

By the Committees on General Government Appropriations;
Community Affairs; and Environmental Preservation and
Conservation; and Senator Bennett

601-05034-09

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1 A bill to be entitled
2 An act relating to water conservation; amending s.
3 373.62, F.S.; revising the requirements for automatic
4 landscape irrigation systems; requiring irrigation
5 contractors to test for the correct operation of
6 system devices or switches and ensure their proper
7 operation before completing other work on the system;
8 requiring the Department of Environmental Protection
9 to create a model ordinance that may be adopted by
10 local governments; providing penalties; providing for
11 the disposition of funds raised through penalties
12 imposed; authorizing local governments to approve
13 smart irrigation controllers; providing legislative
14 findings relating to the adoption of soil moisture
15 sensor control irrigation systems; defining terms;
16 providing a statewide process and conditions for
17 obtaining a variance from water management district
18 restrictions on water use; creating s. 403.9335, F.S.;
19 providing a short title; creating s. 403.9336, F.S.;
20 providing legislative findings; creating s. 403.9337,
21 F.S.; encouraging county and municipal governments to
22 adopt and enforce the Model Ordinance for Florida-
23 Friendly Fertilizer Use on Urban Landscapes or an
24 equivalent requirement as a mechanism for protecting
25 local surface water and groundwater quality; requiring
26 a county government or municipal government located
27 within the watershed of a water body or water segment
28 that is listed by the Department of Environmental
29 Protection as impaired to adopt the model ordinance;

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30 providing that additional or more stringent provisions
31 may be adopted under certain circumstances; providing
32 a timeframe for adopting the model ordinance;
33 providing exceptions; creating s. 403.9338, F.S.;
34 requiring the department to establish and approve
35 training and testing programs providing urban
36 landscape best-management practices; providing that
37 such training authorizes a person to apply for a
38 limited certification for urban landscape commercial
39 fertilizer application issued by the Department of
40 Agriculture and Consumer Services; providing that a
41 person having such certification is not subject to
42 additional local testing; amending s. 482.021, F.S.;
43 defining the terms "commercial fertilizer application"
44 and "urban landscape"; creating s. 482.1562, F.S.;
45 providing for limited certification for urban
46 landscape commercial fertilizer application provided
47 by the Department of Agriculture and Consumer
48 Services; requiring such certification in order to
49 commercially apply fertilizer, beginning on a certain
50 date; providing requirements and fees; providing for
51 expiration and renewal; authorizing the department to
52 provide information concerning persons who are
53 certified; providing for exceptions to the
54 requirements of certification; authorizing the
55 department to adopt rules; providing an effective
56 date.

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

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Section 1. Section 373.62, Florida Statutes, is amended to read:

373.62 Water conservation; automatic sprinkler systems.—

(1) Any person who purchases and installs an automatic landscape irrigation system must properly ~~lawn sprinkler system after May 1, 1991, shall install, and must maintain,~~ and operate technology, ~~a rain sensor device or switch that inhibits or interrupts operation of~~ will override the irrigation cycle of the sprinkler system during periods of sufficient moisture when adequate rainfall has occurred.

(2) A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each device or switch is in proper operating condition before completing other work on the system.

(3) The department shall create a model ordinance by January 15, 2010, that may be adopted and enforced by local governments. The ordinance must, at a minimum:

(a) Require licensed contractors to report automatic landscape irrigation systems that are not in compliance with this section to the appropriate authority.

(b) Provide penalties for licensed contractors who do not comply with this section. The minimum penalty must be \$50 for a first offense, \$100 for a second offense, and \$250 for a third

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88 or subsequent offense.

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90 Regular maintenance and replacement of worn or broken technology
91 which interrupts or inhibits the operation of an automatic
92 landscape irrigation system is not a violation of this section
93 if such repairs are conducted within a reasonable time.

94 (4) Local governments may adopt the model ordinance by
95 October 1, 2010. Local governments that impose requirements that
96 are more stringent than the model ordinance are exempt from
97 adopting the ordinance.

98 (5) Funds generated by penalties imposed under the
99 ordinance shall be used by the local government for the
100 administration and enforcement of this section and to further
101 water-conservation activities.

102 (6) For purposes of this section, a licensed contractor
103 includes an individual who holds a specific irrigation
104 contractor's license issued by a county.

105 (7) (a) The Legislature recognizes that lawn and landscape
106 irrigation systems use a substantial amount of the state's
107 potable water. The Legislature finds that smart irrigation
108 systems that use soil moisture sensors with remote monitoring
109 and adjustment capabilities, if properly installed and
110 monitored, provide more efficient irrigation and save
111 substantially more water than conventional time-controlled
112 irrigation systems. This is because smart irrigation systems
113 apply water to lawns and plants only as necessary to maintain
114 required soil moisture, thus minimizing the overwatering or
115 unnecessary watering that occurs with conventional irrigation
116 systems. However, in order for this technology to optimize the

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117 efficient application of water it cannot be subject to day or
118 days-of-the-week watering restrictions. The Legislature,
119 therefore, recognizes that enacting a statewide process to
120 provide an exemption from local water restriction ordinances
121 will accelerate the adoption of this water saving technology.
122 Further, a uniform exemption process will streamline variance
123 procedures and minimize delay in implementing such technology.
124 The longer it takes to approve soil moisture sensor control
125 systems, the more potable water is wasted. A uniform variance
126 process will allow state residents to maintain their property
127 and protect water resources while enjoying their landscapes.

128 (b) For purposes of this subsection, the term:

129 1. "Monitoring entity" means a local government, community
130 development district created pursuant to chapter 190, a
131 homeowners' association created pursuant to chapter 720, a
132 condominium association created pursuant to chapter 718, a
133 cooperative created pursuant to chapter 719, or a public or
134 private utility.

135 2. "Soil moisture sensor" means a soil-based device that
136 assesses the available plant soil moisture in order to minimize
137 the unnecessary use of water and optimize the effectiveness of
138 an irrigation system.

139 3. "Soil moisture sensor control system" is the collective
140 term for an entire soil moisture sensor system that has remote
141 monitoring and adjustment capability.

142 (c) A variance from day or days-of-the-week watering
143 restrictions shall be granted by the applicable water management
144 district for any residential, commercial, or recreational user
145 within a monitoring entity's jurisdiction having a soil moisture

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146 sensor control system if the monitoring entity certifies that:

147 1. Each soil moisture sensor control system installed
148 within its jurisdiction will have multiple soil sensors that
149 conform to different soil types and slopes in order to optimize
150 water use for each user, adjust irrigation schedules based on
151 soil moisture requirements, and be installed by a licensed
152 contractor in a manner that is consistent with the Field Guide
153 to Soil Moisture Sensor Use in Florida by the University of
154 Florida IFAS Extension Program for Resource Efficient
155 Communities.

156 2. It has the ability to monitor the status of each
157 individual user's system and to remotely modify the system
158 settings for irrigation cycles and run times.

159 3. It will electronically post and update a list of active
160 users of soil moisture sensor control systems within its
161 jurisdiction on a monthly basis and provide Internet access to
162 such listing and the monitoring database to the water management
163 district and the local government.

164 4. It shall provide notice to a user of noncompliant
165 activity within 48 hours after such activity and, if the user
166 does not take corrective action within 48 hours after such
167 notice, it will remove the posted notice required in
168 subparagraph 5. and remove the user from the active users list
169 required by subparagraph 3.

170 5. It shall post a notice at each parcel that has installed
171 a compliant soil moisture sensor control system in plain view
172 from the nearest roadway stating: "Irrigating with Smart
173 Irrigation Controller," with the address of the parcel, and
174 shall remove the notice if the user is no longer being monitored

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175 by the monitoring entity.

176 (d) Upon installation of a soil moisture sensor control
177 system, the licensed contractor shall certify to the monitoring
178 entity that subparagraphs (c)1. and 2. have been met.

179 1. The monitoring entity shall post the notice required by
180 subparagraph (c)5. on the user's property and update the
181 Internet listing of users of active soil moisture sensor control
182 systems to include the new user.

183 2. On an annual basis a professional engineer licensed
184 under chapter 471 or a professional landscape architect licensed
185 under chapter 481 shall perform an annual maintenance review of
186 all soil moisture sensor control systems within the monitoring
187 entity's jurisdiction and certify to the monitoring entity which
188 systems are properly operating and in compliance with paragraph
189 (c). The monitoring entity shall update its Internet listing of
190 users of active soil moisture sensor control systems based on
191 the certification.

192 (e) Failure by the monitoring entity to ensure continual
193 compliance with the condition of this variance shall be cause
194 for the appropriate water management district to revoke the
195 variance upon proper notice to the monitoring entity.

196 (f) The variance provided in this subsection applies to day
197 or days-of-the-week watering restrictions of the water
198 management district as preempted by s. 373.217. All other
199 applicable local government and water management district
200 restrictions related to irrigation, including, but not limited
201 to, a prohibition on irrigation and time-of-day watering
202 requirements and water shortage or emergency orders issued
203 pursuant to s. 373.246(2) and (7), remain applicable to the soil

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204 moisture sensor control system users within a monitoring
205 entity's jurisdiction.

206 (g) This subsection does not require a property owner to
207 install a soil moisture sensor control system.

208 Section 2. Section 403.9335, Florida Statutes, is created
209 to read:

210 403.9335 Short title.—Sections 403.9335-403.9338 may be
211 cited as the "Protection of Urban and Residential Environments
212 and Water Act."

213 Section 3. Section 403.9336, Florida Statutes, is created
214 to read:

215 403.9336 Legislative findings.—The Legislature finds that
216 the implementation of the Model Ordinance for Florida-Friendly
217 Fertilizer Use on Urban Landscapes (2008), which was developed
218 by the department in conjunction with the Florida Consumer
219 Fertilizer Task Force, the Department of Agriculture and
220 Consumer Services, and the University of Florida Institute of
221 Food and Agricultural Sciences, will assist in protecting the
222 quality of Florida's surface water and groundwater resources.
223 The Legislature further finds that local conditions, including
224 variations in the types and quality of water bodies, site-
225 specific soils and geology, and urban or rural densities and
226 characteristics, necessitate the implementation of additional or
227 more stringent fertilizer-management practices at the local
228 government level.

229 Section 4. Section 403.9337, Florida Statutes, is created
230 to read:

231 403.9337 Model Ordinance for Florida-Friendly Fertilizer
232 Use on Urban Landscapes.—

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233 (1) All county and municipal governments are encouraged to
234 adopt and enforce the Model Ordinance for Florida-Friendly
235 Fertilizer Use on Urban Landscapes or an equivalent requirement
236 as a mechanism for protecting local surface and groundwater
237 quality.

238 (2) Each county and municipal government located within the
239 watershed of a water body or water segment that is listed as
240 impaired by nutrients pursuant to s. 403.067, shall, at a
241 minimum, adopt the department's Model Ordinance for Florida-
242 Friendly Fertilizer Use on Urban Landscapes. A local government
243 may adopt additional or more stringent standards than the model
244 ordinance if the following criteria are met:

245 (a) The local government has demonstrated, as part of a
246 comprehensive program to address nonpoint sources of nutrient
247 pollution which is science-based, and economically and
248 technically feasible, that additional or more stringent
249 standards than the model ordinance are necessary in order to
250 adequately address urban fertilizer contributions to nonpoint
251 source nutrient loading to a water body.

252 (b) The local government documents that it has considered
253 all relevant scientific information, including input from the
254 department, the institute, the Department of Agriculture and
255 Consumer Services, and the University of Florida Institute of
256 Food and Agricultural Sciences, if provided, on the need for
257 additional or more stringent provisions to address fertilizer
258 use as a contributor to water quality degradation. All
259 documentation must become part of the public record before
260 adoption of the additional or more stringent criteria.

261 (3) Any county or municipal government that adopted its own

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262 fertilizer-use ordinance before January 1, 2009, is exempt from
263 this section. Ordinances adopted or amended on or after January
264 1, 2009, must substantively conform to the most recent version
265 of the model fertilizer ordinance and are subject to subsections
266 (1) and (2), as applicable.

267 (4) This section does not apply to the use of fertilizer on
268 farm operations as defined in s. 823.14 or on lands classified
269 as agricultural lands pursuant to s. 193.461.

270 Section 5. Section 403.9338, Florida Statutes, is created
271 to read:

272 403.9338 Training.—

273 (1) The department, in cooperation with the Institute of
274 Food and Agricultural Sciences, shall:

275 (a) Provide training and testing programs in urban
276 landscape best-management practices and may issue certificates
277 demonstrating satisfactory completion of the training.

278 (b) Approve training and testing programs that are
279 equivalent to or more comprehensive than the training provided
280 by the department under paragraph (a). Such programs must be
281 reviewed and reapproved by the department if significant changes
282 are made. Currently approved programs must be reapproved by July
283 1, 2010.

284 (2) After receiving a certificate demonstrating successful
285 completion of a department or department-approved training
286 program under this section, a person may apply to the Department
287 of Agriculture and Consumer Services to receive a limited
288 certification for urban landscape commercial fertilizer
289 application under s. 482.1562. A person possessing such
290 certification is not subject to additional local testing.

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291 Section 6. Present subsections (6) through (27) of section
292 482.021, Florida Statutes, are renumbered as subsections (7)
293 through (28), respectively, present subsection (28) is
294 renumbered as subsection (30), and new subsections (6) and (29)
295 are added to that section, to read:

296 482.021 Definitions.—For the purposes of this chapter, and
297 unless otherwise required by the context, the term:

298 (6) "Commercial fertilizer application" means the
299 application of fertilizer for payment or other consideration to
300 property not owned by the person or firm applying the fertilizer
301 or the employer of the applicator.

302 (29) "Urban landscape" means pervious areas on residential,
303 commercial, industrial, institutional, highway rights-of-way, or
304 other nonagricultural lands that are planted with turf or
305 horticultural plants. For the purposes of this section
306 agriculture has the same meaning as in s. 570.02.

307 Section 7. Section 482.1562, Florida Statutes, is created
308 to read:

309 482.1562 Limited certification for urban landscape
310 commercial fertilizer application.—

311 (1) To provide a means of documenting and ensuring
312 compliance with best-management practices for commercial
313 fertilizer application to urban landscapes, the department shall
314 establish a limited certification for urban landscape commercial
315 fertilizer application.

316 (2) Beginning January 1, 2014, any person applying
317 commercial fertilizer to an urban landscape must be certified
318 under this section.

319 (3) To obtain a limited certification for urban landscape

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320 commercial fertilizer application, an applicant must submit to
321 the department:

322 (a) A copy of the training certificate issued pursuant to
323 s. 403.9338.

324 (b) A certification fee set by the department in an amount
325 of at least \$25 but not more than \$75. Until the fee is set by
326 rule, the fee for certification is \$25.

327 (4) A limited certification for urban landscape commercial
328 fertilizer application issued under this section expires 4 years
329 after the date of issuance. Before applying for recertification
330 under subsection (5), the applicant must complete 4 classroom
331 hours of acceptable continuing education, of which at least 2
332 hours address fertilizer best-management practices.

333 (5) An application for recertification must be made at
334 least 90 days before the expiration of the current certificate
335 and be accompanied by:

336 (a) Proof of having completed the 4 classroom hours of
337 acceptable continuing education required under subsection (4).

338 (b) A recertification fee set by the department in an
339 amount of at least \$25 but not more than \$75. Until the fee is
340 set by rule, the fee for certification is \$25.

341 (6) A late renewal charge of \$50 per month shall be
342 assessed 30 days after the date the application for
343 recertification is due and must be paid in addition to the
344 renewal fee. Unless timely recertified, a certificate
345 automatically expires 90 days after the recertification date.
346 Upon expiration, a certificate may be issued only upon
347 reapplying in accordance with section (3).

348 (7) Certification under this section does not authorize:

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- 349 (a) The application of pesticides to turf or ornamentals,
350 including pesticide fertilizer mixtures;
- 351 (b) The operation of a pest control business; or
- 352 (c) The application of pesticides or fertilizers by
353 unlicensed or uncertified personnel under the supervision of the
354 certified person.
- 355 (8) The department may provide information concerning the
356 certification status of persons certified under this section to
357 other local and state governmental agencies. The department is
358 encouraged to create an online data base that lists all persons
359 certified under this section.
- 360 (9) Yard workers who apply fertilizer only to individual
361 residential properties using fertilizer and equipment provided
362 by the residential property owner or resident are exempt from
363 the requirements of this section.
- 364 (10) The department may adopt rules to administer this
365 section.
- 366 Section 8. This act shall take effect July 1, 2009.