

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 Agriculture Committee

BILL: SB 606

INTRODUCER: Senator Evers

SUBJECT: Fertilizer

DATE: February 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhvein	Spalla	AG	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill preempts the authority of local governments to enact fertilizer ordinances more stringent than the state’s Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. It grants the Department of Agriculture and Consumer Services the exclusive authority to regulate the sale of fertilizer, including its composition, formulation, packaging, use, application, and distribution. It also provides that fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations were adopted.

This bill amends sections 403.9336, 403.9337, 570.07, and 576.181 of the Florida Statutes.

II. Present Situation:

Residential lawns and landscapes provide aesthetics, a place to enjoy the outdoors, recreational areas and add value to homes. However, they are also a potential source of pollution. Residential lawns in the United States total approximately 17.7 million acres and in 2003 alone, homeowners spent \$38 billion on landscaping activities. According to a 2004 survey by the National Gardening Association, 66 million U.S. households used chemical pesticides and/or fertilizers on their lawns and gardens to improve soil quality. Theses landscape practices can impact water resources, wildlife and environmental health. Fertilizers typically contain a mixture of nitrogen, phosphorus, and phosphate, which are all naturally-occurring elements. Runoff of these

chemicals into aquatic resources can upset the chemical balance of the environment, resulting in algal bloom explosions that kill plants and fish.¹

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 was to create a model ordinance concerning the use of nonagricultural fertilizer for use by local governments that choose to adopt an ordinance. The Task Force also recommended that local governments be allowed to adopt additional or more stringent provisions to a model ordinance provided the local governments can demonstrate that they meet at least one of the following criteria:

- They have verified impaired waters and are facing existing or possible Total Maximum Daily Loads requirements (under state and federal laws); or
- They have verified harm to human health or harm to the environment that warrants additional consumer fertilizer requirements; or
- More stringent provisions will improve water quality or prevent future impacts of consumer fertilizers on the environment.

In 2009, the Legislature directed the Department of Environmental Protection to adopt and enforce a Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes by January 15, 2010. The model ordinance was adapted from a draft model ordinance written by the Consumer Fertilizer Task Force. It was developed by a partnership of industries², agencies³, local and regional representatives, and other organizations to provide a sound model for the implementation of local control of water use and nonpoint source pollution issues associated with urban landscapes.

The 2009 Legislature made findings⁴ 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. Adoption by local governments that are located in an area where water is impaired by certain nutrients is required and local governments are allowed to adopt more stringent standards if needed through a "comprehensive program" which term is not defined or further explained. Local government staffs and code enforcement officials are responsible for determining when violations have occurred, assessing penalties for the violations and collecting and disposing of funds generated from the penalties to further water conservation activities.

Currently, there are approximately 40 counties and cities that have adopted rules to limit the use of fertilizers which contain phosphorous and nitrogen, most of them in line with the model ordinance. Proponents of the bill favor a statewide fertilizer standard to reduce the varied and numerous local regulations. Opponents of the bill believe that local governments have a better grasp of what is necessary to protect the bays, rivers and lakes in their communities.

¹ <http://www.epa.gov>

² Florida Nursery, Growers and Landscapers Assn., 1000 Friends of Florida, Green Industry Alliance, Florida Turfgrass Assn., Florida Irrigation Society, Landscape Maintenance Assn., Florida Pest Management Assn., Certified Pest Control Operators, Florida League of Cities, and Florida Association of Counties

³ FDOT, FDCA, GDACS, FDEP, UF-IFAS, WMDs

⁴ Chapter 2009-199, L.O.F.

III. Effect of Proposed Changes:

Section 1 amends s. 403.9336, F.S., to delete legislative findings regarding implementation of the Department of Environmental Protection's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. It deletes the finding that local conditions may necessitate the implementation of additional or more stringent fertilizer management practices at the local government level.

Section 2 amends s. 403.9337, F.S., to delete a local government's authority to adopt additional or more stringent standards than the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.

Section 3 amends s. 570.07, F.S., to authorize the Department of Agriculture and Consumer Services to regulate the sale of fertilizer, including the composition, formulation, packaging, use, application, and distribution of fertilizer. It preempts regulation of fertilizer to the state and the department and voids regulation by a county, municipality, or other political subdivision, regardless of when adopted.

Section 4 amends s. 576.181, F.S., to authorize the Department of Agriculture and Consumer Services to regulate the sale of fertilizer, including the composition, formulation, packaging, use, application, and distribution of fertilizer. It preempts regulation of fertilizer to the state and the department and voids regulation by a county, municipality, or other political subdivision, regardless of when adopted.

Section 5 provides that this act shall take effect July 1, 2011.

Other Potential Implications:

None.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This legislation may have a positive fiscal impact on private sector enterprises that apply fertilizer commercially in multiple counties, since there would be a uniform set of rules to comply with.

C. Government Sector Impact:

Local Government Impact

The fiscal impact to local governments in as far as the loss of fines and/or penalties related to the cost of fertilizer ordinance regulation is indeterminate. However, local governments have expressed concerns about the liability the local communities would incur for failure to maintain water quality in impaired water bodies.

Department of Agriculture and Consumer Services

Revenues:

None.

Expenditures:

The establishment of authority to regulate use and application of fertilizer will create a new regulatory program for the Department of Agriculture and Consumer Services. The department has indicated that this will result in the need for extensive investment of staff and resources, as well as additional staff, to develop rules and implement policies.

	FY 11-12	FY 12-13	FY 13-14
Recurring:			
9 Inspectors (S&B*) @ \$60,657	545,913	545,913	545,913
9 Standard Packages** @ \$2,689	24,201	24,201	24,201
1 Case Processor (S&B) @ \$60,657	60,657	60,657	60,657
1 Standard Package @ \$2,689	2,689	2,689	2,689

TOTAL RECURRING:	633,460	633,460	633,460
Non-Recurring:			
9 Professional Start-up Expenses for Inspectors @ \$3,898	35,082	0	0
9 Vehicles for Inspectors @ \$18,000	162,000	0	0
	FY 11-12	FY 12-13	FY 13-14
1 Professional State Up Expenses for Case Processor @ \$3,898	3,898	0	0
1 Contracted Facilitator for Negotiated Rulemaking @ \$20,000	20,000	0	0
TOTAL NON-RECURRING:	220,980	0	0
TOTAL EXPENSES:	854,440	633,460	633,460

*Salary and Benefits

**Minus office rental. Inspectors will use home offices.

VI. Technical Deficiencies:

The bill contains contradictory language. In Section 2⁵, the bill states that “any county or municipal government that adopted its own fertilizer use ordinance before January 1, 2009, is exempt from s. 403.9337, F.S.” However, in Sections 3 and 4⁶, the bill states that “such regulation of fertilizer by a county, municipality, or other political subdivision is void, regardless of when adopted.”

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

⁵ Section 403.9337(3), F.S.

⁶ Sections 570.07(41), F.S. and 576.181(5), F.S., respectively

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
