

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1267

Protecting Urban and Residential Environments & Water

SPONSOR(S): Nelson

TIED BILLS:

IDEN./SIM. BILLS: SB 2352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Agribusiness</u>	<u>7 Y, 0 N</u>	<u>Kaiser</u>	<u>Reese</u>
2) <u>Environment & Natural Resources Council</u>	<u></u>	<u>Kaiser / Smith</u>	<u>Dixon / Hamby</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

In 2007, the legislature established the Consumer Fertilizer Task Force (task force)¹ to take public input and testimony for the development of statewide guidelines governing non-agricultural fertilizer use rates and applications. The task force was comprised of 13 members representing a range of stakeholder interests who were technically qualified by training, education or experience in water quality, horticultural, or agronomic science. The task force held six public meetings around the state taking public comment and developing recommendations. This bill addresses some of the recommendations made by the task force.

The bill requires all county and municipal governments to adopt, at a minimum, the "Florida Friendly Fertilizer Use on Urban Landscapes Model Ordinance"² (model ordinance) by October 1, 2008. A county or municipal government that adopts its own fertilizer use ordinance prior to July 1, 2008, is exempt from the adoption requirement for the model ordinance.

The bill establishes a certification category, within the Department of Agriculture and Consumer Services (department), for commercial application of fertilizer to urban turf. Persons pursuing limited certification must complete a training course and pay a registration fee, which must be renewed annually. Once certified, certificate-holders must maintain records of the types of fertilizers applied and the amounts and locations of the applications. These records must be maintained for at least 3 years and be available for review by the department upon request. The department is authorized to revoke or suspend a certificate as a disciplinary measure.

The Department of Environmental Protection (DEP) and the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida are tasked with crafting the training course for commercial application of fertilizer. The coursework will be based on "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida," (FGI BMPs). The bill requires DEP to provide program training coordinators from various associations³ to conduct regional train-the-trainer classes. The program training coordinators will also coordinate and support training activities for local governments, water management districts, and IFAS. The bill requires the trainers to be certified in FGI BMPs and have a valid trainer certificate.

This bill has an indeterminate fiscal impact on state and local governments. The bill provides for certain registration and annual fees for persons who apply fertilizer commercially to urban turf and landscapes and has a fiscal impact of \$31,106 in FY 2008-09; \$32,546 in FY 2009-10; and \$33,247 in FY 2010-11. The effective date of this legislation is upon becoming law.

There is an amendment traveling with the bill. The amendment is described in "Section IV. Amendment/Council Substitute Changes" of the analysis.

¹ Section 576.092, F.S., 2007-232, L.O.F.

² Or a more stringent ordinance as described in s. 403.9337(2)(a), F.S.

³ Section 482.1562(5), F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1267b.ENRC.doc

DATE: 3/20/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The adoption of a model ordinance for fertilizer use on urban landscapes represents a collaborative effort between local and state governments, as well as environmental and industry interests. The bill requires all county and municipal governments to adopt the model ordinance or, in some instances, an alternative ordinance. The bill also establishes a certification program within the Department of Agriculture and Consumer Services (department) for commercial application of fertilizer to urban turf.

Ensure lower taxes: The bill establishes a fee-based certification program within the department for commercial application of fertilizer to urban turf.

Safeguard individual liberty: Persons wishing to apply fertilizer to urban turf must complete a training course, as well as pay a fee, for certification by the department.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

In 2007, the legislature established the Consumer Fertilizer Task Force (task force)⁴ to take public input and testimony for the development of statewide guidelines governing non-agricultural fertilizer use rates and applications. The creation of the task force was a result of various municipalities and counties enacting rules/regulations dealing with fertilizers. In each case, the rules/regulations varied from county to county and municipality to municipality, making it difficult for the various industry groups to ensure compliance. Additionally, some of the rules/regulations in use are not based on sound agronomic science, thereby jeopardizing the safety of the environment as well as the water supply.

The task force was comprised of 13 members representing a range of stakeholder interests who were technically qualified by training, education or experience in water quality, horticultural, or agronomic science. The task force members were appointed by the President of the Senate, Speaker of the House, Commissioner of Agriculture, Florida League of Cities and the Florida Association of Counties.

The task force held six public meetings around the state taking public comment and developing recommendations. The task force adopted a consensus process that required support of 75% of its members for any substantive decisions on findings and recommendations. On January 15, 2008, the task force released its final report⁵ of recommendations. At that time, the task force was dissolved. This bill addresses some of the recommendations made by the task force.

Effect of Proposed Changes

The bill provides the legislative finding that the “Florida Friendly Fertilizer Use on Urban Landscapes Model Ordinance” (model ordinance), as well as the “Labeling Requirements for Urban Turf Fertilizers” (rule),⁶ are protective of the water quality in the state’s water bodies.

Model Ordinance

The bill requires all county and municipal governments to adopt, at a minimum, the model ordinance by October 1, 2008. A county or municipal government that adopts its own fertilizer use ordinance prior to July 1, 2008, is exempt from the adoption requirement for the model ordinance.

⁴ Section 576.092, F.S., 2007-232, L.O.F.

⁵ http://www.flaes.org/pdf/Fertilizer_Task_Force_Final_Report11408-3.pdf

⁶ Rule 5E-1.003(2), F.A.C.

County and municipal governments have the latitude to adopt more stringent provisions than the model ordinance if the Environmental Regulation Commission of the Department of Environmental Protection (DEP) deems the additional or more stringent provision is necessary based on sound scientific principles. The local government may also adopt more stringent provisions if it can demonstrate it meets at least one of the following criteria:

- The county or municipal government has a verified impaired water body that exists within its jurisdiction;
- A total maximum daily loads requirement for the impaired water body exists under state and federal laws, and
- A more restrictive ordinance has been adopted as a part of a basin management action plan.

The bill specifies that any appropriation by the Legislature for educating consumers on the model ordinance or other fertilizer best management practices (BMPs) at the local government level is intended for the counties and municipalities that have adopted the model ordinance.⁷

Commercial Fertilizer Application

The bill establishes a certification category, to be administered by the department, for commercial application of fertilizer to urban turf. Persons pursuing limited certification must apply to the department and submit proof⁸ of having completed the minimum training program as required by law. Applications must be accompanied by a registration fee of \$50 until such time as the fee is set by rule.⁹

Application for recertification must be made annually and accompanied by a fee. Initially, the fee is set for \$25 until a rule setting the fee is adopted by the department.¹⁰ The department is authorized to assess a late renewal fee of \$50, in addition to the renewal fee, for recertifications that are more than 30 calendar days past the annual renewal date. Unless timely renewed, a certificate automatically expires 180 calendar days after the anniversary recertification date. Once expired, a certificate may only be issued after successful reexamination and payment of any examination fees due.

The bill requires certificate-holders to maintain records of the types of fertilizers applied and the amounts and locations of the applications. These records must be maintained for at least 3 years and be available for review by the department upon request. The department is authorized to revoke or suspend a certificate as a disciplinary measure.

The bill authorizes the department to provide information regarding the certification status of persons certified for commercial application of fertilizer, as well as the results of investigations and inspections, to certain local and state government agencies.¹¹ The department is required to cooperate with these agencies to ensure the efficient regulation and management of fertilizer.

DEP and the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida are required to work together to establish the course materials for certification. The basis for the course is the "Florida Green Industries Best Management Practices for Protection of Water Resources in Florida," (FGI BMPs). The course consists of a minimum of 6 contact hours of training covering such areas as nonpoint source pollution, fertilizer characteristics and selection, Florida turfgrass species and characteristics, irrigation systems, Florida landscape plants and characteristics, pesticide licensing law, as well as other pertinent topics.¹² In addition to the required hours of instruction, course work must cover local ordinance compliance training.

⁷ Or a more stringent ordinance as described in s. 403.9337(2)(a), F.S.

⁸ Section 482.1562(2)(a), F.S.

⁹ The fee may not exceed \$150 or be less than \$50.

¹⁰ The fee may not exceed \$75 or be less \$25.

¹¹ Those agencies involved in the regulation of fertilizer use and management.

¹² Section 482.1562(3)(a), F.S.

DEP is authorized to contract with IFAS to lead the training effort with the primary focus on state-level operations and county-level training. The program will be co-located with other programs currently administered by IFAS.¹³ The bill provides for DEP to provide program training coordinators from various associations¹⁴ to conduct regional train-the-trainer classes. The program training coordinators will also coordinate and support training activities for local governments, water management districts, and IFAS. The bill requires the trainers to be certified in FGI BMPs and have a valid trainer certificate. The bill provides criteria as to what must be covered in the train-the-trainer course.¹⁵

The bill authorizes DEP, working in conjunction with the department and IFAS, to publish training requirements, procedures and materials. The bill requires DEP or IFAS to issue a certificate for certified trainers by January 1, 2008. The bill requires a list of qualified trainers be maintained.

Other

The bill provides a definition for commercial fertilizer application and deletes language regarding proof of training for commercial landscape maintenance personnel, which is no longer applicable. The bill also provides that persons applying fertilizer commercially to urban turf must be licensed under s. 482.1562, F.S.¹⁶

C. SECTION DIRECTORY:

Section 1: Creating s. 403.9335, F.S.; naming sections 403.9335-403.9337, F.S., the “Protection of Urban and Residential Environments and Water Act.”

Section 2: Creating s. 403.9336, F.S.; providing legislative findings.

Section 3: Creating s. 403.9337, F.S.; requiring all local governments to adopt the “Florida Friendly Fertilizer Use on Urban Landscapes Model Ordinance” (model ordinance) by a date certain; allowing local governments to adopt more stringent provisions than the model ordinance under certain conditions; exempting local governments that meet certain criteria from adopting the model ordinance; and requiring appropriations for educating consumers be directed to local governments that have adopted the model ordinance or an ordinance more stringent.

Section 4: Amending s. 482.021, F.S.; providing a definition for “commercial fertilizer application.”

Section 5: Amending s. 482.156, F.S.; deleting certain requirements related to the examination for limited certification for commercial landscape maintenance personnel.

Section 6: Creating s. 482.1561, F.S.; providing criteria for commercial fertilizer application on urban turf; providing for application of fertilizer to be in accordance with best management practices (BMPs) as adopted by the Department of Environmental Protection (DEP); and, providing for disciplinary action.

Section 7: Creating s. 482.1562, F.S.; establishing a limited certification for commercial fertilizer application under the Department of Agriculture and Consumer Services (department); providing criteria for obtaining certification; establishing criteria for the training program; providing for DEP to contract with the University of Florida Institute of Food and Agricultural Sciences Extension (IFAS) to lead the training effort; requiring DEP to provide program training coordinators; providing criteria for training the trainers; requiring DEP, in consultation with IFAS, to publish training requirements, procedures, and materials; providing for a trainer certificate to be issued by a date certain; providing for a list of trainers to be maintained and published; providing for recertification of trainers; providing for a fee for recertification; requiring persons certified to maintain records regarding fertilizers applied; and

¹³ Section 482.1562(4), F.S.

¹⁴ Section 482.1562(5), F.S.

¹⁵ Section 482.1562(6), F.S.

¹⁶ Limited certificate for commercial fertilizer application

providing for the department to provide information regarding certification status and results of inspections and investigations.

Section 8: Providing an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	FY 08-09	FY 09-10	FY 10-11
1. Revenues: (Pest Control Trust Fund)			
New Registration Fee (\$50)	\$ 130,000	\$ 130,000	\$ 130,000
Annual Recertification Fee (\$25)	<u> -</u>	<u> 65,000</u>	<u> 130,000</u>
Total Revenues	<u>\$ 130,000</u>	<u>\$195,000</u>	<u>\$ 260,000</u>
2. Expenditures: (Pest Control Trust Fund)			
Recurring			
Expenses - Estimated travel, supplies, gas, certificate costs, etc.	\$ <u>28,000</u>	\$ <u>28,000</u>	\$ <u>28,000</u>
Total Recurring Costs	28,000	28,000	28,000
Non-Recurring			
OPS – Support staff	-	1,000	1,280
OCO – PC equipment	3,000	3,000	3,000
Contracted services – software maintenance	<u> 106</u>	<u> 536</u>	<u> 967</u>
Total Non-Recurring Costs	3,106	4,536	5,247
Total Costs	<u>\$ 31,106</u>	<u>\$ 32,536</u>	<u>\$ 33,247</u>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
Indeterminate
2. Expenditures:
Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons seeking certification for commercial fertilizer application on urban turf are required to pay a registration fee, as well as complete approved training.

D. FISCAL COMMENTS:

Presently, due to a lack of certification requirements, there is an indeterminate amount of people who are applying fertilizer commercially to urban turf and landscapes. The Department of Environmental Protection states that more than 2,600 people have completed formal training in soil testing, correct

fertilizer applications, irrigation requirements, etc. The \$130,000 total is determined by the estimated 2,600 persons who will complete certification (\$50) on a yearly basis.

Beginning in FY 2009-10, an estimated 2,600 persons may recertify at \$25. In FY 2010-11, an estimated 5,200 persons will recertify.

The department states that, while they are not requesting FTEs at this time, if revenues permit, additional positions will be requested for the expansion of the program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The department is authorized to use its rule-making authority¹⁷ to establish a standard for proof of completion of the required training and to set fees for certification and recertification.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Wednesday, March 19, 2008, the Committee on Agribusiness adopted a strike-all amendment that is traveling with HB 1267. The differences between HB 1267 and the strike-all amendment are:

- The amendment amends the date by which counties and municipalities are required to adopt the model ordinance to December 31, 2008. In the bill, the date for adoption was October 1, 2008.
- The bill stated that, by a date certain, county and municipal governments must “at a minimum” adopt the model ordinance. The phrase, at a minimum, is not included in the amendment.
- The date for exemption of counties and municipalities adopting their own ordinance is changed from July 1, 2008 to January 15, 2008.
- In the bill, the course for the minimum training program for limited certification for commercial fertilizer application, which is to be designed, approved and made available by the DEP, was placed in s. 482.1562, F.S., which falls under the purview of the Department of Agriculture and Consumer Services

¹⁷ Pursuant to s. 482.051, F.S.

(department). In the amendment, the language pertaining to the course development has been moved to s. 403.9338, F.S., which falls under the purview of DEP.

- The amendment changes the effective date for a trainer certificate to be issued by DEP to January 1, 2009. In the bill, the date had been January 1, 2008.
- The amendment provides a definition for “urban lawnscape.”
- By December 31, 2008, a licensee or certified operator in charge must apply for an identification (ID) card for every employee who applies fertilizer commercially to urban lawnsapes. The application for the ID card must be accompanied by the employee’s training certificate. This does not apply to certified operators who are certified in the category of lawn and commercial pest control.
- Persons who have completed training and been certified under the limited certification for commercial landscape maintenance may use their existing training to be considered certified for purposes of implementing fertilizer BMPs.
- By December 31, 2008, persons applying fertilizer commercially to urban lawnsapes must hold a limited certificate for commercial fertilizer application; a limited certification for commercial landscape maintenance; or be under the direct supervision of a certified operator in lawn and ornamental pest control.
- In the amendment, persons seeking limited certification for commercial fertilizer application must apply and submit a copy of the training certificate received from DEP. The bill required an examination in addition to the training certificate.
- The amendment states persons certified pursuant to s. 482.1562, F.S.¹⁸, are not authorized to apply pesticides to turf or ornamentals; operate a pest control business; or apply pesticides if unlicensed or uncertified and not under the supervision of a certified person.
- The amendment gives the department authority to adopt rules to implement the provisions of the legislation.
- The amendment provides that fines collected or received for failure to comply with the provisions of the bill shall be deposited into the Pest Control Trust Fund and used by the department for urban lawnscape fertilizer BMPs education.

¹⁸ Limited certification for commercial fertilizer application