

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the General Government Appropriations Committee

BILL: CS/CS/CS/SB 494

INTRODUCER: General Government Appropriations Committee, Community Affairs Committee,
 Environmental Preservation and Conservation Committee, and Senator Bennett

SUBJECT: Water Conservation

DATE: April 15, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Pigott</u>	<u>DeLoach</u>	<u>GA</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill revises the requirements for automatic landscape irrigation systems to include technology that will interrupt or inhibit the system during periods of sufficient moisture. It requires that licensed contractors inspect these systems to ensure that they are in compliance before completing additional work on the systems.

The bill directs the Department of Environmental Preservation (DEP) to create a model ordinance by January 15, 2010, for adoption by local governments no later than October 1, 2010. The ordinance shall assess penalties to licensed contractors in violation of certain requirements. It provides for regular maintenance of broken systems without assessing penalties when fixed within a reasonable time. It provides that funds raised through penalties be dispersed for water-conservation activities and for administration and enforcement activities.

The bill provides legislative findings regarding the beneficial effect of the use of smart irrigation systems and establishes guidelines for an exemption from local day-of-the-week water restriction ordinances for users of “smart irrigation control systems.”

The bill also provides legislative findings regarding the beneficial effect of the implementation of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscape (2008) and encourages adoption by local governments. It dictates adoption by local governments that are located in an area where water is impaired by certain nutrients and it allows local governments to adopt more stringent standards if needed.

The bill requires the DEP and the Institute of Food and Agricultural Sciences to develop training and testing programs in urban landscape best management practices. The bill provides for the review of similar programs offered by an entity other than the DEP. The bill provides for approval of these programs if they are equivalent to or more comprehensive than the DEP's program. It provides that a person holding a certificate of successful completion of a training program may apply to the Department of Agriculture and Consumer Services for a limited certification for urban landscape commercial fertilizer application license and be exempt from additional local testing requirements.

The bill establishes the procedures that must be met for the issuance of a limited certification for urban landscape commercial fertilizer application license and provides for fees and continuing education for recertification. It creates an exemption for yard workers using the equipment of the homeowner or resident. The DEP is provided rulemaking authority for the adoption of rules to administer this program.

The bill provides an effective date of July 1, 2009.

The bill amends sections 373.62 and 482.021, Florida Statutes.

The bill creates the following sections of the Florida Statutes: 403.9335, 403.9336, 403.9337, 403.9338, and 482.1562.

II. Present Situation:

Landscape Irrigation

Current law provides for specific requirements for automatic lawn sprinkler systems installed after May 1, 1991, to include rain sensing devices or switches. The law lacks any specific enforcement provisions. The law specifies that any person who purchases and installs an automatic sprinkler system must install, maintain, and operate a rain sensor device or switch that will override the irrigation cycle of the system when adequate rainfall has occurred. There are no provisions for alternative technologies of moisture sensing devices or switches. Additionally, there is no requirement for licensed contractors to check or ensure that a rain sensor is installed or is operating properly before they commence work on lawn sprinkler systems. Lastly, there are currently no provisions to assess penalties for violations of this section, and no agency or local government has authority to determine if violations have occurred and to assess penalties for such violations.

According to a 2008 United States Geological Survey report,¹ Florida withdrew 2,541 million gallons per day (Mgal/d) for public use, with 2,201 Mgal/d supplied from groundwater sources and 340 Mgal/d from surface water sources. In addition, the DEP reports that the public supply from groundwater sources represents 52 percent of all daily water withdrawn from groundwater sources, while only 13 percent of surface water withdrawn on a daily basis went to public supply. Of the publicly supplied water resources, approximately 50 percent is used for landscape irrigation.²

Smart Irrigation systems

Lawn and landscape irrigation systems use a substantial amount of the state's potable water. Technology exists that optimizes the efficient application of water. Local water restriction ordinances inhibit the adoption of water saving technology and there is no statewide process that preempts these local ordinances.

Model Fertilizer Ordinance

The DEP, in conjunction with the Florida Consumer Task Force Service, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, developed the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008), which, if adopted, could assist in protecting the quality of Florida's surface water and groundwater resources. However, there is presently no requirement that local governments implement this model ordinance and some local governments have adopted their own fertilizer-use ordinances.

Fertilizer Application

There is no statewide-uniform training, testing, and certification program for persons applying fertilizer. As a result, some fertilizer applicators have to submit fees to and comply with conditions of multiple local governments in order to conduct their fertilizer application business.

III. Effect of Proposed Changes:

Section 1 amends s. 373.62, F.S., to create penalties for licensed contractors who do not comply with certain requirements regarding automatic landscape irrigation systems. Systems must have technology that will inhibit or interrupt the automatic landscape irrigation system when adequate moisture is present.

Licensed contractors must insure that such devices or switches are installed and working properly on every automatic landscape irrigation system upon which they work. If such devices or switches are not installed or are not operating properly, the licensed contractor must repair or

¹U.S. Geological Survey. Richard L. Marella. "Fact Sheet 2008-3080: Water Use in Florida, 2005 and Trends 1950-2005." Retrieved 13 Feb. 2009 <<http://pubs.usgs.gov/fs/2008/3080/>>.

²Florida Department of Environmental Protection. "Learning from the Drought: Annual Status Report on Regional Water Supply Planning." Retrieved 13 Feb. 2009 <<http://www.dep.state.fl.us/water/waterpolicy/docs/learning-from-drought-final-report.pdf>>.

install new devices or switches and confirm they are operating properly before completing any other service on the system.

To administer the requirements of s. 373.62, F.S., the DEP is directed to create a model ordinance by January 15, 2010, which may be adopted by local governments no later than October 1, 2010, and which at a minimum must provide:

- Requirements for contractors to report noncompliant systems to the proper authority.
- Penalties to licensed contractors who do not comply with the requirements of this section: \$50 for a first offense, \$100 for a second offense, and \$250 for a third or subsequent offense.

Local governments that have adopted more stringent ordinances than the DEP model ordinance will not be required to adopt the ordinance.

The bill provides that regular maintenance and replacement of worn or broken technology does not constitute a violation of this section if conducted within a reasonable time.

The bill provides that funds generated by penalties shall be retained by local governments for the administration and enforcement of the section and to further water conservation activities.

The bill includes legislative findings regarding the increase in efficiency of irrigation and water savings if smart irrigation systems are used instead of conventional time-controlled systems. The findings recognize that a state-wide process to provide an exemption from local water restriction ordinances will promote the adoption of this water saving technology.

The bill creates the following definitions pertinent to smart irrigation systems.

- “Monitoring entity” is a local government, community development district, homeowners’ association, a cooperative, or a public or private utility.
- “Soil moisture sensor” is a soil-based device that assesses soil moisture.
- “Soil moisture sensor control system” is the collective term for the system that has remote monitoring and adjustment capability.

The applicable water management district must grant a variance from days-of-the-week watering system for any user having a soil moisture sensor control system if the monitoring entity certifies that:

- the system was installed in compliance with this section.
- the system can monitor and remotely modify settings for cycle and run time.
- it will post a list of active users on the internet and provide that information to the water management district and local government.
- it will give a user 48 hours to take corrective action after notice of noncompliance and will remove the user from the active list.
- it will post a notice in plain view from the nearest roadway that states “Irrigating with Smart Irrigation Controller” and will remove it if corrective action is not timely taken after notice of noncompliance or if the user is no longer being monitored.

The bill requires the licensed contractor to certify to the monitoring entity that installation requirements were met. The monitoring entity is to then update the internet listing and post the roadway sign. A professional, licensed engineer or landscape architect must perform a maintenance review annually and certify which systems are in compliance to the monitoring entity. The water management district is authorized to revoke any exemption if the monitoring entity fails to ensure continual compliance.

The bill creates an exemption only for days-of-the-week watering restrictions and it does not require a property owner to install a soil moisture sensor control system.

Section 2 creates s. 403.9335, F.S. to provide that newly created ss. 403.9335-403.9338, F.S., may be cited as the “Protection of Urban and Residential Environments and Water Act.”

Section 3 creates s. 403.9336, F.S., to make a legislative finding that implementation of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008) (Fertilizer Model Ordinance) will assist in protecting the quality of Florida’s surface water and groundwater resources and that local conditions may justify local governments to implement more stringent fertilizer-management practices.

Section 4 creates s. 403.9337, F.S., to encourage local governments to adopt and enforce the Fertilizer Model Ordinance and to require adoption by local governments located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to s. 403.067, F.S., subject to more stringent standards being adopted if local government demonstrates the necessity of such standards by documentation that becomes part of the public record.

Any local government that adopted its own fertilizer-use ordinance before January 1, 2009, is exempt from this section and any ordinance or amendment adopted after this date must substantively conform to the then current Fertilizer Model Ordinance. Finally, this section does not apply to the use of fertilizer on farm operations or on land classified as agricultural.

Section 5 creates s. 403.9338, F.S., to require the DEP, in cooperation with the Institute of Food and Agricultural Sciences, to:

- provide a training and testing program in urban landscape best-management practices.
- approve training and testing programs that are equivalent to or more comprehensive than the program developed by the DEP. Currently approved programs must be reapproved by July 1, 2010.

A person holding a certificate from an approved training program may apply to the Department of Agriculture and Consumer Services to receive a limited certification for urban landscape commercial fertilizer application without having to comply with any additional local testing.

Section 6 amends s. 482.021, F.S., by renumbering subsections and adding new subsections with the following definitions:

- “Commercial fertilizer application” means application of fertilizer to non-owned property for payment or other consideration.
- “Urban landscape” means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants.

Section 7 creates s. 482.1562, F.S., to set forth the following provisions regarding limited certification for urban landscape commercial fertilizer application.

- Requires the DEP to establish a limited certification for urban landscape commercial fertilizer application to promote compliance with best-management practices.
- Requires persons applying commercial fertilizer to an urban landscape to be certified beginning January 1, 2014.
- Requires applicants to submit their training certificate for certification or proof of continuing education for recertification along with a fee initially set at \$25 but which can be increased to \$75.
- Provides that the certificate is good for four years and requires four classroom hours of acceptable continuing education before recertification.
- Late fees and procedures for reinstatement are specified.
- Activities are detailed that are not authorized to be performed by someone with this certification.
- The DEP can provide information concerning certification status to local and state agencies and is encouraged to create an online data base with this information.
- An exemption from certification is created for yard workers applying fertilizer to individual residential properties if they are using fertilizer and equipment provided by the owner or resident.
- The DEP is giving rulemaking authority to adopt rules to administer this section.

Section 8 provides that this act shall take effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill provides a penalty against a licensed contractor who works on an automatic landscape irrigation system and fails to comply with s. 373.62, F.S. At a minimum, penalties for violations of this section will result in \$50 for a first offense, \$100 for a second offense, and \$250 for a third or subsequent offense. Regular maintenance and replacement of worn or broken technology will not subject a person to penalties if the repair is conducted within a reasonable time. It is anticipated that the costs of maintaining properly operating automatic irrigation systems will be offset, partially or fully, by the savings from more efficient water use.

It is unknown whether licensed contractors will pass additional costs, if any, on to their customers for adherence to the new requirements of s. 373.62, F.S. It is also unknown how much the reporting requirement will cost contractors or whether they will see increased revenues from sales and repairs of noncompliant landscape irrigation systems.

The installation of a soil moisture sensor control system, in order to qualify for an exemption from local government watering restrictions, is voluntary. It is unknown how many users will install these systems or what the fiscal impact will be to them.

The limited certification for urban landscape commercial fertilizer application is a voluntary program until January 1, 2014. It is unknown how many persons will apply for this certification before that date or what the fiscal impact will be to them.

C. Government Sector Impact:

The bill directs the DEP to create a model ordinance by January 15, 2010, for adoption by local governments. Local governments must begin enforcement no later than October 1, 2010. The DEP indicates that the costs associated with meeting the additional requirements of s. 373.62, F.S., can be absorbed by existing resources and programs.

The fiscal impact on local governments is unknown. They will be responsible for enforcement of the model ordinance developed by the DEP. Their staffs and code enforcement officials will be responsible for determining when violations have occurred, assessing penalties for the violations and collecting and disposing of funds generated from the penalties to further water conservation activities. These costs are likely to be offset by the penalty monies the local government can collect.

The adoption of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008) is mandatory for local governments within a watershed impaired by certain nutrients. Adoption of the ordinance is voluntary for all other local governments. The fiscal impact on local governments is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by General Government Appropriations Committee on April 15, 2009:

This committee substitute makes the following changes:

- Changes application of s. 373.62, F.S., from “person who operates” a landscape system to a “person who purchases and installs” a landscape system.
- Deletes penalties for a person who operates a landscape irrigation system.
- Changes the requirement that local governments adopt a model ordinance regarding landscape irrigation systems by October 1, 2010 from mandatory to optional.
- Makes legislative findings regarding the benefits of using smart irrigation systems for urban landscape, creates definitions and establishes procedures for exemption from local government’s day-of-the-week water restrictions by users of a soil moisture sensor control system.
- Encourages certain local governments and mandates other specified local governments, unless either has adopted its own fertilizer-use ordinance before January 1, 2009, to adopt the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscape (2008), while any local government is allowed to adopt a more stringent ordinance if it demonstrates necessity.
- Directs the DEP and the Institute of Food and Agricultural Sciences to develop a training and testing program in best management practices for urban landscape and to review similar programs offered by private entities and approve those programs that are equivalent or more comprehensive than the program developed by the DEP.
- Permits a person who has received a certificate showing successful completion of an approved program to perform his trade without being subject to any additional local testing.
- Provides definitions for “commercial fertilizer application” and “urban landscape.”
- Requires the DEP to establish a limited certification for urban landscape commercial fertilizer application and sets forth procedures regarding an applicant’s certification, training, recertification, and reinstatement. It provides an exemption for application of fertilizer on residential properties using equipment owned by the resident. Rule making authority is provided to the DEP to administer this program.

CS/CS by Community Affairs Committee on March 3, 2009.

The CS/CS makes the following changes:

- changes “irrigation” to “landscape irrigation,”
- eliminates duplicative language stating that contractors can be penalized for not meeting the requirements of the section,
- exempts local governments from having to adopt the model ordinance if the local ordinance is more stringent than the model ordinance, and
- allows the local government to use penalty monies for the administration and enforcement of the section.

CS by Environmental Preservation & Conservation Committee on February 17, 2009.

First, the CS expands the purview of s. 373.62, F.S., to include “automatic irrigation systems” instead of only “automatic lawn sprinkler systems.” Second, it allows operators some flexibility in what technology they want to purchase and install to inhibit or interrupt the automatic irrigation system, rather than limiting their choices to rain or soil-moisture sensor devices or switches. Third, the CS expands the list of professional installers covered in this section from “licensed irrigation contractor” to “licensed contractor” to ensure that all professionals who are licensed to work on irrigation systems are bound by the provision of s. 373.62, F.S. Fourth, the CS provides for penalties for licensed contractors who do not comply with this section. Fifth, the CS requires the DEP to create a model ordinance by January 15, 2010 to be adopted by local governments no later than October 1, 2010 in order to administer this section and removes the DEP’s requirement to delegate enforcement authority to either water management districts or local governments, which is no longer necessary. In addition, since the DEP will no longer be the enforcement agency, penalties will not be remitted to it and, subsequently, will not be deposited into the Water Protection and Sustainability Program Trust Fund. Lastly, the CS contains a provision to provide that regular maintenance of broken systems will not be considered a violation of s. 373.62, F.S., if the repairs are conducted within a reasonable time.

B. Amendments:

None.