

Committee Substitute for Senate Bill No. 678

An act relating to pollution reduction; amending s. 403.067, F.S.; authorizing the development of interim measures or best-management practices for specified water bodies or segments for which total maximum daily loads or allocations have not yet been established; amending s. 403.121, F.S.; providing that a professional engineer is not the agent of an owner or tenant for purposes of enforcing penalties for unpermitted dredging or filling or mangrove trimming; amending s. 373.4595, F.S.; providing eligibility requirements for available grants from coordinating agencies; providing additional requirements for land application of domestic wastewater residuals and septage after a certain date; providing penalties for violations; amending s. 403.08725, F.S.; extending the time limit for approval by the United States Environmental Protection Agency of this section as being in compliance with specified federal requirements; providing an effective date.

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

Section 1. Subsection (11) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(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 paragraph (7)(c) 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 2. Paragraphs (c) and (d) of subsection (3) of section 403.121, Florida Statutes, are amended to read:

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(3) Except for violations involving hazardous wastes, asbestos, or underground injection, administrative penalties must be calculated according to the following schedule:

(c) For a dredge and fill or stormwater violation, the department shall assess a penalty of \$1,000 for unpermitted or unauthorized dredging or filling or unauthorized construction of a stormwater management system against the person or persons responsible for the illegal dredging or filling, or unauthorized construction of a stormwater management system plus \$2,000 if the dredging or filling occurs in an aquatic preserve, Outstanding Florida Water, conservation easement, or Class I or Class II surface water, plus \$1,000 if the area dredged or filled is greater than one-quarter acre but less than or equal to one-half acre, and plus \$1,000 if the area dredged or filled is greater than one-half acre but less than or equal to one acre. The administrative penalty schedule shall not apply to a dredge and fill violation if the area dredged or filled exceeds one acre. The department retains the authority to seek the judicial imposition of civil penalties for all dredge and fill violations involving more than one acre. The department shall assess a penalty of \$3,000 for the failure to complete required mitigation, failure to record a required conservation easement, or for a water quality violation resulting from dredging or filling activities, stormwater construction activities or failure of a stormwater treatment facility. For stormwater management systems serving less than 5 acres, the department shall assess a penalty of \$2,000 for the failure to properly or timely construct a stormwater management system. In addition to the penalties authorized in this subsection, the department shall assess a penalty of \$5,000 per violation against the contractor or agent of the owner or tenant that conducts unpermitted or unauthorized dredging or filling. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer shall not make that person an agent of the owner or tenant.

(d) For mangrove trimming or alteration violations, the department shall assess a penalty of \$5,000 per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit as required by s. 403.9328. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer shall not make that person an agent of the owner or tenant.

Section 3. 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)(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, 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. 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.5.a. The department shall require all entities disposing of domestic wastewater residuals within the Lake Okeechobee watershed to develop and submit to the department by ~~July 1, 2001~~, an agricultural use plan that limits applications based upon phosphorus loading. By July 1, 2005, phosphorus concentrations ~~loading~~ 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 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.

8.6. ~~By July 1, 2001,~~ The Department of Agriculture and Consumer Services shall initiate rulemaking requiring entities within the Lake Okeechobee watershed 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.

9.7. 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.

10.8. 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 4. Subsection (9) of section 403.08725, Florida Statutes, is amended to read:

403.08725 Citrus juice processing facilities.—

(9) ENVIRONMENTAL PROTECTION AGENCY APPROVAL.—No later than February 1, 2001, the department shall submit this act to the United States Environmental Protection Agency as a revision of Florida's state implementation plan and as a revision of Florida's approved state Title V program. If the United States Environmental Protection Agency fails to approve this act as a revision of Florida's state implementation plan within 3 2 years after submittal, this act shall not apply with respect to construction requirements for facilities subject to regulation under the act, and the facilities subject to regulation thereunder must comply with all construction permitting requirements, including those for prevention of significant deterioration, and must make application for construction permits for any construction or modification at the facility which was not undertaken in compliance with all permitting requirements of Florida's state implementation plan, within 3 months thereafter. If the United States Environmental Protection Agency fails to approve this act as a revision of Florida's approved state Title V program within 3 2 years after submittal, this act shall not apply with respect to operation requirements, and all facilities subject to regulation under the act must immediately comply with all Title V program requirements and must make application for Title V operation permits within 3 months thereafter.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor April 24, 2002.

Filed in Office Secretary of State April 24, 2002.