

By the Committees on Comprehensive Planning, Local and Military Affairs; Natural Resources; and Senator Brown-Waite

316-1512-01

1                                   A bill to be entitled  
2           An act relating to Xeriscape; amending ss.  
3           125.568, 166.048, 255.259, 335.167, 373.185,  
4           F.S.; redefining the term "Xeriscape";  
5           prohibiting certain restrictions on the  
6           practice of Xeriscape; amending s. 373.62,  
7           F.S.; providing for the operation and  
8           maintenance of rain sensor devices; amending s.  
9           720.3075, F.S.; prohibiting homeowners'  
10          associations from restricting the practice of  
11          Xeriscape; providing an effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15           Section 1. Section 125.568, Florida Statutes, is  
16 amended to read:

17           125.568 Conservation of water; Xeriscape.--

18           (1)(a) The Legislature finds that Xeriscape  
19 contributes to the conservation of water. In an effort to  
20 meet the water needs of this state in a manner that will  
21 supply adequate and dependable supplies of water where needed,  
22 it is the intent of the Legislature that Xeriscape be an  
23 essential part of water conservation planning.

24           (b) "Xeriscape" or "Florida friendly landscape" means  
25 quality landscapes that conserve water and protect the  
26 environment and are adaptable to local conditions and which  
27 are drought tolerant ~~a landscaping method that maximizes the~~  
28 ~~conservation of water by the use of site-appropriate plants~~  
29 ~~and an efficient watering system.~~ The principles of Xeriscape  
30 include planning and design, appropriate choice of plants,  
31 soil analysis which may include the use of solid waste

1 compost, practical use of turf, efficient irrigation,  
2 appropriate use of mulches, and proper maintenance.

3 (2) ~~By October 1, 1992,~~The board of county  
4 commissioners of each county shall consider enacting  
5 ordinances requiring the use of Xeriscape as a water  
6 conservation measure. If the board determines that Xeriscape  
7 would be of significant benefit as a water conservation  
8 measure relative to the cost to implement Xeriscape  
9 landscaping in its area of jurisdiction, the board shall enact  
10 a Xeriscape ordinance. Further, the board of county  
11 commissioners shall consider promoting Xeriscape as a water  
12 conservation measure by: using Xeriscape in, around, or near  
13 facilities, parks, and other common areas under its  
14 jurisdiction which are landscaped after the effective date of  
15 this act; providing public education on Xeriscape, its uses as  
16 a water conservation tool, and its long-term  
17 cost-effectiveness; and offering incentives to local residents  
18 and businesses to implement Xeriscape landscaping.

19 (3) A deed restriction or covenant entered after  
20 October 1, 2001, or local government ordinance may not  
21 prohibit any property owner from implementing Xeriscape or  
22 Florida friendly landscape on his or her land.

23 Section 2. Section 166.048, Florida Statutes, is  
24 amended to read:

25 166.048 Conservation of water; Xeriscape.--

26 (1)(a) The Legislature finds that Xeriscape  
27 contributes to the conservation of water. In an effort to  
28 meet the water needs of this state in a manner that will  
29 supply adequate and dependable supplies of water where needed,  
30 it is the intent of the Legislature that Xeriscape be an  
31 essential part of water conservation planning.

1           (b) "Xeriscape" or "Florida friendly landscape" means  
2 quality landscapes that conserve water and protect the  
3 environment and are adaptable to local conditions and which  
4 are drought tolerant ~~a landscaping method that maximizes the~~  
5 ~~conservation of water by the use of site-appropriate plants~~  
6 ~~and an efficient watering system.~~ The principles of Xeriscape  
7 include planning and design, appropriate choice of plants,  
8 soil analysis which may include the use of solid waste  
9 compost, practical use of turf, efficient irrigation,  
10 appropriate use of mulches, and proper maintenance.

11           (2) ~~By October 1, 1992,~~The governing body of each  
12 municipality shall consider enacting ordinances requiring the  
13 use of Xeriscape as a water conservation measure. If the  
14 governing body determines that Xeriscape would be of  
15 significant benefit as a water conservation measure relative  
16 to the cost to implement Xeriscape landscaping in its area of  
17 jurisdiction in the municipality, the board shall enact a  
18 Xeriscape ordinance. Further, the governing body shall  
19 consider promoting Xeriscape as a water conservation measure  
20 by: using Xeriscape in, around, or near facilities, parks,  
21 and other common areas under its jurisdiction which are  
22 landscaped after the effective date of this act; providing  
23 public education on Xeriscape, its uses as a water  
24 conservation tool, and its long-term cost-effectiveness; and  
25 offering incentives to local residents and businesses to  
26 implement Xeriscape landscaping.

27           (3) A deed restriction or covenant entered after  
28 October 1, 2001, or local government ordinance may not  
29 prohibit any property owner from implementing Xeriscape or  
30 Florida friendly landscape on his or her land.

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1           Section 3. Subsection (4) is added to section 255.259,  
2 Florida Statutes, to read:

3           255.259 Xeriscape landscaping on public property.--

4           (4) A deed restriction or covenant entered after  
5 October 1, 2001, or local government ordinance may not  
6 prohibit any property owner from implementing Xeriscape or  
7 Florida friendly landscape on his or her land.

8           Section 4. Section 335.167, Florida Statutes, is  
9 amended to read:

10           335.167 State highway construction and maintenance;  
11 Xeriscape landscaping in rights-of-way.--

12           (1) The department shall use and require the use of  
13 Xeriscape practices, as defined in s. 373.185(1), in the  
14 construction and maintenance of all new state highways,  
15 wayside parks, access roads, welcome stations, and other state  
16 highway rights-of-way constructed upon or acquired after June  
17 30, 1992. The department shall develop a 5-year program for  
18 phasing in the use of Xeriscape, including the use of solid  
19 waste compost, in state highway rights-of-way constructed upon  
20 or acquired before July 1, 1992. In accomplishing these  
21 tasks, the department shall employ the guidelines set out in  
22 s. 373.185(2)(a)-(f).

23           (2) A deed restriction or covenant entered after  
24 October 1, 2001, or local government ordinance may not  
25 prohibit any property owner from implementing Xeriscape or  
26 Florida friendly landscape on his or her land.

27           Section 5. Section 373.62, Florida Statutes, is  
28 amended to read:

29           373.62 Water conservation; automatic sprinkler  
30 systems.--Any person who purchases and installs an automatic  
31 lawn sprinkler system after May 1, 1991, shall install, and

1 must maintain and operate,a rain sensor device or switch that  
2 ~~which~~ will override the irrigation cycle of the sprinkler  
3 system when adequate rainfall has occurred.

4 Section 6. Section 373.185, Florida Statutes, is  
5 amended to read:

6 373.185 Local Xeriscape ordinances.--

7 (1) As used in this section, the term:

8 (a) "Local government" means any county or  
9 municipality of the state.

10 (b) "Xeriscape" or "Florida friendly landscape"means  
11 quality landscapes that conserve water and protect the  
12 environment and are adaptable to local conditions and which  
13 are drought tolerant ~~a landscaping method that maximizes the~~  
14 ~~conservation of water by the use of site-appropriate plants~~  
15 ~~and an efficient watering system.~~ The principles of Xeriscape  
16 include planning and design, appropriate choice of plants,  
17 soil analysis which may include the use of solid waste  
18 compost, efficient irrigation, practical use of turf,  
19 appropriate use of mulches, and proper maintenance.

20 (2) Each water management district shall design and  
21 implement an incentive program to encourage all local  
22 governments within its district to adopt new ordinances or  
23 amend existing ordinances to require Xeriscape landscaping for  
24 development permitted after the effective date of the new  
25 ordinance or amendment. Each district shall adopt rules  
26 governing the implementation of its incentive program and  
27 governing the review and approval of local government  
28 Xeriscape ordinances or amendments which are intended to  
29 qualify a local government for the incentive program. Each  
30 district shall assist the local governments within its  
31 jurisdiction by providing a model Xeriscape code and other

1 technical assistance. A local government Xeriscape ordinance  
2 or amendment, in order to qualify the local government for a  
3 district's incentive program, must include, at a minimum:

4 (a) Landscape design, installation, and maintenance  
5 standards that result in water conservation. Such standards  
6 shall address the use of plant groupings, soil analysis  
7 including the promotion of the use of solid waste compost,  
8 efficient irrigation systems, and other water-conserving  
9 practices.

10 (b) Identification of prohibited invasive exotic plant  
11 species.

12 (c) Identification of controlled plant species,  
13 accompanied by the conditions under which such plants may be  
14 used.

15 (d) A provision specifying the maximum percentage of  
16 turf and the maximum percentage of impervious surfaces allowed  
17 in a xeriscaped area and addressing the practical selection  
18 and installation of turf.

19 (e) Specific standards for land clearing and  
20 requirements for the preservation of existing native  
21 vegetation.

22 (f) A monitoring program for ordinance implementation  
23 and compliance.

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25 The districts also shall work with local governments to  
26 promote, through educational programs and publications, the  
27 use of Xeriscape practices, including the use of solid waste  
28 compost, in existing residential and commercial development.  
29 This section may not be construed to limit the authority of  
30 the districts to require Xeriscape ordinances or practices as  
31 a condition of any consumptive use permit.

1           (3) A deed restriction or covenant entered after  
2 October 1, 2001, or local government ordinance may not  
3 prohibit any property owner from implementing Xeriscape or  
4 Florida friendly landscape on his or her land.

5           Section 7. Section 720.3075, Florida Statutes, is  
6 amended to read:

7           720.3075 Prohibited clauses in association  
8 documents.--

9           (1) It is declared that the public policy of this  
10 state prohibits the inclusion or enforcement of certain types  
11 of clauses in homeowners' association documents, including  
12 declaration of covenants, articles of incorporation, bylaws,  
13 or any other document of the association which binds members  
14 of the association, which either have the effect of or provide  
15 that:

16           (a) A developer has the unilateral ability and right  
17 to make changes to the homeowners' association documents after  
18 the transition of homeowners' association control in a  
19 community from the developer to the nondeveloper members, as  
20 set forth in s. 720.307, has occurred.

21           (b) A homeowners' association is prohibited or  
22 restricted from filing a lawsuit against the developer, or the  
23 homeowners' association is otherwise effectively prohibited or  
24 restricted from bringing a lawsuit against the developer.

25           (c) After the transition of homeowners' association  
26 control in a community from the developer to the nondeveloper  
27 members, as set forth in s. 720.307, has occurred, a developer  
28 is entitled to cast votes in an amount that exceeds one vote  
29 per residential lot.

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1 Such clauses are declared null and void as against the public  
2 policy of this state.

3 (2) The public policy described in subsection (1)  
4 prohibits the inclusion or enforcement of such clauses created  
5 on or after the effective date of s. 3, chapter 98-261, Laws  
6 of Florida.

7 (3) Homeowners' association documents, including  
8 declarations of covenants, articles of incorporation, or  
9 bylaws, may not preclude the display of one United States flag  
10 by property owners. However, the flag must be displayed in a  
11 respectful way and may be subject to reasonable standards for  
12 size, placement, and safety, as adopted by the homeowners'  
13 association, consistent with Title 36 U.S.C. chapter 10 and  
14 any local ordinances.

15 (4) Homeowners' association documents, including  
16 declarations of covenants, articles of incorporation or  
17 bylaws, entered after October 1, 2001, may not prohibit any  
18 property owner from implementing Xeriscape or Florida friendly  
19 landscape, as defined in s. 373.185(1), on his or her land.

20 Section 8. This act shall take effect October 1, 2001.

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22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
23 COMMITTEE SUBSTITUTE FOR  
24 CS/SB 126

25 Provides that the prohibition against deed restrictions and  
26 covenants that restrict the use of Xeriscape or Florida  
friendly landscape is prospective from the effective date of  
the bill;

27 Amends s. 720.3075, F.S., to prohibit homeowners' associations  
28 from restricting the practice of Xeriscape.

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