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:	CS/SB 274
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Constantine and others
SUBJECT:	Protection of Springs
DATE:	March 26, 2009 REVISED: 04/06/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	**Fav/CS**
2.	Molloy	Yeatman	CA	**Fav/6 amendments**
3.			HR	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
	X	Amendments were recommended
		Significant amendments were recommended

I. Summary:

The CS/SB 274 (the bill) creates the Florida Springs Protection Act, requires the Department of Environmental Protection (DEP) to adopt a priority list of first and second magnitude springs, and designates all counties and cities with first or second magnitude springs within their jurisdiction as spring protection zones. The bill establishes requirements for spring protection zones for domestic wastewater discharge and wastewater residual application, onsite sewage treatment and disposal systems in specified areas, agricultural operations, animal feeding operations, and stormwater systems.

The bill creates the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program in the Department of Health and provides program requirements. Local governments are directed to include a spring protection measure in the appropriate element of a local comprehensive plan and failure to adopt the measure will result in a prohibition on plan amendments until the measure is adopted.

The bill directs the Department of Health to implement a statewide mandatory onsite sewage treatment and disposal system inspection program to be phased in over a 10-year cycle and

requires the DEP, the Department of Agriculture and Consumer Services (DACS), and the water management districts to assess nitrogen loading from lands owned and managed by each entity for the purpose of developing a management plan to reduce adverse impacts to springs no later than December 31, 2011.

The bill directs the Acquisition and Restoration Council to give weight to Florida Forever projects where any part of the project area falls within a spring protection zone, and provides for the creation of a model ordinance for fertilizer use on urban landscapes to protect water quality. Local governments within a watershed of an impaired water body or water segment must adopt an ordinance that is at least equal to the model ordinance. The bill provides limitations on the application of certain fertilizers after a specified date, and transfers the Bureau of Onsite Sewage from the Department of Health (DOH) to the DEP by a type two transfer.[1]

The CS creates the following sections in the Florida Statues: 369.401, 369.402, 369.403, 369.404, 369.405, 369.406, 369.407, 369.408, 403.9335, and 403.9337; and amends sections 163.3177, 259.105, 381.0065, and 403.1835, Florida Statutes.

II. Present Situation:

Florida has more than 700 recognized springs; 33 first magnitude springs with a flow of more than 100 cubic feet per second that discharge more than 64 million gallons of water per day; 191 second magnitude springs with an average flow of 10 to 100 cubic feet per second that discharge from 6.46 to more than 64 million gallons of water per day; 151 third magnitude springs with a flow of 1 to 10 cubic feet per second that discharge 600,000 to 6.46 million gallons of water per day.[2] Spring discharges, primarily from the Florida Aquifer, are used to determine ground water quality and the degree of human impact on the spring's watershed. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry.

The Florida Springs Task Force was created in 1999 to recommend strategies for protecting and restoring Florida's springs. The multi-agency task force produced a report in November of 2000 entitled "*Florida's Springs, Strategies for Protection and Restoration*" which was the basis of the Florida Springs Initiative within the Department of Environmental Protection. The report identified management strategies such as coordinated land use planning and ordinances that protect spring recharge basins, funding and implementing best management practices, and the acquisition of spring recharge basins to protect springs from land use practices that reduce water quality and quantity. The report also identified regulation strategies to protect spring flow, and a funding mechanism for implementing the strategies contained in the report. The report suggested the creation of a Springs Protection and Restoration Trust Fund funded by a 25-cent increase in automobile tags.

Under the Florida Springs Initiative, the Legislature has provided at least $2.5 million each year since 2001 to support projects for springs restoration, research and protection.

[1] Section 20.06, F.S., provides that a type two transfer is the merger of the functions of one agency, or a program, activity, or function thereof to another agency.
[2] See Bulletin No. 66, *Springs of Florida*, Florida Geological Survey, Retrieved 6 Mar. 2009 <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm>

The Department of Health does not currently have a statewide septic system inspection program but has produced the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program."[3] According to the report, three Florida counties: Charlotte, Escambia and Santa Rosa, have implemented mandatory septic system inspections at a cost of between $83.93 to $215 per inspection. Florida has 2.3 million septic systems with the estimated failure rate during the initial round of inspections to be 9.5 percent.

Currently there is no requirement for local governments to adopt a model ordinance for urban fertilizer use based on the Florida Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions. As part of its ongoing Florida-Friendly Landscape Best Management Practice Educational Program, the Florida Department of Environmental Protection and the University of Florida Institute of Food and Agricultural Sciences have developed this manual to assist local governments, commercial entities and others in smarter fertilizer use.

III. Effect of Proposed Changes:

Section 1: Creates Part IV of Chapter 369, F.S., as follows:

- Section 369.401, F.S., provides a short title.
- Section 369.402, F.S., establishes legislative findings and intent.
- Section 369.403, F.S., provides definitions.
- Section 369.404, F.S., provides the following:
    - Designates all counties and municipalities that contain a first or second magnitude spring as spring protection zones.
    - Directs the DEP to adopt by rule a priority list of first and second magnitude springs based on the average annual concentration of nitrate measured at the spring boil.
    - Creates deadlines for implementation of the requirements in s. 369.405, F.S., based on the priority list developed by the department:
        - High-priority springs, compliance by July 1, 2016;
        - Medium-priority springs, compliance by July 1, 2019; and
        - Low-priority springs, compliance by July 1, 2024.
    - Allows counties or municipalities to submit an application to exempt certain geological areas from inclusion in a spring protection zone if they can prove that the exempted areas will not lead to new or continued degradation of a spring.
    - Directs the DEP to develop standards and rules that provide the minimum scientific methodologies, data or tools for use by counties to support an exemption application.
    - Allows the DEP to deny or modify an exemption application by a county or municipality.
- Section 369.405, F.S., requires implementation of the following requirements:
    - For domestic wastewater discharges:
        - Facilities having permitted capacities greater than or equal to 100,000 gallon per day must reduce nitrogen to less than or equal to 3mg/L.
        - Facilities having permitted capacity between 10,000 and 100,000 gallons per day must reduce nitrogen to less than or equal to 10mg/L.

[3] The Department of Health. Retrieved 18 Mar. 2009 <http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf>

- For onsite sewage treatment and disposal systems, areas having or permitted to have densities greater than or equal to 300 systems per square mile must connect to a central system or other centralized collection and treatment system.
- Agricultural operations must implement best-management practices adopted by the DACS, including nutrient management, to reduce nitrogen impacts to ground water.
- The DACS must develop and proposed for adoption by rule BMPs for equine, cow and calf, and forage grass operations.
  - By December 31, 2009, the DEP must develop and proposed for adoption, revised rules for animal feeding operations which address requirements for lined wastewater lagoons, and the development and implementation of nutrient management plans, including the land spreading of animal waste not treated and packaged as fertilizer.
  - Animal feeding operations must implement the requirements of the revised rules to reduce nitrogen impacts to ground water.
- Stormwater systems requirements are as follows:
  - All drainage wells must be evaluated and a remediation plan developed to reduce nitrogen loading to ground water; and
  - All management systems constructed prior to 1982 must be evaluated and a remediation plan developed to reduce nitrogen loading to ground water.
- Allows the DEP to implement more stringent requirements if necessary to meet surface and ground water quality standards.

- Section 369.406, F.S., provides for additional requirements and compliance deadlines for all spring protection zones.
- Section 369.407, F.S., creates the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program. The program is established in the Department of Health to provide grants to low-income property owners with septic systems in spring protection zones to help them comply with the requirements and rules for these systems developed by the DEP, the DOH and the water management districts. Program requirements and rulemaking authority are provided.
- Section 369.408, F.S., provides rulemaking authority to the DEP, the DOH, and the DACS, and designates the DACS as the lead agency in coordinating the reduction of agricultural nonpoint sources of pollution for springs protection.

Section 2: Amends s. 163.3177, F.S., to require that local governments in spring protection zones adopt a spring protection measure as an element to the local comprehensive plan. Failure to adopt such a measure prohibits the adoption of plan amendments.

The DEP and the state land planning agency shall make all information concerning best-management and use practices and principles available on their respective websites. Landscape design and irrigation systems must meet the standards established pursuant to s. 373.228 (4), F.S.

Section 3: Amends s. 403.1835, F.S., to include the implementation of basin management action plans and spring protection zones as eligible projects for priority pollution control financial assistance. In developing the project priority system, the DEP must give priority to projects that eliminate environmental damage caused by failing onsite sewage treatment and disposal systems, and within that category, give priority to those projects located within an area of critical state

concern under s. 380.05, F.S., or located in a spring protection zone adopted pursuant to s. 369.404, F.S.

Section 4: Creates an undesignated section of law directing the DEP, the DACS, and the water management districts to assess nitrogen loading from lands owned or managed by each respective agency and located within a spring protection zone established, and develop and implement management plans designed to reduce adverse impacts to the springs no later than December 31, 2011.

Section 5: Creates paragraph (d) of subsection (3) of s. 381.0065, F.S., to direct the DOH to develop and implement a statewide mandatory onsite sewage treatment and disposal system inspection program, to be phased in over 10 years. An additional fee of $20 must be collected for each septic system inspected by the DOH, local government, or a licensed septic tank contractor or plumber. At least half of the revenues generated from the additional inspection fee will go into the appropriate trust fund to administer the grant program created pursuant to s. 369.407, F.S. The entity conducting the inspection must submit an application for approval to the Department of Health and provide a copy to the property owner. The DOH must approve the system for continued use or notify the owner that a repair or modification permit is required.

Section 6: Creates paragraph (m) of subsection (9) of s. 259.105, F.S., to direct the Acquisition and Restoration Council to give priority to Florida Forever projects that fall within a spring protection zone created pursuant to s. 369.404, F.S.

Section 7: Creates s. 403.9335, F.S., for the protection of urban and residential environments and water by:

- Directing the DEP to adopt by July 1, 2010, a model ordinance using the 2008 Model Ordinance for Florida Friendly Fertilizer Use on Urban Landscapes developed in conjunction with the Florida Consumer Fertilizer Task Force, the DACS, and the Institute of Food and Agricultural Sciences at the University of Florida.
- Encourages all local governments to adopt the model ordinance.
- Requires all local governments that are within the watershed of a nutrient impaired water body or water segment to adopt the model ordinance.
- Allows local governments to adopt additional or more stringent provisions to the model ordinance.

Section 8: Creates s. 403.9337, F.S., to ban the use of phosphorous containing fertilizer for urban turf application after July 1, 2011, unless soil or tissue tests indicate a phosphorous containing fertilizer is needed to initially establish urban turf or maintain healthy urban turf. Establishes the amount of phosphorous per 1,000 square feet that may be applied to urban turf under an exemption.

Section 9: Transfers the Bureau of Onsite Sewage from the DOH to the DEP by a type two transfer.

Section 10: Provides that the act shall take effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The CS provides that an additional fee of $20 be added to the cost of a septic tank inspection. Fifty percent of the revenues derived from the fee are to be used for the implementation of the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program created in Section 1 of the CS. The remaining fees would be retained by the Department of Health.

There are some 2.3 million septic tanks in the state. The CS provides that all systems except those in areas where the density is less than 1 dwelling per 3 acres will be required to have an inspection. The number of systems that will qualify for the exemption is unknown.

The CS allows for a 10 year phase in of the program so annual revenues are expected to be minimal in the first years. Once fully implemented, it is anticipated that at least 400,000 inspections will be performed annually which will generate $8 million in revenues.

B. Private Sector Impact:

There will be an impact to individual landowners having to meet the onsite wastewater standards required in the CS. Depending on the specific priority designation of the springs in their area, they will be required to connect to some type of centralized collection system between July 1, 2016 and July 1, 2024. The CS does provide that onsite systems in areas with a density of less than 300 septic tanks per square mile will be exempt from this requirement. The number of individual homeowners that will be impacted by the requirement or exempt is indeterminate. Estimates from the DOH range from $2,500 to $20,000 as the cost of connecting to centralized systems for a standard family residence.

Individual homeowners required to have their septic tank systems inspected will pay an additional $20 once every five years. Data from a DOH report indicates that the current rate for inspection, evaluation, and pump out averages $500.

Agriculture operations will face some additional costs to implement the necessary best-management practices required by the legislation. The specific cost is unknown because the practices have not yet been developed. However, it should be noted that even without the legislation many of these agriculture operations may still be required to implement best-management practices as a result of the state's implementation of the Total Maximum Daily Load program.

The CS has a series of "going-forward" requirements designed to address future activities in spring protection zones. These requirements will have an impact on the private sector. Specific requirements and impacts include:

That any development not permitted as of July 2009, with a planned density exceeding 300 septic systems per square mile, will be required to provide some form of centralized collection and treatment. As indicated previously the cost hooking up to a centralized system is estimated to range from $2,500 to $20,000 per residence.

Any new septic tank system installed after July 2009 will be required to meet certain performance based criteria. Costs for performance based systems can vary depending on the level of performance and certain site characteristics. Data from the DOH indicates these systems range in price from $10,000 to $15,000, whereas conventional systems range in price from $3,000 to $6,000. The bill does not prescribe a specific system but outlines the minimum criteria the system shall achieve.

A requirement that during the repair or modification of a septic system, it be determined if the system as installed meets setback requirements that ensure the protection of surface or ground water. If the system does not meet these requirements, additional costs may be incurred to add fill dirt or modify a drainage field.

Individuals who violate the provision of the CS prohibiting the land application of septage will be subject to a $250 fine for the first offense and a $500 fine for a second or subsequent offense.

For individuals who may be required to replace their septic tank systems with new performance based systems, the CS creates the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program. The purpose of which is to provide grants to those low-income property owners (up to 200% of the federal poverty level) to assist in complying with the new requirements of the legislation. Grants of up to $5,000 will be made available to cover the difference between the cost of a traditional septic tank and that of a nitrate-reducing system. Based on the Department of Health data the cost differences can be expected to range between $7,000 and $9,000.

C. Government Sector Impact:

The CS directs several agencies to adopt rules to implement various provisions. It is anticipated that the agencies can accomplish the rulemaking within current budgets. Staff has requested fiscal impacts from the agencies.

Pursuant to a requirement in the 2008 – 2009 General Appropriations Act, the DOH was required to report on the cost of implementing a similar mandatory septic tank inspection program. Findings of the report estimate that program costs of $21.8 million would be fully funded from current application and permitting fees. The cost figure represents the one position that the DOH would require as well as the costs for the county health departments to implement the program.

The CS allows local governments an option to modify the boundaries of the spring protection zones by petitioning the DEP. The cost of this process is indeterminate and will be directly related to the complexity of the specific spring zone.

Local governments are also required to evaluate and implement plans to reduce nitrogen loading from drainage wells and stormwater management systems constructed before 1982. The cost is unknown and will be dependent on the specific characteristics of each system and the extent of capital investment needed to bring the systems into compliance.

The CS provides that the DEP develop a model ordinance for the use of fertilizers on urban landscapes. The department is to modify an existing model ordinance, and local governments are encouraged to adopt the modified model ordinance. However, local governments, located in a spring protection zone or that have impaired waters as listed by the DEP are required to adopt the ordinance. There will be some cost to local governments to adopt the ordinances. The specific number of local governments that will be located in a spring protection zone is unknown, at a minimum there are 34 counties that will be impacted.

The CS also requires local governments to adopt a Department of Environmental Protection developed model ordinance for Florida Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions.

The CS directs local governments during their next evaluation and appraisal cycle to update the appropriate comprehensive plan elements to address springs protection.

Wastewater discharge facilities, either publically or investor owned, will face costs for the implementation of treatment methods to achieve standards provided in the legislation. The cost to these facilities is highly dependent on individual facility characteristics. Factors such as size, level of treatment, and how fast to get to higher treatment levels will have significant bearing on the cost of this requirement. For those publically owned facilities that will be impacted by the requirements of the legislation, there exists the state’s Clean Water Fund SRF loan program to provide assistance.

VI. Technical Deficiencies:

This bill contains the following technical deficiencies:

- For purposes of part IV of chapter 369, F.S., the bill defines "department" as Department of Environmental Protection. However, the bill uses the term "department" throughout part IV to also refer to the DACS and the DOH.
- The bill provides that onsite sewage treatment and disposal systems in certain areas must connect to a central wastewater treatment facility but no provision is made for areas where no central facility exists.
- The bill provides that the title of s. 369.405, F.S., contains requirements for spring protection zones, but the requirements are not limited in application to spring protection zones, and the requirements do not refer back to the priority deadlines contained in s. 369.404, F.S.
- The bill provides that all drainage wells in stormwater systems must be evaluated and a remediation plan to reduce nitrogen loading must be developed and implemented, but the bill doesn't provide who will conduct the evaluation, or develop and implement the remediation plan.
- The bill provides that all "management systems" constructed prior to 1982 must be evaluated and a remediation plan to reduce nitrogen loading must be developed and implemented, but the bill doesn't identify what "management systems" are included (stormwater) and doesn't provide who will conduct the valuation, or develop and implement the remediation plan.
- In various places of the bill, the bill provides that the provisions of a subsection do not limit the application of the requirements being created when it should say that the provisions of the section do not limit the application of the requirements.
- The DOH is required to adopt rules for applying for and disbursing grants, including bid requirements. The grant program is in the form of a rebate to a property owner for costs incurred in complying with requirements to alter, repair, or modify a septic tank system so it is unclear what bid requirements are necessary.
- The bill provides requirements in s. 163.3177, F.S., for a spring protection measure to be included in an element of a local comprehensive plan by counties or municipalities, or portions thereof, designated as spring protection zones, and provides requirements for the development of the measure. In the middle of those requirements and completely unrelated to s. 163.3177, F.S., the bill requires DEP and the state land planning agency to post information on BMPs and use practices and principles on the agency websites, and provides that all landscape design and irrigation systems must meet the standards in s. 373.228(4), F.S.
- The bill requires the DEP to adopt a model ordinance using the 2008 Model Ordinance for Florida-Friendly Use on Urban Landscapes, developed in conjunction with the Florida Consumer Fertilizer Task Force, the DACS, and IFAS at UF as a model. It is unclear why the DEP is directed adopt a model ordinance from a model ordinance that accomplishes the same purposes.

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.)

CS by Environmental Preservation and Conservation on March 17, 2009:
The CS changes the originally filed bill in the following ways:

Expands the Florida Springs Protection Act statewide from a 4-spring pilot program.
Updates definitions to include relevant terms.
Designates all counties and municipalities in which there are located first or second magnitudes as spring protections zones instead of delineation by travel times.
Directs the Department of Environmental Protection to designate springs as high, medium and low priority based on nitrogen concentrations, which removes the designation of impaired and non impaired springs.
Sets deadlines for compliance with certain requirements of this CS based on the spring priority designation.
Allows counties and municipalities to apply for exemptions for certain geological areas that are determined not to impact springs. This is an opt-out provision, rather than the previous opt-in solution based on travel times.
There are no longer differing standards for spring protection zones. Rather, the deadlines to meet the standards and requirements of this CS are staggered in time to allow spring protection zones with low priority springs more time to implement changes than those with high priority springs.
Existing areas with septic system densities greater than or equal to 300 systems per square mile are required to connect to a central wastewater treatment facility or other centralized collection and treatment system by the priority-based deadlines. New developments not permitted as of July 1, 2009, with densities greater than or equal to 300 systems per square mile must connect to a central wastewater treatment facility or other centralized collection and treatment system.
Animal feeding operations must implement best-management practices, address requirements for lined wastewater lagoons, and develop and implement nutrient management plans, including the land spreading of animal waste by the priority-based deadlines.
Stormwater drainage wells and management systems constructed prior to 1982 must be evaluated and remediated to reduce nutrient loading to ground water by the priority-based deadlines.
Land application of septage is prohibited and new fines are established for violations.
The prohibition on land application of Class AA wastewater residuals is added to the existing prohibition on Classes A and B. The existing exemption for Class AA residuals marketed and distributed as fertilizer remains.
Local governments are required to adopt the Department of Environmental Protection's model ordinance for Florida Friendly Landscaping.
Creates the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program to assist low-income property owner to comply with the requirements of the CS.

Directs the Department of Agriculture and Consumer Services to be the lead agency in coordinating rules development for nutrient loading of springs from nonpoint sources.
Directs counties and municipalities to include a spring protection measure in their comprehensive plans during their next evaluation and appraisal report cycle, instead of within 18 months after the adoption of a spring protection zone.
Creates a mandatory 5-year onsite sewage treatment and disposal system inspection program to be phased in over 10 years.
Directs the Acquisition and Restoration Council to give priority to projects that fall within a spring protection zone.
Recommends that local governments adopt a model ordinance for fertilizer use for the protection of urban and residential environments and water. Requires that counties located within the watershed of an impaired water body or water segment adopt the model ordinance, or a stricter ordinance.
Requires the use of no-phosphorous fertilizers on urban turf after July 1, 2011, except to establish or maintain healthy turf if soil or tissue tests confirm that a phosphorous-containing fertilizer is needed.
Provides for a type II transfer of the Bureau of Onsite Sewage from the Department of Health to the Department of Environmental Protection.

B. Amendments:

Barcode 360062 by Community Affairs on April 6, 2009:
Technical amendment to provide that "cooperating entities" are the water management districts, counties, and municipalities having jurisdiction in the areas of springs identified as high, medium, or low priority springs in s. 369.404, F.S., as created in the bill.
Barcode 871958 by Community Affairs on April 6, 2009:
Provides a definition for "spring boil."
Barcode 749992 by Community Affairs on April 6, 2009:
Clarifies that scientific methodologies, data, or tools developed in rules or standards of the DEP may be used by a county or municipal government to support a request for certain geographic areas to be exempted from the spring protection zone designation.
Provides that a ruling of the DEP on a request for an exemption is a final agency action subject to review under the provisions of ss. 120.569 and 120.57, F.S.
Barcode 642104 by Community Affairs on April 6, 2009:
Clarifies that counties and municipalities, rather than all local governments, must adopt by December 31, 2010, the DEP's model ordinance for Florida Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions.
Barcode 372472 by Community Affairs on April 6, 2009:
Clarifies that the DACS must work with cooperating entities, stakeholder groups, and cities and counties, rather than local governments, if rulemaking is necessary to implement new or revised BMPs for improving and protecting springs.
Barcode 827198 by Community Affairs on April 6, 2009:
Technical correction to reflect that springs protection zones are designated by the DEP and not adopted pursuant to rule.