

CHAPTER 2013-71

Committee Substitute for Senate Bill No. 1808

An act relating to numeric nutrient criteria; amending s. 403.061, F.S.; authorizing the Department of Environmental Protection to implement specified provisions to control nutrient load in state waters; authorizing the department to implement specified nutrient standards; providing for deletion of a specified rule from the Florida Administrative Code; providing that specified nutrient criteria rules are subject to specified provisions of the Florida Administrative Code; exempting such nutrient criteria rules from ratification by Legislature under s. 120.541(3), F.S.; directing the department to establish numeric interpretations of the narrative nutrient criterion for certain estuaries and waters, subject to specified provisions and standards; directing the department to submit a specified report to the Governor and Legislature; providing an effective date.

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

Section 1. Subsection (43) is added to section 403.061, Florida Statutes, to read:

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

(43)(a) Implement ss. 403.067 and 403.088 in flowing waters consistent with the attainment and maintenance of:

1. The narrative criterion for nutrients and any in-stream numeric interpretation of the narrative water quality criterion for nutrients adopted by the department in streams, canals, and other conveyances; and

2. Nutrient water quality standards applicable to downstream waters.

(b) The loading of nutrients to downstream waters from a stream, canal, or other conveyance shall be limited to provide for the attainment and maintenance of nutrient water quality standards in the downstream waters.

1. If the downstream water does not have a total maximum daily load adopted under s. 403.067 and has not been verified as impaired by nutrient loadings, then the department shall implement its authority in a manner that prevents impairment of the downstream water due to loadings from the upstream water.

2. If the downstream water does not have a total maximum daily load adopted under s. 403.067 but has been verified as impaired by nutrient

loadings, then the department shall adopt a total maximum daily load under s. 403.067.

3. If the downstream water has a total maximum daily load adopted under s. 403.067 that interprets the narrative water quality criterion for nutrients, then allocations shall be set for upstream water bodies in accordance with s. 403.067(6), and if applicable, the basin management action plan established under s. 403.067(7).

(c) Compliance with an allocation calculated under s. 403.067(6) or, if applicable, the basin management action plan established under s. 403.067(7) for the downstream water shall constitute reasonable assurance that a discharge does not cause or contribute to the violation of the downstream nutrient water quality standards.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 2. The Department of Environmental Protection may implement its adopted nutrient standards for streams, springs, lakes, and estuaries consistent with the document entitled "Implementation of Florida's Numeric Nutrient Standards," which was proposed for adoption by the department in the Florida Administrative Register, Vol. 39, No. 54, pages 1397-1398. This document shall be subject to the provisions of rule 62-302.531(9), Florida Administrative Code, and exempt from ratification under s. 120.541(3), Florida Statutes.

Section 3. When the United States Environmental Protection Agency withdraws all federal numeric nutrient criteria rules in the State of Florida, and otherwise ceases all federal nutrient rulemaking in the State of Florida, then rule 62-302.531(9), Florida Administrative Code, shall stand repealed. Thereafter, upon certification by the Secretary of Environmental Protection filed with the Department of State, the rule shall be deleted from the Florida Administrative Code.

Section 4. Any nutrient criteria rules for estuaries adopted by the Department of Environmental Protection in 2013 are subject to the provisions of rule 62-302.531(9), Florida Administrative Code, and exempt from ratification under s. 120.541(3), Florida Statutes.

Section 5. The Department of Environmental Protection shall establish by rule or final order the estuary specific numeric interpretations of the narrative nutrient criterion for total nitrogen, total phosphorus, and chlorophyll a for any estuaries not already subject to the department's numeric nutrient criteria, and establish chlorophyll a interpretations of the narrative nutrient criterion for non-estuarine coastal waters by December 1, 2014, subject to the provisions of chapter 120, Florida Statutes. The water quality standard pursuant to s. 403.061(11), Florida Statutes, for total

nitrogen, total phosphorus, and chlorophyll a in estuaries, and chlorophyll a in non-estuarine coastal waters, shall be the current conditions of those unimpaired waters, accounting for climactic and hydrologic cycles, until such time as a numeric interpretation of the narrative water quality criterion for nutrients is established by rule or final order. The Department of Environmental Protection shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by August 1, 2013, conveying the status of establishing numeric interpretations of the narrative nutrient criterion pursuant to this section and including the department's calculation of the numeric values that represent the current conditions of those unimpaired waters as stated in this section for those estuaries and non-estuarine coastal waters without numeric interpretations of the narrative nutrient criterion established by rule or final order as of the date of the report.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor May 30, 2013.

Filed in Office Secretary of State May 30, 2013.