

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.

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

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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.