

## Committee Substitute for Senate Bill No. 2282

An act relating to implementation of water quality standards; amending s. 403.031, F.S.; defining the term "total maximum daily load"; creating s. 403.067, F.S.; providing legislative findings and intent; requiring the Department of Environmental Protection to periodically submit to the United States Environmental Protection Agency a list of surface waters or segments for which total maximum daily load assessments will be conducted; providing that the list cannot be used in the administration or implementation of any regulatory program; providing for public comment on the list; requiring the Department of Environmental Protection to conduct total maximum daily load assessments on water bodies based on the priority ranking and schedule; requiring the Department of Environmental Protection to adopt a methodology for determining those water bodies which are impaired by rule; specifying what the rule shall set forth; providing for the adoption of a subsequent updated list of water bodies for which total maximum daily loads will be calculated under certain circumstances; providing for the removal of surface waters or segments under certain conditions; providing for the process for calculating and allocating total maximum daily loads; providing that the Department of Environmental Protection must submit a report by February 1, 2001, to the Governor, the President of the Senate, and the Speaker of the House of Representatives which contains recommendations and draft legislation for any modifications to the process for allocating total maximum daily loads; requiring that the recommendations be developed by the department in cooperation with a technical committee; providing that the total maximum daily load calculations and allocations shall be adopted by rule; providing for public workshops and public notice; providing that the Department of Environmental Protection shall be the lead agency in coordinating the implementation of the total maximum daily load allocation through water quality protection programs; authorizing the department to develop a basin plan requiring the department to cooperatively develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established in allocations for nonagricultural nonpoint pollutant sources; requiring the Department of Agriculture and Consumer Services to develop, and to adopt by rule at its discretion, certain interim measures or best management practices necessary to achieve the level of pollution reduction established in allocations of agricultural pollutant sources; authorizing the Department of Environmental Protection to adopt certain rules; prohibiting the Department of Environmental Protection from implementing, without prior legislative approval, any additional regulatory authority pursuant to the Clean Water Act; amending s. 403.805, F.S.; providing for the powers and duties of the secretary; requiring the Department of Environmental Protection, in coordination with the water management district and the Department of

Agriculture and Consumer Services, to evaluate the effectiveness of the implementation of total maximum daily loads for a specific period and to report to the Governor and the Legislature; providing an effective date.

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

Section 1. Short title.—This act may be cited as the “Florida Watershed Restoration Act.”

Section 2. Subsection (21) is added to section 403.031, Florida Statutes, to read:

403.031 Definitions.—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(21) “Total maximum daily load” is defined as the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

Section 3. Section 403.067, Florida Statutes, is created to read:

403.067 Establishment and implementation of total maximum daily loads.—

(1) LEGISLATIVE FINDINGS AND INTENT.—In furtherance of public policy established in s. 403.021, the Legislature declares that the waters of the state are among its most basic resources and that the development of a total maximum daily load program for state waters as required by ss. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. will promote improvements in water quality throughout the state through the coordinated control of point and nonpoint sources of pollution. The Legislature finds that, while point and nonpoint sources of pollution have been managed through numerous programs, better coordination among these efforts and additional management measures may be needed in order to achieve the restoration of impaired water bodies. The scientifically based total maximum daily load program is necessary to fairly and equitably allocate pollution loads to both nonpoint and point sources. Implementation of the allocation shall include consideration of a cost-effective approach coordinated between contributing point and nonpoint sources of pollution for impaired water bodies or water body segments and may include the opportunity to implement the allocation through non-regulatory and incentive-based programs. The Legislature further declares that the Department of Environmental Protection shall be the lead agency in administering this program and shall coordinate with local governments, water management districts, the Department of Agriculture and Consumer Services, local soil and water conservation districts, environmental groups, regulated interests, other appropriate state agencies, and affected pollution sources in developing and executing the total maximum daily load program.

(2) LIST OF SURFACE WATERS OR SEGMENTS.—In accordance with ss. 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 s. 403.067(4). The department shall establish a priority ranking and schedule for analyzing such waters.

(a) The list, priority ranking, and schedule cannot be used in the administration or implementation of any regulatory program. However, this paragraph does not prohibit any agency from employing the data or other information used to establish the list, priority ranking, or schedule in administering any program.

(b) The list, priority ranking, and schedule prepared under this subsection shall be made available for public comment, but shall not be subject to challenge under chapter 120.

(c) The provisions of this subsection are applicable to all lists prepared by the department and submitted to the United States Environmental Protection Agency pursuant to section ss. 303(d) of the Clean Water Act. Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq., including those submitted prior to the effective date of this act, except as provided in s. 403.067(4).

(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. 120.54, 120.536(1) and 403.067(6)(d).

(3) ASSESSMENT.—

(a) Based on the priority ranking and schedule for a particular listed water body or water body segment, the department shall conduct a total maximum daily load assessment of the basin in which the water body or water body segment is located using the methodology developed pursuant to s. 403.067(3)(b). In conducting this assessment, the department shall coordinate with the local water management district, the Department of Agriculture and Consumer Services, other appropriate state agencies, soil and water conservation districts, environmental groups, regulated interests, and other interested parties.

(b) The department shall adopt by rule a methodology for determining those waters which are impaired. The rule shall provide for consideration as to whether water quality standards codified in chapter 62-302, Florida Administrative Code, are being exceeded, based on objective and credible data, studies and reports, including surface water improvement and management plans approved by water management districts under s. 373.456 and pollutant load reduction goals developed according to department rule. Such rule also shall set forth:

1. Water quality sample collection and analysis requirements, accounting for ambient background conditions, seasonal and other natural variations;

2. Approved methodologies;

3. Quality assurance and quality control protocols;

4. Data modeling; and

5. Other appropriate water quality assessment measures.

(c) If the department has adopted a rule establishing a numerical criterion for a particular pollutant, a narrative or biological criterion may not be the basis for determining an impairment in connection with that pollutant unless the department identifies specific factors as to why the numerical criterion is not adequate to protect water quality. If water quality non-attainment is based on narrative or biological criteria, the specific factors concerning particular pollutants shall be identified prior to a total maximum daily load being developed for those criteria for that surface water or surface water segment.

(4) APPROVED LIST.—If the department determines, based on the total maximum daily load assessment methodology described in s. 403.067(3), that water quality standards are not being achieved and that technology-based effluent limitations and other pollution control programs under local, state, or federal authority, including Everglades restoration activities pursuant to s. 373.4592 and the National Estuary Program, which are designed to restore such waters for the pollutant of concern are not sufficient to result in attainment of applicable surface water quality standards, it shall confirm that determination by issuing a subsequent, updated list of those water bodies or segments for which total maximum daily loads will be calculated. In association with this updated list the department shall establish priority rankings and schedules by which water bodies or segments will be subjected to total maximum daily load calculations. If a surface water or water segment is to be listed under this subsection, the department must specify the particular pollutants causing the impairment and the concentration of those pollutants causing the impairment relative to the water quality standard. This updated list shall be approved and amended by order of the department subsequent to completion of an assessment of each water body or water body segment, and submitted to the United States Environmental Protection Agency. Each order shall be subject to challenge under ss. 120.569 and 120.57.

(5) REMOVAL FROM LIST.—At any time throughout the total maximum daily load process, surface waters or segments evaluated or listed under this section shall be removed from the lists described in s. 403.067(2) or s. 403.067(4) upon demonstration that water quality criteria are being attained, based on data equivalent to that required by rule under s. 403.067(3).

(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 s. 403.067(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 s. 403.067(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 can assimilate 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 among point and nonpoint sources that will alone, or in conjunction with other management and restoration activities, provide for the attainment of water quality standards and the restoration of impaired waters. The allocations shall 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. Such allocations shall be designed to attain water quality standards and shall be based on consideration of the following:

1. Existing treatment levels and management practices;
2. Differing impacts pollutant sources may have on water quality;
3. The availability of treatment technologies, management practices, or other pollutant reduction measures;
4. Environmental, economic, and technological feasibility of achieving the allocation;

5. The cost benefit associated with achieving the allocation;
6. Reasonable timeframes for implementation;
7. Potential applicability of any moderating provisions such as variances, exemptions, and mixing zones; and
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 basin 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.

(d) The total maximum daily load calculations and allocations for each water body or water body segment shall be adopted by rule by the secretary pursuant to ss. 120.54 and 120.536(1), and 403.805. 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) IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) The department shall be the lead agency in coordinating the implementation of the total maximum daily load allocation through water quality protection programs. Application of a total maximum daily load calculation or allocation 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. 120.54 or s. 120.536(1) for adoption of the calculation and allocation previously established by the department. Such programs may include, but are not limited to:

1. Permitting and other existing regulatory programs;
2. Nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, and public education;

3. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts under s. 373.456;
4. Pollutant trading or other equitable economically based agreements;
5. Public works including capital facilities; or
6. Land acquisition.

(b) In developing and implementing the total maximum daily load allocation, the department may develop a basin plan. The basin plan will serve to fully integrate all the management strategies available to the state for the purpose of achieving water quality restoration. The basin 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 shall hold at least one public meeting in the vicinity of the basin to discuss and receive comments during the basin 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 basin lies not less than 5 days nor more than 15 days before the public meeting. A basin plan shall not supplant or otherwise alter any assessment made under s. 403.086(3) and s.403.086(4), or any calculation or allocation made under s. 403.086(6).

(c) 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 s. 403.067(6)(b). These practices and measures may be adopted by rule by the department and the water management districts pursuant to ss. 120.54 and 120.536(1), and may be implemented by those parties responsible for nonagricultural nonpoint 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 s. 403.067(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.

(d) The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.54 and 120.536(1) 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 s. 403.067(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 s. 403.067(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.

(e) The provisions of s. 403.067(7) paragraphs (c) 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, s. 403.067(7)(c) and s. 403.067(7)(d) 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.

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

(a) Delisting water bodies or water body segments from the list developed under s. 403.067(4) pursuant to the guidance under s. 403.067(5);

(b) Administration of funds to implement the total maximum daily load 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. 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 s. 403.067(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 s. 403.067(2).

(9) APPLICATION.—The provisions of this section are intended to supplement existing law and nothing in this section shall be construed as altering any applicable state water quality standards or as restricting the authority otherwise granted to the department or a water management district under this chapter or chapter 373. The exclusive means of state implementation of section ss. 303(d) of the Clean Water Act. Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. shall be in accordance with the identification, assessment, calculation and allocation, and implementation provisions of s. 403.067.

(10) CONSTRUCTION.—Nothing in this section shall be construed as limiting the applicability or consideration of any mixing zone, variance, exemption, site specific alternative criteria, or other moderating provision.

(11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.—The department shall not implement, without prior legislative approval, any additional regulatory authority pursuant to the Clean Water Act ss. 303(d) or 40 CFR Part 130, if such implementation would result in water quality discharge regulation of activities not currently subject to regulation.

(12) In order to provide adequate due process while ensuring timely development of total maximum daily loads, proposed rules and orders authorized by this act shall be ineffective pending resolution of a section 120.54(3), 120.56, 120.569, or 120.57 administrative proceeding. However, the department may go forward prior to resolution of such administrative proceedings with subsequent agency actions authorized by s. 403.067(2) through s. 403.067(6), provided that the department can support and substantiate those actions using the underlying bases for the rules or orders without the benefit of any legal presumption favoring, or in deference to, the challenged rules or orders.

Section 4. Subsection (1) of section 403.805, Florida Statutes, is amended to read:

403.805 Secretary; powers and duties.—

(1) The secretary shall have the powers and duties of heads of departments set forth in chapter 20, including the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of chapters 253,

373, and 376 and this chapter. The secretary shall have rulemaking responsibility under chapter 120, but shall submit any proposed rule containing standards to the Environmental Regulation Commission for approval, modification, or disapproval pursuant to s. 403.804, except for total maximum daily load calculations and allocations developed pursuant to s. 403.067(6). The secretary shall have responsibility for final agency action regarding total maximum daily load calculations and allocations developed pursuant to s. 403.067(6). The secretary shall employ legal counsel to represent the department in matters affecting the department. Except for appeals on permits specifically assigned by this act to the Governor and Cabinet, and unless otherwise prohibited by law, the secretary may delegate the authority assigned to the department by this act to the assistant secretary, division directors, and district and branch office managers and to the water management districts.

Section 5. The department, coordinating with the water management districts and the Department of Agriculture and Consumer Services, shall evaluate the effectiveness of the implementation of total maximum daily loads for a period of 5 years from the effective date of this act. The department shall document that effectiveness, using all data and information at its disposal, in a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2005. The report shall provide specific recommendations for statutory changes necessary to implement total maximum daily loads more effectively, including the development or expansion of pollution prevention and pollutant trading opportunities, and best management practices. The report shall also provide recommendations for statutory changes relating to pollutant sources which are not subject to permitting under chapter 403, Florida Statutes, or chapter 373, Florida Statutes, and which do not implement the nonregulatory practices or other measures outlined in the basin plan prepared under s. 403.067, Florida Statutes, in accordance with the schedule of the plan, or fail to implement them as designed.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor May 26, 1999.

Filed in Office Secretary of State May 26, 1999.