

By Senator Evers

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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
5 water quality criteria rules by the Department of
6 Environmental Protection, water management districts,
7 and local governmental entities; authorizing the
8 department to adopt numeric nutrient water quality
9 criteria for surface waters under certain conditions;
10 providing that certain total maximum daily loads and
11 associated numeric interpretations constitute site
12 specific numeric nutrient water quality criteria;
13 providing for effect, governance, and challenge of
14 such criteria; providing an effective date.

15
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

27 WHEREAS, the federal agency declined to subject its
28 unprecedented, Florida-only numeric nutrient water quality
29 criteria rules to an independent scientific peer review or

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30 economic analysis, and

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

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

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

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Section 403.0675, Florida Statutes, is created
54 to read:

55 403.0675 Numeric nutrient water quality criteria.—

56 (1) The department, water management districts, and all
57 other state, regional, and local governmental entities may not
58 implement or give any effect to the United States Environmental

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59 Protection Agency's nutrient water quality criteria rules for
60 the state's lakes and flowing waters, finalized on December 6,
61 2010, and published in Volume 75, No. 233 of the Federal
62 Register, in any program administered by the department, water
63 management district, or governmental entity.

64 (2) Notwithstanding subsection (1), the department may
65 adopt numeric nutrient water quality criteria for a particular
66 surface water or class of surface waters if the department
67 determines that such criteria are necessary based on historic
68 and projected nutrient loading trends, existing and forthcoming
69 technology-based nutrient reduction measures, and existing and
70 forthcoming water quality restoration and protection programs
71 applicable to the surface water or class of surface waters. The
72 numeric nutrient water quality criteria adopted pursuant to this
73 subsection:

74 (a) Shall be established at the nutrient levels at which
75 the water bodies will exhibit imbalances of naturally occurring
76 populations of flora and fauna based on a cause and effect
77 relationship between nutrient levels and biological responses.

78 (b) May be expressed in terms of concentration, mass
79 loading, load allocation, and surrogate standards, such as
80 chlorophyll-a, and may be supplemented by narrative statements.

81 (c) Shall be subject to s. 120.541.

82 (3) (a) Numeric nutrient total maximum daily loads and
83 associated numeric interpretations of the narrative nutrient
84 criterion, whether total nitrogen, total phosphorus,
85 nitrate/nitrite, or a surrogate nutrient standard, such as
86 chlorophyll-a, biological demand, or specific biological metric,
87 developed by the department and approved by the United States

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88 Environmental Protection Agency as of December 6, 2010,
89 constitute site specific numeric nutrient water quality
90 criteria.

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

93 1. Not effective if the United States Environmental
94 Protection Agency disapproves, approves in part, or conditions
95 its approval of the criteria.

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

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