, is

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1 amended to read:

2 378.403 Definitions.--As used in this part, the term:

3 (1) "Agency" means an official, committee, department,
4 commission, officer, division, authority, bureau, council,
5 board, section, or unit of government within the state,
6 including a county, municipal, or other local or regional
7 entity or special district.

8 (2) "Annual report" means a detailed report, including
9 maps and aerial photographs, submitted for each mine, which
10 describes and delineates mining operations and reclamation or
11 restoration activities undertaken in the previous calendar
12 year.

13 (3) "Department" means the Department of Environmental
14 Protection.

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

18 (5) "Extraction" or "resource extraction" means the
19 removal of resources from their location so as to make them
20 suitable for commercial, industrial, or construction use; but
21 does not include excavation solely in aid of onsite farming or
22 onsite construction, nor the process of searching,
23 prospecting, exploring, or investigating for resources by
24 drilling.

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

28 (7) "Heavy minerals" means those resources found in
29 conjunction with sand deposits which have a specific gravity
30 of not less than 2.8, and includes an admixture of such
31 resources as zircon, staurolite, and titanium minerals as

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1 generally mined in this state.

2 (8) "Limestone" means any extracted material composed
3 principally of calcium or magnesium carbonate.

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

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

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

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

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

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

20 (15) "Peat" means a naturally occurring substance
21 derived primarily from plant materials in a range of
22 decomposing conditions and formed in a water-saturated
23 environment.

24 ~~(16)~~~~(15)~~ "Reclamation" means the reasonable
25 rehabilitation of land where resource extraction has occurred.

26 ~~(17)~~~~(16)~~ "Resource" means soil, clay, peat, stone,
27 gravel, sand, limerock, metallic ore, or any other solid
28 substance of commercial value found in natural deposits on or
29 in the earth, except phosphate, which is regulated by part
30 III.

31 ~~(18)~~~~(17)~~ "Secretary" means the Secretary of

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1 Environmental Protection.

2 ~~(19)(18)~~ "Wetlands" means any area as defined in s.
3 373.019, as delineated using the methodology adopted by rule
4 and ratified pursuant to s. 373.421(1). For areas included in
5 an approved conceptual reclamation plan or modification
6 application submitted prior to July 1, 1994, wetlands means
7 any area having dominant vegetation as defined and listed in
8 rule 67-301.200 ~~Department of Environmental Regulation rule~~
9 ~~17-4.022~~, Florida Administrative Code, regardless of whether
10 the area is within the department's ~~Department of~~
11 ~~Environmental Regulation's~~ jurisdiction or whether the water
12 bodies are connected.

13 Section 6. Paragraph (d) of subsection (7) of section
14 378.503, Florida Statutes, is amended to read:

15 378.503 Limestone reclamation performance standards.--

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

18 (d) Slope requirements of the United States Army Corps
19 of Engineers or the department under part IV of chapter 373 ~~of~~
20 ~~Environmental Regulation under the Warren S. Henderson~~
21 ~~Wetlands Protection Act of 1984.~~

22 Section 7. Section 378.804, Florida Statutes, is
23 amended to read:

24 378.804 Exemption.--Any operator who extracts
25 resources from ~~1 acre or less at any one site in a given year,~~
26 not to exceed 20 5 acres over the life of the mine, or who
27 extracts peat for agricultural purposes is exempt from the
28 provisions of s. 378.801.

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

31 403.067 Establishment and implementation of total

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1 maximum daily loads.--

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

4 (a) Basin management action plans.--

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

24 2. A basin management action plan must ~~shall~~ equitably
25 allocate, pursuant to paragraph (6)(b), pollutant reductions
26 to individual basins, as a whole to all basins, or to each
27 identified point source or category of nonpoint sources, as
28 appropriate. For nonpoint sources for which best management
29 practices have been adopted, the initial requirement specified
30 by the plan must ~~shall~~ be those practices developed pursuant
31 to paragraph (c). The plan shall, in accordance with rules

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1 adopted pursuant to paragraph (8)(c), allow point or nonpoint
 2 sources that will achieve greater pollutant load reductions
 3 than required by a load or wasteload allocation in an adopted
 4 TMDL to generate, register, and trade water quality credits
 5 for such excess reductions to other sources as a method for
 6 the latter to achieve their allocation; provided, however,
 7 that the generation of water quality credits shall not remove
 8 the obligation of a source or activity to meet otherwise
 9 applicable technology requirements or adopted best management
 10 practices. The plan shall allow trading between NPDES
 11 permittees and trading, which may or may not involve NPDES
 12 permittees, where the generation or use of the credits
 13 involves an entity or activity not otherwise subject to
 14 department water discharge permits whose owner voluntarily
 15 elects to become subject to the requirements of this section.
 16 Where appropriate, the plan may take into account the benefits
 17 of ~~provide~~ pollutant load reduction achieved by point or
 18 nonpoint sources ~~credits to dischargers~~ that have implemented
 19 management strategies to reduce pollutant loads, including
 20 best management practices, prior to the development of the
 21 basin management action plan. The plan must ~~shall~~ also
 22 identify the mechanisms that will address ~~by which~~ potential
 23 future increases in pollutant loading ~~will be addressed~~.

24 3. The basin management action planning process is
 25 intended to involve the broadest possible range of interested
 26 parties, with the objective of encouraging the greatest amount
 27 of cooperation and consensus possible. In developing a basin
 28 management action plan, the department shall assure that key
 29 stakeholders, including, but not limited to, applicable local
 30 governments, water management districts, the Department of
 31 Agriculture and Consumer Services, other appropriate state

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1 agencies, local soil and water conservation districts,
2 environmental groups, regulated interests, and affected
3 pollution sources, are invited to participate in the process.
4 The department shall hold at least one public meeting in the
5 vicinity of the watershed or basin to discuss and receive
6 comments during the planning process and shall otherwise
7 encourage public participation to the greatest practicable
8 extent. Notice of the public meeting must ~~shall~~ be published
9 in a newspaper of general circulation in each county in which
10 the watershed or basin lies not less than 5 days nor more than
11 15 days before the public meeting. A basin management action
12 plan shall not supplant or otherwise alter any assessment made
13 under subsection (3) or subsection (4) or any calculation or
14 initial allocation.

15 4. The department shall adopt all or any part of a
16 basin management action plan and any amendment to such plan by
17 secretarial order pursuant to chapter 120 to implement the
18 provisions of this section.

19 5. The basin management action plan must ~~shall~~ include
20 milestones for implementation and water quality improvement,
21 and an associated water quality monitoring component
22 sufficient to evaluate whether reasonable progress in
23 pollutant load reductions is being achieved over time. An
24 assessment of progress toward these milestones must ~~shall~~ be
25 conducted every 5 years, and revisions to the plan must ~~shall~~
26 be made as appropriate. Revisions to the basin management
27 action plan shall be made by the department in cooperation
28 with basin stakeholders. Revisions to the management
29 strategies required for nonpoint sources must ~~shall~~ follow the
30 procedures set forth in subparagraph (c)4. Revised basin
31 management action plans must ~~shall~~ be adopted pursuant to

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1 subparagraph 4.

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

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

9 1. The department shall be the lead agency in
10 coordinating the implementation of the total maximum daily
11 loads through existing water quality protection programs.
12 Application of a total maximum daily load by a water
13 management district must ~~shall~~ be consistent with this section
14 and shall not require the issuance of an order or a separate
15 action pursuant to s. 120.536(1) or s. 120.54 for the adoption
16 of the calculation and allocation previously established by
17 the department. Such programs may include, but are not limited
18 to:

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

21 b. Nonregulatory and incentive-based programs,
22 including best management practices, cost sharing, waste
23 minimization, pollution prevention, agreements established
24 pursuant to s. 403.061(21), and public education;

25 c. Other water quality management and restoration
26 activities, for example surface water improvement and
27 management plans approved by water management districts or
28 basin management action plans developed pursuant to this
29 subsection;

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

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1 e. Public works including capital facilities; or

2 f. Land acquisition.

3 2. For a basin management action plan adopted pursuant
4 to paragraph (a) ~~subparagraph (a)4.~~, any management strategies
5 and pollutant reduction requirements associated with a
6 pollutant of concern for which a total maximum daily load has
7 been developed, including effluent limits set forth for a
8 discharger subject to NPDES permitting, if any, must ~~shall~~ be
9 included in a timely manner in subsequent NPDES permits or
10 permit modifications for that discharger. The department shall
11 not impose limits or conditions implementing an adopted total
12 maximum daily load in an NPDES permit until the permit
13 expires, the discharge is modified, or the permit is reopened
14 pursuant to an adopted basin management action plan.

15 a. Absent a detailed allocation, total maximum daily
16 loads must ~~shall~~ be implemented through NPDES permit
17 conditions that provide for ~~afford~~ a compliance schedule. In
18 such instances, a facility's NPDES permit must ~~shall~~ allow
19 time for the issuance of an order adopting the basin
20 management action plan. The time allowed for the issuance of
21 an order adopting the plan must ~~shall~~ not exceed 5 years. Upon
22 issuance of an order adopting the plan, the permit must ~~shall~~
23 be reopened, as necessary, and permit conditions consistent
24 with the plan must ~~shall~~ be established. Notwithstanding ~~the~~
25 other provisions of this subparagraph, upon request by a NPDES
26 permittee, the department as part of a permit issuance,
27 renewal, or modification may establish individual allocations
28 prior to the adoption of a basin management action plan.

29 b. For holders of NPDES municipal separate storm sewer
30 system permits and other stormwater sources, implementation of
31 a total maximum daily load or basin management action plan

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1 must ~~shall~~ be achieved, to the maximum extent practicable,
2 through the use of best management practices or other
3 management measures.

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

8 d. Management strategies set forth in a basin
9 management action plan to be implemented by a discharger
10 subject to permitting by the department must ~~shall~~ be
11 completed pursuant to the schedule set forth in the basin
12 management action plan. This implementation schedule may
13 extend beyond the 5-year term of an NPDES permit.

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

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

26 g. A nonpoint source discharger included in a basin
27 management action plan must ~~shall~~ demonstrate compliance with
28 the pollutant reductions established under ~~pursuant to~~
29 subsection (6) by either implementing the appropriate best
30 management practices established pursuant to paragraph (c) or
31 conducting water quality monitoring prescribed by the

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1 department or a water management district.

2 h. A nonpoint source discharger included in a basin
3 management action plan may be subject to enforcement action by
4 the department or a water management district based upon a
5 failure to implement the responsibilities set forth in
6 sub-subparagraph g.

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

17 (c) Best management practices.--

18 1. The department, in cooperation with the water
19 management districts and other interested parties, as
20 appropriate, may develop suitable interim measures, best
21 management practices, or other measures necessary to achieve
22 the level of pollution reduction established by the department
23 for nonagricultural nonpoint pollutant sources in allocations
24 developed pursuant to subsection (6) and this subsection.
25 These practices and measures may be adopted by rule by the
26 department and the water management districts pursuant to ss.
27 120.536(1) and 120.54, and, where adopted by rule, shall be
28 implemented by those parties responsible for nonagricultural
29 nonpoint source pollution.

30 2. The Department of Agriculture and Consumer Services
31 may develop and adopt by rule pursuant to ss. 120.536(1) and

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1 120.54 suitable interim measures, best management practices,
2 or other measures necessary to achieve the level of pollution
3 reduction established by the department for agricultural
4 pollutant sources in allocations developed pursuant to
5 subsection (6) and this subsection or for programs implemented
6 pursuant to paragraph (11)(b). These practices and measures
7 may be implemented by those parties responsible for
8 agricultural pollutant sources and the department, the water
9 management districts, and the Department of Agriculture and
10 Consumer Services must ~~shall~~ assist with implementation. In
11 the process of developing and adopting rules for interim
12 measures, best management practices, or other measures, the
13 Department of Agriculture and Consumer Services shall consult
14 with the department, the Department of Health, the water
15 management districts, representatives from affected farming
16 groups, and environmental group representatives. Such rules
17 must ~~shall~~ also incorporate provisions for a notice of intent
18 to implement the practices and a system to assure the
19 implementation of the practices, including recordkeeping
20 requirements.

21 3. Where interim measures, best management practices,
22 or other measures are adopted by rule, the effectiveness of
23 such practices in achieving the levels of pollution reduction
24 established in allocations developed by the department
25 pursuant to subsection (6) and this subsection or in programs
26 implemented pursuant to paragraph (11)(b) must ~~shall~~ be
27 verified at representative sites by the department. The
28 department must ~~shall~~ use best professional judgment in making
29 the initial verification that the best management practices
30 are reasonably expected to be effective and, where applicable,
31 must ~~shall~~ notify the appropriate water management district or

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1 the Department of Agriculture and Consumer Services of its
2 initial verification prior to the adoption of a rule proposed
3 pursuant to this paragraph. Implementation, in accordance with
4 rules adopted under this paragraph, of practices that have
5 been initially verified to be effective, or verified to be
6 effective by monitoring at representative sites, by the
7 department, shall provide a presumption of compliance with
8 state water quality standards and release from the provisions
9 of s. 376.307(5) for those pollutants addressed by the
10 practices, and the department is not authorized to institute
11 proceedings against the owner of the source of pollution to
12 recover costs or damages associated with the contamination of
13 surface water or groundwater caused by those pollutants.
14 Research projects funded by the department, a water management
15 district, or the Department of Agriculture and Consumer
16 Services to develop or demonstrate interim measures or best
17 management practices shall be granted a presumption of
18 compliance with state water quality standards and a release
19 from the provisions of s. 376.307(5). The presumption of
20 compliance and release is ~~shall be~~ limited to the research
21 site and only for those pollutants addressed by the interim
22 measures or best management practices. Eligibility for the
23 presumption of compliance and release is ~~shall be~~ limited to
24 research projects on sites where the owner or operator of the
25 research site and the department, a water management district,
26 or the Department of Agriculture and Consumer Services have
27 entered into a contract or other agreement that, at a minimum,
28 specifies the research objectives, the cost-share
29 responsibilities of the parties, and a schedule that details
30 the beginning and ending dates of the project.

31 4. Where water quality problems are demonstrated,

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1 despite the appropriate implementation, operation, and
 2 maintenance of best management practices and other measures
 3 according to rules adopted under this paragraph, the
 4 department, a water management district, or the Department of
 5 Agriculture and Consumer Services, in consultation with the
 6 department, shall institute a reevaluation of the best
 7 management practice or other measure. Should the reevaluation
 8 determine that the best management practice or other measure
 9 requires modification, the department, a water management
 10 district, or the Department of Agriculture and Consumer
 11 Services, as appropriate, shall revise the rule to require
 12 implementation of the modified practice within a reasonable
 13 time period as specified in the rule.

14 5. Agricultural records relating to processes or
 15 methods of production, costs of production, profits, or other
 16 financial information held by the Department of Agriculture
 17 and Consumer Services pursuant to subparagraphs 3. and 4. or
 18 pursuant to any rule adopted pursuant to subparagraph 2. are
 19 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 20 of the State Constitution. Upon request, records made
 21 confidential and exempt pursuant to this subparagraph shall be
 22 released to the department or any water management district if
 23 ~~provided that~~ the confidentiality specified by this
 24 subparagraph for such records is maintained.

25 6. The provisions of subparagraphs 1. and 2. do shall
 26 not preclude the department or water management district from
 27 requiring compliance with water quality standards or with
 28 current best management practice requirements set forth in any
 29 applicable regulatory program authorized by law to protect ~~for~~
 30 ~~the purpose of protecting~~ water quality. Additionally,
 31 subparagraphs 1. and 2. are applicable only to the extent that

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1 they do not conflict with any rules adopted by the department
2 which ~~that~~ are necessary to maintain a federally delegated or
3 approved program.

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

6 (a) Delisting water bodies or water body segments from
7 the list developed under subsection (4) pursuant to the
8 guidance under subsection (5).~~†~~

9 (b) Administering ~~Administration of~~ funds to implement
10 the total maximum daily load and basin management action
11 planning programs.~~†~~

12 (c) Water quality credit ~~Procedures for pollutant~~
13 trading among the pollutant sources to a water body or water
14 body segment. By July 1, 2007, the department must initiate
15 rulemaking which provides for the following; ~~including a~~
16 ~~mechanism for the issuance and tracking of pollutant credits.~~
17 ~~Such procedures may be implemented through permits or other~~
18 ~~authorizations and must be legally binding. Prior to adopting~~
19 ~~rules for pollutant trading under this paragraph, and no later~~
20 ~~than November 30, 2006, the Department of Environmental~~
21 ~~Protection shall submit a report to the Governor, the~~
22 ~~President of the Senate, and the Speaker of the House of~~
23 ~~Representatives containing recommendations on such rules,~~
24 ~~including the proposed basis for equitable economically based~~
25 ~~agreements and the tracking and accounting of pollution~~
26 ~~credits or other similar mechanisms. Such recommendations~~
27 ~~shall be developed in cooperation with a technical advisory~~
28 ~~committee that includes experts in pollutant trading and~~
29 ~~representatives of potentially affected parties;~~

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

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1 2. A publicly accessible water quality credit trading
 2 registry to track water quality credits and trades, and to
 3 list the prices paid for such credits; provided, however, that
 4 the department shall not participate in the establishment of
 5 such prices;

6 3. Limitations on the availability and use of water
 7 quality credits, including a list of eligible pollutants or
 8 parameters and minimum water quality requirements and, where
 9 appropriate, adjustments to reflect best-management practice
 10 performance uncertainties and water-segment-specific location
 11 factors;

12 4. The timing and duration of credits and allowance
 13 for credit transferability; and

14 5. Mechanisms for determining and ensuring compliance
 15 for trades including recordkeeping, monitoring, reporting, and
 16 inspections. Generators of traded credits are responsible for
 17 achieving the load reductions upon which the credits are
 18 based.

19 (d) The total maximum daily load calculation in
 20 accordance with paragraph (6)(a) immediately upon the
 21 effective date of this act, for those eight water segments
 22 within Lake Okeechobee proper as submitted to the United
 23 States Environmental Protection Agency pursuant to subsection
 24 (2), ~~and~~

25 (e) Implementation of other specific provisions.

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

28 403.088 Water pollution operation permits;
 29 conditions.--

30 (2)

31 (e) However, if the discharge will not meet permit

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1 conditions or applicable statutes and rules, the department
2 may issue, renew, revise, or reissue the operation permit if:

3 1. The applicant is constructing, installing, or
4 placing into operation, or has submitted plans and a
5 reasonable schedule for constructing, installing, or placing
6 into operation, an approved pollution abatement facility or
7 alternative waste disposal system;

8 2. The applicant needs permission to pollute the
9 waters within the state for a period of time necessary to
10 complete research, planning, construction, installation, or
11 operation of an approved and acceptable pollution abatement
12 facility or alternative waste disposal system;

13 3. There is no present, reasonable, alternative means
14 of disposing of the waste other than by discharging it into
15 the waters of the state;

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

18 5. The discharge will not be unreasonably destructive
19 to the quality of the receiving waters; ~~or~~.

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

23 (f) A permit issued, renewed, revised, or reissued
24 pursuant to paragraph (e) shall be accompanied by an order
25 establishing a schedule for achieving compliance with all
26 permit conditions. Such permit may require compliance with
27 the accompanying order.

28 Section 10. Section 403.265, Florida Statutes, is
29 repealed.

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

31

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

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6 A bill to be entitled

7 An act relating to surface water protection
8 programs; amending s. 373.414, F.S.; providing
9 for the regulation of peat mines in certain
10 wetlands; providing legislative intent;
11 providing definitions; providing specific rule
12 authority to the Department of Environmental
13 Protection; amending s. 373.4142, F.S.;
14 providing an exemption from water quality
15 standards for permitted stormwater systems
16 within the Northwest Florida Water Management
17 District; amending s. 373.459, F.S.; deleting a
18 provision that provided exemptions from certain
19 expenditure limitations on surface water
20 protection programs; amending s. 373.4595,
21 F.S.; providing clarification that the
22 Department of Environmental Protection is
23 authorized to adopt certain criteria to prevent
24 harm to water resources; deleting a requirement
25 that certain parties are required to show that
26 a change in land use will not result in
27 phosphorus loading; amending s. 378.403, F.S.;
28 revising definitions relating to the regulation
29 of surface waters; defining the term "peat";
30 amending s. 378.503, F.S.; conforming
31 provisions; amending s. 378.804, F.S.; revising

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1 the exemption provided to certain mine
2 operators from the requirement to notify the
3 secretary of the department when beginning to
4 mine certain substances; amending s. 403.067,
5 F.S.; providing for the trading of water
6 quality credits in the total maximum daily load
7 program in areas that have adopted a basin
8 action plan; providing for rules and specifying
9 what the rules must address; amending s.
10 403.088, F.S.; providing for the revision of
11 water pollution operation permits; repealing s.
12 403.265, F.S., relating to the permitting of
13 peat mining; providing an effective date.

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