

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 457 Fertilizer

SPONSOR(S): Community & Military Affairs Subcommittee, Ingram and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 606

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 3 N, As CS	Kaiser	Blalock
2) Community & Military Affairs Subcommittee	8 Y, 7 N, As CS	Nelson	Hoagland
3) Rulemaking & Regulation Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Consumer Fertilizer Task Force was created by the Florida Legislature in 2007 to review and provide recommendations on the state's policies and programs addressing consumer fertilizers. One recommendation of the task force was the creation of a model ordinance concerning the use of nonagricultural fertilizer for use by local governments that chose to adopt an ordinance. The Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008) was developed by the Department of Environmental Protection in conjunction with the Task Force, the Department of Agriculture and Consumer Services and the University of Florida Institute of Food and Agricultural Sciences.

Current law encourages adoption and enforcement of the model ordinance by county and municipal governments, and requires adoption by local governments that are located in an area where water is impaired. Current law also allows local governments to adopt more stringent standards if specified criteria are met. Local governments that adopted a fertilizer ordinance prior to January 1, 2009, are exempt from these provisions, as are farm operations and lands classified as agricultural.

The CS/CS/HB 457 grants the Department of Agriculture and Consumer Services the exclusive authority to regulate fertilizer, including its sale, composition, formulation, packaging, use, application and distribution. Counties and municipalities are authorized to adopt and enforce the model ordinance in their respective jurisdictions.

The bill specifically preempts regulation of fertilizer to the state and the Department of Agriculture and Consumer Services. However, the bill indicates that its provisions do not limit the authority of the Department of Environmental Protection or the state's water management districts to adopt rules or issue orders requiring fertilizer practices that are necessary to achieve compliance with water quality standards or to implement federally authorized or delegated programs.

In addition, the bill eliminates the authority of local governments, located in areas where water is impaired, to adopt more stringent standards than the model ordinance. Lastly, the bill provides that fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations are enacted.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Consumer Fertilizer Task Force

The Florida Consumer Fertilizer Task Force was created by the Florida Legislature in 2007 to review and provide recommendations on the state's policies and programs addressing consumer fertilizers. One recommendation of the task force was the creation of a model ordinance concerning the use of nonagricultural fertilizer for use by local governments that chose to adopt an ordinance. The Task Force also recommended that local governments be allowed to adopt additional or more stringent provisions to the model ordinance provided a local government could demonstrate that it met certain criteria.

The Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes/The Protection of Urban and Residential Environments and Water Act¹

The Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008)² was developed by the Department of Environmental Protection 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. The 2009 Legislature made findings that implementation of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes would assist in protecting the quality of Florida's surface water and groundwater resources. The Legislature further found that local conditions, including variations in the types and quality of water bodies, site-specific soils and geology, and urban or rural densities and characteristics, could necessitate the implementation of additional or more stringent fertilizer-management practices at the local government level.³

All county and municipal governments were encouraged to adopt and enforce the model ordinance or an equivalent requirement as a mechanism for protecting water quality. Each county and municipal government located within the watershed of a water body or water segment listed as impaired by nutrients pursuant to s. 403.067, F.S., was required to adopt the ordinance, at a minimum. A local government could adopt additional or more stringent standards than the model ordinance if the following standards were met:

- The local government demonstrated that additional or more stringent standards were necessary in order to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body.
- The local government documented that it had considered all relevant scientific information, including input from the Department of Environmental Protection, the University of Florida Institute of Food and Agricultural Science, the Department of Agriculture and Consumer Services, if provided, on the need for additional or more stringent provisions to address fertilizer use as a contributor to water quality degradation.

A local government that adopted its own ordinance prior to January 1, 2009, was exempt from these provisions, as were farm operations or lands classified as agricultural.⁴

Currently, there are approximately 47 cities and counties that have adopted their own ordinances to limit the use of fertilizers containing nitrogen and phosphorous. Proponents of this bill favor a statewide

¹ Sections 403.9335-403.9338, F.S.

² This model ordinance was updated in 2010 to reflect changes to various laws, correct errors and clarify wording, and incorporate new research results.

³ Section 403.9336, F.S.

⁴ Section 403.9337, F.S.

fertilizer standard to reduce the varied and numerous local regulations. Opponents of the bill believe the local governments have a better grasp of what is necessary to protect the bays, rivers and lakes in their communities. They also argue that local governments are subject to a federal mandate to comply with the provisions of the Clean Water Act, and that fertilizer regulations are a mechanism to prevent pollution.

The issue of local government regulation of fertilizer arose as a result of a summertime sales ban of nitrogen or phosphorus-based fertilizer passed by the Pinellas County Commission and St. Petersburg City Council. Supporters of the ban maintain that inappropriate use of such fertilizers during the rainy season contributes to water pollution. According to the Department of Environmental Protection and the University of Florida, excessive nutrient loading to Florida's surface and ground waters is one of the biggest water quality issues facing our state. It is far easier and much less expensive to minimize the amount of nutrients that get into our waters than it is to treat storm water and other nonpoint sources of pollution to remove nutrients. A major source of nutrient loading is from fertilizers applied to urban landscaping.⁵

Effect of Proposed Changes

The CS/CS/ HB 457 grants the Department of Agriculture and Consumer Services the exclusive authority to regulate fertilizer, including its sale, composition, formulation, packaging, use, application and distribution; however, counties and municipalities are authorized to adopt and enforce the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes or an equivalent requirement as a mechanism for protecting local surface and groundwater quality.

The bill expressly preempts the regulation of fertilizer to the Department of Agriculture and Consumer Services and the state. However, the bill indicates that its provisions do not limit the authority of the Department of Environmental Protection or the state's water management districts under ch. 373, F.S. (the "Florida Water Resources Act of 1972"), and ch. 403, F.S. (the "Florida Air and Water Pollution Control Act"), to adopt rules or issue orders requiring fertilizer practices that are necessary to achieve compliance with water quality standards or to implement federally authorized or delegated programs.

In addition, the bill provides that such fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations are enacted. The bill specifically eliminates the exemption for local government fertilizer use ordinances adopted prior to January 1, 2009. Lastly, the bill removes the authority of local governments, located in areas where water is impaired, to adopt more stringent standards than the model ordinance.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.9336, F.S., removing legislative findings regarding local conditions that may necessitate implementation of additional or more stringent fertilizer management practices at the local level.

Section 2: Amends s. 403.9337, F.S., deleting the authority of local government to adopt more stringent standards than the model ordinance; and, removing the exemption for local government ordinances adopted prior to January 1, 2009.

Section 3: Amends s. 570.07, F.S., authorizing the Department of Agriculture and Consumer Services to regulate fertilizer including its sale, composition, formulation, packaging and distribution; authorizing department to regulate the use and application of fertilizer; authorizing counties or municipalities to enforce the model ordinance in their respective jurisdictions; preempting regulation of fertilizer to the state and the department, and specifying that such regulation of fertilizer by counties, municipalities or other political subdivisions is void; providing that the authority of the Department of Environmental

⁵ *Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions*, the Florida Department of Environmental Protection and the University of Florida (January 2009).

Protection or the state's water management districts under chs. 373 and 403, F.S., to adopt rules or issue orders requiring fertilizer practices to achieve water quality standards is not limited.

Section 4: Amends s. 576.181, F.S., preempting regulation of fertilizer to the state and the department, and specifying that such regulation of fertilizer by counties, municipalities or other political subdivisions is void; and authorizing counties and municipalities to enforce the model ordinance in their respective jurisdictions; providing that the authority of the Department of Environmental Protection or the state's water management districts under chs. 373 and 403, F.S., to adopt rules or issue orders requiring fertilizer practices to achieve water quality standards is not limited.

Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Florida Department of Agriculture and Consumer Affairs has indicated that it will not experience a fiscal impact as a result of this bill.⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill appears to have an insignificant fiscal impact on local governments in as far as the loss of fines and/or penalties related to fertilizer ordinance regulation. However, local governments may incur expenses related to the failure to maintain water quality in impaired water bodies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The legislation may have a positive fiscal impact on private sector enterprises that distribute, sell and apply fertilizer commercially as there would be a uniform set of statewide rules.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

⁶ Department of Agriculture & Consumer Services analysis of HB 457 (February 28, 2010).

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

This bill is opposed by the Association of Counties, the League of Cities, the Sierra Club, the Florida Stormwater Association, and Audubon of Florida.

Proponents of the bill include Associated Industries of Florida and the Florida Retailers Association.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2011, the Agriculture and Natural Resources Subcommittee adopted one amendment to HB 457. The amendment:

1. Removes the “grandfather clause” exempting counties that adopted fertilizer ordinances prior to January 1, 2009, from adhering to the model ordinance
2. Authorizes counties or municipal governments to enforce the provisions of the model ordinance in their respective jurisdictions.

On March 23, 2011, the Community & Military Affairs Subcommittee adopted a strike all amendment to the CS for HB 457. This amendment makes technical changes and provides that the provisions of the bill do not limit the authority of the Department of Environmental Protection or the state’s water management districts under chs. 373 and 403, F.S., to adopt rules or issue orders requiring fertilizer practices that are necessary to achieve compliance with water quality standards or to implement federally authorized or delegated programs.

This analysis is drafted to the CS/CS/HB 457.