

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 Health Regulation Committee

BILL: CS/CS/SB 274

INTRODUCER: Health Regulation Committee; Environmental Preservation and Conservation Committee; and Senator Constantine and others

SUBJECT: Water Resources

DATE: April 17, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Kiger</u>	<u>EP</u>	Fav/CS
2.	<u>Molloy</u>	<u>Yeatman</u>	<u>CA</u>	Fav/6 amendments
3.	<u>Stovall</u>	<u>Wilson</u>	<u>HR</u>	Fav/CS
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

I. Summary:

The CS/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 DEP and provides program requirements. The bill directs the Department of Health (DOH) 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 (DACCS), counties and municipal governments, and the water management districts to take various steps to reduce the effects of

nitrogen on groundwater. The bill transfers the Bureau of Onsite Sewage Programs from the DOH to the DEP by a Type II transfer, effective July 1, 2010.¹

The bill replaces the term “xeriscape” with “Florida-friendly landscape” throughout the Florida Statutes; elaborates on the factors to be considered as part of Florida-friendly landscapes; specifies the experience that water well contractors should have; clarifies penalties for unlicensed water well contractors; and provides conforming and technical changes.

The bill establishes a task force to develop recommendations relating to stormwater management system design; specifies study criteria; provides for task force membership, meetings, and expiration; and requires the task force to submit findings and legislative recommendations to the Legislature by November 1, 2009.

The bill creates the following sections in the Florida Statutes: 369.401; 369.402; 369.403; 369.404; 369.405; 369.406; 369.407; 369.408; 373.187; 403.9335; and 403.9337.

The bill amends the following sections in the Florida Statutes: 125.568; 163.3177; 166.048; 255.259; 259.105; 335.167; 369.317; 373.185; 373.228; 373.323; 373.333; 380.061; 381.0065; 388.291; 403.1835; 481.303; and 720.3075.

The bill also creates three undesignated sections of law.

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 groundwater 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 groundwater 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 DEP. 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

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 into another agency.

² See Bulletin No. 66, *Springs of Florida*, Florida Geological Survey, <<http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm>> (Last visited on April 8, 2009).

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.

The DOH conducts an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is an onsite sewage treatment and disposal function.³ The Bureau of Onsite Sewage Programs develops statewide rules and provides training and standardization for County Health Department employees responsible for permitting the installation and repair of onsite sewage treatment and disposal systems (OSTDS) within the state. The bureau also licenses septic tank contractors, approves continuing education courses and course providers for septic tank contractors, funds a hands-on training center, and mediates OSTDS contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic tank designs.⁴

The DOH does not currently have a statewide septic system inspection program but has produced the "Report on Range of Costs to Implement a Mandatory Statewide Five-Year Septic Tank Inspection Program."⁵ 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 DEP 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.

The Wekiva Basin

The Wekiva Basin, consisting of the Wekiva River, the St. Johns River and their tributaries along with associated lands in Central Florida, is part of a vast wildlife corridor that connects northwest Orange County with the Ocala National Forest. The Wekiva River and its tributaries have been designated an Outstanding Florida Water, a National and Scenic River, a Florida Wild and Scenic River, and a Florida Aquatic Preserve.

³ s. 381.006, F.S.

⁴ Description of the Bureau of Onsite Sewage from the DOH website found at: <http://www.doh.state.fl.us/environment/ostds/OSTDSdescription.html> (Last visited on April 9, 2009)

⁵ The Department of Health. <http://www.doh.state.fl.us/environment/ostds/pdffiles/forms/MSIP.pdf> (Last visited on April 8, 2009).

The Wekiva Parkway is limited access highway or expressway constructed between SR 429 and Interstate 4, specifically incorporating the corridor alignment recommended by the Wekiva River Basin Area Task Force and the SR 429 Working Group. The Wekiva Parkway and related transportation facilities must follow the design criteria contained in the recommendations of the Wekiva River Area Task Force adopted by reference by the Wekiva River Basin Coordinating Committee, subject to reasonable environmental, economic and engineering considerations.

In 2004, the Legislature enacted the Wekiva Parkway and Protection Act, part III, ch 369, F.S. The act implemented the recommendations of the Wekiva River Basin Coordinating Committee's Final Report of March 16, 2004, and provides legislative intent and a legal description of the Wekiva Study Area. The majority of the land within the Study Area contributes groundwater recharge to the Wekiva River and springs. The act required each local government within the Study Area to adopt a master stormwater management plan and a wastewater facility plan for joint planning areas and utility service areas where central wastewater systems are not readily available.

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.⁶ "Xeriscape" or "Florida-friendly landscape" means quality landscapes that conserve water and protect the environment, are adaptable to local conditions, and are drought tolerant. Moreover, the Legislature finds that state government has the responsibility to promote xeriscape as a water conservation measure by using xeriscape on public property associated with publicly-owned buildings or facilities.⁷ 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.⁸

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.⁹ The

⁶ Section 255.259(1), F.S.

⁷ *id.*

⁸ Section 373.185(1)(b), F.S.

⁹ Section 373.185(2), F.S.

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.¹⁰ 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.¹¹

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.¹²

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. The FYN is the source of the term "Florida-Friendly Landscaping." The 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 systems and the natural systems they impact. The FYN publishes a handbook explaining the concepts of the Florida-friendly landscaping approach.¹³

Sections 125.568 and 166.048, F.S., provide 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 DACS, the Institute of Food and Agricultural Sciences, the DEP, the Department of Transportation (DOT), 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.

¹⁰ *id.*

¹¹ Section 373.185(3), F.S.

¹² Section 373.228(4), F.S.

¹³ FLORIDA YARDS AND NEIGHBORS, A GUIDE TO FLORIDA-FRIENDLY LANDSCAPING. 12 Apr. 2009 Available at <http://fyn.ifas.ufl.edu/materials/handbook.pdf> > (Lasted visited on April 17, 2009).

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 who has engaged in the unlicensed practice of water well contracting.

Organization of the Executive Branch – Task Force

Chapter 20, F.S., specifies the organizational structure of the executive branch of state government. A “committee” or “task force” means an advisory body created without specific statutory enactment for a time not to exceed 1 year, or created by specific statutory enactment for a time not to exceed 3 years, and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.¹⁴ A “commission” means a body created by specific statutory enactment within a department, the office of the Governor, or the executive office of the Governor and exercising limited quasi-legislative or quasi-judicial or both, independently of the head of the department or the Governor.¹⁵

Section 20.052, F.S., provides that an advisory body created by statutory enactment as an adjunct to an executive agency must be established, evaluated, and maintained in accordance with the following provisions:

- The advisory body may be created only when necessary and beneficial to a public purpose;
- It must be terminated by the Legislature when determined to no longer be necessary and beneficial to a public purpose;
- The Legislature and public must be kept updated on the activities of the advisory body;
- The advisory body may not be created unless:
 - It meets a statutory defined purpose;
 - Its powers and responsibilities conform to the definition of governmental units;
 - Its members are appointed for 4-year staggered terms; and
 - Its members are not compensated and are only authorized to receive per diem and travel expenses; and
- The private citizen members must be appointed by the Governor.

Stormwater Management

Florida receives approximately 40 to 60 inches of rain each year from about 130 storm events. While about 80 percent of the storms are small, with less than 1 inch of rainfall, the state also experiences torrential downpours and hurricane rains. This rainfall causes runoff carrying sediment, fertilizers, pesticides, oil, heavy metals, bacteria, and other contaminants to enter surface waters, causing adverse effects from increased pollution and sedimentation. The

¹⁴ Section 20.03(8), F.S.

¹⁵ Section 20.03(10), F.S.

implementation of erosion control measures consistent with sound agricultural and construction operations is essential to minimizing these impacts.¹⁶

Florida's stormwater regulatory program requires the use of best management practices during and after construction to minimize erosion and sedimentation and to properly manage runoff for both stormwater quantity and quality. Best management practices are control practices that are used for a given set of conditions to achieve satisfactory water quality and quantity enhancement at a minimal cost. Each best management practice has specific application, installation, and maintenance requirements that should be followed to control erosion and sedimentation effectively. Accepted engineering methods must be used in the design of these control measures, such as those established by the DEP, DOT, U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS), International Erosion Control Association (IECA), American Society of Civil Engineers (ASCE), U.S. Army Corps of Engineers (USACOE), or other recognized organizations.¹⁷

Part IV of ch. 373, F.S., governs the management and storage of surface waters. Section 373.403(10), F.S., defines "Stormwater management system" to mean:

a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

Section 373.413, F.S., provides in part:

- Except for the exemptions set forth herein, the governing board or the DEP may require such permits and impose such reasonable conditions as are necessary to assure that the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto and will not be harmful to the water resources of the district. The DEP or the governing board may delineate areas within the district wherein permits may be required.
- A person proposing to construct or alter a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works subject to such permit shall apply to the governing board or department for a permit authorizing such construction or alteration. The application shall contain the following:
 - Name and address of the applicant;
 - Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land;
 - Location of the work;
 - Sketches of construction pending tentative approval;

¹⁶ See, Florida Stormwater Erosion and Sedimentation Control Inspector's Manual, July 2008, <<http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf>> (Last visited on April 17, 2009)

¹⁷ *Id.*

- Name and address of the person who prepared the plans and specifications of construction;
- Name and address of the person who will construct the proposed work;
- General purpose of the proposed work; and
- Such other information as the governing board or department may require.

Section 373.117, F.S., addresses certification by professional engineers, and provides:

- If an application for a permit or license to conduct an activity regulated under this chapter requires the services of a professional engineer as regulated and defined by ch. 471, F.S., the DEP or governing board of a water management district may require, as a condition of granting a permit or license, that a professional engineer licensed under ch. 471, F.S., certify upon completion of the permitted or licensed activity that such activity has been completed in substantial conformance with the plans and specifications approved by the department or board;
- The cost of such certification by a professional engineer shall be borne by the permittee;
- No permitted or licensed activity which is required to be so certified shall be placed into use or operation until the professional engineer's certificate is filed with the department or board.

For purposes of part I of ch. 403, F.S., relating to pollution control, s. 403.0877, F.S., addresses certification by professionals regulated by the Department of Business and Professional Regulation. The section provides:

- Nothing in this section shall be construed as specific authority for a water management district or the DEP to require certification by a professional engineer licensed under ch. 471, F.S., a professional landscape architect licensed under part II of ch. 481, F.S., a professional geologist licensed under ch. 492, F.S., or a professional surveyor and mapper licensed under ch. 472, F.S., for an activity that is not within the definition or scope of practice of the regulated profession;
- If an application for a permit or license to conduct an activity regulated under this chapter, ch. 373, F.S., ch. 376, F.S., or any permitting program delegated to a water management district by a state agency, or to undertake corrective action of such activity or program ordered by the DEP or a water management district, requires the services of a professional as enumerated in subsection (1), the DEP or governing board of a water management district may require, by rule, in conjunction with such an application or any submittals required as a condition of granting a permit or license, or in conjunction with the order of corrective action, such certification by the professional as is necessary to ensure that the proposed activity or corrective action is designed, constructed, operated, and maintained in accordance with applicable law and rules of the DEP or district and in conformity with proper and sound design principles, or other such certification by the professional as may be necessary to ensure compliance with applicable law or rules of the DEP or district. The DEP or governing board of a water management district may further require as a condition of granting a permit or license, or in conjunction with ordering corrective action that the professional certify upon completion of the permitted or licensed activity or corrective action, that such activity or corrective action has, to the best of his or her knowledge, been completed in substantial conformance with the plans and specifications approved by the DEP or board.
- The cost of such certifications by the professional shall be borne by the permittee or the person ordered to correct the permitted activity.

- A permitted or licensed activity or corrective action that is required to be so certified upon completion of the activity or action may not be placed into use or operation until the professional's certificate is filed with the DEP or board.

Finally, s. 403.0896, F.S., addresses training and assistance for stormwater management system personnel. The section provides that the Stormwater Management Assistance Consortium of the State University System, working in cooperation with the community colleges in the state, interested accredited private colleges and universities, the department, the water management districts, and local governments, shall develop training and assistance programs for persons responsible for designing, building, inspecting, or operating and maintaining stormwater management systems.¹⁸

Landscape Architecture

Part II of ch. 481, F.S., provides for the regulation of the landscape architecture profession. The section provides the following stated purpose:

The Legislature finds that the regulation of landscape architecture is necessary to assure competent landscape planning and design of public and private environments, prevention of contamination of water supplies, barrier-free public and private spaces, conservation of natural resources through proper land and water management practices, prevention of erosion, energy conservation, functional and aesthetically-pleasing environmental contributions to humanity's psychological and sociological well-being, and an enhancement of the quality of life in a safe and healthy environment and to assure the highest possible quality of the practice of landscape architecture in this state.

Section 481.303(6), F.S., defines "landscape architecture" as a professional service, including, but not limited to:

- Consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas, including the use of xeriscape as defined in s. 373.185, F.S., where, and to the extent that, the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;
- The determination of settings, grounds, and approaches for and the siting of buildings and structures, outdoor areas, or other improvements;
- The setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary.¹⁹

In response to a petition for a declaratory statement, the Florida Board of Landscape Architecture issued a final order in 1986 concluding that s. 481.303(6), F.S., read in pari materia with

¹⁸ The Consortium was created by s. 33, ch. 89-279, L.O.F.

¹⁹ Section 481.303, F.S.

s. 481.301, F.S., clearly provides that the planning, design, and provision for stormwater and surface water drainage systems, in order to further the stated purposes, are within the definition of the practice of landscape architecture.

In 1988, the Joint Professional Engineers/Landscape Architecture Committee was established by the Legislature by ch. 88-347, L.O.F. The committee was directed to submit to the Legislature a letter of agreement delineating the conditions or circumstances under which landscape architects may submit permit applications for the design of stormwater management drainage systems. At the time, in most areas of the state, only professional engineers were allowed to file permit applications. As a result, there was confusion and inconsistency regarding the role of landscape architects in the stormwater permitting process.

The committee concluded that landscape architects may prepare and seal applications for permits for the design of stormwater or surface water management systems when they have met the licensure requirements of ch. 481, F.S., and by completed of an accredited degree program in landscape architecture and achieved of a passing grade on the Uniform National Exam. In addition, they must have completed 12 classroom hours (1.5 Continuing Education Units) of coursework in stormwater management approved by the Board of Landscape Architecture and the Department of Environmental Regulation (DER), and have also acquired three additional years of post-licensure experience under the charge of an appropriate professional and demonstrate stormwater management design work of a grade and character satisfactory to the Board of Landscape Architecture. Landscape architects having met those requirements would be allowed to submit stormwater and surface water applications provided that:

- Failure of the water management system would not result in significant off-site harm;
- The project is a single drainage basin, or if more than one drainage basin, each basin has direct outfall with no cascading basins;
- The entity constructing the facilities will also operate and maintain them, or if the project is to be subdivided for sale, the operating entity representing the future owners (e.g., homeowners' and property owners' associations not controlled by the constructing entity) agrees to accept responsibility for operation and maintenance of the system before permit issuance;
- The system design or special site conditions does not involve specialized design and formulation of unique or complex operation and maintenance procedures;
- The system design is limited to simple hydraulic, hydrologic and structural analysis; and
- Landscape architecture is the predominant professional discipline associated with designing, certifying and submitting the permit application.

The above would not preclude landscape architects from submitting conceptual stormwater design plans to water management districts.

Landscape architects who want to engage in regulated stormwater management design and permitting activities which exceed the above parameters must meet the following additional requirements:

- Experience: three additional years of professional experience demonstrating stormwater management practice of a grade and character satisfactory to the Board of Landscape Architecture and consultation with the DER;
- Continuing Education: completion of 12 classroom hours (1.5 C.E.U.) in advanced stormwater management; coursework must be approved by the Board of Landscape Architecture and consultation with the DER; and
- Specialized examination: Achievement of a passing grade on a special examination in advanced stormwater management which is developed by the Board of Landscape Architecture in conjunction with the Board of Professional Engineers and the DER and administered by the Department of Professional Regulation to any landscape architect meeting the above requirements.

Landscape architects are included in the definition of “Appropriate Registered Professional” or “Registered Professional” in the St. Johns River Water Management District’s stormwater rule, Rule 40C-42.021(1), F.A.C.:

“Appropriate Registered Professional” or “Registered Professional” means, for purposes of this rule, a professional registered in Florida with the necessary expertise in the fields of hydrology, drainage, flood control, erosion and sediment control, and stormwater pollution control to design and certify stormwater management systems. Examples of registered professionals may include professional engineers licensed under chapter 471, F.S., professional landscape architects licensed under chapter 481, F.S., and professional geologists licensed under chapter 492, F.S., who have the referenced skills.

The phrase “appropriate registered professional” or “registered professional” is used many times throughout ch. 40C-42, F.A.C. For example:

- The construction plans and supporting calculations must be signed, sealed, and dated by an appropriate registered professional as required by the relevant statutory provisions when the design of the stormwater management system requires the services of an appropriate registered professional.²⁰
- Erosion and sediment control best management practices shall be used as necessary during construction to retain sediment on-site. These management practices shall be designed and certified by an appropriate registered professional experienced in the fields of soil conservation or sediment control according to specific site conditions and shall be shown or noted on the plans of the stormwater management system. The registered professional shall furnish the contractor with information pertaining to the construction, operation and maintenance of the erosion and sediment control practice. Sediment accumulations in the system from construction activities shall be removed to prevent loss of storage volume.²¹

The DOT recently amended its rules to define a “licensed professional” as an individual licensed by a Florida professional licensing board, authorized by law to design and certify the stormwater management system under review. This change in rule allows a landscape architect to design and

²⁰ Rule 40C-42.025(10), F.A.C.

²¹ Rule 40C-42.025(1), F.A.C.

certify stormwater management systems pursuant to the findings of the 1988 Joint Professional Engineers/Landscape Architecture Committee.

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; and
- 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 propose for adoption rules to implement this section by July 1, 2010;
 - The rules must create a priority list of first and second magnitude springs based on the nitrate concentration in the water column at the point that the spring discharges onto the earth's surface as an average annual concentration;
 - 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 geographic areas from inclusion in a spring protection zone if they can demonstrate that the activities in the area will not impact the springshed in a manner that leads to new or continued degradation of a spring;
 - Directs the DEP to propose for adoption rules that provide the minimum scientific methodologies, data, or tools for use by counties or municipalities to support an exemption application, by July 1, 2010;
 - Allows the DEP to deny an exemption application by a county or municipality or modify the boundaries of the geographic area for which the exemption is sought; and
 - Requires the DEP to conduct a study and report on nitrate concentrations within spring protection zones by July 1, 2010.
- Section 369.405, F.S., requires implementation of the following requirements within the timelines provided in s. 369.404, F.S.:
 - For domestic wastewater discharges:
 - Existing facilities having permitted capacities greater than or equal to 100,000 gallons per day must reduce annual average total nitrogen to less than or equal to 3mg/L.
 - Existing facilities having permitted capacity between 10,000 and 100,000 gallons per day must reduce annual average nitrogen to less than or equal to 10mg/L.
 - Onsite sewage treatment and disposal systems in areas having or permitted to have densities greater than or equal to 640 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 groundwater.
 - By December 31, 2009, the DACS must develop and propose for adoption by rule, best-management practices for equine, cow, and calf operations.

- The DEP is required to propose for adoption, by July 1, 2010, rules to implement stormwater systems requirements to reduce nitrogen loading to groundwater as follows:
 - Local governments, in cooperation with water management districts, must develop and implement a remediation plan for all existing drainage wells and a remediation plan reducing existing direct discharges of stormwater into groundwater through karst features. The DEP is required to approve the remediation plans prior to the local government implementing the plans;
 - All new drainage wells must comply with the DEP's underground injection control rules;
 - Local governments must implement a remediation plan for all stormwater management systems constructed prior to 1982, and
 - The DOT must identify untreated stormwater discharges into groundwater through natural subterranean drainages like sinkholes, and implement a remediation plan.
- This section also allows the DEP to implement more stringent requirements if necessary to meet surface and groundwater quality standards.
- Section 369.406, F.S., provides for additional requirements and compliance deadlines for all spring protection zones as follows:
 - Newly constructed or expanded domestic wastewater facilities operational after July 1, 2012, must meet the advanced wastewater treatment requirements of s. 403.086(4), F.S.;²²
 - Connection to a central wastewater treatment facility or other centralized collection and treatment system for all development not permitted as of July 1, 2009, which has septic system densities greater than or equal to 640 systems per square mile;
 - New septic systems that are required as a result of the mandatory inspection program provided for in s. 381.0065(3), F.S., and installed after July 1, 2009, must be designed to meet a target annual average groundwater concentration of no more than 3 milligrams per liter total nitrogen at the owner's property line. The DOH is required to develop and adopt by rule design standards for achieving these target annual average groundwater concentrations. Until this design standard rule is in place, compliance with the target annual average groundwater concentration is presumed if the lot associated with the establishment or single-family home is:
 - Served by a septic system meeting either:
 - Baseline system standards in the DOH rules and the ratio of estimated sewage flow in gallons per day to acres of usable property is equal to or less than 100 to 1, or
 - At least the advanced secondary treatment standards for nitrogen in the DOH rules and is combined with a drip irrigation system, a shallow low pressure dosed drainfield system, or a time-dosed drainfield system, or

²² Advanced wastewater treatment means treatment which will provide a reclaimed water product that contains not more than the following concentrations based on a permitted annual average: 5mg/l biochemical oxygen demand (CBOD5); 5 mg/l suspended solids; 3 mg/l total nitrogen; 1 mg/l total phosphorus; and has received high level disinfection. In those waters where the concentrations of phosphorus have been shown not to be a limiting nutrient or a contaminant, the DOH is authorized to waive or alter the compliance levels for phosphorus until there is a demonstration that phosphorus is a limiting nutrient or a contaminant.

- Scheduled to connect to a central wastewater treatment facility within 6 months of the application for permit.

However, this interim provision does not supersede the jurisdictional flow limits of domestic sewage flow of 10,000 gallons or less per day or commercial sewage flow of 5,000 gallons or less per day as established in s. 381.0065(3)(b), F.S.;

- Land application of septage is prohibited and subject to a fine of \$250 for a first offense and a \$500 fine each offense thereafter;
- Any septic system, when requiring repair, modification, or reapproval, must meet a 24-inch separation from the wet season water table and the surface water setback requirement in s. 381.0065(4), F.S. In addition, all treatment receptacles must be within one size of the requirements in the DOH's rules and tested for watertightness by a state-licensed septic tank contractor or plumber;
- The owner of a publicly owned or investor-owned sewerage system is required to notify all owners of a septic system, excluding approved graywater systems, of the availability of central sewerage facilities for connection within 60 days after notification from the DOH that collection facilities for the central sewerage system have been cleared for use. Section 381.00655, F.S., requires the septic system owner to connect to the central sewerage facility within one year after this notification; however, this section authorizes the department to approve a publicly-owned or investor-owned sewerage systems to grant a waiver to the mandatory connection for a sewage treatment system that meets or exceeds standards established for septic systems if it determines that the connection is not required in the public interest due to water quality or public health considerations;
- The DOH is authorized to grant variances to these provisions and any rules adopted under this section in hardship cases in accordance with existing authority to grant variances in s. 381.0065(4)(h), F.S.;
- Land application of Class A, Class B, or Class AA wastewater residuals is prohibited after July 1, 2010, unless the Class AA residuals are marketed and distributed as fertilizer products in accordance with the DOH's rule;
- By December 31, 2009, the DEP must develop and propose for adoption, revised rules for animal feeding operations which address requirements for lined wastewater storage ponds, and the development and implementation of nutrient management plans, including the land spreading of animal waste not treated and packaged as fertilizer;
- Local governments are required, at a minimum, to adopt the DEP's model ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes by December 31, 2010;
- The DEP and the water management districts must adopt design criteria for stormwater treatment systems located within spring protection zones; and
- The DEP retains the authority to require additional treatment or other actions pursuant to ch. 403, F.S., as necessary, to meet surface and groundwater quality standards.
- Section 369.407, F.S., creates the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program. The program is established in the DEP 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 and the water management districts. Program requirements and rulemaking authority are provided. The bill requires the DEP, in coordination with the water management districts, to continue to evaluate the level of nitrate deposited in the Florida springs by septic systems.

- 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. The DACS, the DEP, and the University of Florida-Institute of Food and Agricultural Sciences are required to cooperate in research and demonstration projects to develop enhanced nutrient management tools. The DEP is required to include within the rules it adopts to implement the Florida Springs Protection Act, the variance of compliance deadlines set forth in s. 369.404(2)(b), F.S., based on the financial ability of the responsible county or municipality to meet the requirements of the Act.

Section 2. Amends s. 163.3177, F.S., to require local governments in spring protection zones to 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. Directs all state agencies and the water management districts to assess nitrogen loading from all buildings and facilities owned or managed by each respective agency and located within a spring protection zone, evaluate existing management activities, and develop and implement management plans designed to reduce adverse impacts to the springs no later than December 31, 2011.

Section 5. Amends 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. Every system must be inspected on a 5-year recurring cycle, unless it is exempted. 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 DOH 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. Local governments retain the option to adopt additional or more stringent provisions than those contained in this paragraph related to the mandatory inspection program.

Section 6. Amends 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, to:

- Encourage all counties and municipal governments to adopt and enforce the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
- Require all counties and municipal governments that are within the watershed of a nutrient-impaired water body or water segment, or designated as a spring protection zone, to adopt the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes;
- Allow county and municipal governments to adopt additional or more stringent provisions to the model ordinance if certain enumerated criteria are met;
- Exempt any county or municipal government that has adopted its own fertilizer use ordinance before January 1, 2009, from these provisions; and
- Provide that these provisions do not regulate the use of fertilizer on farm operations or on agricultural lands.

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 Programs, including all activities, personnel, and administrative authority associated with county health departments' onsite sewage programs, from the DOH to the DEP by a Type II transfer effective July 1, 2010.

Section 10. Amends s. 369.317, F.S., to provide that if certain lands within the Wekiva Study Area or the Wekiva parkway alignment corridor are used as environmental mitigation to offset certain impacts, then the activity is considered to meet the cumulative impact upon surface water and wetlands requirements in s. 373.414(8)(a), F.S.

Section 11. 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 serve a compelling public interest and that participation of homeowners' associations and local governments is essential to state water conservation and protection efforts.

The bill removes the term "xeriscape" from Florida Statutes, and replaces the term with "Florida-friendly landscaping."²³ It also amends a number of statutory sections to incorporate additional principles into the definition of Florida-friendly landscaping. These additional principles include:

²³ Sections 125.568, 166.048, 255.259, 335.167, 373.228, 373.185, 380.061, 388.291, 481.303, and 720.3075 of the Florida Statutes.

- Planting the right plants in the right place;
- Efficient watering;
- Appropriate fertilization;
- Mulching;
- Attraction of wildlife;
- Responsible management of yard pests;
- Recycling yard waste;
- Reduction of stormwater runoff; and
- Waterfront protection.

The bill requires each water management district to assist local governments by developing or providing a Florida-friendly landscape model ordinance. The districts may use a model contained in the “Florida-friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions” manual. To qualify for a district’s incentive program, a local government must adhere to certain criteria, including water quality protection or restoration and identification of prohibited exotic species.

The bill requires water management districts to work with the DEP, county extension agents or offices, nursery and landscape industry groups, and other interested stakeholders to promote the use of Florida-friendly landscaping practices through educational programs and publications. The districts must use materials developed by the University of Florida’s Institute of Food and Agricultural Sciences, the Center for Landscape Conservation and Ecology Florida-Friendly Landscaping Program, including the Florida Yards and Neighborhoods extension program, the Green Industries Best Management Practices Program, and other programs with suitable materials. In addition, the bill provides that a deed restriction, covenant, or local government ordinance may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping. It also prohibits all deed restrictions, covenants, or local government ordinances from restricting the use of Florida-friendly landscaping. It clarifies that s. 373.185, F.S., does not limit the authority of the DEP or the water management districts to require Florida-friendly landscaping as a condition for receiving a permit. Lastly, it provides for technical and conforming changes.

Section 12. Creates s. 373.187, F.S., to direct each water management district to use Florida-friendly landscaping on all public property associated with a building or facility constructed after June 30, 2009. It also directs that each water management district create a 5-year phased plan for those buildings or facilities constructed before June 30, 2009.

Section 13. Amends s. 373.228, F.S., to replace “xeriscape” with “Florida-friendly landscaping.” It adds the Florida Native Plant Society as an organization with which the water management districts must cooperate to develop design standards for Florida-friendly landscaping. It also provides for technical changes.

Section 14. Amends s. 373.323(3), F.S., to require applicants for a water well contractor’s license to demonstrate proof of the required two 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 experience shall be considered satisfactory if attested to by in writing by any three the following:
 - A water well contractor;
 - A water well driller;
 - A water well parts and equipment vendor; or
 - A water well inspector employed by a government entity.
- 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; and
 - The approximate date the construction, repair, or abandonment of each well was completed.

It also provides for technical changes.

Section 15. Amends s. 373.333(8), 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. It also provides for technical changes.

Section 16. Amends s. 125.568, F.S., to replace “xeriscape” with “Florida-friendly landscaping,” and including, by reference, the meaning in s. 373.185, F.S. It directs boards of county commissioners to consider Florida-friendly landscaping as water conservation or water quality protection or restoration ordinances. It specifies that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S. It provides 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 serve a compelling public interest and that participation of homeowners’ associations and local governments is essential to state water conservation and protection efforts. It also provides for technical and conforming changes.

Section 17. Amends s. 166.048, F.S., to replace “xeriscape” with “Florida-friendly landscaping,” and including, by reference, the meaning in s. 373.185, F.S. It provides the legislative finding that Florida-friendly landscaping contributes to water conservation, protection and restoration, and that it should be used as a planning measure. It directs the governing bodies of each municipality to consider Florida-friendly landscaping as water conservation or water quality protection or restoration ordinances. It provides for the additional 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 serve a compelling public interest and that participation of homeowners’ associations and local governments is essential to state water conservation and protection efforts. In addition, it specifies that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in

conflict with any provision of part II of chapter 373, F.S. Lastly, it provides for technical and conforming changes.

Section 18. Amends s. 255.259, F.S., to replace “xeriscape” with “Florida-friendly landscaping,” and including, by reference, the meaning in s. 373.185, F.S. It provides the legislative finding that water conservation, protection and restoration are critical to healthy surface water and groundwater, and Florida-friendly landscaping can contribute to protecting and restoring those waters. It directs the Department of Management Services in cooperation with other agencies to adopt rules for using Florida-friendly landscaping on public property associated with building or facilities constructed on or after June 30, 2009, and to create a 5-year phased plan for those buildings or facilities constructed before June 30, 2009. It provides for the additional 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 serve a compelling public interest and that participation of homeowners’ associations and local governments is essential to state water conservation and protection efforts. In addition, it specifies that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S. Lastly, it provides for technical and conforming changes.

Section 19. Amends s. 335.167, F.S., to replace “xeriscape” with “Florida-friendly landscaping,” and including, by reference, the meaning in s. 373.185, F.S. It provides that the DOT use Florida-friendly landscaping on its lands for construction or acquisition of projects occurring on or after June 30, 2009, and to create a 5-year phased plan for those projects constructed or acquired before June 30, 2009. It provides 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 serve a compelling public interest and that participation of homeowners’ associations and local governments is essential to state water conservation and protection efforts. It also specifies that deed restrictions, covenants, or local government ordinances may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S. Lastly, it provides for technical and conforming changes.

Section 20. Amends s. 380.061(3)(a), F.S., related to the Florida Quality Developments program, to replace “xeriscape” with “Florida-friendly landscaping,” and including, by reference, the meaning in s. 373.185, F.S. It also provides for technical changes.

Section 21. Amends s. 388.291(3), F.S., related to reducing an area’s suitability for arthropod breeding, to replace “xeriscape” with “Florida-friendly landscaping,” and providing for technical changes.

Section 22. Amends s. 481.303(6)(a), F.S., related to definitions associated with landscape architecture, to replace “xeriscape” with “Florida-friendly landscaping,” and including, by reference, the meaning in s. 373.185, F.S.

Section 23. Amends s. 720.3075, F.S., related to homeowners' association documents, to replace "xeriscape" with "Florida-friendly landscaping." It provides 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 serve a compelling public interest and that participation of homeowners' associations and local governments is essential to state water conservation and protection efforts. It specifies that covenants, articles of incorporation, or bylaws may not be enforced to prohibit any property owner from implementing Florida-friendly landscaping and may not create any requirement or limitation in conflict with any provision of part II of chapter 373, F.S. Lastly, it provides for technical and conforming changes.

Section 24. Creates an undesignated section of law to establish a task force to:

- Review the Joint Professional Engineers and Landscape Architecture Committee Report conducted pursuant to s. 17, chapter 88-347, Laws of Florida, and determine the current validity of the report and the need to revise any of the conclusions or recommendations;
- Determine how a licensed and registered professional might demonstrate competency for stormwater management system design;
- Determine how the Board of Professional Engineers and the Board of Landscape Architecture might administer certification tests or continuing education requirements for stormwater management system design; and
- Provide recommendations for grandfathering the rights of licensed professionals who currently practice stormwater management design so that they can continue to practice without meeting any new requirements the task force recommends to be placed on licensed professionals in the future.

The Board of Landscape Architecture, the Board of Professional Engineers, the Florida Engineering Society, the Florida Chapter of the American Society of Landscape Architects, the Secretary of the DOT, and the Secretary of the DEP shall each appoint one person to serve on the task force. Members will not be reimbursed for travel, per diem, or any other cost associated with serving on the task force. The task force will meet a minimum of four times either in person or via teleconference; however, a minimum of two meetings must be public hearings with testimony.

The study task force will expire on November 1, 2009. The task force must provide its findings and legislative recommendations to the President of the Senate and the Speaker of the House of Representatives by November 1, 2009.

Section 25. Provides that the act shall take effect July 1, 2009, except as otherwise expressly provided in the act.

Other Potential Implications:

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

It is not known at this time whether the provisions of this bill have an impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution because the significance of the cumulative effect of the committee substitute is unknown. Local governments are 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. In addition, 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. A local government may be eligible for a variance for compliance with the implementation deadlines in s. 369.403(b), F.S.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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.²⁴

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

²⁴ *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3rd DCA 1982), petition den. 424 So.2d 764 (Fla. 1982).

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 So.2d 681 (Fla. 1980). This exception extends to laws that are reasonable and necessary to serve and important public purpose *Yellow Cab Company of Dade County. v. Dade County*, 412 So.2d 395 (Fla. 3rd DCA 1982), petition den. 424 So.2d 764 (Fla.1982), to include protecting the public’s health, safety or welfare. [*Houry v Carvel Homes South, Inc.*, 403 So.2d 1043 (Fla. 1st DCA 1981), petition den. 412 So.2d 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 So.2d 774 (Fla. 1979).

V. Fiscal Impact Statement:

E. Tax/Fee Issues:

The bill requires that an additional fee of \$20 be added to the cost of a septic tank inspection. A minimum of 50 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 bill. The remaining fees would be retained by the DOH.

There are some 2.3 million septic tanks in the state. The bill provides that all systems except those in areas where the density is less than 1 dwelling per 3 acres or within a county designated as a spring protection zone will be required to have an inspection. The number of systems that will qualify for the exemption is unknown.

The bill 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.

F. Private Sector Impact:

There will be an impact to individual landowners having to meet the onsite wastewater standards required in the bill. 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 bill does provide that onsite systems in areas with a density of less than 640 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 bill 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 640 septic systems per square mile, will be required to provide some form of centralized collection and treatment. As indicated previously, the cost of 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 determination during the repair or modification of a septic system, whether the system as installed meets setback requirements that ensure the protection of surface or groundwater. 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 bill prohibiting the land application of seepage 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 bill 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 percent 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 DOH data the cost differences can be expected to range between \$7,000 and \$9,000.

The impact to homeowners and business owners is indeterminate. In addition, the costs of nullifying deed restrictions and covenants are unknown. This provision may generate significant litigation.

G. Government Sector Impact:

The bill 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 bill 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.

Local governments, located in a spring protection zone or that have impaired waters as listed by the DEP, are required to adopt the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes, unless they have already adopted a fertilizer use 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 bill also requires local governments to adopt a DEP developed model ordinance for Florida Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions.

The bill 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.

There will be some costs associated with educational materials and campaigns targeted at the public. These costs are unknown. The impact to each water management district that is required to adopt rules is unknown, but will likely be met with existing staff and resources.

VI. Technical Deficiencies:

Section 2. 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 the DEP and the state land planning agency to post information on best-management practices 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.

Section 4. Line 579 needs a technical amendment to strike the line and insert: districts shall assess nitrogen loading from all publicly owned

Section 14 amends subsection (3) of s. 373.323, F.S., requiring water well contractors to provide satisfactory proof of experience but provides no mechanism to challenge a finding that the proof provided was not satisfactory.

VII. Related Issues:

None.

VIII. Additional Information:**H. Committee Substitute – Statement of Substantial Changes:**

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

CS by Health Regulation on April 15, 2009:

The substantive changes to CS/SB 274:

- Provide for the DEP to propose certain rules for adoption by July 1, 2010, related to:
 - Designation of spring protection zones,
 - Minimum scientific methodologies, data, or tools to be used by a county or municipal government to support a request for exemption of specified geographic areas from requirements related to spring protection zones and the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program;
 - Local governments and the Department of Transportation developing and implementing a certain remediation plans to reduce nitrogen loading to groundwater;
 - Variances of the compliance deadlines for spring protection zones;
- Require the DEP to conduct a study of nitrate concentration within spring protection zones and report its findings by July 1, 2010;
- Clarify that the domestic wastewater discharge and wastewater residual application applies to *existing* wastewater discharges from facilities;
- Increase the density from 300 to 640 systems per square mile for the requirement for onsite sewage treatment and disposal systems and septic systems to connect to a central wastewater treatment facility or other centralized collection and treatment system;
- Add a third condition that qualifies as an presumption of compliance with design standards prior to the DOH adopting design standards for septic systems;
- Require the DEP and water management districts to adopt design criteria for stormwater treatment systems located within spring protection zones;
- Assign responsibility for the Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program to the DEP instead of the DOH;
- Require the DACS, the DEP, the University of Florida-Institute of Food and Agricultural Sciences to conduct research and demonstration projects to develop enhanced nutrient management tools;
- Require all state agencies, in addition to water management districts, to assess nitrogen loading from all publicly-owned buildings and facilities by the respective agency or district;
- Specify that local government is authorized to adopt additional or more stringent provisions related to the powers and duties assigned to the DOH under s. 381.0065, F.S., related to onsite sewage treatment and disposal systems;
- Specifically reference the DEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes by encouraging or requiring county and municipal governments to adopt and enforce it depending upon the location of the local government and authorize a local government to adopt additional or more stringent provisions than the model ordinance if certain criteria are met;

- Delay transfer of the Bureau of Onsite Sewage Programs from the DOH to the DEP until July 1, 2010, and provide more detail for a more thorough transfer;
- Provide that if certain lands within the Wekiva Study Area or the Wekiva parkway alignment corridor are used as environmental mitigation to offset certain impacts, then the activity is considered to meet the cumulative impact upon surface water and wetlands requirements in s. 373.414(8)(a), F.S.;
- Replace the term xeriscape with Florida-friendly landscape and elaborate on the factors to be considered as part of Florida-friendly landscapes;
- Require each water management district to use Florida-friendly landscaping;
- Specify the experience that an applicant for a water well contractor's license should have; and
- Establish a task force that will expire on November 1, 2009, to develop legislative recommendations relating to stormwater management system design in the state.

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 four-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 protection zones instead of delineation by travel times.
- Directs the DEP 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 geographic 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 groundwater 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 DEP'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 DACS 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 DOH to the DEP.

I. 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 best-management practices 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.