HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 239 Numeric Nutrient Water Quality Criteria
SPONSOR(S): Federal Affairs Subcommittee; Williams and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 3 N, As CS	Kliner	Blalock
2) Federal Affairs Subcommittee	8 Y, 5 N, As CS	Kliner	Cyphers
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill directs the Florida Department of Environmental Protection (DEP) to publish a Notice of Proposed Rulemaking no later than May 31, 2012, to revise the dissolved oxygen criteria applicable to Florida waterbodies to take into account the variability occurring in nature.

The bill revises the current classification of surface waters in the state, which are provided for in ch. 62-302, F.A.C. The revised statutory classification system will be implemented to establish the designated uses for state surface waters to more accurately reflect the range of uses that exist within the state and to allow appropriate expectations to be set for all waterbodies. The bill provides numerous statutory cross reference changes to reflect the revised classification system.

The effective date of the bill is July 1, 2010. The bill's fiscal impact is indeterminate. See Fiscal Comments for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Introduction: Water Quality Standards for Surface Waters in Florida

Current Situation

Water quality standards (WQS) are the foundation of the water quality-based pollution control program mandated by the Clean Water Act (CWA). The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.[1]

The CWA requires states or the Federal Environmental Protection Agency (EPA) to establish WQS for pollutants flowing into surface waters, and prohibits the discharge of any pollutant from a point source, such as a pipe, man-made ditch, or large animal feeding operation, into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. In Florida, the water quality of surface waters is primarily regulated through Florida's implementation of the CWA. The CWA provides incentives for Florida to: (a) adopt CWA-compliant WQS; and (b) administer the federal NPDES program on behalf of the EPA.[2]

Under the CWA, states adopt water quality standards for their navigable waters, and review and update those standards at least every three years. States determine WQS for surface waters in three steps:

- Part one is establishing the designated uses for each water body, which may be for drinking, recreation and aquatic life propagation, or for agricultural and industrial purposes;
- Part two is establishing water quality criteria, which can be either numeric or narrative standards that define the amount of pollutant a water body can contain without impairing the designated use; and
- Part three is establishing an anti-degradation policy to maintain and protect existing uses and high quality waters.

The CWA requires states to submit WQS to the EPA for review and approval.[3]

The EPA Administrator must "promptly prepare and publish" proposed regulations setting forth a revised or new WQS for navigable waters:

- If a revised or new WQS submitted by the state is determined by the Administrator not to be consistent with the applicable requirements , or

[1] Applicable water quality standards for purposes of the Act are the minimum standards which must be used when the CWA and regulations implementing the CWA refer to water quality standards, for example, in identifying impaired waters and calculating TMDLs under section 303(d), developing NPDES permit limitations under section 301(b)(1)(C), evaluating proposed discharges of dredged or fill material under section 404, and in issuing certifications under section 401 of the Act. 40 CFR 131.21

[2] Under the federal structure established in the U.S. Constitution, states may not be compelled by the Federal Government to enact legislation or take executive action to implement federal regulatory programs. However, Congress can encourage a state to regulate in a particular way by offering incentives -- often in the form of federal funds. Congress may also create a "potential preemption" structure in which states must regulate the activity under state law according to federally approved standards, or have state regulation pre-empted by federal regulation. The Clean Water Act, Clean Air Act, and Safe Drinking Water Act, for example, utilize these techniques. In addition, it is important to note that a state agency in Florida must have legislative authorization to implement a federal law. The Florida Department of Environmental Protection receives federal funds to administer the NPDES permitting program in the state.

[3] This section of the CWA represents the "potential preemption" structure previously mentioned. Apart from receiving federal funds to assist the state in meeting water quality standards approved by the EPA, the state retains local control over its water quality programs, and provides to its NPDES applicants something the federal structure lacks --administrative deadlines for the agency to approve or deny a permit application.

- In any case where the Administrator determines that a revised or new standard is necessary to meet requirements of the CWA.[4]

The Administrator must promulgate any new or revised standards not later than ninety days after publication of the proposed standards, unless prior to such promulgation, the state adopts a revised or new WQS which the Administrator determines to be in accordance with the CWA. After promulgation by the EPA, however, the promulgated rules become the state's WQS until such time as the EPA withdraws the promulgation, again by rule.[5] This may occur if the state proposes and the EPA approves the state's submission.

The CWA also requires that states identify impaired waters not meeting established WQS. In such instances, a state establishes a total maximum daily load, or TMDL, for those impaired waters. A TMDL is a value of the maximum amount of a pollutant that a body of water can receive and still meet WQS.[6] To enforce TMDLs, water quality-based effluent limitations (WQBELs) must be developed and incorporated into NPDES permits for point sources. Each TMDL represents a goal that is implemented by adjusting pollutant discharge requirements in the individual NPDES permits, along with the implementation of nonpoint source controls, such as Best Management Practices.[7] State-established TMDLs and NPDES WQBELs are submitted to the EPA for approval. The EPA may adjust the criteria for either if the federal agency determines the standard does not comply with the CWA.

The threshold limit on pollutants in surface waters (Florida's surface WQS on which TMDLs are based) are set in administrative rule. The state's impaired waters rule contains a table that catalogues over 100 substances, including subparts, with numerical thresholds for surface water classifications, including fresh and marine waters.[8] Generally, a pollutant is expressed as a numerical threshold (e.g., 11mg/L, or 11 milligrams per liter) because certain chemicals (e.g., Benzene, Lead, Mercury), have threshold concentrations above which adverse biological damage is a scientific certainty.

Surface Water Classification

Current Situation

A significant part of the water quality protections established by the CWA is based on a waterbody's designated uses. Designated uses serve the dual purpose of setting water quality goals for a specific waterbody and establishing the applicable water quality criteria for the waterbody. These goals and criteria serve as the regulatory basis for the establishment of water quality–based treatment controls, strategies, and management decisions by the various programs that incorporate or are designed to implement CWA goals. In the DEP's Division of Water Resource Management and the Division of Environmental Assessment and Restoration, these programs include Nonpoint Source Management, NPDES permitting, Water Reuse, TMDLs, Environmental Resource Permitting, Watershed Monitoring, and Everglades Restoration.

[4] CWA, s. 303(a)(3)(C).
[5] Pursuant to 40 CFR 131.21(c), if EPA finalizes a proposed rule, the EPA promulgated WQS would be applicable WQS for purposes of the CWA until EPA withdraws the federally-promulgated standard. Withdrawing a federal standard would require rulemaking by EPA pursuant to the requirements of the Administrative Procedure Act (5 U.S.C. 551 et seq.).
[6] Generally, the pollutant of concern and a numeric water quality target are, respectively, the chemical causing the impairment and the numeric criteria for that chemical (e.g., chromium) contained in the water quality standard. The TMDL expresses the relationship between any necessary reduction of the pollutant of concern and the attainment of the numeric water quality target. Guidelines for Reviewing TMDLs Under Existing Regulations Issued in 1992, are found at: http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/final52002.cfm
[7] When a water body is classified as impaired, Florida law also authorizes the DEP to adopt a Basin Management Action Plan, or BMAP, for that particular water body. A BMAP is designed to reduce the pollutant concentrations to meet the TMDL. Strategies may include: educational programs, permit limits on wastewater facilities, best management practices, conservation programs, and financial assistance.
[8] Chapter 62-302.530, Florida Administrative Code.

The CWA requires that the surface waters of each state be classified according to designated uses.[9] Florida's classification system was developed in 1968[10] and contains the following classes:

- Class I: Potable Water Supplies
- Class II: Shellfish Propagation or Harvesting
- Class III: Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife
- Class IV: Agricultural Water Supplies
- Class V: Navigation, Utility, and Industrial Use

There are standards designed to protect the various designated uses within each class. Class I waters have standards to protect potable drinking water sources, human recreation, human consumption of fish, and protection of aquatic life. Class II waters have standards to protect human consumption of fish and shellfish, human recreation, and protection of aquatic life. Class III waters have standards to protect human consumption of fish (and cooked shellfish), human recreation, and protection of aquatic life. Class IV waters have standards protective of agricultural and industrial uses, while the dormant Class V designation has standards that are protective of industrial uses.[11]

In 2006, in response to the EPA's encouragement to refine designated uses and requests from a wide cross section of stakeholders, the DEP initiated the Designated Uses Policy Advisory Committee (PAC), a stakeholder committee that evaluated whether Florida's surface water classification system contained in Chapter 62-302, Florida Administrative Code (F.A.C.), needs to be refined.

Stakeholders had raised questions about the validity of restoration goals that were established as TMDLs, and tied to the existing designated uses and water quality criteria. Some stakeholders expressed concern that pristine waters are not adequately protected by the current classification system, while other stakeholders were concerned that the current classification establishes unreasonable goals and restoration requirements for other waterbodies.

These divergent concerns reflect the fact that the vast majority of surface waters in Florida have the identical designated uses. Despite the wide variety of the state surface waters, ranging from naturally flowing rivers, spring runs, and open-water lakes, to concrete drainage ditches, upland cut canals, and other man-made or altered features, they are almost all designated Class III, which supports the designated uses of "recreation and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife." While there are higher classifications (Class I and II), they are for higher human uses (water supply and shellfish, respectively), and they have the same aquatic life expectations as Class III waters. As such, with the limited exception of Class IV waters, which are for agricultural water supplies, there is only one level of protection afforded to aquatic life, with the same expectation of a healthy aquatic life assemblage in a pristine stream as in a man-made, concrete-lined ditch. According to the DEP, these ecosystems are so different from one another, with such varying potential aquatic habitats, and with such a wide range of public purposes and public expectations, that it is unreasonable to assume they can be held to the same standards or protected in precisely the same way.[12]

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[9]The CWA requires that the surface waters of each state be classified according to designated uses, and that states adopt criteria that are protective of the uses. The CWA also allows states to revise designated uses when appropriate, and the EPA has specifically encouraged states to refine their designated uses to make them more precise.

[10] Since 1968, the classification system has been altered only once. The DEP amended its water classification rule, effective August 5, 2010, creating a sub-class of Class III waters called "Class III-Limited" surface waters. Class III Limited share the same water quality criteria as Class III except for any site specific alternative criteria that have been established for the waterbody under Rule 62-302.800, F.A.C. Chapter 62-302.400(5), F.A.C. Class III-Limited waters are restricted to waters with human-induced physical or habitat conditions that prevent attainment of Class III uses and do not include waterbodies that were created for mitigation purposes. Rulemaking will be necessary to re-assign any water body to the new sub-class. No specific water body has been yet classified as Class III-Limited.

[11] *Draft Recommendations of the Designated Uses Policy Advisory Committee for the Refinement of Florida's Surface Water Classification System*, August 2009, p. 3.

[12] *Id.*

After nearly one year of review and discussion of EPA guidance documents and scientific analysis, the PAC members agreed that refinements to the current classification system are warranted because the current system does not adequately describe the range of uses in surface waters that exists around the state. The PAC members generally agreed that Florida's designated use classification system should be refined in the following manner:

- Split the human and aquatic life uses into separate use classification systems so that the unique criteria associated with each broad category could be readily identified. This would allow readers to better understand differences in water quality necessary to protect specific uses within each broad use category.
- Establish two additional human uses and three additional aquatic life uses to incorporate flexibility into the current system. Use Attainability Analysis would have to be conducted before any waters could be reclassified into any use requiring less protection than its current (generally default Class III) classification.[13]

While the PAC primarily focused on the design of the designated use structure, it also noted the importance of establishing the criteria for each classification because the criteria define the water quality goals of each use. The DEP and PAC members agreed early on that the expectations associated with toxic pollutants, which constitute the majority of the criteria that exist today, should not change for any waterbody. The PAC also concluded that only a few criteria are likely to be considered for change. Apart from bacteriological criteria, criteria that reflect physical, chemical, and biological conditions could be subject to change to better reflect the uses and expectations of certain waterbodies, including criteria for biological integrity, dissolved oxygen, and nutrients. For aquatic life-based criteria, criteria could be adopted not only to reflect different expectations for designated uses but also to reflect the variability that may exist by waterbody type. Other subdivisions that could be established include recognizing the difference between flowing and standing waters, recognizing the unique characteristics associated with wetlands and springs, separating the state into bioregions, or splitting out lakes by naturally occurring nutrient levels.

As proposed by the PAC, the renaming conventions are shown in Table 1.

Table 1. Equivalent Classifications for Existing Classes

Existing Class	Proposed Human Use	Proposed Aquatic Life Use
Class I	HU-1	AL-2
Class II	HU-2	AL-2
Class III	HU-3	AL-2
Class IV	HU-6	N/A[14]
Class V	HU-7	N/A[15]

As stated by the Designated Uses PAC:

> The refined classification system would enable citizens, organizations, and state and local governments both to identify waters meriting higher use protection and to more precisely focus restoration efforts on goals that provide the best environmental benefit. Without this refinement, some of Florida's limited resources for restoration of water quality will be spent unwisely, as they will be directed inappropriately at waters, which due to human habitat and hydrological

[13] *Id.*, at p. 10. A Use Attainability Analysis is the process established in federal regulations for reviewing and revising designated uses. The only UAA conducted in Florida to date was for an upgrade in the designated uses for the Fenholloway River in 1997. The UAA demonstrated that Class III uses were attainable, and the river was reclassified from Class V to Class III.

[14] The existing criteria for Class IV waters were based primarily on human uses (the protection of crops and agricultural water supply), and so there is no directly comparable classification for aquatic life in Class IV waters. However, there is a limited set of aquatic life use criteria applicable to Class IV waters, and these criteria would continue to apply. The criteria could be included in HU-6 or as a separate aquatic life use classification.

[15] There are currently no Class V waters, and the determination of the appropriate classification and criteria for these waters will be deferred.

> alterations, cannot fully attain the current Class III uses. Ultimately, those waters used for recreation (human uses) and those waters supporting healthy biological communities (aquatic life uses) must be fully protected under a revised classification system.[16]

Despite this conclusion, DEP did not adopt a revised classification system. Rather, it amended its water classification rule, effective August 5, 2010, creating a sub-class of Class III waters. Pursuant to 62-302.400(5), F.A.C.:

> Class III-Limited surface waters share the same water quality criteria as Class III except for any site specific alternative criteria that have been established for the waterbody under Rule 62-302.800, F.A.C. Class III-Limited waters are restricted to waters with human-induced physical or habitat conditions that prevent attainment of Class III uses and do not include waterbodies that were created for mitigation purposes. "Limited recreation" means opportunities for recreation in the water are reduced due to physical conditions. "Limited population of fish and wildlife" means the aquatic biological community does not fully resemble that of a natural system in the types, tolerance and diversity of species present. Class III-Limited waters are restricted to:
> (a) Wholly artificial waterbodies that were constructed consistent with regulatory requirements under Part I or Part IV of Chapter 373, Part I or Part III of Chapter 378, or Part V of Chapter 403, F.S.; or
> (b) Altered waterbodies that were dredged or filled prior to November 28, 1975. For purposes of this section, "altered waterbodies" are those portions of natural surface waters that were dredged or filled prior to November 28, 1975, to such an extent that they exhibit separate and distinct hydrologic and environmental conditions from any waters to which they are connected.

Rulemaking will be necessary to re-assign any water body to the new sub-class. No specific water body has been yet classified as Class III-Limited.

Effect of Proposed Changes

The bill revises the current classification of surface waters in the state, which establishes the designated uses for state surface waters, to more accurately reflect the range of uses that exist within the state and to allow appropriate expectations to be set for all waterbodies. The reclassification system becomes effective upon approval by the EPA. The DEP is authorized to promulgate rules to implement this classification system. Further refinement to the statutory system must be made pursuant to administrative rule, which is subject to legislative ratification. Upon ratification, the classification system provided for in this bill will no longer be effective.

The bill proposes splitting Florida's outdated classification system into two use expectations; Human Use (HU) and Aquatic Life Use (AL), as follows:

- HU-1: Protection of potable water supply suitable for consumption following conventional drinking water treatment (also includes HU-3 uses).
- HU-2: Shellfish propagation or harvesting (also includes HU-3 uses).
- HU-3: Protection of full body contact and possible ingestion, and fish consumption (default).
- HU-4: Protection of incidental contact and fish consumption.
- HU-5: Contact limited or restricted due to unsafe conditions, protection of fish consumption.
- HU-6: Agricultural water supplies.
- HU-7: Utility and industrial uses.

- AL-1: Propagation and maintenance of aquatic communities that approximate the biological structure and function of natural background.
- AL-2: Propagation and maintenance of a healthy, well-balanced aquatic community with minimal deviation of biological structure and function relative to natural background. (Default)

[16] Draft Recommendations of the Designated Uses Policy Advisory Committee for the Refinement of Florida's Surface Water Classification System, August 2009, p. 20.

- AL-3: Protection of an aquatic community with moderate deviation of biological structure and function relative to natural background.
- AL-4: Protection of an aquatic community with substantial deviation of biological structure and function relative to natural background.

Codifying the classification in statute does not "move" any waters into a different use. At this point the system merely renames the use designations. Administrative rulemaking will be required in order to move any specific waters into a different use category. The bill provides numerous statutory cross-reference changes were added to reflect the revised classification system.

Dissolved Oxygen

Current Situation

Hypoxia is defined as a condition characterized by low levels of dissolved oxygen (DO) in the water, primarily caused by excess nutrients that promote algal growth. The decomposing algae consume oxygen, so that not enough is available to support aquatic life. According to the DEP, the current DO standard was established in the 1970s and does not accurately reflect natural conditions, consequently, there are numerous surface waters listed as impaired due to the faulty standard.

Effect of Proposed Change

The bill directs the DEP to publish a Notice of Proposed Rulemaking no later than May 31, 2012, to revise the dissolved oxygen criteria applicable to Florida waterbodies to take into account the variability occurring in nature. The current dissolved oxygen standard was created in the 1970's and does not reflect Florida's natural conditions, consequently, there may be a number of waters listed as impaired due to the inaccurate standard.

B. SECTION DIRECTORY:

Section 1. In an un-numbered section, directs the DEP to file a Notice of Proposed Rulemaking to revise dissolved oxygen criteria by a date certain.

Section 2. Creates s. 403.066, F.S., providing a classification system for surface water designated uses.

Section 3. Amends s. 373.199 (4)(d), F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 4. Amends s. 373.453 (2)(e), F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 5. Amends paragraph (m) of subsection (2) and paragraph (e) of subsection (4) of section 373.4592, F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 6. Amends paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 373.461, F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 7. Amends s. 380.061 (3)(a), F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 8. Amends s. 403.061 (29), F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 9. Amends s. 403.086 (7)(b), F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 10. Amends s. 403.0882 (6)(b), F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 11. Amends s. 403.121 (3)(c), F.S., providing statutory cross reference changes to reflect the revised classification system.

Sectiom 12. Amends s. 403.707 (5), F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 13. Amends s. 403.813 (1)(m), F.S., providing statutory cross reference changes to reflect the revised classification system.

Section 14. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See, Section D, FISCAL COMMENTS

2. Expenditures:

   See, Section D, FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See, Section D, FISCAL COMMENTS

2. Expenditures:

   See, Section D, FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See, Section D, FISCAL COMMENTS

D. FISCAL COMMENTS:

Rulemaking authority is provided to DEP for implementation of a revised classification system for water bodies. The bill also directs DEP to revise its rule on dissolved oxygen criteria. Finally, applying the classification system provided in the bill to change designated uses of waterbodies will require rulemaking. According to DEP estimates in the recent past, costs associated with rulemaking start around $10,000, not including costs associated with legal challenges. DEP will incur additional costs and workload developing and analyzing the data and science on which the above actions will be based.

All rules promulgated to implement this legislation will be subject to s. 120.541, F.S., requiring a statement of estimated regulatory costs. Section 120.541(2)(a), F.S., reads as follows:

(2) A statement of estimated regulatory costs shall include:
(a) An economic analysis showing whether the rule directly or indirectly:
1. 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 5 years after the implementation of the rule;

2. 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 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

Pursuant to s. 120.541(3), F.S., proposed rules which will have an adverse impact of more than $1 million over 5 years must be submitted to the Florida Legislature for ratification before rule may go into effect. Considering the historic costs for surface water restoration, the DEP rules are likely to meet or exceed this threshold. An exception to paragraph (2)(a) applies for the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6). Neither exception appears to apply in this case.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill directs the DEP to publish a Notice of Proposed Rulemaking no later than May 31, 2012, to revise the dissolved oxygen criteria applicable to Florida waterbodies to take into account the variability occurring in nature. The bill also provides DEP rulemaking authority to implement the surface water designated uses system and to revise the system, subject to legislative ratification. If modified by rule and ratified by the Legislature, the bill provides for the classification system established in the bill to no longer be in effect.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 5, 2011, the Federal Affairs Subcommittee introduced a Proposed Committee Substitute. The differences between the CS version of the bill and the PCS are as follows:

CS Version	PCS as amended
Prohibits state, regional, or local governmental entities from implementing or giving any effect to the federally-promulgated criteria in any program administered by a state, regional, or local governmental entity.	Limits the prohibition to situations where the criteria are more stringent than necessary to protect the designated use.
Authorizes the DEP to adopt numeric nutrient criteria for a particular surface water body or class of surface waters if the DEP determines that numeric nutrient criteria are necessary to protect aquatic life expected to inhabit those waters. The adopted numeric nutrient water quality criteria shall be based on objective and credible data and studies and reports establishing the nutrient levels at which the	Authorization shall be in accordance with s. 403.061, F.S., and implementation of the standard shall only require nutrient reductions where necessary to protect the designated use. DEP may adopt numeric nutrient water quality criteria for a particular surface water or group of surface waters in accordance with s. 403.061, which may be expressed in

CS Version	PCS as amended
water bodies may accept or assimilate without exhibiting imbalances of naturally occurring populations of flora and fauna based on a cause and effect relationship between nutrient levels and biological responses. In addition, such criteria may be expressed in terms of concentration, mass loading, waste load allocation, and surrogate standards, such as chlorophyll-a, and may be supplemented by narrative statements.	terms of concentration, mass loading, waste load allocation, and surrogate standards, such as chlorophyll-a, and may be supplemented by narrative statements. The standards established in accordance with this subsection shall be based on objective and credible data, scientific studies and analysis. Implementation of the standard shall only require nutrient reductions where necessary to protect the designated use.
The bill designates DEP-adopted nutrient Total Maximum Daily Loads (TMDLs) that were approved by the EPA as of December 6, 2010, as site-specific numeric nutrient water quality criteria. The site-specific criteria are not effective if the EPA disapproves, approves in part, or conditions its approval of the criteria, unless ratified by the Legislature. The site-specific criteria are subject to s. 403.067, F.S. (Florida Watershed Restoration Act), administrative rules and orders issued thereto, and are subject to s. 120.56(3), F.S., authorizing a substantially affected person to seek an administrative determination of the invalidity of an existing rule. Once approved and effective, the site-specific criteria may be modified, based on objective and credible data, studies and reports, by department rulemaking in accordance with s. 403.804, F.S., after approval by the Environmental Regulations Commission.	Provides that numeric nutrient total maximum daily loads developed by the DEP and approved by the EPA constitute the site specific numeric interpretation of the narrative nutrient water quality criteria.
Not in bill	Revises the Designated Uses for Florida Surface Water Classification System and places the system in statute. Authorizes DEP to revise the classification system by rule, which must be ratified by the Legislature prior to its taking effect. If such revisions are ratified, the statutorily created classification system will no longer be in effect.
Not in bill	Directs the DEP to publish a Notice of Proposed Rulemaking no later than May 31, 2012, to revise the dissolved oxygen criteria applicable to Florida waterbodies to take into account the variability occurring in nature.
Effective date of July 1, 2011	Same

The Federal Affairs Subcommittee passed an amendment to the PCS that was offered by Representative Trudi Williams, the sponsor for CS/HB 239. The amendment removed the authorization to the DEP to promulgate rules establishing numeric nutrient criteria, and removed the designation of numeric nutrient total maximum daily loads developed by the DEP and approved by the EPA as the site specific numeric interpretation of the narrative nutrient water quality criteria. Bill drafting staff added numerous statutory cross-reference changes to reflect the revised classification system. The analysis reflects the PCS as amended.