

House Bill No. 1855

An act relating to natural resources; creating part IV of ch. 161, F.S., consisting of ss. 161.70, 161.71, 161.72, 161.73, 161.74, 161.75, and 161.76, F.S.; providing definitions; providing findings and intent; requiring that the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, and the Department of Agriculture and Consumer Services to establish the Florida Oceans and Coastal Council; providing for membership of the council; providing for the Secretary of Environmental Protection and the executive director of the Fish and Wildlife Conservation Commission to jointly chair the council; providing responsibilities of the council; requiring that the council undertake a research review; providing for content and access to the review; requiring the council to prepare a research plan that recommends research priorities; providing for annual updates of the plan; providing for distribution of the plan to the Legislature; prepare an oceans and coastal resource assessment; providing for contents of the assessment; requiring the council to establish objectives for research projects; providing for a pilot project; authorizing rulemaking by the Department of Environmental Protection and the Fish and Wildlife Conservation Commission; preserving authority otherwise granted to the commission and state agencies; amending s. 376.121, F.S.; providing an alternative to the compensation schedule for calculating natural resources damages; revising procedures relating to damage assessment; removing a restriction on amount of compensation; amending s. 380.06, F.S.; revising factors for determining a substantial deviation in developments of regional impact; amending s. 380.23, F.S.; revising the federally licensed or permitted activities subject to consistency review under the coastal management program; requiring certain environmental impact reports to be data and information for the state's consistency reviews; amending s. 403.067, F.S.; providing that initial allocation of allowable pollutant loads between point and non-point sources may be developed as part of a total maximum daily load; establishing criteria for establishing initial and detailed allocations to attain pollutant reductions; authorizing the Department of Environmental Protection to adopt phased total maximum daily loads that establish incremental total maximum daily loads under certain conditions; requiring the development of basin management action plans; requiring that basin management action plans integrate the appropriate management strategies to achieve the total maximum daily loads; requiring that the plans establish a schedule for implementing management strategies; requiring that a basin management action plan equitably allocate pollutant reductions to individual basins or to each identified point source or category of nonpoint sources; authorizing that plans may provide pollutant load reduction credits to dischargers that have implemented strategies to reduce pollutant loads prior to the development of the basin management action plan; requiring that the plan identify mechanisms by which potential future sources of pollution will be addressed;

requiring that the department assure key stakeholder participation in the basin management action planning process; requiring that the department hold at least one public meeting to discuss and receive comments during the planning process; providing notice requirements; requiring that the department adopt all or part of a basin management action plan by secretarial order pursuant to ch. 120, F.S.; requiring that basin management action plans that alter that calculation or initial allocation of a total maximum daily load, the revised calculation, or initial allocation must be adopted by rule; requiring periodic evaluation of basin management action plans; requiring that revisions to plans be made by the department in cooperation with stakeholders; providing for basin plan revisions regarding nonpoint pollutant sources; requiring that adopted basin management action plans be included in subsequent NPDES permits or permit modifications; providing that implementation of a total maximum daily load or basin management action plan for holders of an NPDES municipal separate stormwater sewer system permit may be achieved through the use of best management practices; providing that basin management action plans do not relieve a discharger from the requirement to obtain, renew, or modify an NPDES permit or to abide by other requirements of the permit; requiring that plan management strategies be completed pursuant to the schedule set forth in the basin management action plan and providing that the implementation schedule may extend beyond the term of an NPDES permit; providing that management strategies and pollution reduction requirements in a basin management action plan for a specific pollutant of concern are not subject to a challenge under ch. 120, F.S., at the time they are incorporated, in identical form, into a subsequent NPDES permit or permit modification; requiring timely adoption and implementation of pollutant reduction actions for nonagricultural pollutant sources not subject to NPDES permitting but regulated pursuant to other state, regional, or local regulatory programs; requiring timely implementation of best management practices for nonpoint pollutant source dischargers not subject to permitting at the time a basin management action plan is adopted; providing for presumption of compliance under certain circumstances; providing for enforcement action by the department or a water management district; requiring that a landowner, discharger, or other responsible person that is implementing management strategies specified in an adopted basin management action plan will not be required by permit, enforcement action, or otherwise to implement additional management strategies to reduce pollutant loads; providing that the authority of the department to amend a basin management plan is not limited; requiring that the department verify at representative sites the effectiveness of interim measures, best management practices, and other measures adopted by rule; requiring that the department use its best professional judgment in making initial verifications that best management practices are not effective; requiring notice to the appropriate water management district and the Department of Agriculture and Consumer Services under certain conditions; establishing a presumption of

compliance for implementation of practices initially verified to be effective or verified to be effective at representative sites; limiting the institution of proceedings by the department against the owner of a source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants; requiring the Department of Agriculture and Consumer Services to institute a reevaluation of best management practices or other measures where water quality problems are detected or predicted during the development or amendment of a basin management action plan; providing for rule revisions; providing the department with rulemaking authority; requiring that a report be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing recommendations on rules for pollutant trading prior to the adoption of those rules; requiring that recommendations be developed in cooperation with a technical advisory committee containing experts in pollutant trading and representatives of potentially affected parties; deleting a requirement that no pollutant trading program shall become effective prior to review and ratification by the Legislature; amending ss. 373.4595 and 570.085, F.S.; correcting cross-references; providing an effective date.

WHEREAS, Florida's coastline is the second longest coastline of the fifty states, and

WHEREAS, the oceans and coastal resources of the state are held in trust for the people of the state and should be protected and managed for the benefit of current and future generations, and

WHEREAS, it is imperative for the state, regional, and local governments, academic and environmental communities, and agricultural and fishery interests to commit to working together to manage, rehabilitate, and protect Florida's oceans and coastal resources, NOW, THEREFORE,

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

Section 1. Part IV of chapter 161, Florida Statutes, consisting of sections 161.70, 161.71, 161.72, 161.73, 161.74, 161.75, and 161.76, is created to read:

PART IV

OCEANS AND COASTAL RESOURCES MANAGEMENT ACT

161.70 Short title.—This part may be cited as the “Oceans and Coastal Resources Act.”

161.71 Definitions.—As used in this part, the term:

(1) “Commission” means the Fish and Wildlife Conservation Commission created in s. 9, Art. IV of the State Constitution.

(2) “Council” means the Florida Oceans and Coastal Council created by this act.

(3) “Department” means the Department of Environmental Protection.

(4) “Executive director” means the Executive Director of the Fish and Wildlife Conservation Commission.

(5) “Oceans” means those waters from the mean high-water line outward to the state’s jurisdictional boundary and those United States waters in which this state has an interest.

(6) “Secretary” means the Secretary of the Department of Environmental Protection.

161.72 Findings and intent.—

(1) The Legislature finds that:

(a) The oceans and coastal resources of the United States are of national importance;

(b) The U.S. Commission on Ocean Policy has made 212 recommendations and the President has responded with an Ocean Action Plan to better protect and preserve our oceans;

(c) Florida’s ocean and coastal resources contribute significantly to the state economy by supporting multiple beneficial uses and a wide range of economic value that requires balancing of competing considerations;

(d) Florida’s oceans and coastal resources comprise habitats that support endangered and threatened species and extraordinary marine biodiversity;

(e) The coral reefs of southeast Florida and the barrier reef of the Florida Keys, the only barrier reef in the United States, are a national treasure and must continue to be protected;

(f) It is Florida’s responsibility to be a national leader on oceans and coastal protection;

(g) It is in the state’s best interest to ensure the productivity and health of our oceans and coastal resources;

(h) Florida’s marine biodiversity at the species, natural community, seascape, and regional levels must be protected by restoring, rehabilitating, and maintaining the quality and natural function of oceans and coastal resources through an ecosystem-based management approach, as recommended by the U.S. Commission on Ocean Policy;

(i) The quality of our beaches and fisheries resources must be protected to ensure the public health;

(j) Protection must be provided to highly migratory marine species, such as sea turtles and sea birds;

(k) Opportunities must be increased to provide natural resource-based recreation and encourage responsibility and stewardship through educational opportunities;

(l) Oceans and coastal research must be prioritized to ensure coordination among researchers and managers and long-term programs to observe, monitor, and assess oceans, and coastal resources must be developed and implemented;

(m) Development of coastal areas should be both economically and environmentally sustainable, and inappropriate growth in ecologically fragile or hazard-prone areas should be discouraged; and

(n) Conservation and restoration of coastal habitat could be enhanced through the development of regional and local goals, the institution of a program dedicated to coastal and estuarine conservation, better coordination of the state's activities relating to habitat, and improved research, monitoring, and assessment.

(2) It is the intent of the Legislature to create the Oceans and Coastal Resources Council to assist the state in identifying new management strategies to achieve the goal of maximizing the protection and conservation of ocean and coastal resources while recognizing their economic benefits.

(3) It is further the intent of the Legislature that the council shall encourage and support the development of creative public-private partnerships, pursue opportunities to leverage funds, and work in coordination with federal agencies and programs to maximize opportunities for the state's receipt of federal funds.

161.73 Composition.—The Florida Oceans and Coastal Council is created within the Department of Environmental Protection and shall consist of 18 members. The secretary, the executive director, and the commissioner of the Department of Agriculture and Consumer Services, or their designees, shall serve as ex-officio members of the council. The council shall be jointly chaired by the secretary and the executive director. The 15 voting members of the council shall be appointed, within 60 days after this act becomes law, in the following manner:

(1) Five members shall be appointed by the Secretary of the Department of Environmental Protection which will be comprised of one scientist specializing in each of the following fields: wetlands and watersheds; nearshore waters or estuaries; offshore waters or open oceans; hydrology and aquatic systems; and coastal geology or coastal erosion and shorelines.

(2) Five members shall be appointed by the Executive Director of the Fish and Wildlife Conservation Commission which will be comprised of one scientist specializing in each of the following fields: resource management; wildlife habitat management; fishery habitat management; coastal and pelagic birdlife; and marine biotechnology.

(3) Five members shall be appointed by the Commissioner of the Department of Agriculture and Consumer Services. These appointments shall be selected from a list of at least eight individuals submitted to the commissioner by the Florida Ocean Alliance. The individuals selected by the Florida Ocean Alliance shall be chosen from the following disciplines or groups: sportsfishing; ports; cruise industry; energy industry; ecotourism; private

marine research institutes; universities; aquaculture; maritime law; commercial fisheries; socioeconomic; marine science education; and environmental groups.

(4) Appointments made by the secretary and executive director shall be to terms of 4 years each. Appointments made by the Commissioner of the Department of Agriculture and Consumer Services shall be to terms of 2 years. Members shall serve until their successors are appointed. Vacancies shall be filled in the manner of the original appointment for the remainder of the term that is vacated.

(5) Members shall serve without compensation, but are entitled to reimbursement of travel and per diem expenses pursuant to s. 112.061, relating to completing their duties and responsibilities.

161.74 Responsibilities.—

(1) RESEARCH REVIEW.—Prior to the development of the research plan the council shall review and compile the existing, ongoing, and planned ocean and coastal research and monitoring activities relevant to this state. Included in this review shall be the “Florida’s Ocean Strategies Final Report to the Governor” by the Florida Governor’s Oceans Committee dated June 1999. To aid the council in fulfilling this requirement, all public agencies must submit the information requested by the council, and private research institutes are encouraged to submit relevant information to the maximum extent practicable. Upon receiving the information required by this subsection, the council shall develop a library to serve as a repository of information for use by those involved in ocean and coastal research. The council shall develop an index of this information to assist researchers in accessing the information.

(2) RESEARCH PLAN.—The council must complete a Florida Oceans and Coastal Scientific Research Plan which shall be used by the Legislature in making funding decisions. The plan must recommend priorities for scientific research projects. The plan must be submitted to the President of the Senate and the Speaker of the House of Representatives by January 15, 2006. Thereafter, annual updates to the plan must be submitted to the President of the Senate and the Speaker of the House of Representatives by February 1 of each year. The research projects contained in the plan must meet at least one of the following objectives:

(a) Exploring opportunities to improve coastal ecosystem functioning and health through watershed approaches to managing freshwater and improving water quality.

(b) Evaluating current habitat conservation, restoring and maintaining programs, and recommending improvements in the areas of research, monitoring and assessment.

(c) Promoting marine biomedical or biotechnology research and product discovery and development to enhance Florida’s opportunity to maximize the beneficial uses of marine-derived bioproducts and reduce negative health impacts of marine organisms.

(d) Creating consensus and strategies on how Florida can contribute to sustainable management of ocean wildlife and habitat.

(e) Documenting through examination of existing and new research the impact of marine and coastal debris and current best practices to reduce debris.

(f) Providing methods to achieve sustainable fisheries through better science, governance, stock enhancements and consideration of habitat and secondary impacts such as bycatch.

(g) Documenting gaps in current protection strategies for marine mammals.

(h) Promoting research and new methods to preserve and restore coral reefs and other coral communities.

(i) Achieving sustainable marine aquaculture.

(j) Reviewing existing and ongoing studies on preventing and responding to the spread of invasive and nonnative marine and estuarine species.

(k) Exploring ocean-based renewable energy technologies and climate change-related impacts to Florida's coastal area.

(l) Enhancing science education opportunities such as virtual marine technology centers.

(m) Sustaining abundant birdlife and encouraging the recreational and economic benefits associated with ocean and coastal wildlife observation and photography.

(n) Developing a statewide analysis of the economic value associated with ocean and coastal resources, developing economic baseline data, methodologies, and consistent measures of oceans and coastal resource economic activity and value, and developing reports that educate Floridians, the National Ocean Policy Commission, local, state, and federal agencies and others on the importance of ocean and coastal resources.

(3) RESOURCE ASSESSMENT.—By December 1, 2006, the council shall prepare a comprehensive oceans and coastal resource assessment that shall serve as a baseline of information to be used in assisting in its research plan. The resource assessment must include:

(a) Patterns of use of oceans and coastal resources;

(b) Natural resource features, including, but not limited to, habitat, bathymetry, surficial geology, circulation, and tidal currents;

(c) The location of current and proposed oceans and coastal research and monitoring infrastructure;

(d) Industrial, commercial, coastal observing system, ships, subs, and recreational transit patterns; and

(e) Socioeconomic trends of the state's oceans and coastal resources and oceans and coastal economy.

161.75 Rulemaking authority.—The department and the commission may adopt rules, pursuant to ss. 120.536(1) and 120.54, to administer this part.

161.76 Preservation of authority.—This part does not restrict or limit the authority otherwise granted to the commission, or other state agencies by law.

Section 2. In order to protect, conserve, and restore declining recreational fisheries, stimulate economic growth, and help meet the state's seafood needs, the council created in section 161.73, Florida Statutes, shall, as a pilot project to demonstrate the feasibility of collaborative research efforts, direct research by two or more marine science research entities to evaluate the potential for inland, recirculating, and aquaculture technology to produce marine species and to implement new marine stock enhancement initiatives. This project shall be designed to expand new aquaculture and marine stock enhancement technology to include additional species and evaluate the potential to successfully enhance those marine stocks. The council shall present to the Governor, the President of the Senate, and the Speaker of the House of Representatives the results of this research project by February 1, 2007.

Section 3. Section 376.121, Florida Statutes, is amended to read:

376.121 Liability for damage to natural resources.—The Legislature finds that extensive damage to the state's natural resources is the likely result of a pollutant discharge and that it is essential that the state adequately assess and recover the cost of such damage from responsible parties. It is the state's goal to recover the costs of restoration from the responsible parties and to restore damaged natural resources to their predischARGE condition. In many instances, however, restoration is not technically feasible. In such instances, the state has the responsibility to its citizens to recover the cost of all damage to natural resources. To ensure that the public does not bear a substantial loss as a result of the destruction of natural resources, the procedures set out in this section shall be used to assess the cost of damage to such resources. Natural resources include coastal waters, wetlands, estuaries, tidal flats, beaches, lands adjoining the seacoasts of the state, and all living things except human beings. The Legislature recognizes the difficulty historically encountered in calculating the value of damaged natural resources. The value of certain qualities of the state's natural resources is not readily quantifiable, yet the resources and their qualities have an intrinsic value to the residents of the state, and any damage to natural resources and their qualities should not be dismissed as nonrecoverable merely because of the difficulty in quantifying their value. In order to avoid unnecessary speculation and expenditure of limited resources to determine these values, the Legislature hereby establishes a schedule for compensation for damage to the state's natural resources and the quality of said resources. As an alternative to the compensation schedule described in subsections (4), (5), (6), and (9), the department, when no responsible party is

identified, when a responsible party opts out of the formula pursuant to paragraph (10)(a), or when the department conducts a cooperative damage assessment with federal agencies, may use methods of calculating natural resources damages in accordance with federal rules implementing the Oil Pollution Act of 1990, as amended.

(1) The department shall assess and recover from responsible parties the compensation for the injury or destruction of natural resources, including, but not limited to, the death or injury of living things and damage to or destruction of habitat, resulting from pollutant discharges prohibited by s. 376.041. The amount of compensation and any costs of assessing damage and recovering compensation received by the department shall be deposited into the Florida Coastal Protection Trust Fund pursuant to s. 376.12 and disbursed according to subsection (11). Whoever violates, or causes to be violated, s. 376.041 shall be liable to the state for damage to natural resources.

(2) The compensation schedule for damage to natural resources is based upon the cost of restoration and the loss of ecological, consumptive, intrinsic, recreational, scientific, economic, aesthetic, and educational values of such injured or destroyed resources. The compensation schedule takes into account:

(a) The volume of the discharge.

(b) The characteristics of the pollutant discharged. The toxicity, dispersibility, solubility, and persistence characteristics of a pollutant as affects the severity of the effects on the receiving environment, living things, and recreational and aesthetic resources. Pollutants have varying propensities to injure natural resources based upon their potential exposure and effects. Exposure to natural resources is determined by the dispersibility and degradability of the pollutant. Effects to natural resources result from mechanical injury and toxicity and include physical contamination, smothering, feeding prevention, immobilization, respiratory distress, direct mortality, lost recruitment of larvae and juveniles killed, changes in the food web, and chronic effects of sublethal levels of contaminants in tissues or the environment. For purposes of the compensation schedule, pollutants have been ranked for their propensity to cause injury to natural resources based upon a combination of their acute toxicity, mechanical injury, degradability, and dispersibility characteristics on a 1-to-3 relative scale with Category 1 containing the pollutants with the greatest propensity to cause injury to natural resources. The following pollutants are categorized:

1. Category 1: bunker and residual fuel.

2. Category 2: waste oils, crude oil, lubricating oil, asphalt, and tars.

3. Category 3: hydraulic fluids, numbers 1 and 2 diesel fuels, heating oil, jet aviation fuels, motor gasoline, including aviation gasoline, kerosene, stationary turbine fuels, ammonia and its derivatives, and chlorine and its derivatives.

The department shall adopt rules establishing the pollutant category of pesticides and other pollutants as defined in s. 376.031 and not listed in this paragraph.

(c) The type and sensitivity of natural resources affected by a discharge, determined by the following factors:

1. The location of a discharge. Inshore discharges are discharges that occur within waters under the jurisdiction of the department and within an area extending seaward from the coastline of the state to a point 1 statute mile seaward of the coastline. Nearshore discharges are discharges that occur more than 1 statute mile, but within 3 statute miles, seaward of the coastline. Offshore discharges are discharges that occur more than 3 statute miles seaward of the coastline.

2. The location of the discharge with respect to special management areas designated because of their unique habitats; living resources; recreational use; aesthetic importance; and other ecological, educational, consumptive, intrinsic, scientific, and economic values of the natural resources located therein. Special management areas are state parks; recreation areas; national parks, seashores, estuarine research reserves, marine sanctuaries, wildlife refuges, and national estuary program water bodies; state aquatic preserves and reserves; classified shellfish harvesting areas; areas of critical state concern; federally designated critical habitat for endangered or threatened species; and outstanding Florida waters.

3. The areal or linear extent of the natural resources impacted.

(3) Compensation for damage to natural resources for any discharge of less than 25 gallons of gasoline or diesel fuel shall be \$50.

(4) Compensation schedule:

(a) The amount of compensation assessed under this schedule is calculated by: multiplying \$1 per gallon or its equivalent measurement of pollutant discharged, by the number of gallons or its equivalent measurement, times the location of the discharge factor, times the special management area factor.

(b) Added to the amount obtained in paragraph (a) is the value of the observable natural resources damaged, which is calculated by multiplying the areal or linear coverage of impacted habitat by the corresponding habitat factor, times the special management area factor.

(c) The sum of paragraphs (a) and (b) is then multiplied by the pollutant category factor.

(d) The final damage assessment figure is the sum of the amount calculated in paragraph (c) plus the compensation for death of endangered or threatened species, plus the cost of conducting the damage assessment as determined by the department.

(5)(a) The factors used in calculating the damage assessment are:

1. Location of discharge factor:

a. Discharges that originate inshore have a factor of eight. Discharges that originate nearshore have a factor of five. Discharges that originate offshore have a factor of one.

b. Compensation for damage to natural resources resulting from discharges that originate outside of state waters but that traverse the state's boundaries and therefore have an impact upon the state's natural resources shall be calculated using a location factor of one.

c. Compensation for damage to natural resources resulting from discharges of less than 10,000 gallons of pollutants which originate within 100 yards of an established terminal facility or point of routine pollutant transfer in a designated port authority as defined in s. 315.02 shall be assessed a location factor of one.

2. Special management area factor: Discharges that originate in special management areas described in subparagraph (2)(c)2. have a factor of two. Discharges that originate outside a special management area described in subparagraph (2)(c)2. have a location factor of one. For discharges that originate outside of a special management area but impact the natural resources within a special management area, the value of the natural resources damaged within the area shall be multiplied by the special management area factor of two.

3. Pollutant category factor: Discharges of category 1 pollutants have a factor of eight. Discharges of category 2 pollutants have a factor of four. Discharges of category 3 pollutants have a factor of one.

4. Habitat factor: The amount of compensation for damage to the natural resources of the state is established as follows:

a. \$10 per square foot of coral reef impacted.

b. \$1 per square foot of mangrove or seagrass impacted.

c. \$1 per linear foot of sandy beach impacted.

d. \$0.50 per square foot of live bottom, oyster reefs, worm rock, perennial algae, saltmarsh, or freshwater tidal marsh impacted.

e. \$0.05 per square foot of sand bottom or mud flats, or combination thereof, impacted.

(b) The areal and linear coverage of habitat impacted shall be determined by the department using a combination of field measurements, aerial photogrammetry, and satellite imagery. An area is impacted when the pollutant comes in contact with the habitat.

(6) It is understood that a pollutant will, by its very nature, result in damage to the flora and fauna of the waters of the state and the adjoining land. Therefore, compensation for such resources, which is difficult to calculate, is included in the compensation schedule. Not included, however, in

this base figure is compensation for the death of endangered or threatened species directly attributable to the pollutant discharged. Compensation for the death of any animal designated by rule as endangered by the Fish and Wildlife Conservation Commission is \$10,000. Compensation for the death of any animal designated by rule as threatened by the Fish and Wildlife Conservation Commission is \$5,000. These amounts are not intended to reflect the actual value of said endangered or threatened species, but are included for the purposes of this section.

(7) The owner or operator of the vessel or facility responsible for a discharge may designate a representative or agent to work with the department in assessing the amount of damage to natural resources resulting from the discharge.

(8) When assessing the amount of damages to natural resources, the department shall be assisted, if requested by the department, by representatives of other state agencies and local governments that would enhance the department's damage assessment. The Fish and Wildlife Conservation Commission shall assist the department in the assessment of damages to wildlife impacted by a pollutant discharge and shall assist the department in recovering the costs of such damages.

(9) Compensation for damage resulting from the discharge of two or more pollutants shall be calculated for the volume of each pollutant discharged. If the separate volume for each pollutant discharged cannot be determined, the highest multiplier for the pollutants discharged shall be applied to the entire volume of the spill. Compensation for commingled discharges that contact habitat shall be calculated on a proportional basis of discharged volumes. The highest multiplier for such commingled pollutants may only be applied if a reasonable proportionality of the commingled pollutants cannot be determined at the point of any contact with natural resources.

(10) For cases in which the department is authorized to use a method of natural resources damage assessment other than the compensation schedules described in subsections (4), (5), (6), and (9), the department may use the methods described in federal rules implementing the Oil Pollution Act of 1990, as amended ~~discharges of more than 30,000 gallons, the department shall, in consultation with the Game and Fresh Water Fish Commission, adopt rules by July 1, 1994, to assess compensation for the damage to natural resources based upon the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources; the diminution in the value of those resources pending restoration; and the reasonable cost of assessing those damages. The person responsible for a discharge shall be given an opportunity to consult with the department on the assessment design and restoration program.~~

(a) When a responsible party is identified and the department is not conducting a cooperative damage assessment with federal agencies ~~For discharges greater than 30,000 gallons, the person responsible has the option to pay the amount of compensation calculated pursuant to the compensation schedule established in subsection (4) or pay the amount determined by a damage assessment performed by the department. If the person responsible~~

for the discharge elects to have a damage assessment performed, then such person shall notify the department in writing of such decision within ~~30~~ 15 days after ~~identification~~ the discovery of the discharge ~~by the department~~. The decision to have a damage assessment performed to determine compensation for a discharge shall be final; the person responsible for a discharge may not later elect to use the compensation schedule for computing compensation. Failure to make such notice shall result in the amount of compensation for the total damage to natural resources being calculated based on the compensation schedule. The compensation shall be paid within 90 days after receipt of a written request from the department.

(b) In the event the person responsible for a discharge ~~greater than 30,000 gallons~~ elects to have a damage assessment performed, said person shall pay to the department an amount equal to the compensation calculated pursuant to subsection (4) for the discharge using the lesser of the volume of the discharge or a volume of 30,000 gallons. The payment shall be made within 90 days after receipt of a written request from the department.

(c) After completion of the damage assessment, the department shall advise the person responsible for the discharge of the amount of compensation due to the state. A credit shall be given for the amount paid pursuant to paragraph (b). Payment shall be made within 90 days after receipt of a written request from the department. ~~In no event shall the total compensation paid pursuant to this section be less than the dollar amount calculated pursuant to paragraph (b).~~

(11)(a) Moneys recovered by the department as compensation for damage to natural resources shall be expended only for the following purposes:

1. To the maximum extent practicable, the restoration of natural resources damaged by the discharge for which compensation is paid.
2. Restoration of damaged resources.
3. Developing restoration and enhancement techniques for natural resources.
4. Investigating methods for improving and refining techniques for containment, abatement, and removal of pollutants from the environment, especially from mangrove forests, corals, seagrasses, benthic communities, rookeries, nurseries, and other habitats which are unique to Florida's coastal environment.
5. Developing and updating the "Sensitivity of Coastal Environments and Wildlife to Spilled Oil in Florida" atlas.
6. Investigating the long-term effects of pollutant discharges on natural resources, including pelagic organisms, critical habitats, and marine ecosystems.
7. Developing an adequate wildlife rescue and rehabilitation program.
8. Expanding and enhancing the state's pollution prevention and control education program.

9. Restoring natural resources previously impacted by pollutant discharges, but never completely restored.

10. Funding alternative projects selected by the Board of Trustees of the Internal Improvement Trust Fund. Any such project shall be selected on the basis of its anticipated benefits to the marine natural resources available to the residents of this state who previously benefited from the injured or destroyed nonrestorable natural resources.

(b) All interest earned from investment of moneys recovered by the department for damage to natural resources shall be expended only for the activities described in paragraph (a).

(c) The person or parties responsible for a discharge for which the department has requested compensation for damage pursuant to this section shall pay the department, within 90 days after receipt of the request, the entire amount due to the state. In the event that payment is not made within the 90 days, the person or parties are liable for interest on the outstanding balance, which interest shall be calculated at the rate prescribed under s. 55.03.

(12) Any determination or assessment of damage to natural resources for the purposes of this section by the department in accordance with the compensation sections or in accordance with the rules adopted under subsection (10) shall have the force and effect of rebuttable presumption on behalf of the department in any administrative or judicial proceeding.

(13) There shall be no double recovery under this law for natural resource damage resulting from a discharge, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource. The department shall meet with and develop memoranda of understanding with appropriate federal trustees as defined in Pub. L. No. 101-380 (Oil Pollution Act of 1990) to provide further assurances of no double recovery.

(14) The department must review the amount of compensation assessed pursuant to the damage assessment formula established in this section and report its findings to the 1995 Legislature. Thereafter, the department must conduct such a review and report its findings to the Legislature biennially.

(15) The department shall adopt rules necessary or convenient for carrying out the duties, obligations, powers, and responsibilities set forth in this section.

Section 4. Paragraph (b) of subsection (19) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(19) SUBSTANTIAL DEVIATIONS.—

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or

cumulatively with other changes, exceeds any of the following criteria shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review without the necessity for a finding of same by the local government:

1. An increase in the number of parking spaces at an attraction or recreational facility by 5 percent or 300 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 5 percent or 1,000 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25-percent lengthening of an existing runway, or a 25-percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates. However, if an airport is located in two counties, a 10-percent lengthening of an existing runway or a 20-percent increase in the number of gates of an existing terminal is the applicable criteria.

3. An increase in the number of hospital beds by 5 percent or 60 beds, whichever is greater.

4. An increase in industrial development area by 5 percent or 32 acres, whichever is greater.

5. An increase in the average annual acreage mined by 5 percent or 10 acres, whichever is greater, or an increase in the average daily water consumption by a mining operation by 5 percent or 300,000 gallons, whichever is greater. An increase in the size of the mine by 5 percent or 750 acres, whichever is less. An increase in the size of a heavy mineral mine as defined in s. 378.403(7) will only constitute a substantial deviation if the average annual acreage mined is more than 500 acres and consumes more than 3 million gallons of water per day.

6. An increase in land area for office development by 5 percent or an increase of gross floor area of office development by 5 percent or 60,000 gross square feet, whichever is greater.

7. An increase in the storage capacity for chemical or petroleum storage facilities by 5 percent, 20,000 barrels, or 7 million pounds, whichever is greater.

8. An increase of development at a waterport of wet storage for 20 watercraft, dry storage for 30 watercraft, or wet/dry storage for 60 watercraft in an area identified in the state marina siting plan as an appropriate site for additional waterport development or a 5-percent increase in watercraft storage capacity, whichever is greater.

9. An increase in the number of dwelling units by 5 percent or 50 dwelling units, whichever is greater.

10. An increase in commercial development by 50,000 square feet of gross floor area or of parking spaces provided for customers for 300 cars or a 5-percent increase of either of these, whichever is greater.

11. An increase in hotel or motel facility units by 5 percent or 75 units, whichever is greater.

12. An increase in a recreational vehicle park area by 5 percent or 100 vehicle spaces, whichever is less.

13. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

14. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 100 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 100 percent has been reached or exceeded.

15. A 15-percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

16. Any change which would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State. The further refinement of such areas by survey shall be considered under sub-subparagraph (e)5.b.

The substantial deviation numerical standards in subparagraphs 4., 6., 10., 14., excluding residential uses, and 15., are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Office of Tourism, Trade, and Economic Development as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 4., 6., 9., 10., 11., and 14. are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

Section 5. Subsections (3) and (4) of section 380.23, Florida Statutes, are amended to read:

380.23 Federal consistency.—

(3) Consistency review shall be limited to review of the following activities, uses, and projects to ensure that such activities, ~~and uses, and projects~~ are conducted in accordance with the state's coastal management program:

(a) Federal development projects and activities of federal agencies which significantly affect coastal waters and the adjacent shorelands of the state.

(b) Federal assistance projects ~~that which~~ significantly affect coastal waters and the adjacent shorelands of the state and ~~that which~~ are reviewed

as part of the review process developed pursuant to Presidential Executive Order 12372.

(c) Federally licensed or permitted activities affecting land or water uses when such activities are in or seaward of the jurisdiction of local governments required to develop a coastal zone protection element as provided in s. 380.24 and when such activities involve:

1. Permits and licenses required under the Rivers and Harbors Act of 1899, 33 U.S.C. ss. 401 et seq., as amended.

2. Permits and licenses required under the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. ss. 1401-1445 and 16 U.S.C. ss. 1431-1445, as amended.

3. Permits and licenses required under the Federal Water Pollution Control Act of 1972, 33 U.S.C. ss. 1251 et seq., as amended, unless such permitting activities have been delegated to the state pursuant to said act.

4. Permits and licenses relating to the transportation of hazardous substance materials or transportation and dumping which are issued pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. ss. 1501 et seq., as amended, or 33 U.S.C. s. 1321, as amended.

5. Permits and licenses required under 15 U.S.C. ss. 717-717w, 3301-3432, 42 U.S.C. ss. 7101-7352, and 43 U.S.C. ss. 1331-1356 for construction and operation of interstate gas pipelines and storage facilities.

6. Permits and licenses required for the siting and construction of any new electrical power plants as defined in s. 403.503(12), as amended, and the licensing and relicensing of hydroelectric power plants under the Federal Power Act, 16 U.S.C. ss. 791a et seq., as amended.

7. Permits and licenses required under the Mining Law of 1872, 30 U.S.C. ss. 21 et seq., as amended; the Mineral Lands Leasing Act, 30 U.S.C. ss. 181 et seq., as amended; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. ss. 351 et seq., as amended; the Federal Land Policy and Management Act, 43 U.S.C. ss. 1701 et seq., as amended; the Mining in the Parks Act, 16 U.S.C. ss. 1901 et seq., as amended; and the OCS Lands Act, 43 U.S.C. ss. 1331 et seq., as amended, for drilling, mining, pipelines, geological and geophysical activities, or rights-of-way on public lands and permits and licenses required under the Indian Mineral Development Act, 25 U.S.C. ss. 2101 et seq., as amended for drilling and mining on public lands.

8. Permits and licenses for areas leased under the OCS Lands Act, 43 U.S.C. ss. 1331 et seq., as amended, including leases and approvals of exploration, development, and production plans.

~~9. Permits for pipeline rights-of-way for oil and gas transmissions.~~

~~9.10. Permits and licenses required under the for Deepwater Port Act of 1974, ports under 33 U.S.C. ss. 1501 et seq. s. 1503, as amended.~~

10.11. Permits required for the taking of marine mammals under the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. s. 1374.

(d) Federal activities within the territorial limits of neighboring states when the Governor and the department determine that significant individual or cumulative impact to the land or water resources of the state would result from the activities.

(4) The department ~~may is authorized to~~ adopt rules establishing procedures for conducting consistency reviews of activities, uses, and projects for which consistency review is required pursuant to subsections (1), (2), and (3). Such rules shall include procedures for the expeditious handling of emergency repairs to existing facilities for which consistency review is required. The department ~~may is also authorized to~~ adopt rules prescribing the data and information needed for the review of consistency certifications and determinations. When an environmental impact statement or environmental assessment required by the National Environmental Policy Act has been prepared for a specific activity, use, or project subject to federal consistency review under this section, the environmental impact statement or environmental assessment shall be data and information necessary for the state's consistency review of that federal activity, use, or project under this section.

Section 6. Paragraph (d) of subsection (2) and subsections (6), (7), (8), and (11) of section 403.067, Florida Statutes, are amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(2) LIST OF SURFACE WATERS OR SEGMENTS.—In accordance with s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq., the department must submit periodically to the United States Environmental Protection Agency a list of surface waters or segments for which total maximum daily load assessments will be conducted. The assessments shall evaluate the water quality conditions of the listed waters and, if such waters are determined not to meet water quality standards, total maximum daily loads shall be established, subject to the provisions of subsection (4). The department shall establish a priority ranking and schedule for analyzing such waters.

(d) If the department proposes to implement total maximum daily load calculations or allocations established prior to the effective date of this act, the department shall adopt those calculations and allocations by rule by the secretary pursuant to ss. 120.536(1) and 120.54 and paragraph ~~(6)(c)~~ ~~(6)(d)~~.

(6) CALCULATION AND ALLOCATION.—

(a) Calculation of total maximum daily load.

1. Prior to developing a total maximum daily load calculation for each water body or water body segment on the list specified in subsection (4), the department shall coordinate with applicable local governments, water management districts, the Department of Agriculture and Consumer Services,

other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources to determine the information required, accepted methods of data collection and analysis, and quality control/quality assurance requirements. The analysis may include mathematical water quality modeling using approved procedures and methods.

2. The department shall develop total maximum daily load calculations for each water body or water body segment on the list described in subsection (4) according to the priority ranking and schedule unless the impairment of such waters is due solely to activities other than point and nonpoint sources of pollution. For waters determined to be impaired due solely to factors other than point and nonpoint sources of pollution, no total maximum daily load will be required. A total maximum daily load may be required for those waters that are impaired predominantly due to activities other than point and nonpoint sources. The total maximum daily load calculation shall establish the amount of a pollutant that a water body or water body segment may receive from all sources without exceeding water quality standards, and shall account for seasonal variations and include a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. The total maximum daily load may be based on a pollutant load reduction goal developed by a water management district, provided that such pollutant load reduction goal is promulgated by the department in accordance with the procedural and substantive requirements of this subsection.

(b) Allocation of total maximum daily loads. The total maximum daily loads shall include establishment of reasonable and equitable allocations of the total maximum daily load between or among point and nonpoint sources that will alone, or in conjunction with other management and restoration activities, provide for the attainment of the pollutant reductions established pursuant to paragraph (a) to achieve water quality standards for the pollutant causing impairment water quality standards and the restoration of impaired waters. ~~The allocations may establish the maximum amount of the water pollutant from a given source or category of sources that may be discharged or released into the water body or water body segment in combination with other discharges or releases. Allocations may also be made to individual basins and sources or as a whole to all basins and sources or categories of sources of inflow to the water body or water body segments. An initial allocation of allowable pollutant loads among point and nonpoint sources may be developed as part of the total maximum daily load. However, in such cases, the detailed allocation to specific point sources and specific categories of nonpoint sources shall be established in the basin management action plan pursuant to subsection (7). The initial and detailed allocations shall be designed to attain the pollutant reductions established pursuant to paragraph (a) water quality standards and shall be based on consideration of the following:~~

1. Existing treatment levels and management practices;
2. Best management practices established and implemented pursuant to paragraph (7)(c);

3. Enforceable treatment levels established pursuant to state or local law or permit;

4.2. Differing impacts pollutant sources and forms of pollutant may have on water quality;

5.3. The availability of treatment technologies, management practices, or other pollutant reduction measures;

6.4. Environmental, economic, and technological feasibility of achieving the allocation;

7.5. The cost benefit associated with achieving the allocation;

8.6. Reasonable timeframes for implementation;

9.7. Potential applicability of any moderating provisions such as variances, exemptions, and mixing zones; and

10.8. The extent to which nonattainment of water quality standards is caused by pollution sources outside of Florida, discharges that have ceased, or alterations to water bodies prior to the date of this act.

~~(c) Not later than February 1, 2001, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing recommendations, including draft legislation, for any modifications to the process for allocating total maximum daily loads, including the relationship between allocations and the watershed or basin management planning process. Such recommendations shall be developed by the department in cooperation with a technical advisory committee which includes representatives of affected parties, environmental organizations, water management districts, and other appropriate local, state, and federal government agencies. The technical advisory committee shall also include such members as may be designated by the President of the Senate and the Speaker of the House of Representatives.~~

(c)(d) Adoption of rules. The total maximum daily load calculations and allocations established under this subsection for each water body or water body segment shall be adopted by rule by the secretary pursuant to ss. 120.536(1), 120.54, and 403.805. Where additional data collection and analysis are needed to increase the scientific precision and accuracy of the total maximum daily load, the department is authorized to adopt phased total maximum daily loads that are subject to change as additional data becomes available. Where phased total maximum daily loads are proposed, the department shall, in the detailed statement of facts and circumstances justifying the rule, explain why the data are inadequate so as to justify a phased total maximum daily load. The rules adopted pursuant to this paragraph shall not be subject to approval by the Environmental Regulation Commission. As part of the rule development process, the department shall hold at least one public workshop in the vicinity of the water body or water body segment for which the total maximum daily load is being developed. Notice of the public workshop shall be published not less than 5 days nor more than 15 days before the public workshop in a newspaper of general circulation in

the county or counties containing the water bodies or water body segments for which the total maximum daily load calculation and allocation are being developed.

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) Basin management action plans.—

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such a plan shall integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan shall establish a schedule for implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, where appropriate, to achieve the needed pollutant load reductions.

2. A basin management action plan shall equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan shall be those practices developed pursuant to paragraph (c). Where appropriate, the plan may provide pollutant-load-reduction credits to dischargers that have implemented management strategies to reduce pollutant loads, including best management practices, prior to the development of the basin management action plan. The plan shall also identify the mechanisms by which potential future increases in pollutant loading will be addressed.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting shall be published in a newspaper of general circulation in each county in which the watershed or basin lies not less than 5 days nor more than 15 days before the public meeting. A basin management action plan shall not supplant or otherwise alter any assess-

ment made under subsection (3) or subsection (4) or any calculation or initial allocation.

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

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

(b)(a) Total maximum daily load implementation.—

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

a.1. Permitting and other existing regulatory programs, including water-quality-based effluent limitations;

b.2. Nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(21), and public education;

c.3. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts ~~or watershed~~ or basin management action plans developed pursuant to this subsection;

d.4. Pollutant trading or other equitable economically based agreements;

e.5. Public works including capital facilities; or

f.6. Land acquisition.

2. For a basin management action plan adopted pursuant to subparagraph (a)4., any management strategies and pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits set forth for a discharger subject to NPDES permitting, if any, shall be included in a timely

manner in subsequent NPDES permits or permit modifications for that discharger. The department shall not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads shall be implemented through NPDES permit conditions that afford a compliance schedule. In such instances, a facility's NPDES permit shall allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan shall not exceed five years. Upon issuance of an order adopting the plan, the permit shall be reopened, as necessary, and permit conditions consistent with the plan shall be established. Notwithstanding the other provisions of this subparagraph, upon request by a NPDES permittee, the department as part of a permit issuance, renewal or modification may establish individual allocations prior to the adoption of a basin management action plan.

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

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

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

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

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

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

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

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

~~(b) In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a watershed or basin management plan that addresses some or all of the watersheds and basins tributary to the water body. These plans will serve to fully integrate the management strategies available to the state for the purpose of implementing the total maximum daily loads and achieving water quality restoration. The watershed or basin management planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. The department or water management district shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practical extent. Notice of the public meeting shall be published in a newspaper of general circulation in each county in which the watershed or basin lies not less than 5 days nor more than 15 days before the public meeting. A watershed or basin management plan shall not supplant or otherwise alter any assessment made under s. 403.086(3) and (4), or any calculation or allocation made under s. 403.086(6).~~

(c) Best management practices.—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection paragraph (6)(b). These practices and measures may be adopted by rule by the department and the water management districts pursuant to ss. 120.536(1) and 120.54, and, where adopted by rule, shall ~~may be implemented by those parties responsible for nonagricultural nonpoint source pollution pollutant sources and the department and the water management districts shall assist with implementation. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to paragraph (6)(b) shall be verified by the department. Implementation, in accordance with applicable rules, of practices that have~~

been verified by the department to be effective at representative sites shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface or ground water caused by those pollutants. Such rules shall also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including recordkeeping requirements. Where water quality problems are detected despite the appropriate implementation, operation, and maintenance of best management practices and other measures according to rules adopted under this paragraph, the department or the water management districts shall institute a reevaluation of the best management practice or other measures.

2.(d)1. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection paragraph (6)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to paragraph (6)(b) shall be verified by the department. Implementation, in accordance with applicable rules, of practices that have been verified by the department to be effective at representative sites shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface or ground water caused by those pollutants. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules shall also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including recordkeeping requirements. Where water quality problems are detected despite the appropriate implementation, operation, and maintenance of best management practices and other measures according to rules adopted under this paragraph, the Department of Agriculture and Consumer Services shall institute a reevaluation of the best management practice or other measure.

3. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the

department pursuant to subsection (6) and this subsection shall be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are effective and, where applicable, shall notify the appropriate water management district and the Department of Agriculture and Consumer Services of its initial verification prior to the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures according to rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5.2. Individual agricultural records relating to processes or methods of production, or relating to costs of production, profits, or other financial information which are otherwise not public records, which are reported to the Department of Agriculture and Consumer Services pursuant to ~~subparagraphs 3. and 4. this paragraph~~ or pursuant to any rule adopted pursuant to ~~subparagraph 2. this paragraph~~ shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request of the department or any water management district, the Department of Agriculture and Consumer Services shall make such individual agricultural records available to that agency, provided that the confidentiality specified by this subparagraph for such records is maintained. This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

6.(e) The provisions of ~~subparagraphs 1. and 2. paragraphs (e) and (d)~~ shall not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, ~~subparagraphs 1. and 2. paragraphs (e) and (d)~~ are applicable only to the extent that they do not conflict with any rules adopted promulgated by the department that are necessary to maintain a federally delegated or approved program.

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

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

(b) Administration of funds to implement the total maximum daily load and basin management action planning programs program;

(c) Procedures for pollutant trading among the pollutant sources to a water body or water body segment, including a mechanism for the issuance and tracking of pollutant credits. Such procedures may be implemented through permits or other authorizations and must be legally binding. Prior to adopting rules for pollutant trading under this paragraph, and no later than November 30, 2006, the Department of Environmental Protection shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing recommendations on such rules, including the proposed basis for equitable economically based agreements and the tracking and accounting of pollution credits or other similar mechanisms. Such recommendations shall be developed in cooperation with a technical advisory committee that includes experts in pollutant trading and representatives of potentially affected parties; No rule implementing a pollutant trading program shall become effective prior to review and ratification by the Legislature; and

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

(e) Implementation of other specific provisions.

(11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.—

(a) The department shall not implement, without prior legislative approval, any additional regulatory authority pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part 130, if such implementation would result in water quality discharge regulation of activities not currently subject to regulation.

(b) Interim measures, best management practices, or other measures may be developed and voluntarily implemented pursuant to subparagraphs paragraph (7)(c) 1. and 2. ~~or paragraph (7)(d)~~ for any water body or segment for which a total maximum daily load or allocation has not been established. The implementation of such pollution control programs may be considered by the department in the determination made pursuant to subsection (4).

Section 7. Paragraph (c) of subsection (3) of section 373.4595, Florida Statutes, is amended to read:

373.4595 Lake Okeechobee Protection Program.—

(3) LAKE OKEECHOBEE PROTECTION PROGRAM.—A protection program for Lake Okeechobee that achieves phosphorus load reductions for

Lake Okeechobee shall be immediately implemented as specified in this subsection. The program shall address the reduction of phosphorus loading to the lake from both internal and external sources. Phosphorus load reductions shall be achieved through a phased program of implementation. Initial implementation actions shall be technology-based, based upon a consideration of both the availability of appropriate technology and the cost of such technology, and shall include phosphorus reduction measures at both the source and the regional level. The initial phase of phosphorus load reductions shall be based upon the district's Technical Publication 81-2 and the district's WOD program, with subsequent phases of phosphorus load reductions based upon the total maximum daily loads established in accordance with s. 403.067. In the development and administration of the Lake Okeechobee Protection Program, the coordinating agencies shall maximize opportunities provided by federal cost-sharing programs and opportunities for partnerships with the private sector.

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

1. Agricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Protection Program, shall be implemented on an expedited basis. By March 1, 2001, the coordinating agencies shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the coordinating agencies during any best management practice reevaluation performed pursuant to sub-subparagraph d. The department shall use best professional judgment in making the initial determination of best management practice effectiveness.

a. As provided in ~~s. 403.067(7)(c)~~ ~~s. 403.067(7)(d)~~, by October 1, 2000, the Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall initiate rule development for interim measures, best management practices, conservation plans, nutrient management plans, or other measures necessary for Lake Okeechobee phosphorus load reduction. The rule shall include thresholds for requiring conservation and nutrient management plans and criteria for the contents of such plans. Development of agricultural nonpoint source best management practices shall initially focus on those priority basins listed in subparagraph (b)1. The Department of Agriculture and Consumer Services,

in consultation with the department, the district, and affected parties, shall conduct an ongoing program for improvement of existing and development of new interim measures or best management practices for the purpose of adoption of such practices by rule.

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

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

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

2. Nonagricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Protection Program, shall be implemented on an expedited basis. By March 1, 2001, the department and the district shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the department and the district during any best management practice reevaluation performed pursuant to sub-subparagraph d.

a. The department and the district are directed to work with the University of Florida's Institute of Food and Agricultural Sciences to develop appropriate nutrient application rates for all nonagricultural soil amendments in the watershed. As provided in s. 403.067(7)(c), by January 1, 2001, the department, in consultation with the district and affected parties, shall develop interim measures, best management practices, or other measures necessary for Lake Okeechobee phosphorus load reduction. Development of nonagricultural nonpoint source best management practices shall initially focus on those priority basins listed in subparagraph (b)1. The department, the district, and affected parties shall conduct an ongoing program for improvement of existing and development of new interim measures or best

management practices. The district shall adopt technology-based standards under the district's WOD program for nonagricultural nonpoint sources of phosphorus.

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

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

d. Where water quality problems are detected for nonagricultural nonpoint sources despite the appropriate implementation of adopted best management practices, the department and the district shall institute a re-evaluation of the best management practices.

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

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

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

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

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

b. Private and government-owned utilities within Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Okeechobee, Highlands, Hendry, and Glades Counties that dispose of wastewater residual sludge from utility operations and septic removal by land spreading in the Lake Okeechobee watershed may use a line item on local sewer rates to cover wastewater residual treatment and disposal if such disposal and treatment is done by approved alternative treatment methodology at a facility located within the areas designated by the Governor as rural areas of critical economic concern pursuant to s. 288.0656. This additional line item is an environmental protection disposal fee above the present sewer rate and shall not be considered a part of the present sewer rate to customers, notwithstanding provisions to the contrary in chapter 367. The fee shall be established by the county commission or its designated assignee in the county in which the alternative method treatment facility is located. The fee shall be calculated to be no higher than that necessary to recover the facility's prudent cost of providing the service. Upon request by an affected county commission, the Florida Public Service Commission will provide assistance in establishing the fee. Further, for utilities and utility authorities that use the additional line item environmental protection disposal fee, such fee shall not be considered a rate increase under the rules of the Public Service Commission and shall be exempt from such rules. Utilities using the provisions of this section may immediately include in their sewer invoicing the new environmental protection disposal fee. Proceeds from this environmental protection disposal fee shall be used for treatment and disposal of wastewater residuals, including any treatment technology that helps reduce the volume of residuals that require final disposal, but such proceeds shall not be used for transportation or shipment costs for disposal or any costs relating to the land application of residuals in the Lake Okeechobee watershed.

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

environmental protection disposal fee shall be open to the Florida Public Service Commission and the Auditor General for review upon request.

7. The Department of Health shall require all entities disposing of septage within the Lake Okeechobee watershed and the remaining areas of Okeechobee, Glades, and Hendry Counties to develop and submit to that agency, by July 1, 2003, an agricultural use plan that limits applications based upon phosphorus loading. By July 1, 2005, phosphorus concentrations originating from these application sites shall not exceed the limits established in the district's WOD program.

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

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

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

Section 8. Subsection (1) of section 570.085, Florida Statutes, is amended to read:

570.085 Department of Agriculture and Consumer Services; agricultural water conservation.—The department shall establish an agricultural water conservation program that includes the following:

(1) A cost-share program, coordinated where appropriate with the United States Department of Agriculture and other federal, state, regional, and local agencies, for irrigation system retrofit and application of mobile irrigation laboratory evaluations for water conservation as provided in this section and, where applicable, for water quality improvement pursuant to s. 403.067(7)(c) ~~s. 403.067(7)(d)~~.

Section 9. This act shall take effect upon becoming a law.

Approved by the Governor June 8, 2005.

Filed in Office Secretary of State June 8, 2005.