

BILL

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1 A bill to be entitled
 2 An act relating to numeric nutrient water quality
 3 criteria; creating s. 403.0675, F.S.; prohibiting the
 4 implementation of certain federal numeric nutrient water
 5 quality criteria rules by the Department of Environmental
 6 Protection, water management districts, and local
 7 governmental entities; authorizing the department to adopt
 8 numeric nutrient water quality criteria for surface waters
 9 under certain conditions; providing that certain total
 10 maximum daily loads and associated numeric interpretations
 11 constitute site specific numeric nutrient water quality
 12 criteria; providing for effect, governance, and challenge
 13 of such criteria; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16 WHEREAS, the United States Environmental Protection
 17 Agency's numeric nutrient water quality criteria rules for
 18 Florida's lakes and flowing waters, finalized on December 6,
 19 2010, and published in Volume 75, No. 233 of the Federal
 20 Register, lack adequate scientific support and fail to take into
 21 account the unique characteristics of the state's many thousands
 22 of rivers, streams, and lakes, and

23 WHEREAS, the final numeric nutrient water quality criteria
 24 rules fail to incorporate and actually undermine the state's
 25 science-based nutrient water quality programs, including the
 26 total maximum daily loads program and numeric endpoints
 27 promulgated thereunder that EPA has approved as protective of
 28 designated uses, and

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29 WHEREAS, the federal agency declined to subject its
 30 unprecedented, Florida-only numeric nutrient water quality
 31 criteria rules to an independent scientific peer review or
 32 economic analysis, and

33 WHEREAS, implementation of the numeric nutrient water
 34 quality criteria rules would have severe economic consequences
 35 on the state's agriculture, local governments, wastewater and
 36 water utilities, economically vital industries, small
 37 businesses, and residents living below the poverty level or on
 38 fixed incomes, and

39 WHEREAS, implementation of the federal agency's numeric
 40 nutrient water quality criteria rules would require Floridians
 41 to needlessly expend resources pursuing numerous exemptions,
 42 variances, and other relief mechanisms made necessary by the
 43 scientific flaws underlying the federal agency's criteria,
 44 consequently resulting in the delay of restoration projects that
 45 are already underway in the total maximum daily loads program
 46 and other water quality programs, and

47 WHEREAS, the Clean Water Act grants the State of Florida
 48 primacy in protecting state waters from pollution, and the
 49 federal agency's numeric nutrient water quality criteria
 50 rulemaking undermines this cooperative federalism structure,

51
 52 NOW, THEREFORE,

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 54 Be It Enacted by the Legislature of the State of Florida:
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56 Section 1. Section 403.0675, Florida Statutes, is created
 57 to read:

58 403.0675 Numeric nutrient water quality criteria.-

59 (1) (a) The department, water management districts, and all
 60 other state, regional, and local governmental entities may not
 61 implement or give any effect to the United States Environmental
 62 Protection Agency's nutrient water quality criteria for the
 63 state's lakes and flowing waters, finalized on December 6, 2010,
 64 and published in Volume 75, No. 233 of the Federal Register, in
 65 any regulatory program administered by the department, water
 66 management district, or governmental entity.

67 (b) The prohibition in paragraph (a) does not limit the
 68 ability of any water management district or any other state,
 69 regional, or local governmental entity from applying for any
 70 pollution discharge permit or complying with the conditions of
 71 such permits, including those issued under the National
 72 Pollution Discharge Elimination System, or from implementing
 73 best management practices, source control or pollution abatement
 74 measures for water quality improvement programs as provided by
 75 law; provided, however, that nothing in this section shall be
 76 construed to derogate or limit county and municipal home rule
 77 authority.

78 (2) Notwithstanding subsection (1), the department may
 79 adopt numeric nutrient water quality criteria for a particular
 80 surface water or group of surface waters if the department
 81 determines that such criteria are necessary to protect aquatic
 82 life reasonably expected to inhabit those waters. The numeric

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83 nutrient water quality criteria adopted pursuant to this
 84 subsection:

85 (a) Shall be based on objective and credible data, studies
 86 and reports establishing the nutrient levels which the water
 87 bodies may accept or assimilate without exhibiting imbalances of
 88 naturally occurring populations of flora and fauna based on a
 89 cause and effect relationship between nutrient levels and
 90 biological responses.

91 (b) May be expressed in terms of concentration, mass
 92 loading, waste load allocation, load allocation, and surrogate
 93 standards, such as chlorophyll-a, and may be supplemented by
 94 narrative statements.

95 (3) (a) Numeric nutrient total maximum daily loads and
 96 associated numeric interpretations of the narrative nutrient
 97 criterion, whether total nitrogen, total phosphorus,
 98 nitrate/nitrite, or a surrogate nutrient standard, such as
 99 chlorophyll-a, biological demand, or specific biological metric,
 100 developed by the department and approved by the United States
 101 Environmental Protection Agency as of December 6, 2010,
 102 constitute site specific numeric nutrient water quality
 103 criteria.

104 (b) The site specific numeric nutrient water quality
 105 criteria established pursuant to this subsection are:

106 1. Not effective if the United States Environmental
 107 Protection Agency disapproves, approves in part, or conditions
 108 its approval of the criteria, unless ratified by the
 109 Legislature.

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110 2. Subject to s. 403.067, including any rules or orders
 111 issued thereunder, and to challenge under s. 120.56(3).

112 (c) Once approved and effective, the site specific numeric
 113 nutrient water quality criteria established pursuant to this
 114 subsection may be modified, based on objective and credible
 115 data, studies and reports, by department rulemaking in
 116 accordance with s. 403.804.

117 Section 2. This act shall take effect July 1, 2011.