

Bill No. SB 594

Barcode 754116

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

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

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

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

373.4142 Water quality within stormwater treatment
systems.--State surface water quality standards applicable to

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

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

30 373.459 Funds for surface water improvement and
31 management.--

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

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

18 ~~(c)~~ Notwithstanding the requirements of subsection
 19 ~~(4)~~, the department shall authorize the release of money from
 20 the funds in accordance with the provisions of s. 373.501(2)
 21 and procedures in s. 373.59(4) and (5).

22 ~~(d)~~ Notwithstanding the requirements of subsection
 23 ~~(5)~~, moneys in the Ecosystem Restoration and Management Trust
 24 Fund that are not needed to meet current obligations incurred
 25 under this section shall be transferred to the State Board of
 26 Administration, to the credit of the trust fund, to be
 27 invested in the manner provided by law. Interest received on
 28 such investments shall be credited to the trust fund.

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

30 Section 4. Paragraph (c) of subsection (3) of section
 31 373.4595, Florida Statutes, are amended to read:

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1 373.4595 Lake Okeechobee Protection Program.--

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

23 (c) Lake Okeechobee Watershed Phosphorus Control
24 Program.--The Lake Okeechobee Watershed Phosphorus Control
25 Program is designed to be a multifaceted approach to reducing
26 phosphorus loads by improving the management of phosphorus
27 sources within the Lake Okeechobee watershed through continued
28 implementation of existing regulations and best management
29 practices, development and implementation of improved best
30 management practices, improvement and restoration of the
31 hydrologic function of natural and managed systems, and

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1 utilization of alternative technologies for nutrient
 2 reduction. The coordinating agencies shall facilitate the
 3 application of federal programs that offer opportunities for
 4 water quality treatment, including preservation, restoration,
 5 or creation of wetlands on agricultural lands.

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

21 a. As provided in s. 403.067(7)(c), the Department of
 22 Agriculture and Consumer Services, in consultation with the
 23 department, the district, and affected parties, shall initiate
 24 rule development for interim measures, best management
 25 practices, conservation plans, nutrient management plans, or
 26 other measures necessary for Lake Okeechobee phosphorus load
 27 reduction. The rule shall include thresholds for requiring
 28 conservation and nutrient management plans and criteria for
 29 the contents of such plans. Development of agricultural
 30 nonpoint source best management practices shall initially
 31 focus on those priority basins listed in subparagraph (b)1.

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1 The Department of Agriculture and Consumer Services, in
 2 consultation with the department, the district, and affected
 3 parties, shall conduct an ongoing program for improvement of
 4 existing and development of new interim measures or best
 5 management practices for the purpose of adoption of such
 6 practices by rule.

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

23 c. The district or department shall conduct monitoring
 24 at representative sites to verify the effectiveness of
 25 agricultural nonpoint source best management practices.

26 d. Where water quality problems are detected for
 27 agricultural nonpoint sources despite the appropriate
 28 implementation of adopted best management practices, the
 29 Department of Agriculture and Consumer Services, in
 30 consultation with the other coordinating agencies and affected
 31 parties, shall institute a reevaluation of the best management

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1 | practices and make appropriate changes to the rule adopting
2 | best management practices.

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

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

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1 | sources of phosphorus. Nothing in this sub-paragraph shall
 2 | affect the authority of the department or the district to
 3 | adopt basin-specific criteria under Part IV of this Chapter to
 4 | prevent harm to the water resources of the district.

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

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

17 | d. Where water quality problems are detected for
 18 | nonagricultural nonpoint sources despite the appropriate
 19 | implementation of adopted best management practices, the
 20 | department and the district shall institute a reevaluation of
 21 | the best management practices.

22 | 3. The provisions of subparagraphs 1. and 2. shall not
 23 | preclude the department or the district from requiring
 24 | compliance with water quality standards or with current best
 25 | management practices requirements set forth in any applicable
 26 | regulatory program authorized by law for the purpose of
 27 | protecting water quality. Additionally, subparagraphs 1. and
 28 | 2. are applicable only to the extent that they do not conflict
 29 | with any rules promulgated by the department that are
 30 | necessary to maintain a federally delegated or approved
 31 | program.

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

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

30 6.a. The department shall require all entities
 31 disposing of domestic wastewater residuals within the Lake

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1 Okeechobee watershed and the remaining areas of Okeechobee,
 2 Glades, and Hendry Counties to develop and submit to the
 3 department an agricultural use plan that limits applications
 4 based upon phosphorus loading. By July 1, 2005, phosphorus
 5 concentrations originating from these application sites shall
 6 not exceed the limits established in the district's WOD
 7 program.

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

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1 rate increase under the rules of the Public Service Commission
 2 and shall be exempt from such rules. Utilities using the
 3 provisions of this section may immediately include in their
 4 sewer invoicing the new environmental protection disposal fee.
 5 Proceeds from this environmental protection disposal fee shall
 6 be used for treatment and disposal of wastewater residuals,
 7 including any treatment technology that helps reduce the
 8 volume of residuals that require final disposal, but such
 9 proceeds shall not be used for transportation or shipment
 10 costs for disposal or any costs relating to the land
 11 application of residuals in the Lake Okeechobee watershed.

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

30 7. The Department of Health shall require all entities
 31 disposing of septage within the Lake Okeechobee watershed and

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1 the remaining areas of Okeechobee, Glades, and Hendry Counties
 2 to develop and submit to that agency an agricultural use plan
 3 that limits applications based upon phosphorus loading. By
 4 July 1, 2005, phosphorus concentrations originating from these
 5 application sites shall not exceed the limits established in
 6 the district's WOD program.

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

16 ~~9. Prior to authorizing a discharge into works of the~~
 17 ~~district, the district shall require responsible parties to~~
 18 ~~demonstrate that proposed changes in land use will not result~~
 19 ~~in increased phosphorus loading over that of existing land~~
 20 ~~uses.~~

21 ~~9.10.~~ The district, the department, or the Department
 22 of Agriculture and Consumer Services, as appropriate, shall
 23 implement those alternative nutrient reduction technologies
 24 determined to be feasible pursuant to subparagraph (d)6.

25 (d) Lake Okeechobee Research and Water Quality
 26 Monitoring Program.--The district, in cooperation with the
 27 other coordinating agencies, shall establish a Lake Okeechobee
 28 Research and Water Quality Monitoring Program that builds upon
 29 the district's existing Lake Okeechobee research program. The
 30 program shall:

31 1. Evaluate all available existing water quality data

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1 concerning total phosphorus in the Lake Okeechobee watershed,
 2 develop a water quality baseline to represent existing
 3 conditions for total phosphorus, monitor long-term ecological
 4 changes, including water quality for total phosphorus, and
 5 measure compliance with water quality standards for total
 6 phosphorus, including the total maximum daily load for Lake
 7 Okeechobee as established pursuant to s. 403.067. The district
 8 shall also implement a total phosphorus monitoring program at
 9 all inflow structures to Lake Okeechobee.

10 2. Develop a Lake Okeechobee water quality model that
 11 reasonably represents phosphorus dynamics of the lake and
 12 incorporates an uncertainty analysis associated with model
 13 predictions.

14 3. Determine the relative contribution of phosphorus
 15 from all identifiable sources and all primary and secondary
 16 land uses.

17 4. Conduct an assessment of the sources of phosphorus
 18 from the Upper Kissimmee Chain-of-Lakes and Lake Istokpoga,
 19 and their relative contribution to the water quality of Lake
 20 Okeechobee. The results of this assessment shall be used by
 21 the coordinating agencies to develop interim measures, best
 22 management practices, or regulation, as applicable.

23 5. Assess current water management practices within
 24 the Lake Okeechobee watershed and develop recommendations for
 25 structural and operational improvements. Such recommendations
 26 shall balance water supply, flood control, estuarine salinity,
 27 maintenance of a healthy lake littoral zone, and water quality
 28 considerations.

29 6. Evaluate the feasibility of alternative nutrient
 30 reduction technologies, including sediment traps, canal and
 31 ditch maintenance, fish production or other aquaculture,

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1 bioenergy conversion processes, and algal or other biological
2 treatment technologies.

3 (e) Lake Okeechobee Exotic Species Control
4 Program.--The coordinating agencies shall identify the exotic
5 species that threaten the native flora and fauna within the
6 Lake Okeechobee watershed and develop and implement measures
7 to protect the native flora and fauna.

8 (f) Lake Okeechobee Internal Phosphorus Management
9 Program.--The district, in cooperation with the other
10 coordinating agencies and interested parties, shall complete a
11 Lake Okeechobee internal phosphorus load removal feasibility
12 study. The feasibility study shall be based on technical
13 feasibility, as well as economic considerations, and address
14 all reasonable methods of phosphorus removal. If methods are
15 found to be feasible, the district shall immediately pursue
16 the design, funding, and permitting for implementing such
17 methods.

18 (g) Lake Okeechobee Protection Plan
19 implementation.--The coordinating agencies shall be jointly
20 responsible for implementing the Lake Okeechobee Protection
21 Plan, consistent with the statutory authority and
22 responsibility of each agency. Annual funding priorities shall
23 be jointly established, and the highest priority shall be
24 assigned to programs and projects that address phosphorus
25 sources that have the highest relative contribution to
26 phosphorus loading and the greatest potential for phosphorus
27 reduction. In determining funding priorities, the coordinating
28 agencies shall also consider the need for regulatory
29 compliance, the extent to which the program or project is
30 ready to proceed, and the availability of federal matching
31 funds or other nonstate funding, including public-private

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1 | partnerships. Federal and other nonstate funding shall be
2 | maximized to the greatest extent practicable.

3 | (h) Annual progress report.--Each March 1, beginning
4 | in 2006, the district shall report on implementation of this
5 | section as part of the consolidated annual report required in
6 | s. 373.036(7). The annual report shall include a summary of
7 | water quality and habitat conditions in Lake Okeechobee and
8 | the Lake Okeechobee watershed and the status of the Lake
9 | Okeechobee Construction Project. The district shall prepare
10 | the report in cooperation with the other coordinating
11 | agencies.

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

13 |
14 |

15 | ===== T I T L E A M E N D M E N T =====

16 | And the title is amended as follows:

17 | Delete everything before the enacting clause

18 |

19 | and insert:

20 | A bill to be entitled
21 | An act relating to surface water protection
22 | programs; amending s. 373.414, F.S.; providing
23 | for a conforming change; amending s. 373.4142,
24 | F.S.; providing for an exemption from water
25 | quality standards for permitted stormwater
26 | systems within the Northwest Florida Water
27 | Management District; amending s. 373.459, F.S. ;
28 | repealing a provision that repealed a
29 | subsection concerning financial match
30 | requirements and certain expenditure
31 | limitations for surface water protection

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1 programs; amending s. 373.4595, F.S.;

2 authorizing the Department of Environmental

3 Protection and the water management districts

4 to adopt certain criteria for protecting water

5 resources; removing a requirement that

6 responsible parties demonstrate that proposed

7 changes will not increase phosphorous loading;

8 providing an effective date.

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