

Council Substitute for
Council Substitute for House Bill No. 197

An act relating to surface water protection programs; amending s. 373.414, F.S.; providing for the regulation of peat mines in certain wetlands; providing legislative intent; providing definitions; providing specific rule authority to the Department of Environmental Protection; providing applicability of variance provisions for activities in surface waters and wetlands in the Northwest Florida Water Management District; amending s. 373.4142, F.S.; providing an exemption for certain water quality standards in the Northwest Florida Water Management District; amending s. 373.459, F.S.; exempting the Suwannee River Water Management District, the Northwest Florida Water Management District, and specified local governments from certain funding requirements for the implementation of surface water improvement and management projects; eliminating provisions subject to expiration for the deposit, expenditure, release, and transfer of funds relating to the Ecosystem Restoration and Management Trust Fund and the Water Protection and Sustainability Trust Fund; amending s. 373.4595, F.S.; authorizing the Department of Environmental Protection and the South Florida Water Management District to adopt basin-specific criteria under the Lake Okeechobee Watershed Phosphorus Control Program; eliminating certain requirements for the authorization of discharges related to proposed changes in land use; amending s. 378.403, F.S.; revising definitions relating to the regulation of surface waters; defining the term “peat”; amending s. 378.503, F.S.; conforming provisions; amending s. 378.804, F.S.; revising the exemption provided to certain mine operators from the requirement to notify the secretary of the department when beginning to mine certain substances; repealing s. 403.265, F.S.; relating to the permitting of peat mining; providing an effective date.

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

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

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

(6)

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

1. As used in this paragraph, the term:

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

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

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

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

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

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

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

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

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

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

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

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

373.4142 Water quality within stormwater treatment systems.—State surface water quality standards applicable to waters of the state, as defined in s. 403.031(13), shall not apply within a stormwater management system which is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or noticed exemption issued pursuant to chapter 62-25 17-25, Florida Administrative Code; a valid permit or exemption under s. 373.4145 within the Northwest Florida Water Management District; a valid permit issued on or subsequent to April 1, 1986, within the Suwannee River Water Management District or the St. Johns River Water Management District pursuant to this part; a valid permit issued on or subsequent to March 1, 1988, within the Southwest Florida Water Management District pursuant to this part; or a valid permit issued on or subsequent to January 6, 1982, within the South Florida Water Management District pursuant to this part. Such inapplicability of state water quality standards shall be limited to that part of the stormwater management system located upstream of a manmade water control structure permitted, or approved under a noticed exemption, to retain or detain stormwater runoff in order to provide treatment of the stormwater. The additional use of such a stormwater management system for flood attenuation or irrigation shall not divest the system of the benefits of this exemption. This section shall not affect the authority of the department and water management districts to require reasonable assurance that the water quality within such stormwater management systems will not adversely impact public health, fish and wildlife, or adjacent waters.

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

373.459 Funds for surface water improvement and management.—

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

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

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

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

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

Section 4. 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. The coordinating agencies shall develop an interagency agree-

ment 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), 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. 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), 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. Nothing in this sub-subparagraph shall affect the authority of the department or the district to adopt basin-specific criteria under this part to prevent harm to the water resources of the district.

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 reevaluation 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 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.~~

~~9.10.~~ 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 5. Section 378.403, Florida Statutes, is amended to read:

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

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

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

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

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

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

(6) “Fuller’s earth clay” means clay possessing a high absorptive capacity consisting largely of montmorillonite or palygorskite. Fuller’s earth clay includes attapulgite.

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

(8) “Limestone” means any extracted material composed principally of calcium or magnesium carbonate.

(9) “Local government” means any county or municipality.

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

(11) “New mine” means any mine that is not an existing mine.

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

(13) “Operator” means any person engaged in an operation.

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

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

~~(16)~~(15) “Reclamation” means the reasonable rehabilitation of land where resource extraction has occurred.

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

~~(18)~~(17) “Secretary” means the Secretary of Environmental Protection.

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

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

378.503 Limestone reclamation performance standards.—

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

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

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

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

Section 8. ~~Section 403.265, Florida Statutes, is repealed.~~

Section 9. This act shall take effect July 1, 2007.

Approved by the Governor June 19, 2007.

Filed in Office Secretary of State June 19, 2007.