

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

22 WHEREAS, the final numeric nutrient water quality criteria
23 rules fail to incorporate and actually undermine the state's
24 science-based nutrient water quality programs, including the
25 total maximum daily loads program, and

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

HB 239

2011

28 | criteria rules to an independent scientific peer review or
 29 | economic analysis, and

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

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

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

49 |
 50 | Be It Enacted by the Legislature of the State of Florida:

51 |
 52 | Section 1. Section 403.0675, Florida Statutes, is created
 53 | to read:

54 | 403.0675 Numeric nutrient water quality criteria.—

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

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

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

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

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

81 (3) (a) Numeric nutrient total maximum daily loads and
82 associated numeric interpretations of the narrative nutrient

HB 239

2011

83 criterion, whether total nitrogen, total phosphorus,
84 nitrate/nitrite, or a surrogate nutrient standard, such as
85 chlorophyll-a, biological demand, or specific biological metric,
86 developed by the department and approved by the United States
87 Environmental Protection Agency as of December 6, 2010,
88 constitute site specific numeric nutrient water quality
89 criteria.

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

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

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

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