

1 A bill to be entitled
2 An act relating to numeric nutrient water quality
3 criteria; creating s. 403.061(11)(d), F.S., requiring the
4 Department of Environmental Protection to publish a notice
5 of proposed rulemaking by a date certain to revise
6 dissolved oxygen criteria applicable to Florida
7 waterbodies; creating s. 403.0675, F.S.; prohibiting the
8 state, water management districts, and other governmental
9 entities from implementing certain federal numeric
10 nutrient water quality criteria rules of the United States
11 Environmental Protection Agency; clarifying the authority
12 of water management districts and other governmental
13 entities with respect to pollution control; providing
14 construction; authorizing the department to adopt numeric
15 nutrient water quality criteria for surface waters under
16 certain conditions; providing that certain total maximum
17 daily loads constitute site specific numeric
18 interpretation of the narrative nutrient water quality
19 criteria; creating s. 403.066, F.S., providing for a
20 classification system of surface waters for specific
21 designated uses; renaming the current classification
22 system to reflect changes; providing rulemaking authority;
23 providing the classification system will be effective upon
24 approval by the United States Environmental Protection
25 Agency; providing changes to the classification system
26 shall be by rule subject to legislative ratification;
27 providing that the classification system is not effective

28 | if the department changes the system by rule and the rule
29 | is ratified; providing an effective date.

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

32 | Section 1. Paragraph (d) of subsection (11) of section
33 | 403.061, Florida Statutes, is created to read:

34 | 403.061 Department; powers and duties.— The department
35 | shall have the power and the duty to control and prohibit
36 | pollution of air and water in accordance with the law and rules
37 | adopted and promulgated by it and, for this purpose, to:

38 | (11) Establish ambient air quality and water quality
39 | standards for the state as a whole or for any part thereof, and
40 | also standards for the abatement of excessive and unnecessary
41 | noise. The department is authorized to establish reasonable
42 | zones of mixing for discharges into waters.

43 | (d) The department shall publish a Notice of Proposed
44 | Rulemaking no later than May 31, 2012, to revise the dissolved
45 | oxygen criteria applicable to Florida waterbodies to take into
46 | account the variability occurring in nature.

47 | Section 2. Section 403.0675, Florida Statutes, is created
48 | to read:

49 | 403.0675 Numeric nutrient water quality criteria.—

50 | (1) (a) The department, water management districts, and all
51 | other state, regional, and local governmental entities may not
52 | implement or give any effect to the United States Environmental
53 | Protection Agency's nutrient water quality criteria rules for
54 | the state's lakes and flowing waters, finalized on December 6,
55 | 2010, and published in Volume 75, No. 233 of the Federal

56 Register, in any regulatory program administered by the
57 department, water management district, or governmental entity
58 where the criteria are more stringent than necessary to protect
59 the designated use.

60 (b) The prohibition in paragraph (a) does not limit the
61 ability of any water management district or any other state,
62 regional, or local governmental entity from applying for any
63 pollution discharge permit or complying with the conditions of
64 such permits, including those issued under the Federal National
65 Pollutant Discharge Elimination System, or from implementing
66 best management practices, source control, or pollution
67 abatement measures for water quality improvement programs as
68 provided by law.

69 (2) This section does not derogate or limit county and
70 municipal home rule authority.

71 (3) Notwithstanding subsection (1), the department may
72 adopt numeric nutrient water quality criteria for a particular
73 surface water or group of surface waters in accordance with s.
74 403.061, which may be expressed in terms of concentration, mass
75 loading, waste load allocation, and surrogate standards, such as
76 chlorophyll-a, and may be supplemented by narrative statements.
77 The standards established in accordance with this subsection
78 shall be based on objective and credible data, scientific
79 studies and analysis. Implementation of the standard shall only
80 require nutrient reductions where necessary to protect the
81 designated use.

82 (4) (a) Numeric nutrient total maximum daily loads
83 developed by the department and approved by the United States

84 Environmental Protection Agency constitute the site specific
85 numeric interpretation of the narrative nutrient water quality
86 criteria.

87 Section 3. Section 403.066, Florida Statutes, is created to
88 read:

89 403.066 Classification of Surface Waters.- Except as set
90 forth in subsection (3), the designated uses for all surface
91 waters of the State shall be classified to include both a Human
92 Use and an Aquatic Life Use as outlined below:

93 (1) Human Uses:

94 (a) Human Use 1: Protection of potable water supply
95 suitable for human consumption (following conventional drinking
96 water treatment methods), fish consumption, and full body
97 contact. Maintaining a level of water quality suitable for
98 potable water or intended to be suitable for consumption after
99 receiving conventional drinking water treatment.

100 (b) Human Use 2: Protection of shellfish harvesting for
101 human consumption, fish consumption, and full body contact.
102 Protection of shellfish consumption involves maintaining a level
103 of water quality that will prevent unpalatable flavor or
104 accumulation of substances harmful to human health in shellfish
105 tissue.

106 (c) Human Use 3: Protection of fish consumption and full
107 body contact. Recreational uses may support prolonged and direct
108 contact with the water, involving minimal risk of ingesting
109 water in quantities sufficient to pose a health hazard.
110 Protection of fish consumption involves maintaining a level of
111 water quality that will prevent unpalatable flavor or

112 accumulation of substances harmful to human health in fish
 113 tissue.

114 (d) Human Use 4: Protection of fish consumption and
 115 incidental human contact. Recreational uses may result in
 116 contact with the water that is either incidental or accidental.
 117 The probability of ingestion of water is minimal.

118 (e) Human Use 5: Protection of fish consumption, but human
 119 contact is limited or restricted due to unsafe physical
 120 conditions.

121 (f) Human Use 6: Protection of waters for crop irrigation
 122 or consumption by livestock. Maintaining a level of water
 123 quality suitable for consumption of water by livestock or
 124 surface water withdrawal for irrigation of cropland.

125 (g) Human Use 7: Utility and industrial uses. Maintaining a
 126 level of water quality suitable for utility and industrial
 127 purposes.

128 (2) Aquatic Life Uses:

129 (a) Aquatic Life Use 1: Propagation and maintenance of
 130 exceptional aquatic communities that approximate the biological
 131 structure and function of natural background. Natural
 132 structural, functional, and taxonomic integrity is preserved or
 133 approximated; structure and function similar to natural
 134 community; and ecosystem level functions are fully maintained.

135 (b) Aquatic Life Use 2: Propagation and maintenance of
 136 healthy, well-balanced aquatic community with minimal deviation
 137 of biological structure and function relative to natural
 138 background. Overall balanced distribution of all expected groups
 139 of taxa and all ecosystem functions are fully maintained. May

140 have changes in biological structure as evidenced by the
 141 replacement of sensitive taxa by more tolerant taxa.

142 (c) Aquatic Life Use 3: Protection of an aquatic community
 143 with moderate deviation of biological structure and function
 144 relative to natural background. Changes in biological structure
 145 and function have resulted in an altered aquatic community.
 146 Represents the transition between a community characterized by
 147 sensitive or expected taxa to one characterized by tolerant
 148 taxa. Biology may be limited due to habitat limitations,
 149 hydrologic modifications, physical alterations, or other factors
 150 identified by rule.

151 (d) Aquatic Life Use 4: Protection of an aquatic community
 152 with substantial deviation of biological structure and function
 153 relative to natural background. Substantial changes in
 154 biological structure and function have resulted in a limited
 155 aquatic community. Community consists primarily of tolerant taxa
 156 able to survive and propagate under adverse or variable
 157 environmental conditions. Biology may be limited due to extreme
 158 habitat limitations, hydrologic modifications, physical
 159 alterations, or other factors identified by rule.

160 (3) Unless otherwise specified by rule, the current
 161 classification of waterbodies shall be renamed as follows:

- 162 (a) Class I is renamed as Human Use 1, Aquatic Life Use 2.
- 163 (b) Class II is renamed as Human Use 2, Aquatic Life Use 2.
- 164 (c) Class III is renamed as Human Use 3, Aquatic Life Use
 165 2.

166 (d) Class IV is renamed as Human Use 6 and shall contain
167 all of the criteria associated with the current Class IV
168 classification.

169 (e) Class V is renamed as Human Use 7 and shall contain all
170 of the criteria associated with the current Class V
171 classification.

172 (4) The department may adopt rules as necessary to
173 implement this classification system.

174 (5) This section shall become effective upon approval by
175 the United States Environmental Protection Agency.

176 (6) If the department determines that changes are necessary
177 to improve this classification system, it shall adopt an updated
178 classification system by rule, which shall be subject to
179 legislative ratification. Upon ratification, the classification
180 system in this section shall no longer be in effect.

181 Section 4. This act shall take effect upon becoming law.