

By the Committee on Agriculture; and Senator Evers

575-02431-11

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1                   A bill to be entitled  
2       An act relating to fertilizer; amending s. 403.9336,  
3       F.S.; deleting legislative findings relating to the  
4       implementation by local governments of certain  
5       fertilizer management practices; amending s. 403.9337,  
6       F.S.; deleting authority for certain counties and  
7       municipalities to adopt fertilizer management  
8       practices more stringent than standards of a specified  
9       model ordinance; amending ss. 570.07 and 576.181,  
10      F.S.; requiring the Department of Agriculture and  
11      Consumer Services to regulate the sale, composition,  
12      formulation, packaging, use, application, and  
13      distribution of fertilizer; preempting such regulation  
14      of fertilizer to the state and the department;  
15      specifying that such regulation of fertilizer by  
16      counties, municipalities, and other political  
17      subdivisions is void; authorizing local governments to  
18      provide enforcement of the provisions of the model  
19      ordinance; providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23       Section 1. Section 403.9336, Florida Statutes, is amended  
24 to read:

25       403.9336 Legislative findings.—The Legislature finds that  
26 the implementation of the Model Ordinance for Florida-Friendly  
27 Fertilizer Use on Urban Landscapes (2008), which was developed  
28 by the department in conjunction with the Consumer Fertilizer  
29 Task Force, the Department of Agriculture and Consumer Services,

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30 and the University of Florida Institute of Food and Agricultural  
31 Sciences, will assist in protecting the quality of Florida's  
32 surface water and groundwater resources. ~~The Legislature further  
33 finds that local conditions, including variations in the types  
34 and quality of water bodies, site-specific soils and geology,  
35 and urban or rural densities and characteristics, may  
36 necessitate the implementation of additional or more stringent  
37 fertilizer management practices at the local government level.~~

38 Section 2. Section 403.9337, Florida Statutes, is amended  
39 to read:

40 403.9337 Model Ordinance for Florida-Friendly Fertilizer  
41 Use on Urban Landscapes.—Except as otherwise provided in ss.  
42 570.07(41) and 576.181(5):

43 (1) All county and municipal governments are encouraged to  
44 adopt and enforce the Model Ordinance for Florida-Friendly  
45 Fertilizer Use on Urban Landscapes or an equivalent requirement  
46 as a mechanism for protecting local surface and groundwater  
47 quality.

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

55 ~~(a) The local government has demonstrated, as part of a  
56 comprehensive program to address nonpoint sources of nutrient  
57 pollution which is science-based, and economically and  
58 technically feasible, that additional or more stringent~~

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59 ~~standards than the model ordinance are necessary in order to~~  
60 ~~adequately address urban fertilizer contributions to nonpoint~~  
61 ~~source nutrient loading to a water body.~~

62 ~~(b) The local government documents that it has considered~~  
63 ~~all relevant scientific information, including input from the~~  
64 ~~department, the institute, the Department of Agriculture and~~  
65 ~~Consumer Services, and the University of Florida Institute of~~  
66 ~~Food and Agricultural Sciences, if provided, on the need for~~  
67 ~~additional or more stringent provisions to address fertilizer~~  
68 ~~use as a contributor to water quality degradation. All~~  
69 ~~documentation must become part of the public record before~~  
70 ~~adoption of the additional or more stringent criteria.~~

71 ~~(3) Any county or municipal government that adopted its own~~  
72 ~~fertilizer use ordinance before January 1, 2009, is exempt from~~  
73 ~~this section. Ordinances adopted or amended on or after January~~  
74 ~~1, 2009, must substantively conform to the most recent version~~  
75 ~~of the model fertilizer ordinance and are subject to subsections~~  
76 ~~(1) and (2), as applicable.~~

77 ~~(3)(4)~~ This section does not apply to the use of fertilizer  
78 on farm operations as defined in s. 823.14 or on lands  
79 classified as agricultural lands pursuant to s. 193.461.

80 Section 3. Subsection (16) of section 570.07, Florida  
81 Statutes, is amended, present subsection (41) of that section is  
82 renumbered as subsection (42), and a new subsection (41) is  
83 added to that section, to read:

84 570.07 Department of Agriculture and Consumer Services;  
85 functions, powers, and duties.—The department shall have and  
86 exercise the following functions, powers, and duties:

87 (16) To enforce the state laws and rules relating to:

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- 88 (a) Fruit and vegetable inspection and grading.†  
89 (b) Pesticide spray, residue inspection, and removal.†  
90 (c) Registration, labeling, inspection, and analysis of  
91 commercial stock feeds and commercial fertilizers.†  
92 (d) Classification, inspection, and sale of poultry and  
93 eggs.†  
94 (e) Registration, inspection, and analysis of gasolines and  
95 oils.†  
96 (f) Registration, labeling, inspection, and analysis of  
97 pesticides.†  
98 (g) Registration, labeling, inspection, germination  
99 testing, and sale of seeds, both common and certified.†  
100 (h) Weights, measures, and standards.†  
101 (i) Foods, as set forth in the Florida Food Safety Act.†  
102 (j) Inspection and certification of honey.†  
103 (k) Sale of liquid fuels.†  
104 (l) Licensing of dealers in agricultural products.†  
105 (m) Administration and enforcement of all regulatory  
106 legislation applying to milk and milk products, ice cream, and  
107 frozen desserts.†  
108 (n) Recordation and inspection of marks and brands of  
109 livestock.† ~~and~~  
110 (o) Regulation of fertilizer, including the sale,  
111 composition, formulation, packaging, and distribution.  
112 (p) Regulation of the use and application of fertilizer.  
113 (q) ~~(o)~~ All other regulatory laws relating to agriculture.

114  
115 In order to ensure uniform health and safety standards, the  
116 adoption of standards and fines in the subject areas of

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117 paragraphs (a)-(o) ~~(a)-(n)~~ is expressly preempted to the state  
118 and the department. Any local government enforcing the subject  
119 areas of paragraphs (a)-(o) ~~(a)-(n)~~ must use the standards and  
120 fines set forth in the pertinent statutes or any rules adopted  
121 by the department pursuant to those statutes. In order to ensure  
122 uniform health safety standards and fines in the subject area of  
123 paragraph (p), counties or municipal governments are hereby  
124 authorized to enforce the provisions of the Model Ordinance for  
125 Florida-Friendly Fertilizer Use on Urban Landscapes, as setforth  
126 in 403.9337, in their respective jurisdictions.

127 (41) The department has exclusive authority to regulate the  
128 sale, composition, formulation, packaging, use, application, and  
129 distribution of fertilizer under chapter 576. This subsection  
130 expressly preempts such regulation of fertilizer to the state  
131 and the department. Such regulation of fertilizer by a county,  
132 municipality, or other political subdivision is void, regardless  
133 of when adopted.

134 Section 4. Section 576.181, Florida Statutes, is amended to  
135 read:

136 576.181 Administration; rules; procedure; preemption.—

137 (1) This chapter and all rules adopted hereunder shall be  
138 administered and enforced by the department.

139 (2) The department is authorized, by rule, to implement,  
140 make specific, and interpret the provisions of this chapter, and  
141 specifically to determine the composition and uses of fertilizer  
142 as defined in this chapter, including, without limiting the  
143 foregoing general terms, the taking and handling of samples, the  
144 establishment of investigational allowances, deficiencies, and  
145 penalties where not specifically provided for in this chapter;

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146 to prohibit the sale or use in fertilizer of any material proven  
147 to be detrimental to agriculture, public health, or the  
148 environment, or of questionable value; to provide for the  
149 incorporation into fertilizer of such other substances as  
150 pesticides and proper labeling of such mixture; and to prescribe  
151 the information which shall appear on the label other than  
152 specifically set forth in this chapter.

153 (3) The department may establish by rule requirements  
154 governing aircraft used for the aerial application of  
155 fertilizers, including requirements for recordkeeping, annual  
156 aircraft registration, secure storage when not in use, area-of-  
157 application information, and reporting any sale, lease,  
158 purchase, rental, or transfer of such aircraft to another  
159 person.

160 (4) The department may establish by rule requirements  
161 governing the secure storage of fertilizers used by aerial  
162 fertilizer applicators.

163 (5) The department has exclusive authority to regulate the  
164 sale, composition, formulation, packaging, use, application, and  
165 distribution of fertilizer. This subsection expressly preempts  
166 such regulation of fertilizer to the state and the department.  
167 Such regulation of fertilizer by a county, municipality, or  
168 other political subdivision is void, regardless of when adopted.  
169 Counties or municipal governments are hereby authorized to  
170 enforce the provisions of the Model Ordinance for Florida-  
171 Friendly Fertilizer Use on Urban Landscapes, as set forth in  
172 403.9337, in their respective jurisdictions.

173 Section 5. This act shall take effect July 1, 2011.