

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 directs the Department of Environmental Protection (DEP) to adopt the model 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)⁵ 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 report⁶ 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),⁷ serve to improve the quality of water in the state’s water bodies.

Model Ordinance

The bill directs the DEP to adopt, without change, the model ordinance by October 1, 2008. The bill provides that at least every three years, or as research or other information becomes available, DEP in consultation with the department, the University of Florida’s Institute of Food and Agricultural Sciences (IFAS), local governments, and other interested parties, shall review the model ordinance and adopt changes as necessary.

⁵ Section 576.092, F.S., 2007-232, L.O.F.

⁶ http://www.flaes.org/pdf/Fertilizer_Task_Force_Final_Report11408-3.pdf

⁷ Rule 5E-1.003(2), F.A.C.

Local governments that have adopted and implemented the model ordinance and have collected site-specific data demonstrating that the model ordinance is not sufficiently protective may adopt additional or more stringent provisions to the model ordinance provided that such government can demonstrate it meets the following criteria:

- The local government has within its jurisdiction all or part of a water body, or all or part of a watershed that drains to all or part of a water body, which has been verified as being impaired or assessed as being potentially impaired for a nutrient or nutrients under state or federal laws.
- The local government has demonstrated, as part of a comprehensive program to address nonpoint sources of nutrient pollution which is based on sound scientific principals, that additional or more stringent provisions to the model ordinance are necessary to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body identified above.

A local government may also adopt additional provisions to or more stringent provisions to the model ordinance if it is a party to a basin management action plan adopted pursuant to s. 403.067, F.S.⁸, or if it has an approved municipal separate storm sewer system permit.

A local government electing to adopt additional or more stringent provisions than the model ordinance must consult with DEP, the department, and IFAS in the establishment of such criteria. Input received from the consulting agencies must become part of the record of the local government's decision for adoption of more stringent criteria.

A county or municipal government that adopted its own fertilizer use ordinance prior to July 1, 2008 is exempt from the adoption requirement for the model ordinance. However, such government must follow the process described above in the adoption of additional or more stringent provisions.

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 proof⁹ 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.¹⁰ The department is given rule-making authority to implement these provisions.

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.¹¹ 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 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.¹² The department is required to cooperate with these agencies to ensure the efficient regulation and management of fertilizer.

The bill provides for fines collected or received for failure to comply with these provisions be deposited into the Pest Control Trust Fund and used by the department for urban lawnscapes fertilizer BMPs education.

⁸ Total maximum daily loads (TMDLs)

⁹ Section 482.1562(2)(a), F.S.

¹⁰ The fee may not exceed \$150 or be less than \$50.

¹¹ The fee may not exceed \$75 or be less \$25.

¹² Those agencies involved in the regulation of fertilizer use and management.

The bill also provides for persons who have completed training and been certified under the limited certification for commercial landscape maintenance to use their existing training to be considered certified for purposes of implementing fertilizer BMPs.

DEP and IFAS 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.¹³

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.¹⁴ The bill provides for DEP to provide program training coordinators from various associations¹⁵ 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.¹⁶

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, 2009. The bill requires a list of qualified trainers be maintained.

Other

The bill provides definitions for "commercial fertilizer application" and "urban lawnscapes." The bill also deletes language regarding proof of training for commercial landscape maintenance personnel, which is no longer applicable. The bill provides that persons applying fertilizer commercially to urban turf must be licensed under s. 482.1562, F.S.¹⁷ Additionally, the bill requires a licensee or certified operator in charge to apply for an identification card for employees applying fertilizer commercially by December 31, 2008. The application must be accompanied by the training certificate earned by the employee. This does not apply to certified operators who are certified in the category of lawn and commercial pest control.

The bill states that certification to apply fertilizer commercially does not authorize:

- Application of pesticides to turf or ornamentals, including pesticide fertilizer mixtures;
- Operation of a pest control business; or
- Application of pesticides by unlicensed or uncertified personnel under the supervision of a certified person.

Effective December 31, 2008, persons applying fertilizer commercially to urban lawnscapes or urban turf must:

- Hold a limited certificate for commercial fertilizer application;
- Hold a limited certificate for commercial landscape maintenance; or
- Be under the direct supervision of a certified operator in lawn and ornamental pest control.

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."

¹³ Section 482.1562(3)(a), F.S.

¹⁴ Section 482.1562(4), F.S.

¹⁵ Section 482.1562(5), F.S.

¹⁶ Section 482.1562(6), F.S.

¹⁷ Limited certificate for commercial fertilizer application

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

Section 3: Creating s. 403.9337, F.S.; directing DEP 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; and exempting local governments that meet certain criteria from adopting the model ordinance.

Section 4: Creating s. 403.9338, F.S.; 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; and, providing for a list of trainers to be maintained and published.

Section 5: Amending s. 482.021, F.S.; providing definitions.

Section 6: Amending s. 482.091, F.S.; requiring the licensee or certified operator in charge to apply for an identification card for employees applying fertilizer commercially by a date certain; providing criteria for obtaining identification card; and, providing exceptions.

Section 7: Amending s. 482.156, F.S.; deleting certain requirements related to the examination for limited certification for commercial landscape maintenance personnel; and, providing exception for certain persons from obtaining a training certificate.

Section 8: Creating s. 482.1561, F.S.; providing criteria for commercial fertilizer application on urban turf; and, providing for application of fertilizer to be in accordance with best management practices (BMPs) as adopted by the Department of Environmental Protection (DEP).

Section 9: 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; providing for recertification of trainers; providing for a fee for recertification; and providing for the department to provide information regarding certification status and results of inspections and investigations.

Section 10: Creating s. 482.1563, F.S.; authorizing the department to adopt rules necessary to implement the provisions of the certification program.

Section 11: Amending s. 482.2401, F.S.; providing uses for monies collected.

Section 12: 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>
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Total Recurring Costs	28,000	28,000	28,000
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Non-Recurring

OPS – Support staff	-	1,000	1,280
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OCO – PC equipment	3,000	3,000	3,000
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Contracted services – software maintenance	<u>106</u>	<u>536</u>	<u>967</u>
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Total Non-Recurring Costs	3,106	4,536	5,247
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Total Costs	\$ <u>31,106</u>	\$ <u>32,536</u>	\$ <u>33,247</u>
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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 given rule-making authority to implement the provisions of the certification program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2008, the Environment and Natural Resources Council adopted one traveling strike-all amendment by the Committee on Agribusiness and two amendments to the traveling strike-all amendment and passed HB 1267 as a committee substitute (CS). CS/HB 1267 amends the legislative finding from being "protective of" the water quality in the state's water bodies to "serving to improve" the water quality of the state's water bodies. The CS directs the Department of Environmental Protection (DEP) to adopt the model ordinance, without change, by October 1, 2008. In HB 1267, the adoption was required of the local governments rather than DEP. The date for exemption of counties and municipalities adopting their own ordinance is changed from July 1, 2008 to January 15, 2008 in the CS. In HB 1267, 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 (department). In the CS, the language pertaining to the course development has been moved to s. 403.9338, F.S., which falls under the purview of DEP. The CS changes the effective date for a trainer certificate to be issued by DEP to January 1, 2009. In HB 1267, the date had been January 1, 2008. The CS provides a definition for "urban lawnscape." In the CS, by a date certain, 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. The CS also provides for 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. The CS provides that 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 CS, persons seeking limited certification for commercial fertilizer application must apply and submit a copy of the training certificate received from DEP. HB 1267 required an examination in addition to the training certificate. The CS 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 CS gives the department authority to adopt rules to implement the provisions of the legislation. The CS 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