

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Environmental Preservation Committee

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BILL: SB 2322

SPONSOR: Senator Alexander

SUBJECT: Restoration of water quality

DATE: April 7, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kiger	Kiger	EP	<b>Favorable</b>
2.			AG	
3.			GA	
4.				
5.				
6.				

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## I. Summary:

The bill addresses several issues relating to the current total maximum daily load program (s. 403.067, F.S.). This program, commonly referred to as TMDLs, is a federally required water quality program administered by the Department of Environmental Protection. The goal of the program is to reduce pollutant loadings in certain waterbodies through a cooperative effort among the many stakeholders whose activities have an impact on the specific water body.

Provisions of the bill:

Clarify the allocation methods used for prescribing pollutant loadings associated with a TMDL.

Codify the development of basin management action plans. These plans are used as a guide for achieving surface water restoration.

Provide additional clarification of the relationship between TMDLs and regulatory practices.

Creates incentives for unregulated entities to assist in the implementation of the basin management action plans.

Provides for improved verification of best management practices and other pollution measures.

This bill substantially amends ss. 373.4595, 403.067, and 570.085 Florida Statutes

## II. Present Situation:

### **Total Maximum Daily Loads (TMDL)**

The federal Water Pollution Control Act of 1972, commonly referred to as the Clean Water Act (CWA), established the basic framework for pollution control in the nation's water bodies. The primary goal of the CWA was to have the nation's water bodies clean and useful. By setting national standards and regulations for the discharge of pollution, the CWA intended to restore and protect the health of the nation's water bodies.

Section 305(b) of the CWA requires states to submit to Congress a biennial report on the water quality of their lakes, streams, and rivers. A partial list of water bodies that qualify as "impaired," meaning they do not meet specific pollutant limits for their designated uses, must be submitted to the U.S. Environmental Protection Agency (EPA) under section 303(d) of the CWA. States are required to develop TMDLs for each pollutant that exceeds the legal limits for that water body. Section 303(d) and the development of TMDLs were generally ignored by the federal and state governments until numerous lawsuits were filed by environmental groups.

More specifically, TMDLs are the result of quantitative analysis of water bodies where one or more water quality standards are not being met, and are aimed at identifying the management strategies necessary to attain those water quality standards. In essence, TMDLs describe the amount of each pollutant a water body can receive without violating standards, and are characterized as the sum of wasteload allocations, load allocations, and margin of safety to account for uncertainties. Wasteload allocations are pollutant loads attributable to existing and future point sources, such as discharges from industry and sewage facilities. Load allocations are pollutant loads attributable to existing and future nonpoint sources and natural background. Nonpoint sources include runoff from farms, forests, urban areas, and natural sources, such as decaying organic matter and nutrients in soil.

TMDLs take into account the water quality of an entire water body or watershed and assess all the pollutant loadings into that watershed, rather than simply considering whether each individual discharge meets its permit requirements. The management strategies that emerge from the TMDL process may encompass everything from traditional regulatory measures, agricultural best management practices and other pollution prevention measures such as, land acquisition, infrastructure funding, and pollutant trading. They also will include an overall monitoring plan to test their effectiveness.

As described previously, section 303(d) of the CWA requires states to submit a list of impaired water bodies and to prioritize TMDL development and implementation for those water bodies. The 303(d) list is updated every two years. The list sets a prioritized schedule for TMDL development for all water bodies on the list. The scope of this process is enormous since Florida has about 52,000 miles of rivers and streams, nearly 800 lakes, 4,500 square miles of estuaries, and more than 700 springs. The Department of Environmental Protection (DEP) submitted its first 303(d) list in 1992 which was later refined in subsequent submissions. In 1998, the EPA first approved the list.

In 1999, the Legislature passed the Florida Watershed Restoration Act (WRA) (ch. 99-223, L.O.F.) which codified the establishment of TMDLs for pollutants of water bodies as required by the federal CWA. The WRA required the DEP to promulgate rules relating to the methodology for assessing, calculating, allocating, and implementing the TMDL process. The WRA also directed that the TMDL process be integrated with existing protection and restoration programs, and coordinated with all state agencies and affected parties.

The DEP reports that the primary pollutants causing the impairment of surface waters include nutrients (nitrogen and phosphorus), bacteria, metals (iron, silver, copper, etc.), and mercury. Currently, the DEP develops and implements TMDLs through a watershed-based management approach that addresses the state's 52 major hydrologic basins into five groups. Each basin group is subject to a five phase TMDL cycle on a rotating basis. Phase 1 is a preliminary evaluation of the quality of a water body. Phase 2 is monitoring and assessing to verify water quality improvements. Phase 3 is the development and adoption of TMDLs for waters verified as impaired. Phase 4 is the development of basin management action plans (called BMAPS) used to achieve the TMDL. Phase 5 is the implementation of the plan and monitoring of results.

Throughout the process, the DEP coordinates and collaborates with all the stakeholders which are contributors to or are affected by the quality of the state's water bodies. Government agencies, businesses, organizations, and individuals who contribute to the discharge of pollutants into the state's water bodies are requested to share in the responsibility of attaining TMDLs by discharging only an allotted specified pollutant based upon an established TMDL. As of December 2004, the DEP has adopted, by rule, 52 TMDLs with another 61 TMDLs in the proposal or drafting stages.

### **III. Effect of Proposed Changes:**

The bill substantially amends section 403.067, F.S. These provisions provide for the establishment and implementation of total maximum daily loads (TMDL's).

Subsection (6) Calculation and Allocation is amended to:

Allow for preliminary allocations of pollutant loads.

Adds best management practices and enforceable treatment levels to a list of issues that shall be considered when determining allocations.

Allows the DEP to adopt rules permitting for a phased implementation of TMDLs.

A new subsection (7) is created. This new subsection outlines procedures for the development of basin management action plans and implementation of total maximum daily loads.

Created or substantially amended by the bill is the following:

Section 403.067(7)(a) Basin Management Action Plans (BMAPS or plan)

Provides for the creation of BMAPS and directs that such plans integrate the appropriate strategies to achieve the TMDLs. The BMAPS are to ensure the

restoration of designated uses and shall allow for phased implementation of TMDLS. The BMAPs shall have a schedule for implementation, establish a basis for evaluating results, and identify feasible funding strategies.

The BMAP shall equitably allocate pollutant reductions. For nonpoint sources the plan shall permit the use of adopted best management practices. For dischargers that have implemented strategies to reduce pollutant loads the plan may provide for pollutant credits. Finally, the plan shall address potential future sources of pollution.

The process for developing the plan shall involve the broadest representation of stakeholders. At least one public hearing is required and must be held within the basin impacted by the plan.

The plan shall be adopted and a formal department order and will be subject to the provisions of chapter 120, F.S., (Administrative Challenges). Any revisions shall also be subject to department order and may be challenged.

The BMAP shall be evaluated on a periodic basis to determine if pollutant load reductions are being achieved and whether revisions are needed.

#### Section 403.067(7)(b) Total Maximum Daily Load Implementation

Management strategies and pollutant reduction requirements adopted in BMAPS shall be included in any future permits or permit modifications.

The DEP is prohibited from imposing additional pollution requirements in any permit until such time as the TMDL is established for the pollutant, the permit expires, or a modification is sought.

The BMAP does not relieve any requirement for dischargers to obtain, renew, or modify permits.

Management strategies set forth in a BMAP shall be completed pursuant to the schedule in the plan and may extend beyond the 5-year term of NPDES federal permits.

Management strategies and pollution reduction requirements in the BMAP shall not be subject to challenge when they are being incorporated into existing permits or subsequent permits.

For non-agricultural pollutant sources not subject to federal permits but subject to other state or local permits, the pollutant reductions in the BMAP shall be implemented to the maximum extent practicable as part of those permits.

A nonpoint source discharger included in a BMAP may demonstrate compliance with pollutant reductions by implementing appropriate best management practices

or conducting water quality monitoring as prescribed by the DEP or water management district.

Nonpoint source dischargers included in a BMAP may be subject to enforcement actions if they fail to implement reductions required in the BMAP.

A nonpoint source discharger included in a BMAP shall be required to timely implement best management practices in the plan.

A landowner, discharger, or other responsible person who is implementing strategies in the plan shall not be required to implement additional strategies to reduce pollutant loads unless the BMAP is revised.

#### Section 403.067(7)(c) Best management practices

The bill amends existing provisions to remove language that has been expanded upon and re-created in paragraph (b). New provisions created in this paragraph include:

A requirement that the effectiveness of implementation strategies be verified by the DEP. This verification or an initial verification shall be reported to the Department of Agriculture and Consumer Services and the water management districts prior to adoption of any rule that codifies that strategy. The verification of a practice shall provide a presumption of compliance for the purposes of meeting state water quality standards.

Should verification data indicate that practices outlined in the BMAP are not achieving the desired result then the appropriate agency shall revise the plan.

A provision is also added that requires the DEP to submit a report concerning the development of a pollutant trading process. The report shall contain recommendations developed in cooperation with a technical advisory committee that includes experts in pollutant trading and representative of potentially affected parties.

Sections 373.4595 and 570.585, F.S., are amended to provide for necessary conforming changes.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

While specific provisions of the bill may only have a minimal impact on the private sector the overall cost of implementing best management practices and other strategies required under the federal Clean Water Act can be significant.

C. Government Sector Impact:

The DEP estimates that annual costs for administering the TMDL program will be between \$2.5 and \$4 million. These costs are for contracting with consultants, universities, and others on the TMDL program.

Cost estimates for the overall implementation of the TMDL program are very difficult to determine. Based on a model developed by consultants for DEP the costs to local governments and the private sector for implementation may exceed \$300 million over the next 20 years. Local government representatives have estimated that the stormwater treatment requirements alone will cost between \$1 and \$5 billion.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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