

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 421 Limited Certification for Urban Landscape Commercial Fertilizer Application

**SPONSOR(S):** Agriculture and Natural Resources Subcommittee, Smith

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 604

| REFERENCE  | ACTION           | ANALYST    | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|------------------|------------|--|
| 1) Agriculture & Natural Resources Subcommittee                | 10 Y, 3 N, As CS | Cunningham | Blalock                                  |
| 2) Community & Military Affairs Subcommittee                   |                  | Gibson     | Hoagland                                 |
| 3) Agriculture & Natural Resources Appropriations Subcommittee |                  |            |  |
| 4) State Affairs Committee                                     |                  |            |  |

### 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 BMPs, and that they are exempt from 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 to local and state governmental agencies information 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 a negative fiscal impact on local governments to the extent that any increased local cleanup is required due to the exemptions from local ordinances. (See Fiscal Analysis).

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

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

STORAGE NAME: h0421c.CMAS

DATE: 1/23/2012

## 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)<sup>1</sup> was developed by the Department of Environmental Protection (DEP) in conjunction with the Florida Consumer Fertilizer Task Force, 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.<sup>2</sup>

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.<sup>3</sup>

##### **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 BMPs) 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.<sup>4</sup> 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 landscape commercial fertilizer application.<sup>5</sup> 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.

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

<sup>2</sup> S. 403.9336, F.S.

<sup>3</sup> S. 403.9337, F.S.

<sup>4</sup> 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.

<sup>5</sup> As of June 30, 2011, DACS has issued 767 limited certificates.

The limited certification is valid for 4 years and recertification requires that the applicant complete 4 hours of acceptable continuing education, 2 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 4 hour continuing education class, and a recertification fee of no less than \$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:

- 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.

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.<sup>6</sup> Currently, the statute does not provide an exemption from local ordinances addressing fertilization of urban landscapes for those persons who are certified.

### **Local Government Ordinances Addressing Fertilization of Urban Turfs, Lawns, and Landscapes**

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 (usually during the rainy season).

#### **Effect of Proposed Changes**

The bill amends s. 482.1562, F.S., to provide that the Legislature finds that the implementation of best management practices 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 that they are exempt from local government ordinances that address the fertilization of urban turfs, lawns, and landscapes.

In addition, the bill amends current law to now require DACS to provide to local and state governmental agencies information 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.

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<sup>6</sup> S. 482.1562(9), F.S.

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.<sup>7</sup>

**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 Consumer Services (DACS) from 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 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. The fiscal impact, if any, would vary based on the local government and the ordinances currently in place. Therefore, the fiscal impact on local government expenditures 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 a patchwork of local regulations that may differ significantly within the geographic area that the business operates in. In addition, exemption from local ordinances such as time period bans on application will benefit the fertilizer industry by increasing the months of the year available in which to conduct business. The impact on certified persons will vary based on the provisions of the local ordinances that no longer would have to be followed, and therefore, the fiscal impact on the private sector is indeterminate at this time.

**D. FISCAL COMMENTS:**

See above.

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<sup>7</sup> Section 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.

### **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 not been updated to reflect this amendment.