

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 593 Water Resources
SPONSOR(S): General Government Policy Council, Agriculture & Natural Resources Policy Committee, Boyd
TIED BILLS: None IDEN./SIM. BILLS: SB 2530

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Agriculture & Natural Resources Policy Committee, Military & Local Affairs Policy Committee, General Government Policy Council, and empty rows.

SUMMARY ANALYSIS

Landscape irrigation accounts for one of the largest uses of water in Florida. Finding that water conservation is increasingly critical to the continuance of an adequate water supply for the citizens of the state, the legislature has found that "Xeriscape" or "Florida-friendly landscape" can contribute significantly to water conservation and water quality protection and restoration. This bill removes the term Xeriscape from Florida Statutes, replacing it with "Florida-friendly landscapes," and specifies additional principles that illustrate this particular landscaping approach. The bill also recognizes the University of Florida/ IFAS' Florida Yards and Neighborhoods Program as a resource to promote the use of Florida-friendly landscaping. The bill further provides legislative findings that the use of Florida-friendly landscaping and other measures that conserve Florida's water resources serve a compelling public interest and that the participation of homeowners' associations and local governments is essential to state water conservation efforts, and deed restrictions, covenants, and local ordinances may not be enforced to prohibit a landowner from applying Florida-friendly landscaping to their property or create any requirement or limitation in conflict with any provision of Part II of chapter 373, F.S. (regulating consumptive use of water and the management and storage of surface waters respectively).

The bill revises the current requirement for a county's board of county commissioners or a municipality's governing body to enact a Xeriscape ordinance if it determines that Xeriscape would be a significant benefit as a water conservation measure relative to the cost to implement Xeriscape landscaping, to replace Xeriscape with Florida-friendly landscaping and to add consideration of water quality protection or restoration measure benefits, especially for impaired waters designated pursuant to s. 403.067, F.S.

The bill requires water management districts to consider, when evaluating applications for water use from public water suppliers, whether the applicable local government has adopted ordinances for landscaping and irrigation systems consistent with Florida-friendly landscaping. The bill also requires water management districts to use Florida-friendly landscaping around buildings and facilities owned by the district and constructed after June 30, 2009, and requires the water management districts to develop a 5-year program for phasing in the use of Florida-friendly landscaping on public property associated with buildings or facilities owned by the water management districts and constructed before July 1, 2009.

The bill also creates additional requirements for individuals to meet prior to being able to take the water well contractor licensure examination and specifies that the fine to be imposed for practicing water well contracting without a license is \$5,000 per occurrence.

This bill does not appear to have a significant fiscal impact on state or local government.

This bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida-friendly Landscape

Present Situation

Landscape irrigation accounts for one of the largest uses of water in Florida. Finding that water conservation is increasingly critical to the continuance of an adequate water supply for the citizens of the state, the legislature has found that "Xeriscape" can contribute significantly to the conservation of water.¹ Moreover, the legislature finds that state government has the responsibility to promote Xeriscape as a water conservation measure by using Xeriscape on public property associated with publicly owned buildings or facilities.² "Xeriscape" or "Florida-friendly landscape" means quality landscapes that conserve water and protect the environment and are adaptable to local conditions and that are drought tolerant. The principles of Xeriscape include planning and design, appropriate choice of plants, soil analysis that may include the use of solid waste compost, efficient irrigation, practical use of turf, appropriate use of mulches, and proper maintenance.³

Currently, s. 373.185, F.S., provides that each water management district must design and implement an incentive program to encourage all local governments within its district to adopt new ordinances or amend existing ordinances to require Xeriscape landscaping for development permitted after the effective date of the new ordinance or amendment. Each district must adopt rules governing the implementation of its incentive program and governing the review and approval of local government Xeriscape ordinances or amendments that are intended to qualify a local government for the incentive program. In addition, each district must assist the local governments within its jurisdiction by providing a model Xeriscape code and other technical assistance. A local government Xeriscape ordinance or amendment, in order to qualify the local government for a district's incentive program, must include certain minimum requirements.⁴ The districts also must work with local governments to promote, through educational programs and publications, the use of Xeriscape practices, including the use of solid waste compost, in existing residential and commercial development. This section may not be construed to limit the authority of the districts to require Xeriscape ordinances or practices as a condition of any consumptive use permit.⁵ A deed restriction or covenant entered after October 1,

¹ Section 255.259(1), F.S.

² Section 255.259(1), F.S.

³ Section 373.185(1)(b), F.S.

⁴ Section 373.185(2), F.S.

⁵ Section 373.185(2), F.S.

2001, or local government ordinance may not prohibit any property owner from implementing Xeriscape or Florida-friendly landscape on his or her land.⁶

The water management districts are required to work with statutorily specified organizations and governmental entities to develop landscape irrigation and xeriscape design standards for new construction that incorporate a landscape irrigation system and develop scientifically based model guidelines for urban, commercial, and residential landscape irrigation, including drip irrigation, for plants, trees, sod, and other landscaping.⁷

The Florida Yards and Neighborhoods (FYN), which is established in the University of Florida's Cooperative Extension Service, is a public outreach educational program that encourages homeowners, landscape maintenance personnel, and others to practice environmentally sensitive landscape techniques to conserve water and protect water quality. FYN is the source of the term "Florida-Friendly Landscaping." FYN incorporates the principles of Xeriscape but goes one step further by focusing on all aspects of water quality and quantity that relate to urban landscape systems and the natural systems they impact. The FYN publishes a handbook¹⁵ explaining the concepts of Florida-friendly landscaping approach.

Sections 125.568 and 166.048, F.S., provides that if a county's board of county commissioners or a municipality's governing body respectively determines that Xeriscape would be a significant benefit as a water conservation measure relative to the cost to implement Xeriscape landscaping, the board or governing body must enact a Xeriscape ordinance.

Section 373.228, F.S., provides that the water management districts must work with the Florida Nurserymen and Growers Association, the Florida Chapter of the American Society of Landscape Architects, the Florida Irrigation Society, the Department of Agriculture and Consumer Services, the Institute of Food and Agricultural Sciences, the Department of Environmental Protection, the Department of Transportation, the Florida League of Cities, the Florida Association of Counties, and the Florida Association of Community Developers to develop landscape irrigation and xeriscape design standards for new construction which incorporate a landscape irrigation system and develop scientifically based model guidelines for urban, commercial, and residential landscape irrigation, including drip irrigation, for plants, trees, sod, and other landscaping.

Effect of Proposed Changes

This bill amends s. 373.185, F.S., to remove the term Xeriscape from Florida Statutes, and replace the term with "Florida-friendly landscapes." This bill also provides additional principles that illustrate this particular landscaping approach, taking such principles from the FYN handbook. These principles include:

- Planting the right plants in the right place;
- Efficient watering;
- Appropriate fertilization;
- Mulching;
- Attraction of wildlife;
- Responsible management of yard pests;
- Recycling yard waste;
- Reduction of stormwater runoff; and
- Waterfront protection.

This bill also amends s. 373.185, F.S., to require water management districts to work with the Department of Environmental Protection (DEP), county extension agents or offices, nursery and landscape industry groups, and other interested stakeholders to promote the use of Florida-friendly landscaping practices in both existing and proposed developments in Florida. In promoting the use of

⁶ Section 373.185(3), F.S.

⁷ Section 373.228(4), F.S.

Florida-friendly landscaping practices, each water management district must use the materials previously developed by the DEP and the University of Florida Institute of Food and Agricultural Sciences Extension and the Center for Landscape Conservation and Ecology. This bill further amends s. 373.185, F.S., to provide that a deed restriction, covenant, or local government ordinance may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping or create any requirement or limitation in conflict with any water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373, F.S. This bill also provides legislative findings that the use of Florida-friendly landscaping and other water use and pollution prevention measures that conserve or protect Florida's water resources serves a compelling public interest and that participation of homeowners' associations and local governments is essential to state water conservation and water protection efforts.

This bill creates s. 373.167, F.S., to provide that each water management district must use Florida-friendly landscaping on public property associated with buildings and facilities owned by the water management district and constructed after June 30, 2009. This bill also requires the water management districts to develop a 5-year program for phasing in the use of Florida-friendly landscaping on public property associated with buildings or facilities owned by the water management districts and constructed before July 1, 2009.

This bill establishes that Florida-friendly landscaping is a water quality protection and restoration measure in addition to a water conservation measure, and amends ss. 125.568 and 166.048, F.S., to provide that if a county's board of county commissioners or a municipality's governing body determines that Florida-friendly landscaping would be a significant benefit as a water conservation measure or a water quality protection or restoration measure, especially for impaired waters designated pursuant to s. 403.067, F.S., relative to the cost to implement Florida-friendly landscaping, the board must enact a Florida-friendly landscaping ordinance.

This bill amends s. 373.228, F.S., to reflect the change in name of the Florida Nurserymen and Growers Association to the Florida Nursery Growers and Landscape Association, and adds the Florida Native Plant Society to the list of organizations and government entities that the water management districts must work with in developing landscape irrigation and Florida-friendly landscaping design standards for new construction. The bill also amends s. 373.228, F.S., to require water management districts to consider, in evaluating applications for water use from public water suppliers, whether the applicable local government has adopted ordinances for landscaping or irrigation systems consistent with Florida-friendly landscaping.

The bill also provides several identical conforming statutory revisions to reflect the replacement of the term Xeriscape with Florida-friendly landscaping, and the requirement that deed restrictions, covenants, or local ordinances not be enforced to prohibit property owners from implementing Florida-friendly landscaping on their land or create any requirement or limitation in conflict with any water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373, F.S.

Water Well Contractors

Present Situation

Section 373.323(3), F.S., provides that an applicant for a water well contractor's license is entitled to take the licensure examination if the applicant, among other things, has at least two years of experience in constructing, repairing, or abandoning wells.

Section 373.333, F.S., provides that a water management district may impose a fine, not to exceed \$5,000, against a person that has engaged in the unlicensed practice of water well contracting.

Effect of the Bill

This bill amends s. 373.323(3), F.S., to require applicants for a water well contractor's license to demonstrate proof of the required 2 years experience by providing:

- Evidence of the length of time the applicant has been engaged in the construction, repair, or abandonment of water wells. Such evidence shall be attested to by at least three letters from any of the following:
 - Water well contractors.
 - Water well drillers.
 - Water well parts and equipment vendors.
 - Water well inspectors.
- A list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years. Of these wells, at least seven must have been constructed by the applicant. The list must also include:
 - The name and address of the owner of each well.
 - The location, primary use, and depth and diameter of each well the applicant has constructed, repaired, or abandoned.
 - The approximate date the construction, repair, or abandonment of each well was completed.

This bill amends s. 373.333, F.S., to provide that a water management district may impose a fine, not to exceed \$5,000 per occurrence, against a person that has engaged in the unlicensed practice of water well contracting.

B. SECTION DIRECTORY:

Section 1: Creating s. 373.167, F.S., relating to water management district implementation of florida-friendly landscaping.

Section 2: Amends s. 373.185, F.S., relating to local Florida-friendly landscape ordinances.

Section 3: Amends s. 373.323, F.S., relating to the licensure of water well contractors.

Section 4: Amends s. 373.333, F.S., relating to disciplinary guidelines for practicing water well contracting without a required license.

Sections 5 through 13: Provide conforming amendments to ss. 125.568, 166.048, 255.259, 335.167, 373.228, 380.061, 388.291, 481.303, and 720.3075, F.S.

Section 14: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill appears to have an insignificant fiscal impact on state government expenditures. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill appears to have an insignificant fiscal impact on local government expenditures. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There may be some costs incurred by the water management districts in establishing the criteria governing the review and approval of local landscape ordinances and work with local governments, counties, nurseries, and other interested stakeholders to provide educational programs to promote the use of Florida-friendly landscaping.

There also may be some costs incurred by the municipalities that are required by this bill to consider enacting ordinances and enact the ordinances if they determine that the ordinances would be a significant benefit to water conservation or water quality protection or restoration.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill requires cities and counties to take action that requires the expenditure of money. Current law provides that if a county's board of county commissioners or a municipality's governing body respectively determines that Xeriscape would be a significant benefit as a water conservation measure relative to the cost to implement Xeriscape landscaping, the board or governing body must enact a Xeriscape ordinance. The bill expands this requirement by amending ss. 125.568 and 166.048, F.S., to provide that if a county's board of county commissioners or a municipality's governing body determines that Florida-friendly landscaping would be a significant benefit as a water conservation measure or a water quality protection or restoration measure, especially for impaired waters designated pursuant to s. 403.067, F.S., relative to the cost to implement Florida-friendly landscaping, the board must enact a Florida-friendly landscaping ordinance. However, the fiscal impact does not appear to be significant, and therefore the bill appears to be exempt from the Mandates requirements.

This bill does not appear to reduce the authority that counties or municipalities have to raise revenues in the aggregate or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 6, 2009, the Agriculture and Natural Resources Policy Committee adopted one strike-all amendment to the bill. The strike-all amendment made the following revisions to the bill:

- Requires each water management district to use Florida-friendly landscaping, on public property associated with buildings and facilities owned by the water management district and constructed after June 30, 2009. Also, requires the water management districts to develop a 5-year program for phasing in the use of Florida-friendly landscaping on public property associated with buildings or facilities owned by the water management districts and constructed before July 1, 2009.
- Establishes that Florida-friendly landscaping is a water quality protection and restoration measure in addition to a water conservation measure, and provides that if a county's board of county commissioners or a municipality's governing body determines that Florida-friendly landscaping would be a significant benefit as a water quality protection or restoration measure, especially for impaired waters designated pursuant to s. 403.067, F.S., relative to the cost to implement Florida-friendly landscaping, the board or governing body must enact a Florida-friendly landscaping ordinance.
- Requires each water management district, in promoting the use of Florida-friendly landscaping, to use materials previously developed by the Department of Environmental Protection (DEP), the University of Florida Institute of Food and Agricultural Sciences Extension and the Center for Landscape Conservation and Ecology.
- Provides that water management districts may develop supplemental materials as appropriate to address differing physical or natural characteristics within each district.
- Provides that water management districts may impose a fine, not to exceed \$5,000 per occurrence, against an unlicensed person that has engaged in the practice of water well contracting.
- Provides that water management districts must consider, when evaluating applications for water use from public water suppliers, whether the applicable local government has adopted ordinances for landscaping and irrigation systems consistent with Florida-friendly landscaping.

On March 31, 2009, the General Government Policy Council adopted one amendment to the bill that deleted the word "existing" before the phrase "residential and commercial development" to provide that water management districts' education programs and activities will promote the use of Florida-friendly landscaping practices in both existing and future developments in Florida.