

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 2530

INTRODUCER: Senator Baker

SUBJECT: Water Resources

DATE: March 27, 2009 REVISED: 3/31/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/1 amendment
2.			EP	
3.			GO	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill replaces the term xeriscape with Florida-friendly landscape, elaborates on the factors to be considered as part of Florida-friendly landscapes, specifies the experience that well water contractors should have, and clarifies penalties for unlicensed well-water contractors.

This bill substantially amends the following sections of the Florida Statutes: 125.568, 166.048, 255.259, 335.167, 373.185, 373.228, 373.323, 373.333, 380.061, 388.291, 481.303, and 720.3075.

II. Present Situation:

Xeriscape or Florida-Friendly Landscape

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

¹ Section 255.259(1), F.S.

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, are adaptable to local conditions, and 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. The xeriscape provisions do not 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, 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

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.

⁶ Section 373.185(3), F.S.

⁷ Section 373.228(4), F.S.

systems and the natural systems they impact. The FYN publishes a handbook explaining the concepts of Florida-friendly landscaping approach.⁸

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. The standards and guidelines must be reviewed by January 1, 2011 to determine whether new research findings require a change or modification of the standards and guidelines.

Water Well Contractors

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.

III. Effect of Proposed Changes:

Section 1 amends s. 373.185, F.S., to provide the legislative finding 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 protection efforts.

This bill removes the term "xeriscape" from Florida Statutes, and replacing the term with "Florida-friendly landscapes."⁹ This bill also amends a number of statutory sections to incorporate additional principles into the definition of Florida-friendly landscapes. These principles include:

- Planting the right plants in the right place;
- Efficient watering;
- Appropriate fertilization;

⁸ FLORIDA YARDS AND NEIGHBORS, A GUIDE TO FLORIDA-FRIENDLY LANDSCAPING, *available at* <http://fyn.ifas.ufl.edu/materials/handbook.pdf>.

⁹ Section 373.185, F.S.; section 125.568, F.S.; and section 166.048, F.S.

- Mulching;
- Attraction of wildlife;
- Responsible management of yard pests;
- Recycling yard waste;
- Reduction of stormwater runoff; and
- Waterfront protection.

The bill changes the requirement that each water management district adopt rules governing the implementation of its incentive program to simply require that each district establish criteria governing the review and approval of local government Florida-friendly landscape ordinances and amendments which are intended to qualify a local government for the incentive program. It restates the requirement in s. 373.228(4), F.S., that the local government ordinance incorporates the Florida-friendly landscape design standards developed by the work group created in s. 373.228(4), F.S.

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. The districts shall use the University of Florida's Yards and Neighborhoods extension program or a similar program as a resource for the delivery of educational programs to individual homeowners and homeowners' associations. 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. The bill removes the limitation that the deed restriction or covenant have been entered into after October 1, 2001. The section is not to be construed to limit the authority of the districts to require Florida-friendly landscape ordinances or practices as a condition to certain permits.

Section 2 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.

Section 3 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.

Section 4 amends s. 125.568, F.S., to delete the term xeriscape, revise the definition of “Florida-friendly landscape (see section 1 discussion), and to specify that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscape and may not create any requirement or limitation in conflict with any provision of part II of chapter 373.

Section 5 amends s. 166.048, F.S., to delete the term xeriscape, revise the definition of “Florida-friendly landscape (see section 1 discussion), and to specify that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscape and may not create any requirement or limitation in conflict with any provision of part II of chapter 373.

Section 6 amends s. 255.259, F.S., to delete the term xeriscape and to specify that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscape and may not create any requirement or limitation in conflict with any provision of part II of chapter 373.

Section 7 amends s. 335.167, F.S., to delete the term xeriscape and to specify that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscape and may not create any requirement or limitation in conflict with any provision of part II of chapter 373.

Section 8 amends s. 373.228, F.S., to replace the term xeriscape with Florida-friendly landscape.

Section 9 amends s. 380.061, F.S., to replace the term xeriscape with Florida-friendly landscape.

Section 10 amends s. 388.291, F.S., to replace the term xeriscape with Florida-friendly landscape.

Section 11 amends s. 481.303, F.S., to replace the term xeriscape with Florida-friendly landscape.

Section 12 amends s. 720.3075, F.S., to delete the term xeriscape and to specify that covenants, articles of incorporation, or bylaws may not be enforced to prohibit any property owner from implementing Florida-friendly landscape and may not create any requirement or limitation in conflict with any provision of part II of chapter 373.

Other Potential Implications:

Taking a more comprehensive approach to landscaping would likely contribute significantly to the conservation of water and help reduce runoff, pollution, and enhance the aesthetics of the State of Florida.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The statute prohibits the enforcement of deed restrictions and covenants that prohibit any property owner from implementing Florida-friendly landscape. This may impair existing contracts, which would require that the law serve an important public purpose.¹⁰

Article I, Section 10 of the *United States Constitution* prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community. *Stone v. Mississippi*, 101 U.S. 814 (1880). The severity of the impairment is a key issue when evaluating whether a state law impairs a contract. *General Motors Corp. v. Romein*, 503 U.S. 181 (1992). In *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

In 1989, the Federal District Court in Tampa held that the state statute permitting condominium unit owners to display the American Flag [s. 718.113(4), F.S.] did not impair existing contract rights of the condominium association to restrict such display. The court suggested in dicta that personal display of the flag is constitutionally protected speech, and because “the statute did not create rights, but merely recognized them, it does not impair existing contract rights.” *Gerber v. Longboat Harbour North Condominium, Inc.*, 724 F.Supp. 884 (M.D.FL., 1989).

Article I, Section 10 of the *Florida Constitution* also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers. *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So2d 681 (Fla. 1980). This exception extends to laws

¹⁰ *Yellow Cab C. V. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982).

that are reasonable and necessary to serve an important public purpose *Yellow Cab C. v. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982), to include protecting the public's health, safety or welfare. [*Khoury v Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981), petition den. 412 So2d 467 (Fla. 1981)].

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts. *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So2d 774 (Fla. 1979).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 579110 by Community Affairs on March 31, 2009:

The amendment provides exemptions from certain water restrictions for developments or subdivisions that have at least 25 parcels that use smart irrigation controllers. The amendment provides a definition for smart irrigation controller and specifies requirements for the devices.