Agriculture & Natural Resources Subcommittee

Tuesday, February 22, 2011
1:00 PM
Reed Hall

Dean Cannon
Speaker

Steve Crisafulli
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Natural Resources Subcommittee

Start Date and Time: Tuesday, February 22, 2011 01:00 pm

End Date and Time: Tuesday, February 22, 2011 04:00 pm

Location: Reed Hall (102 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 13 Onsite Sewage Treatment and Disposal Systems by Coley
HB 95 State Parks by Bembry
HB 421 Agricultural-related Exemptions to Water Management Requirements by Bembry
HB 457 Fertilizer by Ingram, Nelson

NOTICE FINALIZED on 02/15/2011 16:14 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 13 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Coley and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 82, SB 130, SB 168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Deslatte	Blalock
2) Health Care Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

During the 2010 regular legislative session, the Legislature passed HB 550, which, in part, created an onsite sewage treatment and disposal system evaluation program (program) to be administered by the Department of Health (DOH) beginning January 1, 2011. During the 2010 November special session, the Legislature extended the beginning date for implementing the program from January 1, 2011 to July 1, 2011.

Under current law, all onsite sewage systems must undergo an inspection by the DOH once every five years, starting July 1, 2011. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement. A septic system owner must pay the cost of the evaluation as well as a 5-year evaluation report fee of not less than $15, or more than $30, which is collected by the person conducting the septic system evaluation and remitted to the DOH. A pump-out of a septic system is not required if documentation of a pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and the documentation states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance as defined by DOH rule. Each evaluation or pump-out must be performed by a registered septic tank contractor or master septic tank contractor, a licensed professional engineer with wastewater treatment system experience, or an environmental health professional certified in the area of onsite sewage treatment and disposal system evaluation. Owners of septic systems are responsible for paying the cost of any required pump-out, repair, or replacement, and cannot request partial evaluation or the omission of portions of the evaluation. Beginning January 1, 2012, the DOH must administer a grant program to assist owners of onsite systems. A grant may be awarded to an owner only for the purpose of inspecting, pumping, repairing, or replacing a system serving a single family residence occupied by an owner with a family income of less than or equal to 133 percent of the federal poverty level at the time of application. A portion of the report fee (at least $1 and not more than $5) must be used to fund a grant program.

The bill amends current law to remove language that directs the DOH to create and administer the statewide septic tank evaluation program and eliminates procedures and criteria for the evaluation program. The bill also repeals current law to terminate the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program, and eliminates provisions authorizing the DOH to collect an evaluation report fee. Finally, the bill eliminates provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule.

This bill will decrease the DOH's workload associated with implementation of the program, and will have no fiscal impact on local governments. The bill will eliminate the anticipated positive economic impact on private businesses performing inspections and repairs expected to result from implementation of the program, and will eliminate the costs to septic tank owners that would be required to incur program compliance costs. According to the DOH analysis[1], the DOH will lose a projected $3.2 million in revenue for fiscal year 2011-2012.

[1] On file with staff.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Health (DOH) oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is oversight of sewage treatment and disposal systems, i.e., septic tanks.[2] The DOH estimates there are 2.6 million septic tanks in use statewide.

The Bureau of Onsite Sewage Programs develops statewide rules and provides training and standardization for County Health Department employees responsible for issuing permits for the installation and repair of onsite septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal system contracting complaints. In addition, the bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.[3]

In 2008, the DOH submitted a report on the range of costs to implement a mandatory statewide 5-year septic tank inspection program.[4] Of the 2.6 million septic tanks statewide, the report stated that over half of the systems are over 30 years old and were installed under standards less stringent than current standards. The report further stated that less than one percent of these active systems has operating permits and receives annual inspections by the DOH and routine maintenance from private maintenance entities. Repairs of onsite systems were not regulated until 1987, so many of the older systems have been unlawfully modified.

According to the report, although there was no statewide septic tank inspection program, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of $83.93 to $215 per inspection. In 2008, approximately 0.5 percent of septic tanks were inspected and pumped out. The report concluded that "a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years, based on the DOH's existing procedure for voluntary inspection, would be a significant upgrade to Florida's onsite system management practices. The mandatory inspections would initially be phased in through inspection and inclusion of onsite systems that are already inspected by the DOH (ie., county ordained mandatory inspection programs, systems applying for modifications or repairs and for systems subject to real estate transactions). A mandatory septic inspection program would result in greater environmental and public health protection by increasing system owner awareness, prolonging system life and delaying or eliminating costly system repairs."

During the 2010 legislative session, the Legislature passed HB 550, which, in part, created an onsite sewage treatment and disposal system evaluation program (program) to be administered by the DOH beginning January 1, 2011. The purpose of the program is to assess the fundamental operational condition of septic systems and identify failures within the systems. Section 381.0065(5), F.S., directs the DOH to adopt rules implementing the program standards, procedures, and requirements, including a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or repair of a

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[2] Section 381.006, F.S. (2009).

[3] Description of the Bureau of Onsite Sewage from the DOH website. Available at: http://www.doh.state.fl.us/environment/ostds/OSTDSdescription.html.

[4] The report was submitted in compliance with HB 5001, General Appropriations Act, for Fiscal Year 2008-2009. The report was submitted to the Speaker of the House of Representatives, the President of the Senate, and the Executive Office of the Governor. The report can be found at: http://www.myfloridaeh.com/ostds/pdfiles/forms/MSIP.pdf

failing system, enforcement procedures for failure of a system owner to obtain an evaluation of the system, and failure of a contractor to timely submit evaluation results to the DOH and the system owner. The DOH must ensure statewide implementation of the program by January 1, 2016.

The program requires the owner of a septic system, excluding a system that is required to obtain an operating permit,[5] to have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any system failures. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement. A septic system owner must pay the cost of the evaluation as well as a 5-year evaluation report fee of not less than $15, or more than $30, which is collected by the person conducting the septic system evaluation and remitted to the DOH. The actual cost of an evaluation, as well as the cost of any necessary remedial actions, is one of the issues currently under review by the DOH.

Owners of septic systems are responsible for paying the cost of any required pump-out, repair, or replacement, and cannot request partial evaluation or the omission of portions of the evaluation. Each evaluation or pump-out must be performed by a registered septic tank contractor of master septic tank contractor, a licensed professional engineer with wastewater treatment system experience, or an environmental health professional certified in the area of onsite sewage treatment and disposal system evaluation. Prior to any evaluation deadline, the DOH must provide a minimum 60 days notice to owners that their systems must be evaluated by that deadline.

Systems being evaluated that were installed prior to January 1, 1983, must meet a minimum 6-inch separation from the bottom of the drainfield to the wettest season water table elevation. All drainfield repairs, replacements, or modifications to systems installed prior to January 1, 1983, must meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation. Systems being evaluated that were installed after January 1, 1983, must meet a minimum 12-inch separation from bottom of drainfield to the wettest season water table elevation, and all drainfield repairs, replacements, or modifications to these systems must meet a minimum 24-inch separation from bottom of drainfield to the wettest season water table elevation.

A pump-out of a septic system is not required if documentation of a pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and the documentation states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance as defined by DOH rule.

Beginning on January 1, 2012, the DOH will administer a grant program to assist low-income owners of septic systems to defray some of the cost of complying with the requirements of the evaluation program. A grant can be awarded to an owner for the purpose of inspecting, pumping, repairing, or replacing a system serving a single-family residence occupied by an owner with a family income of less than or equal to 133% of the federal poverty level.[6] At least $1, but no more than $5, of the evaluation report fee described above must be used to fund the grant program.

The DOH has begun the rulemaking process to implement the evaluation program, but has encountered delays. Concerns have been expressed by the DOH, its Technical Review and Advisory Panel, and the public regarding the unknown costs associated with implementation of the program, including costs to property owners required to pay for the inspection and any remedial activities, as well as implementation costs to the state. Because of the short timeframe for developing the rule and implementing the program, it appears that there is insufficient time for the DOH to complete a cost estimate and adopt a final rule before the required January 1, 2011, implementation date.

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[5] Systems that require an operating permit are typically large scale complex commercial systems and anaerobic systems. Typical residential septic systems require a permit for installation, but not an annual operating permit.

[6] Depending on the size of a family, 133% of the federal poverty level equals a yearly income of between $14,404 and $49,223. https://www.cms.gov/MedicaidEligibility/07_IncomeandResourceGuidelines.asp.

During the 2010 November special session, SB 2A was passed to change the implementation date of the statewide septic tank evaluation program from January 1, 2011 to July 1, 2011.

Effect of Proposed Changes

The bill eliminates provisions directing the DOH to create and administer a statewide septic tank evaluation program and eliminates procedures and criteria for the evaluation program. The bill also repeals s. 381.00656, F.S., to terminate the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program. In addition, the bill eliminates provisions authorizing the DOH to collect an evaluation report fee. Finally, the bill eliminates provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065, F.S., revising legislative intent; eliminating provisions directing the Department of Health to create and administer a statewide septic tank evaluation program; eliminating procedures and criteria for the evaluation program.

Section 2. Repeals s. 381.00656, F.S., terminating the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program, to conform.

Section 3. Amends s. 381.0066, F.S., eliminating provisions authorizing the department to collect an evaluation report fee; eliminating provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the DOH analysis, the DOH will lose a projected $3.2 million in revenue for fiscal year 2011-2012.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The septic system evaluation program, once implemented, will likely increase revenues of persons or businesses in the private sector who are authorized to perform the required evaluations and any pump-out, repairs, replacements, or modifications identified during the evaluation of a septic system. The bill will eliminate this increase in revenues. Conversely, property owners who use a septic system will bear the costs of an evaluation and any necessary remedial activities. The bill will eliminate those costs to septic tank owners.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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

A bill to be entitled

An act relating to onsite sewage treatment and disposal systems; amending s. 381.0065, F.S.; revising legislative intent; eliminating provisions directing the Department of Health to create and administer a statewide septic tank evaluation program; eliminating procedures and criteria for the evaluation program; repealing s. 381.00656, F.S., to terminate the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program, to conform; amending s. 381.0066, F.S.; eliminating provisions authorizing the department to collect an evaluation report fee; eliminating provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule; providing an effective date.

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

Section 1. Subsections (1), (5), (6), and (7) of section 381.0065, Florida Statutes, are amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.—

(1) LEGISLATIVE INTENT.—

(a) It is the intent of the Legislature that proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public. ~~It is further the intent of the Legislature that the department shall administer an evaluation program to ensure the operational condition of the system and identify any failure with the~~

~~system.~~

(b) It is the intent of the Legislature that where a publicly owned or investor-owned sewerage system is not available, the department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this section. It is further the intent of the Legislature that the installation and use of onsite sewage treatment and disposal systems not adversely affect the public health or significantly degrade the groundwater or surface water.

~~(5) EVALUATION AND ASSESSMENT.~~

~~(a) Beginning January 1, 2011, the department shall administer an onsite sewage treatment and disposal system evaluation program for the purpose of assessing the fundamental operational condition of systems and identifying any failures within the systems. The department shall adopt rules implementing the program standards, procedures, and requirements, including, but not limited to, a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or repair of a failing system, enforcement procedures for failure of a system owner to obtain an evaluation of the system, and failure of a contractor to timely submit evaluation results to the department and the system owner. The department shall ensure statewide implementation of the evaluation and assessment program by January 1, 2016.~~

~~(b) Owners of an onsite sewage treatment and disposal system, excluding a system that is required to obtain an~~

~~operating permit, shall have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any failure within the system.~~

~~(c) All evaluation procedures must be documented and nothing in this subsection limits the amount of detail an evaluator may provide at his or her professional discretion. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement pursuant to the department's procedure.~~

~~(d)1. Systems being evaluated that were installed prior to January 1, 1983, shall meet a minimum 6-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs, replacements or modifications to systems installed prior to January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule.~~

~~2. Systems being evaluated that were installed on or after January 1, 1983, shall meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation as defined by department rule. All drainfield repairs, replacements or modification to systems developed on or after January 1, 1983, shall meet a minimum 24-inch separation from the bottom of the drainfield to the wettest season water table elevation.~~

~~(e) If documentation of a tank pump-out or a permitted new installation, repair, or modification of the system within the~~

~~previous 5 years is provided, and states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance pursuant to department rule, a pump-out of the system is not required.~~

~~(f) Owners are responsible for paying the cost of any required pump-out, repair, or replacement pursuant to department rule, and may not request partial evaluation or the omission of portions of the evaluation.~~

~~(g) Each evaluation or pump-out required under this subsection must be performed by a septic tank contractor or master septic tank contractor registered under part III of chapter 489, a professional engineer with wastewater treatment system experience licensed pursuant to chapter 471, or an environmental health professional certified under chapter 381 in the area of onsite sewage treatment and disposal system evaluation.~~

~~(h) The evaluation report fee collected pursuant to s. 381.0066(2)(b) shall be remitted to the department by the evaluator at the time the report is submitted.~~

~~(i) Prior to any evaluation deadline, the department must provide a minimum of 60 days' notice to owners that their systems must be evaluated by that deadline. The department may include a copy of any homeowner educational materials developed pursuant to this section which provides information on the proper maintenance of onsite sewage treatment and disposal systems.~~

(5) ~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—

(a) Department personnel who have reason to believe

noncompliance exists, may at any reasonable time, enter the premises permitted under ss. 381.0065-381.0066, or the business premises of any septic tank contractor or master septic tank contractor registered under part III of chapter 489, or any premises that the department has reason to believe is being operated or maintained not in compliance, to determine compliance with the provisions of this section, part I of chapter 386, or part III of chapter 489 or rules or standards adopted under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489. As used in this paragraph, the term "premises" does not include a residence or private building. To gain entry to a residence or private building, the department must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction.

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the

department may not exceed $500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

4. The department shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation within 21 days after the date the citation is received. The citation must contain a conspicuous statement that if the recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient has waived the recipient's right to contest the citation and must pay an amount up to the maximum fine.

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under ss. 381.0065-381.0067, part I of chapter 386, part III of chapter 489, or other provisions of law or rule.

6. Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

7. The department, pursuant to ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, shall deposit any fines it collects in the county health department trust fund for use in providing services specified in those sections.

8. This section provides an alternative means of enforcing ss. 381.0065-381.0067, part I of chapter 386, and part III of chapter 489. This section does not prohibit the department from enforcing ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489, or its rules, by any other means. However, the department must elect to use only a single method of enforcement for each violation.

(6) ~~(7)~~ LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective January 1, 2016, the land application of septage from onsite sewage treatment and disposal systems is prohibited. By February 1, 2011, the department, in consultation with the Department of Environmental Protection, shall provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, recommending alternative methods to establish enhanced treatment levels for the land application of septage from onsite sewage and disposal systems. The report shall include, but is not limited to, a schedule for the reduction in land application, appropriate treatment levels, alternative methods for treatment and disposal, enhanced application site permitting requirements including any requirements for nutrient management plans, and the range of costs to local governments, affected businesses, and individuals for alternative treatment and disposal methods. The report shall also include any recommendations for legislation or rule authority needed to reduce land application of septage.

Section 2. Section 381.00656, Florida Statutes, is repealed:

~~381.00656 Grant program for repair of onsite sewage treatment disposal systems.—Effective January 1, 2012, the department shall administer a grant program to assist owners of onsite sewage treatment and disposal systems identified pursuant to s. 381.0065 or the rules adopted thereunder. A grant under the program may be awarded to an owner only for the purpose of inspecting, pumping, repairing, or replacing a system serving a single-family residence occupied by an owner with a family income of less than or equal to 133 percent of the federal poverty level at the time of application. The department may prioritize applications for an award of grant funds based upon the severity of a system's failure, its relative environmental impact, the income of the family, or any combination thereof. The department shall adopt rules establishing the grant application and award process, including an application form. The department shall seek to make grants in each fiscal year equal to the total amount of grant funds available, with any excess funds used for grant awards in subsequent fiscal years.~~

Section 3. Subsection (2) of section 381.0066, Florida Statutes, is amended to read:

381.0066 Onsite sewage treatment and disposal systems; fees.—

(2) The minimum fees in the following fee schedule apply until changed by rule by the department within the following limits:

(a) Application review, permit issuance, or system inspection, including repair of a subsurface, mound, filled, or other alternative system or permitting of an abandoned system: a

fee of not less than $25, or more than $125.

~~(b) A 5-year evaluation report submitted pursuant to s. 381.0065(5): a fee not less than $15, or more than $30. At least $1 and no more than $5 collected pursuant to this paragraph shall be used to fund a grant program established under s. 381.00656.~~

(b) ~~(c)~~ Site evaluation, site reevaluation, evaluation of a system previously in use, or a per annum septage disposal site evaluation: a fee of not less than $40, or more than $115.

(c) ~~(d)~~ Biennial Operating permit for aerobic treatment units or performance-based treatment systems: a fee of not more than $100.

(d) ~~(e)~~ Annual operating permit for systems located in areas zoned for industrial manufacturing or equivalent uses or where the system is expected to receive wastewater which is not domestic in nature: a fee of not less than $150, or more than $300.

(e) ~~(f)~~ Innovative technology: a fee not to exceed $25,000.

(f) ~~(g)~~ Septage disposal service, septage stabilization facility, portable or temporary toilet service, tank manufacturer inspection: a fee of not less than $25, or more than $200, per year.

(g) ~~(h)~~ Application for variance: a fee of not less than $150, or more than $300.

(h) ~~(i)~~ Annual operating permit for waterless, incinerating, or organic waste composting toilets: a fee of not less than $50, or more than $150.

(i) ~~(j)~~ Aerobic treatment unit or performance-based

treatment system maintenance entity permit: a fee of not less than $25, or more than $150, per year.

(j) ~~(k)~~ Reinspection fee per visit for site inspection after system construction approval or for noncompliant system installation per site visit: a fee of not less than $25, or more than $100.

(k) ~~(l)~~ Research: An additional $5 fee shall be added to each new system construction permit issued to be used to fund onsite sewage treatment and disposal system research, demonstration, and training projects. Five dollars from any repair permit fee collected under this section shall be used for funding the hands-on training centers described in s. 381.0065(3)(j).

(l) ~~(m)~~ Annual operating permit, including annual inspection and any required sampling and laboratory analysis of effluent, for an engineer-designed performance-based system: a fee of not less than $150, or more than $300.

~~On or before January 1, 2011, the Surgeon General, after consultation with the Revenue Estimating Conference, shall determine a revenue neutral fee schedule for services provided pursuant to s. 381.0065(5) within the parameters set in paragraph (b). Such determination is not subject to the provisions of chapter 120.~~ The funds collected pursuant to this subsection must be deposited in a trust fund administered by the department, to be used for the purposes stated in this section and ss. 381.0065 and 381.00655.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 95 State Parks
SPONSOR(S): Bembry
TIED BILLS: None **IDEN./SIM. BILLS:** SB 236

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Cunningham	Blalock AFB
2) Community & Military Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Division of Recreation and Parks (division) within the Department of Environmental Protection (department) oversees Florida's 160 state parks. The division has statutory authority[1] to charge reasonable fees for the use or operation of facilities and concessions in the state parks. The monies collected from these fees are deposited into the State Park Trust Fund (trust fund), which is for the administration, improvement, and maintenance of the state parks and any acquisition of lands for state park purposes.

Currently, active duty members and honorably discharged veterans of the United States Armed Forces (armed forces), National Guard, or reserve components thereof receive a twenty-five percent discount on annual entrance passes to Florida's state parks. Veterans with service-connected disabilities receive a lifetime family annual entrance pass at no charge. Surviving spouses of deceased members of the armed forces, National Guard, or reserve components thereof who have fallen in combat also receive a lifetime family annual entrance pass at no charge. Qualification for these discounts is determined by satisfactory documentation as established by the division.

The bill provides for the inclusion of parents of deceased members of the armed forces, National Guard, or reserve components thereof who have fallen in combat to receive a lifetime annual entrance pass at no charge if satisfactory documentation approved by the division is provided.

This bill may result in an indeterminate reduction in state park revenues. However, according to the division, the publicity and goodwill earned by the state is expected to result in an increased visitation, which should offset any loss of revenues. The division also stated that some counties impose a surcharge in addition to the entrance fee. It is unclear whether the surcharge would be waived as well as the entrance fee. If counties waive the surcharges, this may represent a potential reduction in revenues for those counties.

[1] Section 258.014(1), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Recreation and Parks (division) within the Department of Environmental Protection (department) oversees Florida's 160 state parks. The division has statutory authority[2] to charge reasonable fees for the use or operation of facilities and concessions in the state parks. The monies collected from these fees are deposited into the State Park Trust Fund (trust fund), which is for the administration, improvement, and maintenance of the state parks and any acquisition of lands for state park purposes.

The division offers two types of annual passes; the family annual entrance pass for $120 and the individual annual entrance pass for $60.[3] Active duty members and honorably discharged veterans of the United States Armed Forces (armed forces), National Guard, or reserve components thereof receive a twenty-five percent discount on annual entrance passes to Florida's state parks. Veterans with service-connected disabilities receive a lifetime family annual entrance pass at no charge. Surviving spouses of members of the armed forces, National Guard, or reserve components thereof who have fallen in combat also receive a lifetime annual entrance pass at no charge. The division offers a discount of one-half off of the daily admission fee to Florida National Guard active members, spouses and minor children. In addition, the division offers one-half off of daily admission fees for Florida residents participating in the Food Stamp program, and one-half off the base camping fee for Florida residents 65 years and older or who are 100% disabled.

The division prescribes what constitutes satisfactory documentation to evidence eligibility.[4]

Satisfactory written documentation to prove eligibility for the 25% discount on Annual Entrance Passes for active duty and honorably discharged veterans of the armed forces, National Guard, or reserve units thereof includes:

- Current military identification card showing the bearer as active duty, reserve, or retired member of a branch of the US Armed Forces; or
- Personal identification (i.e.: driver license, etc.) and the most recent DD Form 214, Certificate of Release or Discharge from Active Duty, showing the named individual's Character of Service as Honorable, or other current official documentation from the Department of Defense, Department of Homeland Security, Department of Veterans Affairs or an appropriate branch of one of those agencies, naming the bearer as active duty, reserve, veteran, or retired member of the US Armed Forces.

Satisfactory written documentation to prove eligibility the free for Life Family Annual Entrance Passes for honorably discharged U.S. veterans who have service-connected disabilities includes:

- Personal identification (i.e., driver license) and most recent DD Form 214, Certificate of Release or Discharge from Active Duty, showing the named individual's Character of Service as Honorable, or other current official documentation from the Department of Defense, or one of those agencies, naming the bearer as veteran, or retired military; and
- Current official documentation from the Department of Defense, Department of Homeland Security, Department of Veterans Affairs or an appropriate branch of one of the those agencies, naming the bearer as having sustained a service-related disability.

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[2] Section 258.014(1), F.S.
[3] During FY 2009-10, annual entrance pass sales accounted for $1,758,157.95 in revenues.
[4] http://www.floridastateparks.org/default.cfm

Satisfactory documentation to prove eligibility for Free for Life Family Annual Entrance Passes for surviving spouses of deceased members of the armed forces, National Guard, or reserve units thereof who have fallen in combat includes:

- Personal identification (i.e.: driver license), the final DD Form 214, Certificate of Release or Discharge from Active Duty, showing the date of death as the same date as the date of separation, and marriage certificate or license, or death certificate showing the bearer as the spouse of the military member who has fallen in combat.

Effect of Proposed Changes

The bill provides for the inclusion of parents of deceased members of the armed forces, National Guard, or reserve components thereof who have fallen in combat to receive a lifetime annual entrance pass at no charge.

B. SECTION DIRECTORY:

Section 1: Amends s. 258.0145, F.S., to include parents of deceased veterans.

Section 2: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill appears to have an indeterminate fiscal impact on state government revenues. (See "Fiscal Comments" section below.)

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See "Fiscal Comments" section below.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parents of deceased members of the armed forces, National Guard, or reserve components thereof who have fallen in combat will benefit from the legislation.

D. FISCAL COMMENTS:

The Division of Recreation and Parks (division) within the Department of Environmental Protection (department) states that there will be a potential reduction in state park revenue, due to the inclusion of parents in the discount, which is indeterminate at this time. However, according to the division, the publicity and goodwill earned by the state is expected result in increased visitation, which should offset any loss of revenues.

For the most part, there would be no fiscal impact on local governments. However, according to the department's website[5], some counties impose a surcharge in addition to the division's entrance fee. It is unclear whether the surcharge would be waived as well as the entrance fee. If the surcharges were waived, this may represent a potential reduction in revenue for the counties that impose the surcharge.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[5] http://www.floridastateparks.org/thingstoknow/fees.cfm

A bill to be entitled

An act relating to state parks; amending s. 258.0145, F.S.; providing for the parents of certain deceased veterans to receive lifetime annual entrance passes to state parks at no charge; providing an effective date.

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

Section 1. Subsection (3) of section 258.0145, Florida Statutes, is amended to read:

258.0145 Military state park fee discounts.—The Division of Recreation and Parks shall provide the following discounts on park fees to persons who present written documentation satisfactory to the division which evidences their eligibility for the discounts:

(3) Surviving spouses and parents of deceased members of the United States Armed Forces, National Guard, or reserve components thereof who have fallen in combat shall receive lifetime family annual entrance passes at no charge.

Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 421 Agricultural-related Exemptions to Water Management Requirements
SPONSOR(S): Bembry
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser	Blalock
2) Rulemaking & Regulation Subcommittee			
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Florida law has afforded an agricultural exemption to bona fide farm operators since the mid-1980's in regards to obtaining a permit from the water management districts (WMDs) for altering the topography of any tract of land as long as the alteration is not for the sole or predominant purpose of impounding or obstructing surface waters. The bill revises the current agricultural exemption to specify that certain agricultural activities may impede or divert the flow of surface waters or adversely impact wetlands, as long as it is not the sole or predominant purpose of the agricultural activity or alteration. The bill also provides retroactive application of the exemption to July 1, 1984.[1]

The bill allows the WMD or a landowner to request a determination from the Department of Agriculture and Consumer Services (department) when a dispute regarding an exemption occurs. The bill further states that the determination by the department is binding. The bill authorizes the department and the WMDs to enter into a new memorandum of understanding (MOU), or amend an existing MOU, to propose procedures by which the department will undertake the review and determination process. The department is given rule-making authority to implement these processes.

The bill provides that mitigation to offset any adverse effects of lands converted to a non-agricultural use is not necessary if the damage occurred in at least 4 of the last 7 years preceding the conversion.

And lastly, the bill amends the definition of agricultural activities to include: cultivating, fallowing, and leveling, and provides that such activities constitute "agricultural activities" provided the activities are not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

The legislation appears to have a negative fiscal impact of approximately $175,000 to state government in the form of increased expenses by the department. The bill does not appear to have a fiscal impact on local governments.

[1] The effective date of the Warren S. Henderson Wetlands Protection Act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1

Present Situation

In 1984, the Legislature passed the Warren S. Henderson Wetlands Protection Act[2] (act), which was the first concerted effort at protecting and managing wetlands in the state. Among other things, the legislation established a permitting system for dredge and fill permits. The act also provided an exemption from the permitting process for "normal and necessary" agriculture and forestry operations. The act placed agricultural operations under the control of the water management districts (WMDs) rather than under the jurisdiction of the then-Department of Natural Resources (DNR).

In 1993, during the reorganization of the DNR to the Department of Environmental Protection (DEP), the Wetlands Protection Act was repealed, with the exception of section 403.927, F.S. Section 403.927, F.S., provides that "agricultural activities"[3] are not subject to specific discharge permits, except that DEP may require a stormwater permit or discharge permit at the point of discharge from an agricultural water management system.

Current law[4] also allows persons engaged in certain agriculture occupations[5] to alter the topography of any tract of land without obtaining an environmental resource permit from a WMD. The current exemption states that the alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.

In 2009, a large agricultural company filed suit[6] against one of the WMDs in regards to the agricultural exemption in s. 373.406(2), F.S. The WMD alleged the defendant had constructed numerous drainage ditches on its property without first obtaining required permits from the district. The defendant claimed the construction fell under the exemption afforded through s. 373.406 (2), F.S., since the ditches were consistent with the practice of agricultural activities and not for the *"...sole or predominant purpose of impounding or obstructing surface waters..."* The court ruled in favor of the WMD, stating that the provisions in s. 403.927, F.S., virtually eliminate the agricultural exemption in s. 373.406(2), F.S., as it applies to alterations impacting wetlands.

Effect of Proposed Changes

The bill revises the agricultural exemption in current law to specify that certain agricultural activities may impede or divert the flow of surface waters or adversely impact wetlands, as long as it is not the sole or predominant purpose of the said activity or alteration. The bill also provides retroactive application of the exemption to July 1, 1984.[7]

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[2] HB 1187, Sections 403.91-403.929, F.S.

[3] "Agricultural activities" includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, harvesting, construction of access roads, and placement of bridges and culverts, provided such operations do not impede or divert the flow of surface waters.

[4] Section 373.406(2), F.S.

[5] Silviculture, floriculture and horticulture.

[6] *A. Duda and Sons, Inc. v. St. Johns River Water Management District*, 17 So. 3d 738 (Fla. 5th DCA 2009) (Duda I) and 22 So.3d 622 (Fla. 5th DCA 2009) (Duda II)

[7] The effective date of the Warren S. Henderson Wetlands Protection Act.

Section 2

Present Situation

In 2006, the Legislature enacted legislation[8] that required the Department of Agriculture and Consumer Services (department) and the WMDs to enter into a memorandum of understanding (MOU) authorizing the department to assist the WMDs, at their request, in determining whether an existing or proposed activity qualifies for the agricultural exemption in s. 373.406(2), F.S. Currently, the determination issued by the department is non-binding, meaning the WMDs are not required to comply with the department's determination.

The department states that, on average, one or two requests for a determination are received per year. The department conducts a site visit, technical support materials are reviewed and a written non-binding conclusion is sent back to the appropriate WMD.

Effect of Proposed Legislation

The bill allows the WMD or a landowner to request a determination from the department when a dispute regarding the agricultural exemption in s. 373.406(2), F.S., occurs. The bill further states that the department has exclusive authority to make a binding determination.

The bill authorizes the department and the WMDs to enter into a new MOU, or amend an existing MOU, to propose procedures by which the department will undertake the review and determination process. The department is given rule-making authority to implement these processes.

According to the department, the workload of the department may substantially increase since the requests may now originate from the landowner as well as the WMDs.

Section 3

Present Situation

Current law states that when land transfers from an agricultural use to a use other than agriculture, the non-agricultural land is no longer entitled to the agricultural exemption.

Effect of Proposed Legislation

The bill provides that mitigation to offset any adverse effects of lands converted to a non-agricultural use is not necessary if the damage occurred in at least 4 of the last 7 years preceding the conversion.

The bill amends the definition of agricultural activities in s. 403.927, F.S., to include: cultivating, fallowing, and leveling, and provides that such activities constitute "agricultural activities" provided that the activities are not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

Section 4

The bill takes effect on July 1, 2011.

B. SECTION DIRECTORY:

Section 1: Amending s. 373.406, F.S.; revising the exemption to include impacts to surface waters and wetlands; and, providing for retroactive application.

Section 2: Amending s. 373.407, F.S.; providing the Department of Agriculture and Consumer Services (department) with the exclusive authority to determine whether agricultural exemptions apply under certain conditions; authorizing the department to enter into a memorandum of agreement with the water management districts; and, allowing the department to adopt rules necessary for implementation.

Section 3: Amending s. 403.927, F.S.; providing an exemption from mitigation requirements for converted agricultural lands under certain conditions; and, amending the definition of "agricultural activities."

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[8] HB 1015

Section 4: Providing an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

	(FY 10-11) Amount/FTE	(FY11-12) Amount/FTE	(FY12-13) Amount/FTE
Recurring*	$175,000/2	$175,000/2	$175,000/2

*Department of Agriculture and Consumer Services' General Inspection Trust Fund

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Potentially positive for agriculture, as some agricultural operations that have been required to apply for and obtain a surface water permit (e.g., citrus, row crops) in the past may now be exempt from this requirement.

D. FISCAL COMMENTS:

None

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is given rule-making authority regarding the determination of qualification for an agricultural-related exemption.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The water management districts (WMDs) expressed various concerns with the legislation as written. Some of the concerns are:

- The bill empowers the Department of Agriculture and Consumer Services (department) as the sole regulator of wetlands on agricultural lands. The concern is whether the department has the expertise and/or manpower to carry out this requirement.
- The exemption allows the impediment of water up and downstream, which may result in a potential impact to other entities up or downstream, as well as state waters.
- The provision for negating the mitigation of adverse effects occurring before the conversion of the land appears to provide a "loophole" for flipping land from agricultural to development without obtaining a permit.
- Amending the current language to "....may not be for the sole effect of...." would make the exemption easier to identify.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to agricultural-related exemptions to water management requirements; amending s. 373.406, F.S.; revising an exemption for agricultural-related activities to include certain impacts to surface waters and wetlands; providing for retroactive application of the exemption; amending s. 373.407, F.S.; providing exclusive authority to the Department of Agriculture and Consumer Services to determine whether certain activities qualify for an agricultural-related exemption under specified conditions; requiring a specified memorandum of agreement between the department and each water management district; authorizing the department to adopt rules; amending s. 403.927, F.S.; providing an exemption from mitigation requirements for converted agricultural lands under certain conditions; revising the definition of the term "agricultural activities" to include cultivating, fallowing, and leveling and to provide for certain impacts to surface waters and wetlands; providing an effective date.

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

Section 1. Subsection (2) of section 373.406, Florida Statutes, is amended to read:

373.406 Exemptions.—The following exemptions shall apply:

(2) Notwithstanding s. 403.927, nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the

occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the practice of such occupation. However, such alteration or activity may not be for the sole or predominant purpose of impeding ~~impounding~~ or diverting the flow of ~~obstructing~~ surface waters or adversely impacting wetlands. This exemption has retroactive application to July 1, 1984.

Section 2. Section 373.407, Florida Statutes, is amended to read:

373.407 Determination of qualification ~~Memorandum of agreement~~ for an agricultural-related exemption.—In the event of a dispute as to the applicability of an exemption, ~~No later than July 1, 2007, the Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement under which the Department of Agriculture and Consumer Services shall assist in a determination by~~ a water management district or landowner may ~~as to whether an existing or proposed activity qualifies for the exemption in s. 373.406(2). The memorandum of agreement shall provide a process by which, upon the~~ request ~~of a water management district,~~ the Department of Agriculture and Consumer Services to make a binding determination ~~shall conduct a nonbinding review~~ as to whether an existing or proposed activity qualifies for an agricultural-related exemption under ~~in~~ s. 373.406(2). The Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum

of agreement or amend an existing memorandum of agreement which sets forth ~~shall provide~~ processes and procedures by which the Department of Agriculture and Consumer Services shall undertake its ~~this~~ review, make a determination effectively and efficiently, and provide notice of its determination to the applicable water management district or landowner. The Department of Agriculture and Consumer Services has exclusive authority to make the determination under this section and may adopt rules to implement this section and s. 373.406(2) ~~issue a recommendation~~.

Section 3. Subsection (3) and paragraph (a) of subsection (4) of section 403.927, Florida Statutes, are amended to read:

403.927 Use of water in farming and forestry activities.—

(3) If land served by a water management system is converted to a use other than an agricultural use, the water management system, or the portion of the system which serves that land, will be subject to the provisions of this chapter. However, mitigation under chapter 373 or this chapter to offset any adverse effects caused by agricultural activities that occurred before the conversion of the land is not required if the activities occurred on the land in at least 4 of the last 7 years preceding the conversion.

(4) As used in this section, the term:

(a) "Agricultural activities" includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, cultivating, harvesting, fallowing, leveling,

construction of access roads, and placement of bridges and culverts, provided such operations are not for the sole or predominant purpose of impeding ~~do not impede~~ or diverting ~~divert~~ the flow of surface waters or adversely impacting wetlands.

Section 4. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 457 Fertilizer
SPONSOR(S): Ingram and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 606

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee		Kaiser	Blalock
2) Community & Military Affairs Subcommittee			
3) Rulemaking & Regulation Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

In 2009, the Legislature passed CS/CS/CS/SB 494, relating to water conservation. Among other things, the bill directed the Department of Environmental Protection (DEP) to adopt and enforce a Model Ordinance (model ordinance) for Florida-Friendly Fertilizer Use on Urban Landscapes by January 15, 2010.

Current law encourages adoption and enforcement of the model ordinance by local governments, and it requires adoption by local governments that are located in an area where water is impaired by certain nutrients. Current law also allows local governments to adopt more stringent standards if specified criteria are met. Local governments that have adopted their own ordinance prior to January 1, 2009, are exempt from these provisions, as are farm operations.

The bill grants the Department of Agriculture and Consumer Services (department) with the exclusive authority to regulate the sale of fertilizer, including its composition, formulation, packaging, use, application, and distribution. In addition, the bill provides that such fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations were adopted. Lastly, the bill removes the authority of local governments, located in areas where water is impaired, to adopt more stringent standards than the model ordinance. As discussed in the "Drafting Issues/Other Comments" section of the analysis, the bill contains some provisions that conflict with current law.

The bill appears to have a negative fiscal impact of approximately $900,000 on state government in the form of increased expenses for the department and an insignificant fiscal impact on local governments. (See the "Fiscal Comments" section for a more detailed explanation.)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2009, the Legislature passed CS/CS/CS/SB 494, relating to water conservation. Among other things, the bill directed the Department of Environmental Protection (DEP) to adopt and enforce a Model Ordinance (model ordinance) for Florida-Friendly Fertilizer Use on Urban Landscapes by January 15, 2010. The model ordinance assesses penalties on licensed contractors in violation of certain requirements, including the requirement to inspect automatic landscape irrigation systems and report systems not in compliance with statutory requirements. It allows for regular maintenance of broken systems without assessing penalties when fixed within a reasonable time. The funds raised through penalties are dispersed for water-conservation activities and for administration and enforcement activities.

Current law provides legislative findings regarding the beneficial effect of the implementation of the model ordinance and encourages adoption and enforcement by local governments. It requires adoption by local governments that are located in an area where water is impaired by certain nutrients, and allows local governments to adopt more stringent standards if specified criteria are met. Local governments that have adopted their own ordinance prior to January 1, 2009, are exempt from these provisions, as are farm operations.

Currently, there are approximately 40 cities and counties that have adopted their own ordinances. Proponents of the bill favor a statewide fertilizer standard to reduce the varied and numerous local regulations. Opponents of the bill believe the local governments have a better grasp of what is necessary to protect the bays, rivers and lakes in their communities.

Effect of Proposed Changes

The bill grants the Department of Agriculture and Consumer Services (department) with the exclusive authority to regulate the sale of fertilizer, including its composition, formulation, packaging, use, application, and distribution. In addition, the bill provides that such fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations were adopted. Lastly, the bill removes the authority of local governments, located in areas where water is impaired, to adopt more stringent standards than the model ordinance.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.9336, F.S.; removing legislative findings regarding local conditions that may necessitate implementation of additional or more stringent fertilizer management practices at the local level.

Section 2: Amends s. 403.9337, F.S.; deleting authority of local government to adopt more stringent standards than the model ordinance.

Section 3: Amends s. 570.07, F.S.; authorizing the Department of Agriculture and Consumer Services (department) to regulate the sale of fertilizer, including the composition, formulation, packaging, use, application, and distribution of fertilizer; preempting regulation of fertilizer to the state and the department, and specifying that such regulation of fertilizer by counties, municipalities, or other political subdivisions is void.

Section 4: Amends s. 576.181, F.S.; preempting regulation of fertilizer to the state and the department, and specifying that such regulation of fertilizer by counties, municipalities, or other political subdivisions is void.

Section 5: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

Cost Type	Class	Unit Cost	Number	FY 11-12	FY 12-13	FY 13-14
Recurring						
Inspector (S&B*)	ESII	60,657	9	545,913	545,913	545,913
Case Processor (S&B)	ESII	60,657	1	60,657	60,657	60,657
Contracted Facilitator for Negotiated Rulemaking		20,000	1	20,000	0	0
Non-Recurring						
Standard package** *(minus office rental)*		6,587	9	59,283	24,201	24,201
Standard package		6,587	1	6,587	2,689	2,689
Vehicle		18,000	9	162,000	0	0
			Total	854,440	633,460	633,460
			Recurring	633,460	633,460	633,460
			Non-recurring	220,980		
				854,440		

*Salary and benefits
* *Inspectors will use home offices.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   The bill appears to have an insignificant fiscal impact on local governments in as far as the loss of fines and/or penalties related to fertilizer ordinance regulation. Local governments have also expressed concerns about the liability the local communities would incur for failure to maintain water quality in impaired water bodies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The legislation may have a positive fiscal impact on private sector enterprises that apply fertilizer commercially since there would be a uniform set of rules statewide to comply with rather than a patchwork of different ordinances.

D. FISCAL COMMENTS:

None

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill contains contradictory language. In Section 2[1], 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 4[2], the bill states that "such regulation of fertilizer by a county, municipality, or other political subdivision is void, regardless of when adopted."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[1] Section 403.9337(3), F.S.
[2] Sections 570.07(41), F.S. and 576.181(5), F.S., respectively

A bill to be entitled

An act relating to fertilizer; amending s. 403.9336, F.S.; deleting legislative findings relating to the implementation by local governments of certain fertilizer management practices; amending s. 403.9337, F.S.; deleting authority for certain counties and municipalities to adopt fertilizer management practices more stringent than standards of a specified model ordinance; amending ss. 570.07 and 576.181, F.S.; requiring the Department of Agricultural and Consumer Services to regulate the sale of fertilizer, including the composition, formulation, packaging, use, application, and distribution of fertilizer; preempting such regulation of fertilizer to the state and the department; specifying that such regulation of fertilizer by counties, municipalities, and other political subdivisions is void; providing an effective date.

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

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

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

Sciences, will assist in protecting the quality of Florida's surface water and groundwater resources. ~~The Legislature further finds 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, may necessitate the implementation of additional or more stringent fertilizer management practices at the local government level.~~

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

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

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

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

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

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

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

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

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

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

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

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

(a) Fruit and vegetable inspection and grading.~~;~~

(b) Pesticide spray, residue inspection, and removal.~~;~~

(c) Registration, labeling, inspection, and analysis of commercial stock feeds and commercial fertilizers.~~;~~

(d) Classification, inspection, and sale of poultry and eggs.~~;~~

(e) Registration, inspection, and analysis of gasolines and oils.~~;~~

(f) Registration, labeling, inspection, and analysis of pesticides.~~;~~

(g) Registration, labeling, inspection, germination testing, and sale of seeds, both common and certified.~~;~~

(h) Weights, measures, and standards.~~;~~

(i) Foods, as set forth in the Florida Food Safety Act.~~;~~

(j) Inspection and certification of honey.~~;~~

(k) Sale of liquid fuels.~~;~~

(l) Licensing of dealers in agricultural products.~~;~~

(m) Administration and enforcement of all regulatory legislation applying to milk and milk products, ice cream, and frozen desserts.~~;~~

(n) Recordation and inspection of marks and brands of livestock.~~; and~~

(o) Regulation of the sale of fertilizer, including the composition, formulation, packaging, use, application, and distribution of fertilizer.

(p) ~~(o)~~ All other regulatory laws relating to agriculture.

In order to ensure uniform health and safety standards, the adoption of standards and fines in the subject areas of paragraphs (a)-(o) ~~(a)-(n)~~ is expressly preempted to the state and the department. Any local government enforcing the subject areas of paragraphs (a)-(o) ~~(a)-(n)~~ must use the standards and fines set forth in the pertinent statutes or any rules adopted by the department pursuant to those statutes.

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

Section 4. Subsection (5) is added to section 576.181, Florida Statutes, to read:

576.181 Administration; rules; procedure; preemption.—

(5) The department has exclusive authority to regulate the sale of fertilizer, including the composition, formulation, packaging, use, application, and distribution of fertilizer. This subsection expressly preempts such regulation of fertilizer to the state and the department. Such regulation of fertilizer by a county, municipality, or other political subdivision is void, regardless of when adopted.

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

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Agriculture & Natural Resources Subcommittee

Representative Ingram offered the following:

Amendment (with title amendment)

Remove lines 69-136 and insert:

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

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

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

Amendment No.

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

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

(a) Fruit and vegetable inspection and grading.~~;~~

(b) Pesticide spray, residue inspection, and removal.~~;~~

(c) Registration, labeling, inspection, and analysis of commercial stock feeds and commercial fertilizers.~~;~~

(d) Classification, inspection, and sale of poultry and eggs.~~;~~

(e) Registration, inspection, and analysis of gasolines and oils.~~;~~

(f) Registration, labeling, inspection, and analysis of pesticides.~~;~~

(g) Registration, labeling, inspection, germination testing, and sale of seeds, both common and certified.~~;~~

(h) Weights, measures, and standards.~~;~~

(i) Foods, as set forth in the Florida Food Safety Act.~~;~~

(j) Inspection and certification of honey.~~;~~

(k) Sale of liquid fuels.~~;~~

(l) Licensing of dealers in agricultural products.~~;~~

(m) Administration and enforcement of all regulatory legislation applying to milk and milk products, ice cream, and frozen desserts.~~;~~

(n) Recordation and inspection of marks and brands of livestock.~~; and~~

(o) Regulation of fertilizer, including the sale, composition, formulation, packaging, and distribution.

Amendment No.

(p) Regulation of the use and application of fertilizer.

(q) ~~(o)~~ All other regulatory laws relating to agriculture.

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

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

Section 4. Subsection (5) is added to section 576.181, Florida Statutes, to read:

576.181 Administration; rules; procedure; preemption.—

Amendment No.

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

T I T L E A M E N D M E N T

Remove lines 10-16 and insert:

Agricultural and Consumer Services to regulate the sale, composition, formulation, packaging, use, application, and distribution of fertilizer; preempting such regulation of fertilizer to the state and the department; specifying that such regulation of fertilizer by counties, municipalities, and other political subdivisions is void; authorizing local governments to provide enforcement of the provisions of the Model Ordinance; providing an