

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1515 Turf and Landscape Maintenance  
**SPONSOR(S):** Murzin and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Agriculture &amp; Natural Resources Policy Committee</u>	<u>15 Y, 1 N, As CS</u>	<u>Blalock</u>	<u>Reese</u>
2)	<u>Civil Justice &amp; Courts Policy Committee</u>	<u></u>	<u>DeZego</u>	<u>De La Paz</u>
3)	<u>General Government Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u>Natural Resources Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

This bill establishes the following provisions related to the application of fertilizer in Florida:

- Encourages local governments to adopt and enforce the provisions in the Department of Environmental Protection’s (DEP) Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes.
- Requires local governments located within a watershed consisting of waters designated as impaired for nutrient load to adopt the provisions of DEP’s Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes, and allows them to adopt more stringent provisions if certain criteria are met.
- Requires urban landscape commercial fertilizer applicators to obtain a certificate demonstrating completion of the Green Industry Best Management Practices training program.
- Requires the Department of Agriculture and Consumer Services (DACS) and IFAS to approve training programs and testing materials.
- Requires DACS to establish a limited certification category for urban landscape commercial fertilizer application and to adopt rules.
- Encourages DACS to create an on-line database that lists all certified urban landscape fertilizer applicators.
- Provides that a person who violates any provision in chapter 482, F.S., is guilty of a misdemeanor of the second degree.

This bill appears to have a fiscal impact on the Department of Environmental Protection’s expenditures by requiring the DEP to approve training programs and testing materials equivalent to or more comprehensive than the Green Industry Best Management Practices Training Program.

The 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:

##### Background

Nutrient pollution, especially from nitrogen and phosphorus, has consistently ranked as one of the top causes of degradation in some United States waters for more than a decade.<sup>1</sup> Excess nitrogen and phosphorus lead to significant water quality problems including harmful algal blooms, hypoxia and declines in wildlife and wildlife habitat. Excesses have also been linked to higher amounts of chemicals that make people sick.<sup>2</sup>

Generally, water bodies require nutrients, such as nitrogen and phosphorus, to be healthy, but too many nutrients can be harmful. Many of the nation's waters, including streams, rivers, wetlands, estuaries, and coastal waters, are affected by nitrogen and phosphorus pollution. High levels of nitrogen and phosphorus in waters can produce harmful algal blooms. In turn, these blooms can produce "dead zones" in water bodies where dissolved oxygen levels are so low that most aquatic life cannot survive. This condition in water bodies is referred to as hypoxia.

Nitrogen and phosphorus enter the state's water bodies from point and non-point<sup>3</sup> sources.

The primary contributors of nitrogen and phosphorous pollution are:

- Overusing fertilizer (both residential and agricultural usage);
- Rainfall flowing over cropland, animal feeding operations and pastures, picking up animal waste and depositing it in water bodies;
- Rainfall flowing over urban and suburban areas where stormwater management is not required (e.g., parking lots, lawns, rooftops, roads);
- Discharge of nitrogen and phosphorus from waste-water treatment plants; and
- Overflow from septic systems.

In general, non-point source pollution typically is significantly higher than the point sources of pollution. Therefore, in order to reduce the environmental impacts of nitrogen and phosphorous in the state's

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<sup>1</sup> EPA website- <http://www.epa.gov/waterscience/criteria/nutrient>. Last accessed on March 25, 2009.

<sup>2</sup> *Id.*

<sup>3</sup> A non-point source of pollution is one that is not readily and specifically identifiable. Webster's Encyclopedic Unabridged Dictionary, pg. 1315 (1996).

water bodies, it is important to limit the input of nitrogen and phosphorous from non-point sources. Furthermore, it is much more costly to remove nitrogen and phosphorous from water than to keep it from entering the water in the first place. As water quality criteria become more stringent and Total Maximum Daily Loads (TMDLs) for phosphorous and nitrogen in the state's water bodies are applied, limiting the amount of phosphorous and nitrogen that enters Florida's waters could be a cost-effective policy tool. A TMDL is the maximum amount of a given pollutant that a water body can absorb and still maintain its designated uses (e.g., drinking, fishing, swimming, shellfish harvesting). One water body may have several TMDLs, one for each pollutant that exceeds the water body's capacity to absorb it safely. Under section 303(d) of the Clean Water Act, states are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by the states. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters.<sup>4</sup>

### Effect of Bill

This bill creates s. 403.9337, F.S., to encourage all county and municipal governments to adopt and enforce the provisions in the Department of Environmental Protection's (DEP) Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes. The section also requires each county and municipal government that is located within a watershed<sup>5</sup> that contains a body of water that is listed by the DEP as impaired for nutrient levels to adopt the provisions of the DEP's Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes. A county and municipal government can adopt additional or more stringent provisions than the DEP's model ordinance if the following criteria are met:

- The county and municipal government has demonstrated that additional or more stringent provisions are necessary to address urban fertilizer contributions to nonpoint source nutrient loading; and
- The county or municipal government gives consideration to all relevant scientific information, including input from the DEP, the Department of Agriculture and Consumer Services (DACS), and the University of Florida Institute of Food and Agriculture Sciences (IFAS) on the need for additional or more stringent provisions. The above consideration must be documented and must become part of the public record prior to adopting the additional or more stringent criteria.

This bill creates s. 403.9338, F.S., to provide that no later than January 1, 2014, an urban landscape commercial fertilizer applicator<sup>6</sup> must obtain a certificate demonstrating completion of the Green Industry Best Management Practices Training Program, or an equivalent program implemented by the DEP and IFAS. This section also requires the DEP, in consultation with DACS and IFAS, to approve training programs and testing materials equivalent to the Green Industry Best Management Practices Training Program. This section also provides that after receiving a certificate demonstrating completion of the Green Industry Best Management Practices Training Program, an urban landscape commercial fertilizer applicator can apply to DACS to receive a limited certification for urban landscape commercial fertilizer applicators to apply fertilizer to urban landscapes<sup>7</sup> throughout the state.

This bill creates s. 482.1562, F.S., to require DACS to establish a limited certification category for urban landscape commercial fertilizer application. An application for certification must include a fee set by DACS that cannot be more than \$75 or less than \$25. Until DACS establishes a rule implementing this limited certification, the application fee will be \$25. The certification issued expires annually and an application for recertification must be made at least 90 days before expiration. The application fee for recertification is the same as for initial certification, however, if the recertification application is more than 30 days late, a late renewal charge of \$50 per month will be assessed and must be paid in

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<sup>4</sup> EPA website- <http://www.epa.gov/OWOW/tmdl/>. Last accessed on March 25, 2009.

<sup>5</sup> A watershed is the geographic area through which water flows across the land and drains into a common body of water, whether a stream, river, lake, or ocean. See <http://www.dep.state.fl.us/water/watersheds/index.htm>. Last accessed on March 25, 2009.

<sup>6</sup> An "urban landscape commercial fertilizer applicator" means a person who applies fertilizer for payment or other consideration to property with urban landscaping that is not owned by the applicator.

<sup>7</sup> In this section, "urban landscape" means pervious non-agriculture areas on residential, commercial, industrial, institutional, highway rights-of-way or other urban lands that are planted with turf or horticultural plants.

addition to the renewal fee. The application must also include proof of having completed four hours of continuing education, at least two hours of which must be regarding fertilizer best management practices. The certification provided for in this section does not authorize the following:

- The application of pesticides to trees or ornamentals;
- The operation of a pest control business; or
- The application of pesticides or fertilizers by unlicensed or uncertified personnel under the supervision of the certified person.

This bill also provides that DACS is authorized to provide information on the certification status of persons certified to other local and state government agencies, and encourages DACS to create an on-line data base that lists all certified urban landscape fertilizer applicators. In addition, this bill provides that a person who violates any provision of chapter 482, F.S., is guilty of a second degree misdemeanor punishable by a definite term of imprisonment not to exceed 60 days or a fine of \$500.

#### B. SECTION DIRECTORY:

Section 1: Creates s. 403.9335, F.S., providing a short title for ss. 403.9335 – 403.9338, F.S.

Section 2: Creates s. 403.9336, F.S., relating to legislative findings.

Section 3: Creates s. 403.9337, F.S., relating to the adoption of the Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes.

Section 4: Creates s. 403.9338, F.S., relating to Urban Landscape Commercial Fertilizer Applicator Training Certificates.

Section 5: Amends s. 482.021, F.S., providing a definition for “urban landscape commercial fertilizer application.”

Section 6: Creates s. 482.1562, F.S., relating to limited certification for urban landscape commercial fertilizer application.

Section 7: 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 indeterminate fiscal impact on the Department of Environmental Protection’s expenditures by requiring the DEP to approve training programs and testing materials equivalent to or more comprehensive than the Green Industry Best Management Practices Training Program.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill appears to increase local government expenditures by requiring local governments located with a watershed containing a body of water that is listed as impaired for nutrient loads to adopt the provisions of DEP's Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to have a direct economic impact on the private sector by requiring a person who applies fertilizer for payment or other consideration to property with urban landscaping that is not owned by the applicator to obtain annually a limited certification established by DACS. The application fee for this limited certification can cost the applicant between \$25 and \$75 per year.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; 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:

This bill grants rulemaking authority to the Department of Agriculture and Consumer Services to adopt rules implementing the limited certification for urban landscape commercial fertilizer application.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill makes any violation of chapter 482, F.S., a second degree misdemeanor. This provision appears to be in conflict with other penalty provisions within chapter 482, F.S., such as ss. 482.161 and 482.165, F.S. This subsection (7) may need to be re-drafted to pertain more specifically to the application of fertilizer requirements provided in the bill.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 19, 2009, the Agriculture and Natural Resources Policy Committee adopted one strike-all amendment to this bill. The strike-all amendment provides for the following:

- Encourages local governments to adopt and enforce the provisions in DEP's Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes.
- Requires local governments located within a watershed consisting of waters designated as impaired for nutrient load to adopt the provisions of DEP's Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes, and allows them to adopt more stringent provisions if certain criteria are met.
- Requires urban landscape commercial fertilizer applicators to obtain a certificate demonstrating completion of the Green Industry Best Management Practices training program.
- Requires DACS and IFAS to approve training programs and testing materials.
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