

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 421 Limited Certification for Urban Landscape Commercial Fertilizer Application
SPONSOR(S): Community & Military Affairs Subcommittee, Agriculture and Natural Resources Subcommittee, and Smith
TIED BILLS: None **IDEN./SIM. BILLS:** SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 3 N, As CS	Cunningham	Blalock
2) Community & Military Affairs Subcommittee	9 Y, 6 N, As CS	Gibson	Hoagland
3) State Affairs Committee		Kaiser	Hamby

SUMMARY ANALYSIS

In order to provide a means of documenting and ensuring compliance with the best management practices (BMPs) for commercial fertilizer application to urban landscapes, s. 482.1562, F.S., provides a limited certification for urban landscape commercial fertilizer application. Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape must be certified. In order to obtain a limited certification for urban landscape commercial fertilizer application, an applicant must submit to the Department of Agriculture and Consumer Services (DACS) a training certificate issued by the Department of Environmental Protection (DEP) and pay a certification fee.

The certification for urban landscape commercial fertilizer application does not authorize:

- the application of pesticides to turf or ornamentals, or pesticide fertilizer including pesticide fertilizer mixtures;
- the operation of a pest control business; or
- the application of pesticides or fertilizers by unlicensed or uncertified personnel under the supervision of the certified person.

DACS may provide information concerning the certification status of certified persons to local and state governmental agencies, and DACS is encouraged to create an online database listing those persons who are certified. DACS also is granted the authority to adopt rules to administer the limited certification. Yard workers who only apply fertilizer to individual residential properties are exempt from the certification requirements.

The bill amends s. 482.1562, F.S., to provide that the Legislature finds that the implementation of BMPs for commercial fertilizer application to urban landscapes is a critical component of the state's efforts to minimize potential impacts to water quality. The bill also provides that persons who have obtained the limited certification for urban landscape commercial fertilizer application are required to follow the BMPs and are exempt from the prohibited application period bans within local government ordinances that address the fertilization of urban turfs, lawns, and landscapes. In addition, the bill now requires, instead of merely allows, DACS to provide information to local and state governmental agencies concerning the certification status of persons that have obtained the limited certification. Lastly, the bill grants DACS enforcement authority over persons that have obtained the limited certification for urban landscape commercial fertilizer application.

The bill has no fiscal impact on state government but may have an indeterminate negative fiscal impact on local governments to the extent that any increased local cleanup is required due to the exemptions from the prohibited application period bans. (See Fiscal Analysis)

The bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Consumer Fertilizer Task Force & Model Ordinance

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)¹ was developed by the Department of Environmental Protection (DEP) in conjunction with the Florida Consumer Fertilizer Task Force, the Department of Agriculture and Consumer Services (DACS) and the University of Florida's Institute of Food and Agricultural Sciences (IFAS).

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. 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.²

All county and municipal governments are encouraged to adopt and enforce the model ordinance or an equivalent requirement as a mechanism for protecting local surface and groundwater quality.³ Certain counties and municipalities located within a watershed of a water body or water segment listed as impaired by nutrients pursuant to s. 403.067, F.S., must, at a minimum, adopt the model ordinance and may adopt additional or more stringent standards if certain criteria are met.⁴ There is an exemption for local governments that adopted a fertilizer use ordinance before January 1, 2009.⁵

Limited Certification for Urban Landscape Commercial Fertilizer Application

Section 403.9338, instructs DEP, in cooperation with IFAS to provide training and testing programs in urban landscape best management practices (BMPs)⁶ and to approve other training and testing programs that are equivalent to or more comprehensive. A person who successfully completes a training program may apply to DACS to receive a limited certification for urban landscape commercial fertilizer application.⁷ A person possessing this certification is then not subject to additional local testing.

In order to provide a means of documenting and ensuring compliance with the BMPs for commercial fertilizer application to urban landscapes, s. 482.1562, F.S., provides the limited certification for urban

¹ This model ordinance was updated in 2010 to reflect changes to various laws, correct errors and clarify wording, and incorporate new research results.

² S. 403.9336, F.S.

³ S. 403.9337, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ See DEP'T OF ENV. PROTECTION, FLORIDA-FRIENDLY BEST MANAGEMENT PRACTICES FOR PROTECTION OF WATER RESOURCES BY THE GREEN INDUSTRIES (2010), available at: <http://www.dep.state.fl.us/water/nonpoint/pubs.htm> (last accessed January 25, 2012).

⁷ S. 482.021(6), F.S., defines "commercial fertilizer application" as "the application of fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer of the applicator." S. 482.021(29) defines "urban landscape" as "pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants," agriculture has the same meaning as in s. 570.02.

landscape commercial fertilizer application.⁸ Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape must be certified. In order to obtain a limited certification for urban landscape commercial fertilizer application, an applicant must submit to DACS:

- A training certificate issued by s. 403.9338, F.S.; and
- Pay a certification fee, which is set by DACS in an amount of at least \$25, but not more than \$75.

The limited certification is valid for four years and recertification requires that the applicant complete four hours of acceptable continuing education, two hours of which, must address fertilizer best management practices.

An application for recertification must be made 90 days before the expiration of the current certificate and include proof of the four hour continuing education class, and a recertification fee of at least \$25 but not more than \$75. A late renewal charge of \$50 per month will be assessed 30 days after the date the application for recertification is due and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 90 days after the recertification date. Upon expiration, an applicant must reapply in the manner described above.

The certification for urban landscape commercial fertilizer application does not authorize:

- Application of pesticides to turf or ornamentals, or pesticide fertilizer including pesticide fertilizer mixtures;
- Operation of a pest control business; or
- Application of pesticides or fertilizers by unlicensed or uncertified personnel under the supervision of the certified person.

Current law also provides that DACS may provide information concerning the certification status of those certified to local and state governmental agencies, and DACS is encouraged to create an online database listing those persons who are certified. DACS has the authority to adopt rules to administer this limited certification for urban landscape commercial fertilizer application.

Yard workers who apply fertilizer only to individual residential property using fertilizer and equipment provided by the residential property owner or resident are exempt from the limited certification requirements.⁹ Currently, the statute does not provide an exemption for certified persons from local ordinances that prohibit the application of fertilizer to urban turfs, lawns, and landscapes during certain time periods.

Local Government Fertilizer Application Ban Ordinances

Local governments have enacted a wide variety of ordinances through their home rule powers to regulate the commercial fertilization of urban turfs, lawns, and landscapes. These ordinances relate to composition of applied fertilizer, fertilizer application rate, fertilizer free zones, setback requirements, and strict no application time period bans. Local prohibited application period bans generally restrict the application of fertilizers containing nitrogen and phosphorous to turfs, lawns, and landscapes during the months of June through September, known as the rainy season.¹⁰

Because rainfall that exceeds the ability of the soil to retain moisture in the root zone may lead to runoff into surface waters or leaching through the soil to ground water, the BMPs¹¹ also contain a prohibited

⁸ As of June 30, 2011, DACS has issued 767 limited certificates.

⁹ S. 482.1562(9), F.S.

¹⁰ See Venice, Fla., Ordinance No. 2009-07, s. 7 (2009) (prohibiting application from June 1- Sep. 30; Bonita Springs, Fla., Ordinance No. 08-23, s. 7 (2008) (prohibiting application from June 1-Sep. 30); and Sanibel, Fla., Ordinance No. 07-003, s. 5 (2007) (prohibiting application from July 1- Sep. 30) (copies of ordinances on file with the committee).

¹¹ See DEP'T OF ENV. PROTECTION, FLORIDA-FRIENDLY BEST MANAGEMENT PRACTICES FOR PROTECTION OF WATER RESOURCES BY THE GREEN INDUSTRIES (2010), available at: <http://www.dep.state.fl.us/water/nonpoint/pubs.htm> (last accessed January 25, 2012).

application period ban when the National Weather Service has issued a flood, tropical storm, or hurricane watch or warning, or if heavy rains¹² are likely. Some local governments have also adopted similar local ordinance application period bans that prohibit fertilizer application when heavy rains are likely.¹³

Currently, DEP determines impaired waters¹⁴ throughout the state, which are those not meeting water quality standards for a particular pollutant or pollutants, and adopts by rule a TMDL for each of the pollutants causing the water quality problems.¹⁵ With local input, a Basin Management Action Plan (BMAP) is then developed that outlines strategies and actions for cleanup within a local government's jurisdiction.¹⁶ As part of the strategy to achieve restoration, DEP grants a load reduction credit to the local government in the BMAP if the local government has adopted comprehensive nonpoint source pollution reduction efforts, of which the model ordinance for fertilizer application is one part.¹⁷ However, DEP currently does not offer a local government any additional credit for a calendar based prohibited application period ban; because according to the Department, as of now, the science has not been proven.¹⁸ Public testimony from stakeholders on this bill also revealed that disagreement exists as to the effectiveness of local prohibited application period bans.

Effect of Proposed Changes

The bill amends s. 482.1562, F.S., to provide that the Legislature finds that the implementation of BMPs for commercial fertilizer application to urban landscapes is a critical component of the state's efforts to minimize potential impacts to water quality. The bill also provides that persons who have obtained the limited certification for urban landscape commercial fertilizer application are required to follow BMPs and are exempt from the prohibited application period bans within local government ordinances that address the fertilization of urban turfs, lawns, and landscapes. Certified persons would still be required to follow the prohibited application period ban guidelines contained in the BMPs.

In addition, the bill amends current law to now require DACS to provide information to local and state governmental agencies concerning the certification status of persons that have obtained the limited certification. An analysis of the legislation completed by DACS stated that mandating the providing of information to local governments will not create any fiscal impact on the department since the Division of Agricultural Environmental Services currently has a tracking and reporting method in place.

Lastly, the bill grants DACS enforcement authority over persons that have obtained the limited certification for urban landscape commercial fertilizer application, and specifies that all penalties, fines, and administrative actions must be consistent with ch. 482.¹⁹

B. SECTION DIRECTORY:

Section 1. Amends s. 482.1562, F.S., providing that the Legislature finds that best management practices for commercial fertilizer application to urban landscapes is a critical component to minimize potential impacts to Florida's water quality; providing that persons who have obtained the limited certification for urban landscape commercial fertilizer application are required to follow best management practices; exempts persons certified and licensed by the Department of Agriculture and

¹² The BMPs define "heavy rain" as rainfall greater than or equal to 50mm (2 inches) in a 24 hour period, which is the definition used by the World Meteorological Organization. Further the BMPs state that while only about 3 to 5% of Florida rain events exceed two inches, caution should always be used to avoid runoff or leaching from saturated or compacted soils or in other high-risk situations.

¹³ See Stuart, Fla., Code s. 20-163 (2011) and Jacksonville, Fla., Code s. 366.604 (2008).

¹⁴ Water bodies that do not meet certain water quality standards are identified as "impaired" for the particular pollutants of concern--nutrients, bacteria, mercury, etc.--and total maximum daily loads (TMDLs) must be developed, adopted and implemented for those pollutants to reduce pollutants and clean up the water body.

¹⁵ See DEP Total Maximum Daily Loads Program, *available at*: <http://www.dep.state.fl.us/water/tmdl/index.htm> (last accessed January 26, 2012).

¹⁶ *Id.*

¹⁷ Staff correspondence with DEP.

¹⁸ *Id.*

¹⁹ S. 482.191, F.S., provides that a person who violates any provision of this chapter is guilty of a misdemeanor of the second degree, which is punishable by up to 60 days in jail and a \$500 fine.

Consumer Services (DACS) from the prohibited application period bans within local ordinances that address the fertilization of urban turfs, lawns, and landscapes; requires DACS to provide specified information to other local and state governmental agencies; provides DACS with certain enforcement authority; and provides a requirement for related penalties, fines, and administrative actions.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Because of the exemption from the prohibited application period bans within local ordinances, local governments may experience an increase in expenditures in order to comply with state and federally mandated water quality programs, if following the BMPs is insufficient to maintain the mandated water quality. There is, however, disagreement among stakeholders regarding the effectiveness of local prohibited application period bans. Therefore, the fiscal impact on local government expenditures, if any, is indeterminate at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certified persons in the business of commercial fertilizer application are likely to benefit from no longer having to comply with prohibited application period bans within local ordinances as this may increase the months of the year in which they are able to conduct business. The impact on certified persons will vary based on the business and whether they operate in a local jurisdiction with a prohibited application period ban. Therefore, the direct positive economic impact on the private sector is indeterminate.

D. FISCAL COMMENTS:

See above

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 action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 15, 2011, the Agriculture & Natural Resources Subcommittee amended and passed HB 421 as a Committee Substitute (CS). The amendment requires that persons who have obtained the limited certification for urban landscape commercial fertilizer application are required to follow best management practices as established by the Department of Environmental Protection.

On January 18, 2012, the Community & Military Affairs Subcommittee adopted an amendment to CS/HB 421 that narrowed the exemption provided to certified persons from “local government ordinances that address the fertilization of urban turfs, lawns, and landscapes” to an exemption for certified persons only from “the prohibited application period bans within local government ordinances that address the fertilization of urban turfs, lawns, and landscapes.” The analysis has been updated to reflect this amendment.