By the Committee on Environmental Preservation and Conservation; and Senators Constantine, Dockery, and Jones

592-02916A-09 2009274c1

A bill to be entitled

An act relating to the protection of springs; creating part IV of ch. 369, F.S.; providing a short title; providing legislative findings and intent with respect to the need to protect and restore springs and ground water; providing definitions; requiring the Department of Environmental Protection to delineate the springsheds of specified springs; requiring the department to adopt spring protection zones by secretarial order; requiring the department to adopt total maximum daily loads and basin management action plans for spring systems; providing effluent requirements for domestic wastewater treatment facilities; providing requirements for onsite sewage treatment and disposal systems; providing requirements for agricultural operations; authorizing the Department of Environmental Protection, the Department of Health, and the Department of Agriculture and Consumer Services to adopt rules; amending s. 163.3177, F.S.; requiring certain local governments to adopt a springs protection element as one of the required elements of the comprehensive plan by a specified date; providing that certain design principles be included in the element; requiring the Department of Environmental Protection and the state land planning agency to make information available concerning best-management practices; prohibiting a local government that fails to adopt a springs protection element from amending its comprehensive

plan; amending s. 403.1835, F.S.; including certain areas of critical state concern and the spring protection zones established by the act among projects that are eligible for certain financial assistance; requiring the Department of Environmental Protection, the Department of Agriculture and Consumer Services, and water management districts to assess nitrogen loading and begin implementing management plans within the spring protection zones by a specified date; amending s. 381.0065, F.S.; requiring the Department of Health to implement a statewide onsite sewage treatment and disposal system inspection program; providing a 10-year phase-in cycle; requiring inspection; providing specific exemptions; providing fee requirements; providing disposition of fees; amending s. 259.105, F.S.; providing priority under the Florida Forever Act for projects within a springs protection zone; creating s. 403.9335, F.S.; providing legislative findings; providing for model ordinances for the protection of urban and residential environments and water; requiring the Department of Environmental Protection to adopt a model ordinance by a specified date; requiring municipalities and counties having impaired water bodies or segments to adopt the ordinance; creating s. 403.9337, F.S.; providing definitions; prohibiting use of certain fertilizers after a specified date; providing for exemptions; transferring by a type II transfer the Bureau of Onsite Sewage from the Department of Health

to the Department of Environmental Protection; providing an effective date.

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

Section 1. Part IV of chapter 369, Florida Statutes, consisting of sections 369.401, 369.402, 369.403, 369.404, 369.405, 369.406, 369.407, and 369.408, is created to read:

369.401 Short title.—This part may be cited as the "Florida Springs Protection Act."

369.402 Legislative findings and intent.—

(1) Florida's springs are a precious and fragile natural resource that must be protected. Springs provide recreational opportunities for swimmers, canoeists, wildlife watchers, cave divers, and others. Because of the recreational opportunities and accompanying tourism, many of the state's springs greatly benefit state and local economies. In addition, springs provide critical habitat for plants and animals, including many endangered or threatened species, and serve as indicators of groundwater and surface water quality.

(2) In general, Florida's springs, whether found in urban or rural settings, or on public or private lands, are threatened by actual, or potential, flow reductions and declining water quality. Many of Florida's springs show signs of ecological imbalance, increased nutrient loading, and lowered water flow. Groundwater sources of spring discharges are recharged by seepage from the surface and through direct conduits such as sinkholes and can be adversely affected by polluted runoff from urban and agricultural lands and discharges resulting from poor

wastewater management practices.

(3) Springs and ground water can be restored through good stewardship, including effective planning strategies, best-management practices, and appropriate regulatory programs that preserve and protect the springs and their springsheds.

369.403 Definitions.—As used in this part, the term:

(1) "Cooperating entities" means the Department of Environmental Protection, the Department of Health, the Department of Agriculture and Consumer Services, the Department of Community Affairs, the Department of Transportation, and each water management district and those local governments and municipalities having jurisdiction in the areas of the springs identified in s. 369.404.

(2) "Department" means the Department of Environmental Protection.

(3) "Estimated sewage flow" means the quantity of domestic and commercial wastewater in gallons per day which is expected to be produced by an establishment or single-family residence as determined by rule of the Department of Health.

(4) "First magnitude spring" means a spring that has a median discharge of greater than or equal to 100 cubic feet per second for the period of record, as determined by the department.

(5) "Onsite sewage treatment and disposal system" or "septic system" means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic

waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(6) "Second magnitude spring" means a spring that has a median discharge of 10 to 100 cubic feet per second for the period of record, as determined by the department.

(7) "Spring" means a point where ground water is discharged onto the earth's surface, including under any surface water of the state, excluding seeps. The term includes a spring run.

(8) "Spring run" means a body of flowing water to a point of confluence with another body of flowing water of equal or greater flow, or until the point where the flow is less than 50 percent of the surface water flow as originating at the spring.

(9) "Springshed" means those areas within the groundwater and surface water basins which contribute to the discharge of a spring.

(10) "Usable property" means the area of the property expressed in acres exclusive of all paved areas and prepared road beds within public or private rights-of-way or easements and exclusive of surface water bodies.

369.404 Designation of spring protection zones.—

(1) All counties or municipalities in which there are located first or second magnitude springs are hereby designated as spring protection zones.

(2) The department is directed to adopt rules to implement the requirements of this section.

(a) Such rules at a minimum shall create a priority list of first and second magnitude springs designating them as high, medium, or low priority based on the following measurements of nitrate at the spring boil as an average annual concentration:

1. High — nitrate greater than or equal to 1.0mg/L;

2. Medium — nitrate greater than or equal to 0.5mg/L and less than 1.0mg/L; and

3. Low — nitrate up to 0.5mg/L.

(b) Based on the priority determination of the department for first and second magnitude springs, the corresponding deadlines apply to the requirements of s. 369.405 to spring protection zones as designated in this section.

1. For high-priority springs, the deadline for compliance shall be no later than July 1, 2016;

2. For medium-priority springs, the deadline for compliance shall be no later than July 1, 2019; and

3. For low-priority springs, the deadline for compliance shall be no later than July 1, 2024.

(3) Counties or municipalities, upon application to the department, may seek to have specific geographic areas exempted from this designation by demonstrating that activities within such areas will not impact the springshed in a manner that leads to new or continued degradation.

(4) The department is directed to develop standards and rules that provide the minimum scientific methodologies, data, or tools that shall be used by a county to support the request for an exemption.

(5) Pursuant to subsection (2), the department may deny an application for exemption or may modify the boundaries of the specific geographic areas for which an exemption is sought if the application fails to meet the requirements in subsection (3).

369.405 Requirements for spring protection zones.—

(1) Domestic wastewater discharge and wastewater residual application must comply with the requirements of this subsection.

(a) All wastewater discharges from facilities having permitted capacities greater than or equal to 100,000 gallons per day must achieve nitrogen concentrations less than or equal to 3mg/L.

(b) All wastewater discharges from facilities having permitted capacities less than 100,000 gallons per day but greater than 10,000 gallons per day must achieve nitrogen concentrations less than or equal to 10mg/L.

(2) Onsite sewage treatment and disposal systems in areas permitted to or that contain septic systems in 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.

(3)(a) Agricultural operations must implement applicable best-management practices, including nutrient management, adopted by the Department of Agriculture and Consumer Services to reduce nitrogen impacts to ground water. By December 31, 2009, the Department of Agriculture and Consumer Services, in cooperation with the other cooperating entities and stakeholders, must develop and propose for adoption by rule

equine, cow and calf, and forage grass best-management practices pursuant to this paragraph.

(b) Animal feeding operations must implement the requirements of rules adopted by the department to reduce nitrogen impacts to ground water. By December 31, 2009, the department, in cooperation with the other cooperating entities and stakeholders, must develop and propose 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.

(4) Stormwater systems must comply with the requirements of this section.

(a) All drainage wells must be evaluated and a remediation plan to reduce nitrogen loading to ground water must be developed and implemented.

(b) All management systems constructed prior to 1982 must be evaluated and a remediation plan to reduce nitrogen loading to ground water must be developed and implemented.

(5) This subsection does not limit the department's authority to require additional treatment or other actions pursuant to chapter 403, as necessary, to meet surface and groundwater quality standards.

369.406 Additional requirements for all spring protection zones.

(1) All newly constructed or expanded wastewater facilities operational after July 1, 2012, must meet the advanced wastewater treatment requirements of s. 403.086(4).

(2) For all development not permitted as of July 1, 2009, which has septic system densities greater than or equal to 300 systems per square mile, connection to a central wastewater treatment facility or other centralized collection and treatment system is required.

(3) New septic systems that are 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. Compliance with these requirements does not require groundwater monitoring. The Department of Health shall develop and adopt by rule design standards for achieving these target annual average groundwater concentrations. At a minimum, these standards must take into consideration the relationship between the treatment level achieved by the septic system and the area of usable property available for rainwater dilution.

(4) Prior to adoption of the design standards by the Department of Health, compliance with the requirements in subsection (3) is presumed if one the following conditions are met:

(a) The lot associated with the establishment or single-family home is served by a septic system meeting the baseline system standards set forth in rules of the Department of Health, and the ratio of estimated sewage flow in gallons per day to usable property is 100 to 1 or less.

(b) The lot associated with the establishment or single-family home is served by a septic system meeting at least the advanced secondary treatment standards set forth in rules of the Department of Health, combined with a drip irrigation system.

(5) Subsection (4) does not supersede the jurisdictional flow limits established in s. 381.0065(3)(b).

(6) Land application of septage is prohibited and subject to a $250 fine for a first offense and $500 fine for a second or subsequent offense pursuant to the authority granted to the Department of Health in s. 381.0065(3)(h).

(7) 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 requirements in s. 381.0065(4). All treatment receptacles must be within one size of the requirements in rules of the Department of Health and must be tested for watertightness by a state-licensed septic tank contractor or plumber.

(8) Each owner of a publicly owned or investor-owned sewerage system must notify all owners of septic systems, excluding approved graywater systems, of the availability of central sewerage facilities for purposes of connection pursuant to s. 381.00655(1) within 60 days after receipt of notification from the department that collection facilities for the central sewerage system have been cleared for use.

(a) Notwithstanding s. 381.00655(2)(b), a publicly owned or investor-owned sewerage system may not waive the requirement for mandatory onsite sewage disposal connection to an available publicly owned or investor-owned sewerage system, except as provided in paragraph (b).

(b) With the approval of the department, a publicly owned or investor-owned sewerage system may waive the requirement for mandatory onsite sewage disposal connection for a sewage treatment system that meets or exceeds standards established for

septic systems if it determines that such connection is not required in the public interest due to water quality or public health considerations.

(9) In hardship cases the Department of Health may grant variances to the provisions of this section and any rules adopted under this section in accordance with s. 381.0065(4)(h).

(10) After July 1, 2010, land application of Class A, Class B, or Class AA wastewater residuals, as defined by department rule, is prohibited. This prohibition does not apply to Class AA residuals that are marketed and distributed as fertilizer products in accordance with department rule.

(11) Local governments must, at a minimum, adopt the department's model ordinance for Florida Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions by December 31, 2010.

(12) This subsection does not limit the department's authority to require additional treatment or other actions pursuant to chapter 403, as necessary, to meet surface and groundwater quality standards.

369.407 Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program.—

(1) The Florida Springs Onsite Sewage Treatment and Disposal System Compliance Grant Program is established in the Department of Health and shall be administered by the department. The purpose of the program is to provide grants to low-income property owners in spring protection zones using septic systems to assist the property owners in complying with rules for these systems developed by the Department of Health, the Department of Environmental Protection, or the water

management districts and to enforce compliance with standards for septic systems. The grant program is effective upon final adoption of department rules and may be applied to costs incurred on or after such date.

(2) Any property owner in a spring protection zone having an income less than or equal to 200 percent of the federal poverty level who is required by rule of the Department of Health, the Department of Environmental Protection, or the water management districts to alter, repair, or modify any existing septic system to a nitrate-reducing treatment system on such property may apply to the Department of Health for a grant to assist the owner with the cost of compliance.

(3) The amount of the grant is limited to the cost differential between the replacement of a comparable existing septic system and that of an upgraded nitrate-reducing treatment system, but may not exceed $5,000 per property.

(4) The grant must be in the form of a rebate to the property owner for costs incurred in complying with the requirements for septic systems. The property owner must provide documentation of those costs in the grant application to the Department of Health.

(5) The Department of Health shall adopt rules providing forms, procedures, and requirements for applying for and disbursing grants, including bid requirements, and for documenting compliance costs incurred.

(6) The Department of Health, in coordination with the Department of Environmental Protection and the water management districts, shall continue to evaluate, by any means the department deems appropriate, the level of nitrate deposited in

Florida springs by septic systems.

369.408 Rules.—

(1) The department, the Department of Health, and the Department of Agriculture and Consumer Services may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this part, as applicable.

(2) The Department of Agriculture and Consumer Services shall be the lead agency in coordinating the reduction of agricultural nonpoint sources of pollution for springs protection. The Department of Agriculture and Consumer Services, and the department pursuant to s. 403.067(7)(c)4., shall study and if necessary, in cooperation with the other cooperating entities, applicable local governments, and stakeholders, initiate rulemaking to implement new or revised best-management practices for improving and protecting springs. As needed to implement the new or revised practices, the Department of Agriculture and Consumer Services shall revise its best-management practices rules to require implementation of the modified practice within a reasonable time period as specified in the rule.

Section 2. Paragraph (l) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5) and (12), the comprehensive plan shall include the following elements:

(l) In counties or municipalities, or portions thereof, designated as spring protection zones pursuant to s. 369.404,

during the first comprehensive plan evaluation and appraisal report conducted after July 1, 2009, a spring protection measure that ensures the protection of and, where necessary, restoration of water quality in springs shall be added to the appropriate comprehensive plan element. The measure must address minimizing human impacts on springs from development through protecting karst features during and after the development process, ensuring that future development follows low-impact design principles, ensuring that landscaping and fertilizer use are consistent with the Florida Friendly Landscaping program, ensuring adequate open space, and providing for proper management of stormwater and wastewater to minimize their effects on the water quality of springs. The spring protection measure must be based on low-impact design, landscaping, and fertilizer best-management and use practices and principles developed by the Department of Environmental Protection and contained in the Florida Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions. The Department of Environmental Protection and the state land planning agency shall make information concerning such best-management and use practices and principles prominently available on their websites. In addition, all landscape design and irrigation systems must meet the standards established pursuant to s. 373.228(4). Failure to adopt a spring protection measure shall result in a prohibition on any plan amendments until the measure is adopted.

Section 3. Subsection (7) of section 403.1835, Florida Statutes, is amended to read:

403.1835 Water pollution control financial assistance.—

(7) Eligible projects must be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and public health benefits must be taken into consideration during the department's assignment of project priorities. The department shall adopt a priority system by rule. In developing the priority system, the department shall give priority to projects that:

(a) Eliminate public health hazards;

(b) Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(9) regarding domestic wastewater ocean outfalls;

(c) Assist in the implementation of total maximum daily loads and basin management action plans adopted under s. 403.067;

(d) Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;

(e) Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;

(f) Promote reclaimed water reuse;

(g) Eliminate environmental damage caused by failing onsite sewage treatment and disposal systems, with priority given to systems located within an area designated as an area of critical state concern under s. 380.05 or located in a spring protection

zone adopted pursuant to s. 369.404 ~~or those that are causing environmental damage~~; or

(h) Reduce pollutants to and otherwise promote the restoration of state ~~Florida's~~ surface and ground waters.

Section 4. The Department of Environmental Protection, the Department of Agriculture and Consumer Services, and the water management districts shall assess nitrogen loading from lands owned or managed by each respective agency and located within a spring protection zone using a consistent methodology, evaluate existing management activities, and develop and begin implementing management plans to reduce adverse impacts to the springs no later than December 31, 2011.

Section 5. Present paragraphs (d) through (n) of subsection (3) of section 381.0065, Florida Statutes, are redesignated as paragraphs (e) through (o), respectively, and a new paragraph (d) is added to that subsection, to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.—The department shall:

(d) Develop and implement a mandatory statewide onsite sewage treatment and disposal system inspection program.

1. The program shall:

a. Be phased in over a 10-year cycle and provide that every system is inspected on a 5-year recurring cycle.

b. Initially target those systems inspected under other departmental criteria.

c. Provide for the exemption of those systems in areas where the density of dwellings is fewer than one per 3 acres

unless the property abuts a water body or water segment that is listed by the department as impaired pursuant to s. 369.404 or s. 403.067.

2. The department, local government, or state-licensed septic tank contractor or plumber shall charge an additional fee of $20 for each system inspected. Upon completion of the inspection, the entity conducting the inspection must submit an application for approval to the department and provide a copy to the owner. The department must approve the system for continued use or notify the owner of the requirement for a repair or modification permit.

3. Revenues from the fee must be deposited in the appropriate department trust fund, and a minimum of 50 percent of the revenues shall be dedicated to the grant program created pursuant to s. 369.407.

Section 6. Paragraph (m) is added to subsection (9) of section 259.105, Florida Statutes, to read:

259.105 The Florida Forever Act.—

(9) The Acquisition and Restoration Council shall recommend rules for adoption by the board of trustees to competitively evaluate, select, and rank projects eligible for Florida Forever funds pursuant to paragraph (3)(b) and for additions to the Conservation and Recreation Lands list pursuant to ss. 259.032 and 259.101(4). In developing these proposed rules, the Acquisition and Restoration Council shall give weight to the following criteria:

(m) Any part of the project area falls within a springs protection zone as defined by ss. 369.401-369.407.

Section 7. Section 403.9335, Florida Statutes, is created

to read:

403.9335 Protection of urban and residential environments and water.—

(1) The Legislature finds that the implementation of a model ordinance for fertilizer use on urban landscapes will assist in protecting the quality of Florida's surface water and groundwater resources. The Legislature further finds that local circumstances, including the varying types and conditions of water bodies, site-specific soils and geology, and urban and rural densities and characteristics, necessitates that additional or more stringent fertilizer-management practices be implemented at the local government level.

(2) The department is directed by July 1, 2010, to adopt a model ordinance. The department shall utilize the 2008 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes, which was developed in conjunction with the Florida Consumer Fertilizer Task Force, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, in the development of the model ordinance.

(3) All county and municipal governments are encouraged to adopt and enforce the model ordinance or an equivalent requirement as a mechanism for protecting the local surface water and groundwater quality.

(4) Each county and municipal government located within the watershed of a water body or water segment that is listed by the department as impaired by nutrients pursuant to s. 369.404 or s. 403.067 shall adopt the model ordinance. However, a county or municipal government may adopt additional provisions to or more

stringent provisions than the model ordinance.

Section 8. Section 403.9337, Florida Statutes, is created to read:

403.9337 Urban turf fertilizers.—

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

(a) "No-phosphate fertilizer" or "no-phosphorus fertilizer" means fertilizer that contains less than 0.5 percent phosphate by weight.

(b) "Urban turf" means noncropland planted, mowed, and managed grasses, including, but not limited to, residential lawns; turf on commercial property; filter strips; and turf on property owned by federal, state, or local governments and other public lands, including roadways, roadsides, parks, campsites, recreation areas, school grounds, and other public grounds. The term does not include pastures, hay production and grazing land, turf grown on sod farms, or any other form of agricultural production; golf courses or sports turf fields; or garden fruits, flowers, or vegetables.

(c) "Soil test" means a test performed on soil planted or sodded, or that will be planted or sodded, by a laboratory approved by the Department of Agriculture and Consumer Services and performed within the last 2 years to indicate if the level of available phosphorus in the soil is sufficient to support healthy turf growth.

(d) "Tissue test" means a test performed on plant tissue growing in the soil planted or sodded, or that will be planted or sodded, by a laboratory approved by the Department of Agriculture and Consumer Services and performed within the last 2 years to indicate if the level of available phosphorus in the

soil is sufficient to support healthy turf.

(2) Other than no-phosphate and no-phosphorus fertilizers, fertilizer containing phosphorus may not be applied to urban turf anywhere in this state on or after July 1, 2011, unless a soil or tissue test that is conducted pursuant to a method approved by the Department of Agriculture and Consumer Services indicates:

(a) For turf that is being initially established by seed or sod, the level of available phosphorus is insufficient to establish new turf growth and a root system. However, during the first year, a one-time application only of up to 1 pound of phosphate per 1,000 square feet of area may be applied.

(b) For established turf, the level of available phosphorus is insufficient to support healthy turf growth. However, no more than 0.25 pound of phosphate per 1,000 square feet of area per each application may be applied, not to exceed 0.5 pound of phosphate per 1,000 square feet of area per year.

Section 9. All personnel, statutory powers, duties, and functions of the Bureau of Onsite Sewage in the Department of Health are transferred from the Department of Health to the Department of Environmental Protection by a type two transfer, as defined in s. 20.06, Florida Statutes.

Section 10. This act shall take effect July 1, 2009.