

1 A bill to be entitled

2 An act relating to surface water protection programs;
 3 amending s. 373.414, F.S., providing the variance provisions
 4 of s. 403.201, F.S., are applicable to activities regulated
 5 under s. 373.4145, F.S.; amending s. 373.4142, F.S.,
 6 providing the state surface water quality standards shall
 7 not apply within a stormwater management system with a valid
 8 permit or exemption under 373.4145, F.S., within the
 9 Northwest Florida Water Management District; amending s.
 10 373.459, F.S., removing the requirement for the Northwest
 11 Florida Water Management District, the Suwannee River Water
 12 Management District or a disadvantaged local government to
 13 provide a 50-percent match towards the implementation of the
 14 surface water improvement and management projects; amending
 15 s. 373.4595, F.S.; providing that the section does not
 16 affect the authority of the Department of Environmental
 17 Protection or the South Florida Water Management District to
 18 adopt basin-specific criteria under Part IV of Chapter 373,
 19 F.S.; eliminating the requirement that the South Florida
 20 Water Management District, prior to authorizing a discharge
 21 into works of the district, require responsible parties to
 22 demonstrate that proposed changes in land use will not
 23 result in increased phosphorus loadings over that of
 24 existing land uses; providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Subsection (17) of section 373.414, Florida
 29 Statutes, is amended to read:

30 373.414 Additional criteria for activities in surface waters
 31 and wetlands.—

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

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

40 373.4142 Water quality within stormwater treatment
 41 systems.—State surface water quality standards applicable to
 42 waters of the state, as defined in s. 403.031(13), shall not
 43 apply within a stormwater management system which is designed,
 44 constructed, operated, and maintained for stormwater treatment in
 45 accordance with a valid permit or noticed exemption issued
 46 pursuant to chapter 62-25 ~~17-25~~, Florida Administrative Code; a
 47 valid permit or exemption under s. 373.4145 within the Northwest
 48 Florida Water Management District; a valid permit issued on or
 49 subsequent to April 1, 1986, within the Suwannee River Water
 50 Management District or the St. Johns River Water Management
 51 District pursuant to this part; a valid permit issued on or
 52 subsequent to March 1, 1988, within the Southwest Florida Water
 53 Management District pursuant to this part; or a valid permit
 54 issued on or subsequent to January 6, 1982, within the South
 55 Florida Water Management District pursuant to this part. Such
 56 inapplicability of state water quality standards shall be limited
 57 to that part of the stormwater management system located upstream
 58 of a manmade water control structure permitted, or approved under
 59 a noticed exemption, to retain or detain stormwater runoff in
 60 order to provide treatment of the stormwater. The additional use

61 of such a stormwater management system for flood attenuation or
 62 irrigation shall not divest the system of the benefits of this
 63 exemption. This section shall not affect the authority of the
 64 department and water management districts to require reasonable
 65 assurance that the water quality within such stormwater
 66 management systems will not adversely impact public health, fish
 67 and wildlife, or adjacent waters.

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

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

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

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

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

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

98 Section 4. Paragraph (c), of subsection (3) of section
 99 373.4595, Florida Statutes, is amended to read:

100 373.4595 Lake Okeechobee Protection Program.--

101 (c) Lake Okeechobee Watershed Phosphorus Control Program.--

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

115 1. Agricultural nonpoint source best management practices,
 116 developed in accordance with s. 403.067 and designed to achieve
 117 the objectives of the Lake Okeechobee Protection Program, shall
 118 be implemented on an expedited basis. The coordinating agencies

119 shall develop an interagency agreement pursuant to ss. 373.046
120 and 373.406(5) that assures the development of best management
121 practices that complement existing regulatory programs and
122 specifies how those best management practices are implemented and
123 verified. The interagency agreement shall address measures to be
124 taken by the coordinating agencies during any best management
125 practice reevaluation performed pursuant to sub-subparagraph d.
126 The department shall use best professional judgment in making the
127 initial determination of best management practice effectiveness.

128 a. As provided in s. 403.067(7)(c), the Department of
129 Agriculture and Consumer Services, in consultation with the
130 department, the district, and affected parties, shall initiate
131 rule development for interim measures, best management practices,
132 conservation plans, nutrient management plans, or other measures
133 necessary for Lake Okeechobee phosphorus load reduction. The rule
134 shall include thresholds for requiring conservation and nutrient
135 management plans and criteria for the contents of such plans.
136 Development of agricultural nonpoint source best management
137 practices shall initially focus on those priority basins listed
138 in subparagraph (b)1. The Department of Agriculture and Consumer
139 Services, in consultation with the department, the district, and
140 affected parties, shall conduct an ongoing program for
141 improvement of existing and development of new interim measures
142 or best management practices for the purpose of adoption of such
143 practices by rule.

144 b. Where agricultural nonpoint source best management
145 practices or interim measures have been adopted by rule of the
146 Department of Agriculture and Consumer Services, the owner or
147 operator of an agricultural nonpoint source addressed by such

148 rule shall either implement interim measures or best management
149 practices or demonstrate compliance with the district's WOD
150 program by conducting monitoring prescribed by the department or
151 the district. Owners or operators of agricultural nonpoint
152 sources who implement interim measures or best management
153 practices adopted by rule of the Department of Agriculture and
154 Consumer Services shall be subject to the provisions of s.
155 403.067(7). The Department of Agriculture and Consumer Services,
156 in cooperation with the department and the district, shall
157 provide technical and financial assistance for implementation of
158 agricultural best management practices, subject to the
159 availability of funds.

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

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

171 2. Nonagricultural nonpoint source best management
172 practices, developed in accordance with s. 403.067 and designed
173 to achieve the objectives of the Lake Okeechobee Protection
174 Program, shall be implemented on an expedited basis. The
175 department and the district shall develop an interagency
176 agreement pursuant to ss. 373.046 and 373.406(5) that assures the

177 development of best management practices that complement existing
 178 regulatory programs and specifies how those best management
 179 practices are implemented and verified. The interagency agreement
 180 shall address measures to be taken by the department and the
 181 district during any best management practice reevaluation
 182 performed pursuant to sub-subparagraph d.

183 a. The department and the district are directed to work
 184 with the University of Florida's Institute of Food and
 185 Agricultural Sciences to develop appropriate nutrient application
 186 rates for all nonagricultural soil amendments in the watershed.
 187 As provided in s. 403.067(7)(c), the department, in consultation
 188 with the district and affected parties, shall develop interim
 189 measures, best management practices, or other measures necessary
 190 for Lake Okeechobee phosphorus load reduction. Development of
 191 nonagricultural nonpoint source best management practices shall
 192 initially focus on those priority basins listed in subparagraph
 193 (b)1. The department, the district, and affected parties shall
 194 conduct an ongoing program for improvement of existing and
 195 development of new interim measures or best management practices.
 196 The district shall adopt technology-based standards under the
 197 district's WOD program for nonagricultural nonpoint sources of
 198 phosphorus. Nothing in this sub-paragraph shall affect the
 199 authority of the department or the district to adopt basin-
 200 specific criteria under Part IV of this Chapter to prevent harm
 201 to the water resources of the district.

202 b. Where nonagricultural nonpoint source best management
 203 practices or interim measures have been developed by the
 204 department and adopted by the district, the owner or operator of
 205 a nonagricultural nonpoint source shall implement interim

206 | measures or best management practices and be subject to the
207 | provisions of s. 403.067(7). The department and district shall
208 | provide technical and financial assistance for implementation of
209 | nonagricultural nonpoint source best management practices,
210 | subject to the availability of funds.

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

214 | d. Where water quality problems are detected for
215 | nonagricultural nonpoint sources despite the appropriate
216 | implementation of adopted best management practices, the
217 | department and the district shall institute a reevaluation of the
218 | best management practices.

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

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

234 | 5. Projects that make use of private lands, or lands held

235 | in trust for Indian tribes, to reduce nutrient loadings or
236 | concentrations within a basin by one or more of the following
237 | methods: restoring the natural hydrology of the basin, restoring
238 | wildlife habitat or impacted wetlands, reducing peak flows after
239 | storm events, increasing aquifer recharge, or protecting range
240 | and timberland from conversion to development, are eligible for
241 | grants available under this section from the coordinating
242 | agencies. For projects of otherwise equal priority, special
243 | funding priority will be given to those projects that make best
244 | use of the methods outlined above that involve public-private
245 | partnerships or that obtain federal match money. Preference
246 | ranking above the special funding priority will be given to
247 | projects located in a rural area of critical economic concern
248 | designated by the Governor. Grant applications may be submitted
249 | by any person or tribal entity, and eligible projects may
250 | include, but are not limited to, the purchase of conservation and
251 | flowage easements, hydrologic restoration of wetlands, creating
252 | treatment wetlands, development of a management plan for natural
253 | resources, and financial support to implement a management plan.

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

262 | b. Private and government-owned utilities within Monroe,
263 | Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River,

PCS for HB 197

ORIGINAL

2007

264 Okeechobee, Highlands, Hendry, and Glades Counties that dispose
265 of wastewater residual sludge from utility operations and septic
266 removal by land spreading in the Lake Okeechobee watershed may
267 use a line item on local sewer rates to cover wastewater residual
268 treatment and disposal if such disposal and treatment is done by
269 approved alternative treatment methodology at a facility located
270 within the areas designated by the Governor as rural areas of
271 critical economic concern pursuant to s. 288.0656. This
272 additional line item is an environmental protection disposal fee
273 above the present sewer rate and shall not be considered a part
274 of the present sewer rate to customers, notwithstanding
275 provisions to the contrary in chapter 367. The fee shall be
276 established by the county commission or its designated assignee
277 in the county in which the alternative method treatment facility
278 is located. The fee shall be calculated to be no higher than that
279 necessary to recover the facility's prudent cost of providing the
280 service. Upon request by an affected county commission, the
281 Florida Public Service Commission will provide assistance in
282 establishing the fee. Further, for utilities and utility
283 authorities that use the additional line item environmental
284 protection disposal fee, such fee shall not be considered a rate
285 increase under the rules of the Public Service Commission and
286 shall be exempt from such rules. Utilities using the provisions
287 of this section may immediately include in their sewer invoicing
288 the new environmental protection disposal fee. Proceeds from this
289 environmental protection disposal fee shall be used for treatment
290 and disposal of wastewater residuals, including any treatment
291 technology that helps reduce the volume of residuals that require
292 final disposal, but such proceeds shall not be used for

PCS for HB 197

ORIGINAL

2007

293 transportation or shipment costs for disposal or any costs
294 relating to the land application of residuals in the Lake
295 Okeechobee watershed.

296 c. No less frequently than once every 3 years, the Florida
297 Public Service Commission or the county commission through the
298 services of an independent auditor shall perform a financial
299 audit of all facilities receiving compensation from an
300 environmental protection disposal fee. The Florida Public Service
301 Commission or the county commission through the services of an
302 independent auditor shall also perform an audit of the
303 methodology used in establishing the environmental protection
304 disposal fee. The Florida Public Service Commission or the county
305 commission shall, within 120 days after completion of an audit,
306 file the audit report with the President of the Senate and the
307 Speaker of the House of Representatives and shall provide copies
308 to the county commissions of the counties set forth in sub-
309 subparagraph b. The books and records of any facilities receiving
310 compensation from an environmental protection disposal fee shall
311 be open to the Florida Public Service Commission and the Auditor
312 General for review upon request.

313 7. The Department of Health shall require all entities
314 disposing of septage within the Lake Okeechobee watershed and the
315 remaining areas of Okeechobee, Glades, and Hendry Counties to
316 develop and submit to that agency an agricultural use plan that
317 limits applications based upon phosphorus loading. By July 1,
318 2005, phosphorus concentrations originating from these
319 application sites shall not exceed the limits established in the
320 district's WOD program.

321 8. The Department of Agriculture and Consumer Services

322 shall initiate rulemaking requiring entities within the Lake
 323 Okeechobee watershed and the remaining areas of Okeechobee,
 324 Glades, and Hendry Counties which land-apply animal manure to
 325 develop conservation or nutrient management plans that limit
 326 application, based upon phosphorus loading. Such rules may
 327 include criteria and thresholds for the requirement to develop a
 328 conservation or nutrient management plan, requirements for plan
 329 approval, and recordkeeping requirements.

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

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

338 Section 5. This act shall take effect July 1, 2007.
 339