

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 457 Fertilizer

SPONSOR(S): State Affairs Committee, Community & Military Affairs Subcommittee, Agriculture & Natural Resources 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) State Affairs Committee	14 Y, 3 N, As CS	Kaiser	Hamby

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 county and municipal governments that chose to adopt an ordinance. The Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008) (model ordinance) was developed by the Department of Environmental Protection in conjunction with the Task Force, the Department of Agriculture and Consumer Services (department) 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 by nutrients. 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 bill provides that a county or municipal government may adopt additional or more stringent standards than the model ordinance if each of the following standards is met:

- The county or municipal government has a comprehensive program to address multiple nonpoint sources of nutrient pollution which is science-based, and economically and technically feasible, and the additional or more stringent standards are necessary to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body;
- The county or municipal government documents that it has considered all relevant scientific information, including input from the Department of Environmental Protection, the University of Florida's 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; and
- The county or municipal government reports the adoption of its fertilizer ordinances to the Department of Environmental Protection.

The bill provides an exemption from these requirements to county and municipal governments that have adopted fertilizer ordinances prior to July 1, 2011.

The bill grants the department the exclusive authority to regulate the sale, composition, packaging, labeling, retail and wholesale distribution, and formulation, including nutrient content level and release rates, of fertilizer. The bill expressly preempts such regulation of fertilizer to the state, unless a county or municipal government has adopted its own fertilizer ordinances prior to July 1, 2011, in which case the local government is authorized to enforce such ordinance within its jurisdiction.

The bill does not appear to have a fiscal impact on state or local government. This legislation may have a positive fiscal impact on private sector enterprises that distribute, sell and apply fertilizer commercially as there will be a uniform set of statewide rules.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0457f.SAC

DATE: 4/8/2011

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's Institute of Food and Agricultural Sciences. In 2009, the Legislature established 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, at a minimum, to adopt the ordinance. 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's 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 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

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.

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 bill provides that each county and municipal government located within the watershed of a water body or water segment that is listed as impaired by nutrients must adopt and enforce the most recent version of the Department of Environmental Protection's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. The bill also provides that a county or municipal government may adopt additional or more stringent standards than the model ordinance if each of the following standards is met:

- The county or municipal government has a comprehensive program to address multiple nonpoint sources of nutrient pollution which is science-based, and economically and technically feasible, and the additional or more stringent standards are necessary to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body;
- The county or municipal government documents that it has considered all relevant scientific information, including input from the Department of Environmental Protection, the University of Florida's 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; and
- The county or municipal government reports the adoption of its fertilizer ordinances to the Department of Environmental Protection.

A county or municipal government that adopted its own fertilizer ordinances prior to July 1, 2011 is exempt from these provisions.

In addition, the bill grants the Department of Agriculture and Consumer Services the exclusive authority to regulate the sale, composition, packaging, labeling, retail and wholesale distribution, and formulation, including nutrient content level and release rates of fertilizer. The bill preempts such regulation of fertilizer to the state, unless a county or municipal government has adopted its own fertilizer ordinances prior to July 1, 2011, in which case the local government is authorized to enforce such ordinance within its jurisdiction.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.9336, F.S., correcting the version of the Model Ordinance for Florida-Friendly Fertilizer use on Urban Landscapes.

Section 2: Amends s. 403.9337, F.S., revising the authority of county and municipal governments to adopt fertilizer standards that are in addition or more stringent than the model ordinance; and, requiring the county and municipal governments to report the adoption of such standards to the Department of Environmental Protection.

Section 3: Amends s. 570.07, F.S., requiring the Department of Agriculture and Consumer Services to regulate fertilizer including its sale, composition, packaging, labeling, retail and wholesale distribution

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

and formulation of fertilizer; preempting regulation of fertilizer to the state; and, authorizing county and municipal governments to enforce the model ordinance and certain ordinances adopted before a specified date.

Section 4: Amends s. 576.181, F.S., requiring the Department of Agriculture and Consumer Services to regulate fertilizer including its sale, composition, packaging, labeling, retail and wholesale distribution and formulation of fertilizer; preempting regulation of fertilizer to the state; and, authorizing county and municipal governments to enforce the model ordinance and certain ordinances adopted before a specified date.

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:

None

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:

None

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

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

- Removes the “grandfather clause” exempting counties that adopted fertilizer ordinances prior to January 1, 2009, from adhering to the model ordinance.
- 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.

On April 7, 2011, the **State Affairs Committee** adopted a strike all amendment to CS/CS/HB 457. This amendment differs from the current bill in that it:

- Restores current statutory language relating to legislative intent.
- Provides a path for county and municipal governments to adopt additional or more stringent standards than the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (model ordinance).
- Requires a county or municipal government to notify the Department of Environmental Protection (DEP) of the adoption of an ordinance.
- Provides an exemption to adoption of the model ordinance and the preemption provisions in ss. 570.07(41) and 576.181(5), F.S., for county or municipal governments that have adopted fertilizer ordinances prior to July 1, 2011.
- Preempts to the Department of Agriculture and Consumer Services fertilizer regulation in regards to labeling, distribution (retail and wholesale), as well as nutrient content level and release rates.
- Removes language from s. 570.07(16), F.S., authorizing county and municipal governments to enforce the provisions of the model ordinance.
- Removes language from ss. 570.07(41) and 576.181(5), F.S., regarding the authority of the DEP 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/CS/HB 457.