

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 other
7 governmental entities; clarifying the authority of water
8 management districts and other governmental entities with
9 respect to pollution control; providing construction;
10 authorizing the department to adopt numeric nutrient water
11 quality criteria for surface waters under certain
12 conditions; providing that certain total maximum daily
13 loads and associated numeric interpretations constitute
14 site specific numeric nutrient water quality criteria;
15 providing for effect, governance, and challenge of such
16 criteria; providing an effective date.

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

25 WHEREAS, the final numeric nutrient water quality criteria
26 rules fail to incorporate and actually undermine the state's
27 science-based nutrient water quality programs, including the
28 total maximum daily loads program, and numeric endpoints adopted

CS/HB 239

2011

29 | thereunder that the federal agency has approved as protective of
 30 | designated uses, and

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

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

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

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

54 |

55 | Be It Enacted by the Legislature of the State of Florida:

56 |

57 Section 1. Section 403.0675, Florida Statutes, is created
58 to read:

59 403.0675 Numeric nutrient water quality criteria.—

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

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

77 (2) This section does not derogate or limit county and
78 municipal home rule authority.

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

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

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

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

95 (4) (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.

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

CS/HB 239

2011

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 data
115 and studies and reports, by department rulemaking in accordance
116 with s. 403.804.

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