

By Senator Dean

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1                   A bill to be entitled  
2           An act relating to numeric nutrient water quality  
3           criteria; prohibiting the Department of Environmental  
4           Protection, the water management districts, and other  
5           governmental entities from implementing federal rules  
6           relating to numeric nutrient water quality criteria;  
7           providing that the prohibition does not limit a water  
8           management district or a state, regional, or local  
9           governmental entity from applying for a pollution  
10          discharge permit or complying with the permit or from  
11          implementing certain practices or measures;  
12          authorizing the department to adopt site-specific  
13          water quality criteria subject to certain conditions;  
14          providing that certain nutrient numeric standards  
15          already developed by the department constitute site-  
16          specific criteria under certain conditions; providing  
17          that such criteria are subject to administrative  
18          challenge and may be modified; providing an effective  
19          date.

20  
21           WHEREAS, the United States Environmental Protection  
22           Agency's rules for numeric nutrient water quality criteria for  
23           Florida's lakes and flowing waters, finalized on December 6,  
24           2010, and published in Volume 75, No. 233 of the Federal  
25           Register, lack adequate scientific support and fail to take into  
26           account the unique characteristics of the state's many thousands  
27           of rivers, streams, and lakes, and

28           WHEREAS, the federal agency declined to subject its  
29           unprecedented, Florida-only numeric nutrient water quality

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30 criteria rules to an independent scientific peer review or  
31 economic analysis, and

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

38 WHEREAS, implementation of the federal agency's rules for  
39 numeric nutrient water quality criteria would require state  
40 residents to needlessly expend resources pursuing numerous  
41 exemptions, variances, and other relief mechanisms made  
42 necessary by the scientific flaws underlying the federal  
43 agency's criteria, which will result in delaying restoration  
44 projects that are already underway in the total maximum daily  
45 load program and other water quality programs, and

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

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52  
53 Be It Enacted by the Legislature of the State of Florida:

54  
55 Section 1. State policy concerning numeric nutrient water  
56 quality criteria.-

57 (1) With respect to the United States Environmental  
58 Protection Agency's rules for numeric nutrient water quality

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59 criteria which were finalized on December 6, 2010, and published  
60 in Vol. 75, No. 233 of the Federal Register:

61 (a) The Department of Environmental Protection, the water  
62 management districts, and local governmental entities may not  
63 implement or give any force or effect to such rules in any  
64 program administered by the department.

65 (b) The prohibition in paragraph (a) does not limit a water  
66 management district or other state, regional, or local  
67 governmental entity from applying for any pollution discharge  
68 permit or complying with the conditions of such permits,  
69 including those issued under the National Pollution Discharge  
70 Elimination System, or from implementing best management  
71 practices or source control or pollution abatement measures for  
72 water quality improvement programs as provided by law.

73 (2) Notwithstanding subsection (1), the department may  
74 adopt numeric nutrient water quality criteria for a particular  
75 surface water or group of surface waters if the department  
76 determines that such criteria are necessary to protect aquatic  
77 life that is reasonably expected to inhabit those waters. Site-  
78 specific criteria adopted pursuant to this subsection:

79 (a) Must be based on objective and credible data, studies,  
80 and reports establishing nutrient levels that water bodies may  
81 accept or assimilate without exhibiting imbalances of naturally  
82 occurring populations of flora and fauna, based on a cause and  
83 effect relationship between nutrient levels and biological  
84 responses.

85 (b) May be expressed in terms of concentration, mass  
86 loading, waste load allocation, load allocation, and surrogate  
87 standards, such as chlorophyll a, and may be supplemented by

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88 narrative statements.

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

98 (a) Such site-specific water quality criteria are:

99 1. Not effective if the United States Environmental  
100 Protection Agency disapproves, approves in part, or conditions  
101 its approval of the criteria, unless ratified by the  
102 Legislature.

103 2. Subject to s. 403.067, Florida Statutes, including any  
104 rules or orders issued thereunder, and to challenges under s.  
105 120.56(3), Florida Statutes.

106 (b) Once approved and effective, site-specific water  
107 quality criteria may be modified, based on objective and  
108 credible data, studies, and reports, by department rulemaking in  
109 accordance with s. 403.804, Florida Statutes.

110 (4) This section does not derogate or limit county and  
111 municipal home rule authority.

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