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 Environmental Preservation and Conservation Committee

BILL:	CS/SB 604
INTRODUCER:	Agriculture Committee and Senator Dean and others
SUBJECT:	Limited Certification for Urban Landscape Commercial Fertilizer Application
DATE:	January 27, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Buford	AG	**Fav/CS**
2.	Uchino	Yeatman	EP	**Unfavorable**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This committee substitute (CS) provides legislative findings that the use of best management practices (BMPs) when applying commercial fertilizer is critical to the state's efforts in minimizing potential harmful impacts to the water quality of the state. It provides that persons who have obtained the limited certification for urban landscape commercial fertilizer application by the Department of Agriculture and Consumer Services (DACS) are required to follow BMPs, and that they are exempt from local government ordinances that address the fertilization of urban turfs, lawns, and landscapes. It requires the department to provide local and state governmental agencies with information concerning the certification status of persons that have obtained the limited certification. It also clarifies that the department is granted enforcement authority over certified professionals, including administration, enforcement, and collection of penalties, fines, and administrative actions.

This CS amends section 482.1562 of the Florida Statutes.

II. Present Situation:

Model Ordinance for Florida-Friendly Fertilizer Use

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. A Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (model ordinance), was developed by the Department of Environmental Protection (DEP), in conjunction with the Florida Consumer Fertilizer Task Force, the DACS, and the University of Florida Institute of Food and Agricultural Sciences (IFAS). In 2009 the Legislature made findings that implementation of the model ordinance will assist in protecting the quality of Florida's surface water and groundwater resources.[1]

Local Government Adoption of Fertilizer Ordinances

Section 403.9337, F.S., encourages local governments to adopt the model ordinance as a mechanism for protecting local surface and groundwater quality; however, it recognizes that certain local conditions may necessitate the implementation of additional or more stringent fertilizer management practices at the local government level. Many local governments have enacted a variety of ordinances through their home rule powers to regulate the commercial fertilization of urban turfs, lawns and landscapes.[2] These ordinances relate to composition of applied fertilizer, fertilizer application rate, fertilizer free zones, setback requirements and blackout times where no fertilizer can be applied (usually the rainy season).

Local governments are also required to limit impacts from stormwater discharges. The U.S. Army Corps of Engineers (Corps) administers the National Pollution Discharge Elimination System (NPDES) permit program under the federal Clean Water Act. The Corps has delegated the authority to Florida to implement this program for stormwater systems, including municipal systems. The DEP permits MS4 municipal separate storm sewer systems.[3] An MS4 is a publicly-owned conveyance or system of conveyances (i.e., ditches, curbs, catch basins, underground pipes, etc.) that is designed or used for collecting or conveying stormwater and that discharges to surface waters of the state.[4] Under the MS4 permit, local governments are required to undertake a number of activities to protect water bodies. Some of these activities include capital construction projects to retain stormwater, retrofitting where possible and land use decisions.

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[1] Chapter 2009-199, s. 3, Laws of Fla.

[2] The following counties have adopted more stringent standards than the model ordinance or substantially similar ordinances to the model ordinance: Alachua, Charlotte, Duval, Hillsborough, Lee, Manatee, Marion, Martin, Orange, Pinellas, Sarasota St. Johns and Wakulla. The following municipalities have also adopted more stringent standards than the model ordinance: City of Alachua, Bonita Springs, Cape Coral, Fort Meyers, Fort Meyers Beach, Jacksonville, Longboat Key, Monteverde, Naples, Northport, all municipalities within Pinellas County, Port St. Lucie, Sanibel, City of Sarasota, Sewall's Point and Venice.

[3] DEP, *Florida's NPDES Stormwater Program*, http://www.dep.state.fl.us/water/stormwater/npdes/MS4_1.htm (last visited Jan. 26, 2012).

[4] *Id*.

DACS-certification of Commercial Fertilizer Applicators

In order to have a means of documenting and ensuring compliance with BMPs for commercial fertilizer application to urban landscapes, the Legislature directed the DACS to establish a limited certification for urban landscape commercial fertilizer application. The DACS, in cooperation with the IFAS, was also directed to develop an educational program for people working in lawn-care and landscape maintenance to teach safe landscaping practices. After receiving a certificate demonstrating successful completion of the DACS or a DACS-approved program, and paying a certification fee, a person may apply to the DACS to receive a limited certification of urban landscape commercial fertilizer application under s. 482.1562, F.S. Starting January 1, 2014, all commercial fertilizer applicators must be certified to make any type of fertilizer application to commercial turf or ornamental trees, the turf or ornamental areas of parks or fields other than agricultural areas, or the turf or ornamental area of any residential property.[5] Currently, certified persons are not exempt from local government ordinances that address fertilization of urban turfs, lawns, and landscapes.

Contributions of Fertilizers to Waters of the State

There have been numerous studies of the effects on urban fertilizer use in Florida. A 2008 study completed by the Tampa Bay Estuary Program concluded that a conservative estimate of fertilizer runoff in urbanized areas approaches 25 percent.[6]

In the Lower St. Johns River basin management action plan, the Florida Department of Transportation (FDOT) was required to remove 18,472 pounds of nitrogen per year from stormwater runoff. The FDOT commissioned a study that concluded of the 112,020 pounds of nitrogen applied annually to roadside areas, 18,477 pounds (16.5 percent) washed into surface waters. The study also concluded that the roadside areas did not require application of nitrogen fertilizer, saving $150,000 annually. In addition, by not applying the fertilizer, the FDOT was able to meet is reduction goal of removing 18,472 pounds of nitrogen with no other reduction strategies.[7]

In a third study, the DEP hired MACTEC, an environmental engineering firm, to conduct a study of Wekiva River nitrate sourcing. The study was completed in two phases and a final report was issued in March 2010. Part of phase II of the study re-visited the effects of residential fertilizer in the Wekiva River Basin. The study concluded that 15 percent of the annual nitrogen loading in the Wekiva River Basin comes from residential fertilizer use. This amounts to 1,485 metric tons per year in the Wekiva Basin.[8]

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[5] University of Florida, IFAS Extension, *Licensing of Lawn and Ornamental Pesticide Applicators in Florida, available at* http://edis.ifas.ufl.edu/pdffiles/PI/PI00600.pdf (last visited Jan. 27, 2012).

[6] Tampa Bay Estuary Program, *Technical Memorandum: Model-Based Estimates of Nitrogen Load Reductions Associated with Fertilizer Restriction Implementation* (Nov. 2008) (on file with the Senate Committee on Environmental Preservation and Conservation).

[7] FDOT Research, *Evaluation of Pollution Levels Due to the Use of Consumer Fertilizers under Florida Conditions, available at* http://www.dot.state.fl.us/research-center/Completed_Proj/Summary_RD/FDOT_BDK78%20_977-04_sum.pdf (last visited Jan. 26, 2012).

[8] MACTEC, prepared for the St. Johns WMD and the DEP, *Final Report Wekiva River Basin Nitrate Sourcing Study* (Mar. 2010), *available at* http://www.dep.state.fl.us/water/wekiva/docs/wekiva-basin-nitrate-sourcing-fr0310.pdf (last visited Jan. 26, 2012).

III. Effect of Proposed Changes:

Section 1 amends s. 482.1562, F.S., to provide legislative findings that using BMPs in the application of commercial fertilizer to urban landscapes is a critical component of the state's efforts to minimize potential impacts to water quality. It requires persons, certified for urban landscape commercial fertilizer application, to follow BMPs established by the DEP. It exempts certified persons from local government ordinances that address the fertilization of urban turfs, lawns, and landscapes. It requires the department to provide specified information to other local and state governmental agencies. Finally, it clarifies that the department has enforcement authority over certified professionals and provides requirements for associated penalties, fines, and administrative actions taken by the department.

Section 2 provides that this act shall take effect July 1, 2012.

Other Potential Implications:

The CS will preempt local governments that have adopted urban fertilizer ordinances from regulating department-certified fertilizer applicators. Certified applicators must adhere to BMPs established by the DEP. However, the DEP has not adopted any BMPs for urban fertilizer application. It has only coordinated the development of recommended guidelines in the "Florida-Friendly Best Management Practices for Protection of Water Quality by the Green Industries," including BMPs for urban fertilizer application.[9] Therefore, this requirement appears to be unenforceable and may exempt urban fertilizer applicators from local ordinances even if they do not follow the recommended BMPs. The DEP has existing authority to adopt BMPs by rule pursuant s. 403.067(7)(c)1., F.S., for the establishment of total maximum daily loads. If the Legislature intends to ensure the applicability of this provision, it should authorize the DEP to adopt BMPs for urban fertilizer application as well.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[9] DEP, Florida-*Friendly Best Management Practices for Protection of Water Quality by the Green Industries*, *available at* http://fyn.ifas.ufl.edu/pdf/GIBMP_Manual_WEB_2_17_11.pdf (last visited Jan. 26, 2012).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS exempts department-certified fertilizer applicators from all local government ordinances that address urban fertilization. It also allows the department to assess penalties and fines against applicators who do not comply with certain provisions. The impact can only be determined on a case-by-case basis.

C. Government Sector Impact:

The CS requires the DACS to provide information concerning the certification status of persons who have obtained the limited certification for urban landscape commercial fertilizer application to other local and state governmental agencies. This may result in a potential workload increase for the DACS, which is expected to meet the costs with existing staff and resources.

Additionally, the CS may have a significant impact on local governments to provide for nutrient reductions for their NPDES permits (MS4 stormwater systems) or to comply with total maximum daily loads and basin management action plans. Several counties' representatives have expressed concerns that the CS may require them to provide for much more costly options to remove nutrients from surface waters, including capital projects and constructed wetlands. The Tampa Bay Estuary Program estimates 30.2 tons on nitrogen will be prevented from entering the Tampa Bay watershed as the result of enacting local ordinances.[10] Another county has constructed a filter marsh to remove nitrogen at a cost of $600 per pound.[11] While the individual costs to local governments cannot be determined, they may be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[10] E-mail from Nanette Holland, Public Outreach Coordinator, Tampa Bay Estuary Program (Jan. 26, 2012) (on file with the Senate Committee on Environmental Preservation and Conservation).
[11] E-mail from Kurt Harclerode, Operations Manager, Natural Resources Division, Lee County (Jan. 26, 2012) (on file with the Senate Committee on Environmental Preservation and Conservation).

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Agriculture Committee on December 5, 2011:
The CS requires that persons certified for urban landscape and commercial fertilizer application follow BMPs as established by the DEP. It also requires the department to provide specified information to other local and state governmental agencies.

B. Amendments:

None.