

By Senator Baker

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1 A bill to be entitled
2 An act relating to water resources; amending s.
3 373.185, F.S.; providing legislative findings
4 regarding the use of Florida-friendly landscape;
5 revising the principles of Florida-friendly landscape;
6 deleting references to "xeriscape"; revising
7 eligibility criteria for certain water management
8 district incentive programs; requiring certain local
9 government ordinances and amendments to incorporate
10 specified landscape irrigation and design standards
11 and identify specified invasive exotic plant species;
12 requiring water management districts to consult with
13 additional entities for activities relating to
14 Florida-friendly landscape practices; specifying the
15 University of Florida's Yards and Neighborhoods
16 extension program or a similar program as a primary
17 resource for the delivery of educational programs
18 relating to such practices; providing that such
19 programs are exempt from ch. 120, F.S.; providing that
20 certain regulations prohibiting the implementation of
21 Florida-friendly landscape or conflicting with
22 provisions governing the permitting of consumptive
23 uses of water are prohibited; providing construction;
24 amending s. 373.323, F.S.; revising application
25 requirements for water well contractor licensure;
26 requiring applicants to provide specified
27 documentation; amending s. 373.333, F.S.; clarifying
28 that the fine imposed for engaging in the unlicensed
29 practice of water well contracting applies per

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30 occurrence; amending ss. 125.568, 166.048, 255.259,
 31 335.167, 373.228, 380.061, 388.291, 481.303, and
 32 720.3075, F.S.; conforming provisions to changes made
 33 by the act; providing an effective date.

34
 35 Be It Enacted by the Legislature of the State of Florida:

36
 37 Section 1. Section 373.185, Florida Statutes, is amended to
 38 read:

39 373.185 Local Florida-friendly ~~Xeriscape~~ ordinances.—

40 (1) The Legislature finds that the use of Florida-friendly
 41 landscaping and other measures to conserve the state's water
 42 resources serves a compelling public interest and that the
 43 participation of homeowners' associations and local governments
 44 is essential to these efforts.

45 (2)~~(1)~~ As used in this section, the term:

46 (a) "Local government" means any county or municipality of
 47 the state.

48 (b) ~~"Xeriscape"~~ or "Florida-friendly landscape" means
 49 quality landscapes that conserve water, ~~and~~ protect the
 50 environment, ~~and~~ are adaptable to local conditions, ~~and~~ ~~which~~
 51 are drought tolerant. The principles of Florida-friendly
 52 landscaping ~~Xeriscape~~ include planting the right plant in the
 53 right place, efficient watering, appropriate fertilization,
 54 mulching, attraction of wildlife, responsible management of yard
 55 pests, recycling yard waste, reduction of stormwater runoff, and
 56 waterfront protection. Additional components include planning
 57 and design, ~~appropriate choice of plants,~~ soil analysis which
 58 may include the use of solid waste compost, ~~efficient~~

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59 ~~irrigation,~~ practical use of turf, ~~appropriate use of mulches,~~
60 and proper maintenance.

61 (3)~~(2)~~ Each water management district shall design and
62 implement an incentive program to encourage all local
63 governments within its district to adopt new ordinances or amend
64 existing ordinances to require Florida-friendly Xeriscape
65 landscaping for development permitted after the effective date
66 of the new ordinance or amendment. Each district shall establish
67 criteria ~~adopt rules governing the implementation of its~~
68 ~~incentive program and~~ governing the review and approval of local
69 government Florida-friendly landscape Xeriscape ordinances or
70 amendments which are intended to qualify a local government for
71 the incentive program. Each district shall assist the local
72 governments within its jurisdiction by providing a model
73 Florida-friendly landscape Xeriscape code and other technical
74 assistance. A local government ~~Xeriscape~~ ordinance or amendment,
75 in order to qualify the local government for a district's
76 incentive program, must include, at a minimum:

77 (a) Landscape design, installation, and maintenance
78 standards that result in water conservation. Such standards
79 shall address the use of plant groupings, soil analysis
80 including the promotion of the use of solid waste compost,
81 efficient irrigation systems, and other water-conserving
82 practices.

83 (b) Identification of prohibited invasive exotic plant
84 species consistent with s. 581.091.

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

87 (d) A provision specifying the maximum percentage of turf

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88 and the maximum percentage of impervious surfaces allowed in a
89 Florida-friendly landscaped ~~xeriscape~~ area and addressing the
90 practical selection and installation of turf.

91 (e) Specific standards for land clearing and requirements
92 for the preservation of existing native vegetation.

93 (f) A monitoring program for ordinance implementation and
94 compliance.

95 (g) Incorporation of the landscape irrigation and Florida-
96 friendly landscape design standards developed pursuant to s.
97 373.228(4).

98
99 The districts also shall work with local governments, county
100 extension agents or offices, nursery and landscape industry
101 groups, and other interested stakeholders to promote, through
102 educational programs and publications, the use of Florida-
103 friendly landscape ~~xeriscape~~ practices, including the use of
104 solid waste compost, in existing residential and commercial
105 development. The districts shall use the University of Florida's
106 Yards and Neighborhoods extension program or a similar program
107 as a primary resource for the delivery of educational programs
108 to individual homeowners and homeowners' associations. This
109 subsection is exempt from chapter 120 ~~section may not be~~
110 ~~construed to limit the authority of the districts to require~~
111 ~~xeriscape ordinances or practices as a condition of any~~
112 ~~consumptive use permit.~~

113 ~~(4)(3)~~ A deed restriction, ~~or~~ covenant ~~entered after~~
114 ~~October 1, 2001,~~ or local government ordinance may not be
115 enforced to prohibit any property owner from implementing
116 ~~xeriscape or~~ Florida-friendly landscape on his or her land and

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117 may not create any requirement or limitation in conflict with
118 any provision of part II.

119 (5) This section may not be construed to limit the
120 authority of the districts to require Florida-friendly landscape
121 ordinances or practices as a condition of any permit under part
122 II or part IV.

123 Section 2. Subsection (3) of section 373.323, Florida
124 Statutes, is amended to read:

125 373.323 Licensure of water well contractors; application,
126 qualifications, and examinations; equipment identification.—

127 (3) An applicant who meets the following requirements shall
128 be entitled to take the water well contractor licensure
129 examination to practice water well contracting:

130 (a) Is at least 18 years of age.

131 (b) Has at least 2 years of experience in constructing,
132 repairing, or abandoning water wells. Satisfactory proof of such
133 experience shall be demonstrated by providing:

134 1. Evidence of the length of time the applicant has been
135 engaged in the business of the construction, repair, or
136 abandonment of water wells as a major activity, as attested to
137 by three letters from any of the following persons:

138 a. Water well contractors.

139 b. Water well drillers.

140 c. Water well parts and equipment vendors.

141 d. Water well inspectors employed by a governmental agency.

142 2. A list of at least 10 water wells that the applicant has
143 constructed, repaired, or abandoned within the preceding 5
144 years. Of these wells, at least seven must have been
145 constructed, as defined in s. 373.303(2), by the applicant. The

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146 list to be provided under this subparagraph shall also include:

147 a. The name and address of the owner or owners of each
148 well.

149 b. The location, primary use, and approximate depth and
150 diameter of each well the applicant has constructed, repaired,
151 or abandoned.

152 c. The approximate date the construction, repair, or
153 abandonment of each well was completed.

154 (c) Has completed the application form and remitted a
155 nonrefundable application fee.

156 Section 3. Subsection (8) of section 373.333, Florida
157 Statutes, is amended to read:

158 373.333 Disciplinary guidelines; adoption and enforcement;
159 license suspension or revocation.—

160 (8) The water management district may impose through an
161 order an administrative fine not to exceed \$5,000 per occurrence
162 against an unlicensed person if ~~when~~ it determines that the
163 unlicensed person has engaged in the practice of water well
164 contracting~~r~~, for which a license is required.

165 Section 4. Section 125.568, Florida Statutes, is amended to
166 read:

167 125.568 Conservation of water; Florida-friendly landscape
168 ~~Xeriscape~~.—

169 (1) (a) The Legislature finds that Florida-friendly
170 landscape ~~Xeriscape~~ contributes to the conservation of water. In
171 an effort to meet the water needs of this state in a manner that
172 will supply adequate and dependable supplies of water where
173 needed, it is the intent of the Legislature that Florida-
174 friendly landscaping ~~Xeriscape~~ be an essential part of water

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175 conservation planning.

176 (b) ~~"Xeriscape" or~~ "Florida-friendly landscape" means
177 quality landscapes that conserve water, and protect the
178 environment, and are adaptable to local conditions, and ~~which~~
179 are drought tolerant. The principles of Florida-friendly
180 landscaping ~~Xeriscape~~ include planting the right plant in the
181 right place, efficient watering, appropriate fertilization,
182 mulching, attraction of wildlife, responsible management of yard
183 pests, recycling yard waste, reduction of stormwater runoff, and
184 waterfront protection. Additional components include planning
185 and design, ~~appropriate choice of plants,~~ soil analysis which
186 may include the use of solid waste compost, practical use of
187 turf, ~~efficient irrigation, appropriate use of mulches,~~ and
188 proper maintenance.

189 (2) The board of county commissioners of each county shall
190 consider enacting ordinances requiring the use of Florida-
191 friendly landscaping ~~Xeriscape~~ as a water conservation measure.
192 If the board determines that such landscaping ~~Xeriscape~~ would be
193 of significant benefit as a water conservation measure relative
194 to the cost to implement Florida-friendly ~~Xeriscape~~ landscaping
195 in its area of jurisdiction, the board shall enact a Florida-
196 friendly landscape ~~Xeriscape~~ ordinance. Further, the board of
197 county commissioners shall consider promoting such landscaping
198 ~~Xeriscape~~ as a water conservation measure by: using Florida-
199 friendly landscape ~~Xeriscape~~ in, around, or near facilities,
200 parks, and other common areas under its jurisdiction that ~~which~~
201 are landscaped after the effective date of this act; providing
202 public education on Florida-friendly landscape ~~Xeriscape~~, its
203 uses as a water conservation tool, and its long-term cost-

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204 effectiveness; and offering incentives to local residents and
205 businesses to implement Florida-friendly ~~Xeriscape~~ landscaping.

206 (3) A deed restriction, ~~or~~ covenant ~~entered after October~~
207 ~~1, 2001~~, or local government ordinance may not be enforced to
208 prohibit any property owner from implementing ~~Xeriscape~~ ~~or~~
209 Florida-friendly landscape on his or her land and may not create
210 any requirement or limitation in conflict with any provision of
211 part II of chapter 373.

212 Section 5. Section 166.048, Florida Statutes, is amended to
213 read:

214 166.048 Conservation of water; Florida-friendly landscape
215 ~~Xeriscape~~.—

216 (1) (a) The Legislature finds that Florida-friendly
217 landscape ~~Xeriscape~~ contributes to the conservation of water. In
218 an effort to meet the water needs of this state in a manner that
219 will supply adequate and dependable supplies of water where
220 needed, it is the intent of the Legislature that Florida-
221 friendly landscape ~~Xeriscape~~ be an essential part of water
222 conservation planning.

223 (b) ~~"Xeriscape"~~ ~~or~~ "Florida-friendly landscape" means
224 quality landscapes that conserve water, ~~and~~ protect the
225 environment, ~~and~~ are adaptable to local conditions, ~~and~~ which
226 are drought tolerant. The principles of Florida-friendly
227 landscaping ~~Xeriscape~~ include planting the right plant in the
228 right place, efficient watering, appropriate fertilization,
229 mulching, attraction of wildlife, responsible management of yard
230 pests, recycling yard waste, reduction of stormwater runoff, and
231 waterfront protection. Additional components include planning
232 and design, ~~appropriate choice of plants,~~ soil analysis which

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233 may include the use of solid waste compost, practical use of
234 turf, ~~efficient irrigation, appropriate use of mulches,~~ and
235 proper maintenance.

236 (2) The governing body of each municipality shall consider
237 enacting ordinances requiring the use of Florida-friendly
238 landscape ~~Xeriscape~~ as a water conservation measure. If the
239 governing body determines that such landscaping ~~Xeriscape~~ would
240 be of significant benefit as a water conservation measure
241 relative to the cost to implement Florida-friendly ~~Xeriscape~~
242 landscaping in its area of jurisdiction in the municipality, the
243 board shall enact a Florida-friendly landscape ~~Xeriscape~~
244 ordinance. Further, the governing body shall consider promoting
245 such landscaping ~~Xeriscape~~ as a water conservation measure by:
246 using Florida-friendly landscape ~~Xeriscape~~ in, around, or near
247 facilities, parks, and other common areas under its jurisdiction
248 that ~~which~~ are landscaped after the effective date of this act;
249 providing public education on Florida-friendly landscape
250 ~~Xeriscape~~, its uses as a water conservation tool, and its long-
251 term cost-effectiveness; and offering incentives to local
252 residents and businesses to implement Florida-friendly ~~Xeriscape~~
253 landscaping.

254 (3) A deed restriction, ~~or~~ covenant ~~entered after October~~
255 ~~1, 2001,~~ or local government ordinance may not be enforced to
256 prohibit any property owner from implementing ~~Xeriscape~~ ~~or~~
257 Florida-friendly landscape on his or her land and may not create
258 any requirement or limitation in conflict with any provision of
259 part II of chapter 373.

260 Section 6. Section 255.259, Florida Statutes, is amended to
261 read:

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262 255.259 Florida-friendly ~~Xeriscape~~ landscaping on public
263 property.—

264 (1) The Legislature finds that water conservation is
265 increasingly critical to the continuance of an adequate water
266 supply for the citizens of this state. The Legislature further
267 finds that "Florida-friendly landscape ~~Xeriscape~~," as defined in
268 s. 373.185, can contribute significantly to the conservation of
269 water. Finally, the Legislature finds that state government has
270 the responsibility to promote Florida-friendly landscape
271 ~~Xeriscape~~ as a water conservation measure by using Florida-
272 friendly landscape ~~Xeriscape~~ on public property associated with
273 publicly owned buildings or facilities.

274 (2) As used in this section, "publicly owned buildings or
275 facilities" means those construction projects under the purview
276 of the Department of Management Services. It does not include
277 environmentally endangered land or roads and highway
278 construction under the purview of the Department of
279 Transportation.

280 (3) The Department of Management Services, in consultation
281 with the Department of Environmental Protection, shall adopt
282 rules and guidelines for the required use of Florida-friendly
283 landscape ~~Xeriscape~~ on public property associated with publicly
284 owned buildings or facilities constructed after June 30, 1992.
285 The Department of Management Services also shall develop a 5-
286 year program for phasing in the use of Florida-friendly
287 landscape ~~Xeriscape~~ on public property associated with publicly
288 owned buildings or facilities constructed before July 1, 1992.
289 In accomplishing these tasks, the Department of Management
290 Services shall take into account the guidelines set out in s.

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291 373.185(3)(a)-(g)(2)(a)-(f). The Department of Transportation
292 shall implement Florida-friendly ~~Xeriscape~~ landscaping pursuant
293 to s. 335.167.

294 (4) A deed restriction, ~~or~~ covenant ~~entered after October~~
295 ~~1, 2001~~, or local government ordinance may not be enforced to
296 prohibit any property owner from implementing ~~Xeriscape or~~
297 Florida-friendly landscape on his or her land and may not create
298 any requirement or limitation in conflict with any provision of
299 part II of chapter 373.

300 Section 7. Section 335.167, Florida Statutes, is amended to
301 read:

302 335.167 State highway construction and maintenance;
303 ~~Xeriscape or~~ Florida-friendly landscaping.-

304 (1) The department shall use and require the use of
305 Florida-friendly landscape ~~Xeriscape~~ practices, as defined in s.
306 373.185(2)(1), in the construction and maintenance of all new
307 state highways, wayside parks, access roads, welcome stations,
308 and other state highway rights-of-way constructed upon or
309 acquired after June 30, 1992. The department shall develop a 5-
310 year program for phasing in the use of Florida-friendly
311 landscape ~~Xeriscape~~, including the use of solid waste compost,
312 in state highway rights-of-way constructed upon or acquired
313 before July 1, 1992. In accomplishing these tasks, the
314 department shall employ the guidelines set out in s.
315 373.185(3)(a)-(g)(2)(a)-(f).

316 (2) A deed restriction, ~~or~~ covenant ~~entered after October~~
317 ~~1, 2001~~, or local government ordinance may not be enforced to
318 prohibit any property owner from implementing ~~Xeriscape or~~
319 Florida-friendly landscape on his or her land and may not create

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320 any requirement or limitation in conflict with any provision of
321 part II of chapter 373.

322 Section 8. Subsections (2) and (4) of section 373.228,
323 Florida Statutes, are amended to read:

324 373.228 Landscape irrigation design.—

325 (2) The Legislature finds that landscape irrigation
326 comprises a significant portion of water use and that the
327 current typical landscape irrigation system and Florida-friendly
328 landscape ~~xeriscape~~ designs offer significant potential water
329 conservation benefits.

330 (4) The water management districts shall work with the
331 Florida Nurserymen and Growers Association, the Florida Chapter
332 of the American Society of Landscape Architects, the Florida
333 Irrigation Society, the Department of Agriculture and Consumer
334 Services, the Institute of Food and Agricultural Sciences, the
335 Department of Environmental Protection, the Department of
336 Transportation, the Florida League of Cities, the Florida
337 Association of Counties, and the Florida Association of
338 Community Developers to develop landscape irrigation and
339 Florida-friendly landscape ~~xeriscape~~ design standards for new
340 construction which incorporate a landscape irrigation system and
341 develop scientifically based model guidelines for urban,
342 commercial, and residential landscape irrigation, including drip
343 irrigation, for plants, trees, sod, and other landscaping. The
344 landscape and irrigation design standards shall be based on the
345 irrigation code defined in the Florida Building Code, Plumbing
346 Volume, Appendix F. Local governments shall use the standards
347 and guidelines when developing landscape irrigation and Florida-
348 friendly landscape ~~xeriscape~~ ordinances. By January 1, 2011, the

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349 agencies and entities specified in this subsection shall review
350 the standards and guidelines to determine whether new research
351 findings require a change or modification of the standards and
352 guidelines.

353 Section 9. Paragraph (a) of subsection (3) of section
354 380.061, Florida Statutes, is amended to read:

355 380.061 The Florida Quality Developments program.-

356 (3) (a) To be eligible for designation under this program,
357 the developer shall comply with each of the following
358 requirements which is applicable to the site of a qualified
359 development:

360 1. Have donated or entered into a binding commitment to
361 donate the fee or a lesser interest sufficient to protect, in
362 perpetuity, the natural attributes of the types of land listed
363 below. In lieu of the above requirement, the developer may enter
364 into a binding commitment which runs with the land to set aside
365 such areas on the property, in perpetuity, as open space to be
366 retained in a natural condition or as otherwise permitted under
367 this subparagraph. Under the requirements of this subparagraph,
368 the developer may reserve the right to use such areas for the
369 purpose of passive recreation that is consistent with the
370 purposes for which the land was preserved.

371 a. Those wetlands and water bodies throughout the state as
372 would be delineated if the provisions of s. 373.4145(1)(b) were
373 applied. The developer may use such areas for the purpose of
374 site access, provided other routes of access are unavailable or
375 impracticable; may use such areas for the purpose of stormwater
376 or domestic sewage management and other necessary utilities to
377 the extent that such uses are permitted pursuant to chapter 403;

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378 or may redesign or alter wetlands and water bodies within the
379 jurisdiction of the Department of Environmental Protection which
380 have been artificially created, if the redesign or alteration is
381 done so as to produce a more naturally functioning system.

382 b. Active beach or primary and, where appropriate,
383 secondary dunes, to maintain the integrity of the dune system
384 and adequate public accessways to the beach. However, the
385 developer may retain the right to construct and maintain
386 elevated walkways over the dunes to provide access to the beach.

387 c. Known archaeological sites determined to be of
388 significance by the Division of Historical Resources of the
389 Department of State.

390 d. Areas known to be important to animal species designated
391 as endangered or threatened animal species by the United States
392 Fish and Wildlife Service or by the Fish and Wildlife
393 Conservation Commission, for reproduction, feeding, or nesting;
394 for traveling between such areas used for reproduction, feeding,
395 or nesting; or for escape from predation.

396 e. Areas known to contain plant species designated as
397 endangered plant species by the Department of Agriculture and
398 Consumer Services.

399 2. Produce, or dispose of, no substances designated as
400 hazardous or toxic substances by the United States Environmental
401 Protection Agency or by the Department of Environmental
402 Protection or the Department of Agriculture and Consumer
403 Services. This subparagraph is not intended to apply to the
404 production of these substances in nonsignificant amounts as
405 would occur through household use or incidental use by
406 businesses.

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407 3. Participate in a downtown reuse or redevelopment program
408 to improve and rehabilitate a declining downtown area.

409 4. Incorporate no dredge and fill activities in, and no
410 stormwater discharge into, waters designated as Class II,
411 aquatic preserves, or Outstanding Florida Waters, except as
412 activities in those waters are permitted pursuant to s.
413 403.813(2) and the developer demonstrates that those activities
414 meet the standards under Class II waters, Outstanding Florida
415 Waters, or aquatic preserves, as applicable.

416 5. Include open space, recreation areas, Florida-friendly
417 landscape ~~Xeriscape~~ as defined in s. 373.185, and energy
418 conservation and minimize impermeable surfaces as appropriate to
419 the location and type of project.

420 6. Provide for construction and maintenance of all onsite
421 infrastructure necessary to support the project and enter into a
422 binding commitment with local government to provide an
423 appropriate fair-share contribution toward the offsite impacts
424 which the development will impose on publicly funded facilities
425 and services, except offsite transportation, and condition or
426 phase the commencement of development to ensure that public
427 facilities and services, except offsite transportation, will be
428 available concurrent with the impacts of the development. For
429 the purposes of offsite transportation impacts, the developer
430 shall comply, at a minimum, with the standards of the state land
431 planning agency's development-of-regional-impact transportation
432 rule, the approved strategic regional policy plan, any
433 applicable regional planning council transportation rule, and
434 the approved local government comprehensive plan and land
435 development regulations adopted pursuant to part II of chapter

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436 163.

437 7. Design and construct the development in a manner that is
438 consistent with the adopted state plan, the applicable strategic
439 regional policy plan, and the applicable adopted local
440 government comprehensive plan.

441 Section 10. Subsection (3) of section 388.291, Florida
442 Statutes, is amended to read:

443 388.291 Source reduction measures; supervision by
444 department.—

445 (3) Property owners in a developed residential area are
446 required to maintain their property in such a manner so as not
447 to create or maintain any standing freshwater condition capable
448 of breeding mosquitoes or other arthropods in significant
449 numbers so as to constitute a public health, welfare, or
450 nuisance problem. Nothing in this subsection shall permit the
451 alteration of permitted stormwater management systems or
452 prohibit maintained fish ponds, Florida-friendly landscaping
453 ~~xeriscaping~~, or other maintained systems of landscaping or
454 vegetation. If such a condition is found to exist, the local
455 arthropod control agency shall serve notice on the property
456 owner to treat, remove, or abate the condition. Such notice
457 shall serve as prima facie evidence of maintaining a nuisance,
458 and upon failure of the property owner to treat, remove, or
459 abate the condition, the local arthropod control agency or any
460 affected citizen may proceed pursuant to s. 60.05 to enjoin the
461 nuisance and may recover costs and attorney's fees if they
462 prevail in the action.

463 Section 11. Paragraph (a) of subsection (6) of section
464 481.303, Florida Statutes, is amended to read:

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465 481.303 Definitions.—As used in this chapter:

466 (6) "Landscape architecture" means professional services,
467 including, but not limited to, the following:

468 (a) Consultation, investigation, research, planning,
469 design, preparation of drawings, specifications, contract
470 documents and reports, responsible construction supervision, or
471 landscape management in connection with the planning and
472 development of land and incidental water areas, including the
473 use of Florida-friendly landscape ~~Xeriscape~~ as defined in s.
474 373.185, where, and to the extent that, the dominant purpose of
475 such services or creative works is the preservation,
476 conservation, enhancement, or determination of proper land uses,
477 natural land features, ground cover and plantings, or
478 naturalistic and aesthetic values;

479 Section 12. Subsection (4) of section 720.3075, Florida
480 Statutes, is amended to read:

481 720.3075 Prohibited clauses in association documents.—

482 (4) Homeowners' association documents, including
483 declarations of covenants, articles of incorporation, or bylaws,
484 ~~entered after October 1, 2001,~~ may not be enforced to prohibit
485 any property owner from implementing ~~Xeriscape or~~ Florida-
486 friendly landscape, as defined in s. 373.185(2) ~~(1)~~, on his or
487 her land and may not create any requirement or limitation in
488 conflict with any provision of part II of chapter 373.

489 Section 13. This act shall take effect July 1, 2009.