

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1806

INTRODUCER: Environmental Preservation and Conservation Committee

SUBJECT: Total Maximum Daily Loads

DATE: April 8, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino		ep SPB 7036 as introduced
2.	McKay	McVaney	GO	Pre-meeting
3.				
4.				
5.				
6.				

I. Summary:

SB 1806 provides that the Department of Environmental Protection’s rules on total maximum daily load (TMDL) are exempt from the requirement of legislative ratification.

The bill substantially amends section 403.067(6)(c) of the Florida Statutes.

II. Present Situation:

Establishment of TMDLs in Florida

Under section 303 of the federal Clean Water Act (CWA), states are incentivized to adopt water quality standards (WQSs) for their navigable waters and must review and update those standards at least once every three years. These standards include:

- Designation of a waterbody’s beneficial uses, such as water supply, recreation, fish propagation, and navigation;
- Water quality criteria that define the amounts of pollutants, in either numeric or narrative standards, that the waterbody can contain without impairment of the designated beneficial uses; and
- Anti-degradation requirements.¹

In 1999, the Legislature passed the Florida Watershed Restoration Act (WRA), which codified the establishment of TMDLs for pollutants of waterbodies as required by the federal CWA.²

¹ 33 U.S.C. s. 1313(c)(2)(A); 40 C.F.R. ss. 131.6, 131.10-12.

² Section 403.067, F.S.

Each TMDL, which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by the waterbody while still meeting WQSs. Waterbodies that do not meet the established WQSs are deemed impaired and, pursuant to the CWA, the DEP establishes a TMDL for the waterbody or section of the waterbody that is impaired.³ A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.⁴ Waste load 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 such as the runoff from farms, forests, and urban areas. If a state does not set TMDLs for impaired waterbodies, the EPA may revoke the delegation of authority permitted under the CWA and begin setting TMDLs within a state.

Restoration of impaired waterbodies can be expensive for both the public and private sectors, requiring infrastructure investments in wastewater and stormwater facilities, implementation of best management practices, acquisition of conservation lands, etc.

Legislative Ratification of Agency Rules

Pursuant to s. 120.541, F.S., any rule that meets any of three thresholds must be ratified by the Legislature. The three thresholds are:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years after the implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within five years after the implementation of the rule; and
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within five years after the implementation of the rule.⁵

TMDL rules will often meet or exceed one of the above thresholds, thus requiring ratification. If ratification is required, “the rule must be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next regular legislative session, and the rule may not take effect until it is ratified by the Legislature.”⁶

According to the Department of Environmental Protection (DEP), one of the problems with ratifying TMDL rules is that if the notice deadline is missed, and TMDLs are developed throughout the year, then it can take up to a year for a rule to go into effect. This may result in significant delays in the process of restoring water quality.⁷

³ *Id.*

⁴ Chapter 62-302, F.A.C. (Surface Water Quality Standards). Nonpoint sources of pollution are essentially sources of pollution that are not point sources. Nonpoint sources of pollution can include runoff from agricultural lands or residential areas; oil, grease and toxic materials from urban runoff; and sediment from improperly managed construction sites.

⁵ Section 120.541(2)(a)1.-3., F.S.

⁶ Section 120.541(3), F.S.

⁷ DEP, *Department of Environmental Protection Draft Bill Analysis* (Mar. 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

III. Effect of Proposed Changes:

Section 1 amends s. 403.067, F.S., to exempt TMDLs and phased TMDLs from the legislative ratification requirements of s. 120.541(3), F.S.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Allowing the DEP to continue administering the TMDL program under the delegation of authority from the EPA might provide the private sector continuity and certainty in working within the existing DEP framework.

C. Government Sector Impact:

According to the DEP, the DEP will benefit from a modest reduction in staff time and costs associated with preparing and submitting TMDL rule packages to the Legislature for ratification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
