

1 quality credits in the total maximum daily load
2 program in areas that have adopted a basin
3 action plan; providing for rules and specifying
4 what the rules must address; amending s.
5 403.088, F.S.; providing for the revision of
6 water pollution operation permits; repealing s.
7 403.265, F.S., relating to the permitting of
8 peat mining; providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
11

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

15 373.414 Additional criteria for activities in surface
16 waters and wetlands.--

17 (6)

18 (e) The Legislature recognizes that the state's
19 horticultural industry contributes to the economic strength of
20 Florida and that high-quality peat is a limited resource that
21 is an important component of horticultural production. The
22 Legislature further recognizes that obtaining high-quality
23 peat typically and uniquely requires the mining of wetlands
24 and other surface waters and that the use of recycled and
25 renewable material to replace or reduce the use of natural
26 peat is necessary for the future of the horticultural
27 industry.

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

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

1 b. "Horticultural industry" means the industry that
2 cultivates plants, including, but not limited to, trees,
3 shrubs, flowers, annuals, perennials, tropical foliage,
4 liners, ferns, vines, bulbs, grafts, scions, or buds, but
5 excludes turf grasses grown or kept for or capable of
6 propagation or distribution for retail, wholesale, or
7 rewholesale purposes.

8 2. The department shall develop rules for permitting
9 and mitigation of peat mines in herbaceous or historically
10 herbaceous wetlands where high quality peat is extracted
11 exclusively for use in the horticultural industry provided:

12 a. The permitting and mitigation rules shall be
13 applicable only at a mine where no less than 80 percent of the
14 extracted peat is high quality peat and the high quality peat
15 is used in products that incorporate other renewable or
16 recycled materials;

17 b. No extraction is occurring in the underlying sand
18 or rock strata;

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

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

24 3. In adopting rules as directed in subparagraph 2.,
25 design modifications shall not be required to reduce or
26 eliminate adverse impacts to herbaceous wetlands that score
27 below a specific value, as provided by rule using the uniform
28 mitigation assessment method of evaluation, except to require
29 that the project meet water quality standards, not cause
30 adverse offsite flooding, not adversely impact significant
31 historical and archeological resources pursuant to s. 267.061,

1 and not cause adverse impacts to listed species or their
2 habitats. In assessing mitigation for mines that are not
3 required to reduce or eliminate adverse impacts, retaining a
4 percentage of the reclaimed wetland as open water shall be
5 deemed appropriate wetland mitigation. The rules must
6 establish the amount of open water allowable as mitigation
7 based upon a consideration of the type and amount of other
8 wetland mitigation proposed, the value of those wetlands as
9 evaluated using the uniform mitigation assessment method, and
10 the amount of preservation of wetlands. The amount of open
11 water shall not exceed 60 percent of the premining wetlands
12 within the extracted area.

13 4. Rule 62-345.600, Florida Administrative Code, shall
14 not be applied to mitigation for mines qualifying under this
15 paragraph.

16 5. The department shall initiate rulemaking within 90
17 days after July 1, 2007, and water management districts may
18 implement the proposed rules without adoption pursuant to s.
19 120.54.

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

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

28 373.4142 Water quality within stormwater treatment
29 systems.--State surface water quality standards applicable to
30 waters of the state, as defined in s. 403.031(13), do shall
31 not apply within a stormwater management system that which is

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

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

29 | 373.459 Funds for surface water improvement and
30 | management.--
31 |

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

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

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 must ~~shall~~ address measures to be taken
16 | by the coordinating agencies during any best management
17 | practice reevaluation performed pursuant to sub-subparagraph
18 | d. The department shall use best professional judgment in
19 | making the 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 must ~~shall~~ include thresholds for
28 | requiring conservation and nutrient management plans and
29 | criteria for the contents of such plans. Development of
30 | agricultural nonpoint source best management practices shall
31 | initially focus on those priority basins listed in

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

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 must ~~shall~~ address measures to be
13 | taken by the department and the district during any best
14 | management practice reevaluation performed pursuant to
15 | sub-subparagraph 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 must ~~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

1 sources of phosphorus. This sub-subparagraph does not affect
2 the authority of the department or the districts to adopt
3 basin-specific criteria to prevent harm to the water resources
4 of the district under this part.

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 ~~must shall~~
9 implement interim measures or best management practices and be
10 subject 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. ~~do shall~~
23 not 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 if ~~to the extent that~~ they do not
29 conflict with any rules adopted promulgated by the department
30 that are necessary to maintain a federally delegated or
31 approved program.

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 shall ~~will~~
18 be 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

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 under ~~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 shall ~~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 is ~~shall not be considered a~~

1 rate increase under the rules of the Public Service Commission
2 and ~~is 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 must
6 ~~shall~~ be used for the treatment and disposal of wastewater
7 residuals, including any treatment technology that helps
8 reduce the volume of residuals that require final disposal,
9 but such proceeds shall not be used for transportation or
10 shipment 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 must ~~shall~~ be
28 open to the Florida Public Service Commission and the Auditor
29 General for review upon request.

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

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 manure application, based upon phosphorus loading. Such rules
13 may include criteria and thresholds for the requirement to
14 develop a conservation or nutrient management plan,
15 requirements for plan approval, and recordkeeping
16 requirements.

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

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

26 Section 5. Section 378.403, Florida Statutes, is
27 amended to read:

28 378.403 Definitions.--As used in this part, the term:

29 (1) "Agency" means an official, committee, department,
30 commission, officer, division, authority, bureau, council,
31 board, section, or unit of government within the state,

1 including a county, municipal, or other local or regional
2 entity or special district.

3 (2) "Annual report" means a detailed report, including
4 maps and aerial photographs, submitted for each mine, which
5 describes and delineates mining operations and reclamation or
6 restoration activities undertaken in the previous calendar
7 year.

8 (3) "Department" means the Department of Environmental
9 Protection.

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

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

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

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

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

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

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

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

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

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

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

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

19 ~~(16)(15)~~ "Reclamation" means the reasonable
20 rehabilitation of land where resource extraction has occurred.

21 ~~(17)(16)~~ "Resource" means soil, clay, peat, stone,
22 gravel, sand, limerock, metallic ore, or any other solid
23 substance of commercial value found in natural deposits on or
24 in the earth, except phosphate, which is regulated by part
25 III.

26 ~~(18)(17)~~ "Secretary" means the Secretary of
27 Environmental Protection.

28 ~~(19)(18)~~ "Wetlands" means any area as defined in s.
29 373.019, as delineated using the methodology adopted by rule
30 and ratified pursuant to s. 373.421(1). For areas included in
31 an approved conceptual reclamation plan or modification

1 application submitted prior to July 1, 1994, wetlands means
2 any area having dominant vegetation as defined and listed in
3 rule 67-301.200 ~~Department of Environmental Regulation rule~~
4 ~~17-4.022~~, Florida Administrative Code, regardless of whether
5 the area is within the department's ~~Department of~~
6 ~~Environmental Regulation's~~ jurisdiction or whether the water
7 bodies are connected.

8 Section 6. Paragraph (d) of subsection (7) of section
9 378.503, Florida Statutes, is amended to read:

10 378.503 Limestone reclamation performance standards.--

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

13 (d) Slope requirements of the United States Army Corps
14 of Engineers or the department under part IV of chapter 373 ~~of~~
15 ~~Environmental Regulation under the Warren S. Henderson~~
16 ~~Wetlands Protection Act of 1984.~~

17 Section 7. Section 378.804, Florida Statutes, is
18 amended to read:

19 378.804 Exemption.--Any operator who extracts
20 resources from ~~1 acre or less at any one site in a given year,~~
21 not to exceed 20 ~~5~~ acres over the life of the mine, or who
22 extracts peat for agricultural purposes is exempt from the
23 provisions of s. 378.801.

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

26 403.067 Establishment and implementation of total
27 maximum daily loads.--

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

30 (a) Basin management action plans.--

31

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

20 2. A basin management action plan ~~must shall~~ equitably
21 allocate, pursuant to paragraph (6)(b), pollutant reductions
22 to individual basins, as a whole to all basins, or to each
23 identified point source or category of nonpoint sources, as
24 appropriate. For nonpoint sources for which best management
25 practices have been adopted, the initial requirement specified
26 by the plan ~~must shall~~ be those practices developed pursuant
27 to paragraph (c). The plan shall, in accordance with rules
28 adopted pursuant to paragraph (8)(c), allow point or nonpoint
29 sources that will achieve greater pollutant load reductions
30 than required by a load or wasteload allocation in an adopted
31 TMDL to generate, register, and trade water quality credits

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

20 3. The basin management action planning process is
21 intended to involve the broadest possible range of interested
22 parties, with the objective of encouraging the greatest amount
23 of cooperation and consensus possible. In developing a basin
24 management action plan, the department shall assure that key
25 stakeholders, including, but not limited to, applicable local
26 governments, water management districts, the Department of
27 Agriculture and Consumer Services, other appropriate state
28 agencies, local soil and water conservation districts,
29 environmental groups, regulated interests, and affected
30 pollution sources, are invited to participate in the process.
31 The department shall hold at least one public meeting in the

1 vicinity of the watershed or basin to discuss and receive
2 comments during the planning process and shall otherwise
3 encourage public participation to the greatest practicable
4 extent. Notice of the public meeting ~~must shall~~ be published
5 in a newspaper of general circulation in each county in which
6 the watershed or basin lies not less than 5 days nor more than
7 15 days before the public meeting. A basin management action
8 plan shall not supplant or otherwise alter any assessment made
9 under subsection (3) or subsection (4) or any calculation or
10 initial allocation.

11 4. The department shall adopt all or any part of a
12 basin management action plan and any amendment to such plan by
13 secretarial order pursuant to chapter 120 to implement the
14 provisions of this section.

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

29 6. The provisions of the department's rule relating to
30 the equitable abatement of pollutants into surface waters may
31 not be applied to water bodies or water body segments for

1 which a basin management plan that takes into account future
2 new or expanded activities or discharges has been adopted
3 pursuant to this section.

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

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

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

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

21 c. Other water quality management and restoration
22 activities, for example surface water improvement and
23 management plans approved by water management districts or
24 basin management action plans developed pursuant to this
25 subsection;

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

28 e. Public works including capital facilities; or

29 f. Land acquisition.

30 2. For a basin management action plan adopted pursuant
31 to paragraph (a) ~~subparagraph (a)4.~~, any management strategies

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

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

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

31

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

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

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

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

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

30 h. A nonpoint source discharger included in a basin
31 management action plan may be subject to enforcement action by

1 the department or a water management district based upon a
2 failure to implement the responsibilities set forth in
3 sub-subparagraph g.

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

14 (c) Best management practices.--

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

27 2. The Department of Agriculture and Consumer Services
28 may develop and adopt by rule pursuant to ss. 120.536(1) and
29 120.54 suitable interim measures, best management practices,
30 or other measures necessary to achieve the level of pollution
31 reduction established by the department for agricultural

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

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

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

28 4. Where water quality problems are demonstrated,
29 despite the appropriate implementation, operation, and
30 maintenance of best management practices and other measures
31 according to rules adopted under this paragraph, the

1 department, a water management district, or the Department of
2 Agriculture and Consumer Services, in consultation with the
3 department, shall institute a reevaluation of the best
4 management practice or other measure. Should the reevaluation
5 determine that the best management practice or other measure
6 requires modification, the department, a water management
7 district, or the Department of Agriculture and Consumer
8 Services, as appropriate, shall revise the rule to require
9 implementation of the modified practice within a reasonable
10 time period as specified in the rule.

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

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

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

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

6 (b) Administering ~~Administration of~~ funds to implement
7 the total maximum daily load and basin management action
8 planning programs.†

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

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

29 2. A publicly accessible water quality credit trading
30 registry that tracks water quality credits and trades and
31 lists the prices paid for such credits; provided, however,

1 that the department shall not participate in the establishment
2 of such prices;

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

9 4. The timing and duration of credits and allowance
10 for credit transferability; and

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

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

22 (e) Implementation of other specific provisions.

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

25 403.088 Water pollution operation permits;
26 conditions.--

27 (2)

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

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

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

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

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

16 5. The discharge will not be unreasonably destructive
17 to the quality of the receiving waters; ~~or-~~

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

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

26 Section 10. Section 403.265, Florida Statutes, is
27 repealed.

28 Section 11. This act shall take effect July 1, 2007.
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 594

4 The committee substitute provides legislative recognition that
5 peat harvesting represents a unique industry which occurs in
6 specific wetlands in the state. It provides the Department of
7 Environmental Protection with rule making authority to oversee
8 peat mining used exclusively in the horticultural industry.
9 It updates current statutory language to conform to provisions
10 in the committee substitute and repeals s. 403.265, F.S., as
11 provisions were transferred to Chapter 373, F.S. The committee
12 substitute corrects language to ensure that existing variance
13 provisions will also be applicable to the Northwest Florida
14 Water Management District ERP program, which was created last
15 year.

16 It provides conforming language for consistency ensuring that
17 state surface water quality standards do not apply within a
18 stormwater management system designed, constructed, or
19 operated in accordance with a valid permit issued under the
20 NFWFMD ERP program.

21 It permanently removes the requirement for the Northwest
22 Florida and Suwannee River water management districts, or
23 financially disadvantaged small local governments to provide a
24 50 percent match in funds towards the implementation of the
25 Surface Water Improvement and Management (SWIM) program.

26 Finally, the committee substitute provides clarity on the
27 South Florida Water Management Districts authority to adopt
28 basin specific criteria that prevent harm to the resources of
29 Lake Okeechobee and its watershed as well as authorizing the
30 DEP to approve water quality credit trading as part of Basin
31 Management Action Plans created to implement total maximum
 daily loads.