

Committee Substitute for Committee Substitute for  
Committee Substitute for Senate Bill No. 494

An act relating to water conservation; amending s. 373.62, F.S.; revising the requirements for automatic landscape irrigation systems; requiring irrigation contractors to test for the correct operation of system devices or switches and ensure their proper operation before completing other work on the system; requiring the Department of Environmental Protection to create a model ordinance that may be adopted by local governments; providing penalties; providing for the disposition of funds raised through penalties imposed; authorizing local governments to approve smart irrigation controllers; providing legislative findings relating to the adoption of soil moisture sensor control irrigation systems; defining terms; providing a statewide process and conditions for obtaining a variance from water management district restrictions on water use; creating s. 403.9335, F.S.; providing a short title; creating s. 403.9336, F.S.; providing legislative findings; creating s. 403.9337, F.S.; encouraging county and municipal governments 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 water and groundwater quality; requiring a county government or municipal government located within the watershed of a water body or water segment that is listed by the Department of Environmental Protection as impaired to adopt the model ordinance; providing that additional or more stringent provisions may be adopted under certain circumstances; providing a timeframe for adopting the model ordinance; providing exceptions; creating s. 403.9338, F.S.; requiring the department to establish and approve training and testing programs providing urban landscape best-management practices; providing that such training authorizes a person to apply for a limited certification for urban landscape commercial fertilizer application issued by the Department of Agriculture and Consumer Services; providing that a person having such certification is not subject to additional local testing; amending s. 482.021, F.S.; defining the terms “commercial fertilizer application” and “urban landscape”; creating s. 482.1562, F.S.; providing for limited certification for urban landscape commercial fertilizer application provided by the Department of Agriculture and Consumer Services; requiring such certification in order to commercially apply fertilizer, beginning on a certain date; providing requirements and fees; providing for expiration and renewal; authorizing the department to provide information concerning persons who are certified; providing for exceptions to the requirements of certification; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 373.62, Florida Statutes, is amended to read:

373.62 Water conservation; automatic sprinkler systems.—

(1) Any person who purchases and installs an automatic landscape irrigation system must properly lawn sprinkler system after May 1, 1991, shall install, and must maintain, and operate technology, a rain sensor device or switch that inhibits or interrupts operation of will override the irrigation cycle of the sprinkler system during periods of sufficient moisture when adequate rainfall has occurred.

(2) A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on that system. If such devices or switches are not installed in the system or are not in proper operating condition, the contractor must install new ones or repair the existing ones and confirm that each device or switch is in proper operating condition before completing other work on the system.

(3) The department shall create a model ordinance by January 15, 2010, that may be adopted and enforced by local governments. The ordinance must, at a minimum:

(a) Require licensed contractors to report automatic landscape irrigation systems that are not in compliance with this section to the appropriate authority.

(b) Provide penalties for licensed contractors who do not comply with this section. The minimum penalty must be \$50 for a first offense, \$100 for a second offense, and \$250 for a third or subsequent offense.

Regular maintenance and replacement of worn or broken technology which interrupts or inhibits the operation of an automatic landscape irrigation system is not a violation of this section if such repairs are conducted within a reasonable time.

(4) Local governments may adopt the model ordinance by October 1, 2010. Local governments that impose requirements that are more stringent than the model ordinance are exempt from adopting the ordinance.

(5) Funds generated by penalties imposed under the ordinance shall be used by the local government for the administration and enforcement of this section and to further water-conservation activities.

(6) For purposes of this section, a licensed contractor includes an individual who holds a specific irrigation contractor's license issued by a county.

(7)(a) The Legislature recognizes that lawn and landscape irrigation systems use a substantial amount of the state's potable water. The Legislature finds that smart irrigation systems that use soil moisture sensors with remote monitoring and adjustment capabilities, if properly installed and monitored, provide more efficient irrigation and save substantially more water than conventional time-controlled irrigation systems. This is because smart irrigation systems apply water to lawns and plants only as necessary to maintain required soil moisture, thus minimizing the overwatering or

unnecessary watering that occurs with conventional irrigation systems. However, in order for this technology to optimize the efficient application of water it cannot be subject to day or days-of-the-week watering restrictions. The Legislature, therefore, recognizes that enacting a statewide process to provide an exemption from local water restriction ordinances will accelerate the adoption of this water saving technology. Further, a uniform exemption process will streamline variance procedures and minimize delay in implementing such technology. The longer it takes to approve soil moisture sensor control systems, the more potable water is wasted. A uniform variance process will allow state residents to maintain their property and protect water resources while enjoying their landscapes.

(b) For purposes of this subsection, the term:

1. “Monitoring entity” means a local government, community development district created pursuant to chapter 190, a homeowners’ association created pursuant to chapter 720, a condominium association created pursuant to chapter 718, a cooperative created pursuant to chapter 719, or a public or private utility.

2. “Soil moisture sensor” means a soil-based device that assesses the available plant soil moisture in order to minimize the unnecessary use of water and optimize the effectiveness of an irrigation system.

3. “Soil moisture sensor control system” is the collective term for an entire soil moisture sensor system that has remote monitoring and adjustment capability.

(c) A variance from day or days-of-the-week watering restrictions, which shall include the maximum soil set point for different soil types within the monitoring entity’s jurisdiction, shall be granted by the applicable water management district for any residential, commercial, or recreational user within a monitoring entity’s jurisdiction having a soil moisture sensor control system if the monitoring entity certifies that:

1. Each soil moisture sensor control system installed within its jurisdiction will have multiple soil sensors that conform to different soil types and slopes in order to optimize water use for each user, adjust irrigation schedules based on soil moisture requirements, and be installed by a licensed contractor in a manner that is consistent with the Field Guide to Soil Moisture Sensor Use in Florida by the University of Florida IFAS Extension Program for Resource Efficient Communities.

2. It has the ability to monitor the status of each individual user’s system and to remotely modify the system settings for irrigation cycles and run times.

3. It will electronically post and update a list of active users of soil moisture sensor control systems within its jurisdiction on a monthly basis and provide Internet access to such listing and the monitoring database to the water management district and the local government.

4. It shall provide notice to a user of noncompliant activity within 48 hours after such activity and, if the user does not take corrective action

within 48 hours after such notice, it will remove the posted notice required in subparagraph 5. and remove the user from the active users list required by subparagraph 3.

5. It shall post a notice at each parcel that has installed a compliant soil moisture sensor control system in plain view from the nearest roadway stating: "Irrigating with Smart Irrigation Controller," with the address of the parcel, and shall remove the notice if the user is no longer being monitored by the monitoring entity.

(d) Upon installation of a soil moisture sensor control system, the licensed contractor shall certify to the monitoring entity that subparagraphs (c)1. and (c)2. have been met.

1. The monitoring entity shall post the notice required by subparagraph (c)5. on the user's property and update the Internet listing of users of active soil moisture sensor control systems to include the new user.

2. On an annual basis a professional engineer licensed under chapter 471 or a professional landscape architect licensed under chapter 481 shall perform an annual maintenance review of all soil moisture sensor control systems within the monitoring entity's jurisdiction and certify to the monitoring entity which systems are properly operating and in compliance with paragraph (c). The monitoring entity shall update its Internet listing of users of active soil moisture sensor control systems based on the certification.

(e) Failure by the monitoring entity to ensure continual compliance with the condition of this variance shall be cause for the appropriate water management district to revoke the variance upon proper notice to the monitoring entity.

(f) The variance provided in this subsection applies to day or days-of-the-week watering restrictions of the water management district as preempted by s. 373.217. All other applicable local government and water management district restrictions related to irrigation, including, but not limited to, a prohibition on irrigation and time-of-day watering requirements and water shortage or emergency orders issued pursuant to s. 373.246(2) and (7), remain applicable to the soil moisture sensor control system users within a monitoring entity's jurisdiction.

(g) This subsection does not require a property owner to install a soil moisture sensor control system. This subsection also does not prohibit a property owner from installing soil moisture sensors and seeking an individual variance from the applicable water management district even if such property is located within the jurisdiction of a monitoring entity that has been granted a variance pursuant to paragraph (c).

Section 2. Section 403.9335, Florida Statutes, is created to read:

403.9335 Short title.—Sections 403.9335-403.9338 may be cited as the "Protection of Urban and Residential Environments and Water Act."

Section 3. Section 403.9336, Florida Statutes, is created 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 Florida 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 4. Section 403.9337, Florida Statutes, is created to read:

403.9337 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.—

(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 5. Section 403.9338, Florida Statutes, is created to read:

403.9338 Training.—

(1) The department, in cooperation with the Institute of Food and Agricultural Sciences, shall:

(a) Provide training and testing programs in urban landscape best-management practices and may issue certificates demonstrating satisfactory completion of the training.

(b) Approve training and testing programs that are equivalent to or more comprehensive than the training provided by the department under paragraph (a). Such programs must be reviewed and reapproved by the department if significant changes are made. Currently approved programs must be reapproved by July 1, 2010.

(2) After receiving a certificate demonstrating successful completion of a department or department-approved training program under this section, a person may apply to the Department of Agriculture and Consumer Services to receive a limited certification for urban landscape commercial fertilizer application under s. 482.1562. A person possessing such certification is not subject to additional local testing.

Section 6. Present subsections (6) through (27) of section 482.021, Florida Statutes, are renumbered as subsections (7) through (28), respectively, present subsection (28) is renumbered as subsection (30), and new subsections (6) and (29) are added to that section, to read:

482.021 Definitions.—For the purposes of this chapter, and unless otherwise required by the context, the term:

(6) “Commercial fertilizer application” means 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.

(29) “Urban landscape” means pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section agriculture has the same meaning as in s. 570.02.

Section 7. Section 482.1562, Florida Statutes, is created to read:

482.1562 Limited certification for urban landscape commercial fertilizer application.—

(1) To provide a means of documenting and ensuring compliance with best-management practices for commercial fertilizer application to urban landscapes, the department shall establish a limited certification for urban landscape commercial fertilizer application.

(2) Beginning January 1, 2014, any person applying commercial fertilizer to an urban landscape must be certified under this section.

(3) To obtain a limited certification for urban landscape commercial fertilizer application, an applicant must submit to the department:

(a) A copy of the training certificate issued pursuant to s. 403.9338.

(b) A certification fee set by the department in an amount of at least \$25 but not more than \$75. Until the fee is set by rule, the fee for certification is \$25.

(4) A limited certification for urban landscape commercial fertilizer application issued under this section expires 4 years after the date of issuance. Before applying for recertification under subsection (5), the applicant must complete 4 classroom hours of acceptable continuing education, of which at least 2 hours address fertilizer best-management practices.

(5) An application for recertification must be made at least 90 days before the expiration of the current certificate and be accompanied by:

(a) Proof of having completed the 4 classroom hours of acceptable continuing education required under subsection (4).

(b) A recertification fee set by the department in an amount of at least \$25 but not more than \$75. Until the fee is set by rule, the fee for certification is \$25.

(6) A late renewal charge of \$50 per month shall 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, a certificate may be issued only upon reapplying in accordance with section (3).

(7) Certification under this section does not authorize:

(a) The application of pesticides to turf or ornamentals, including pesticide fertilizer mixtures;

(b) The operation of a pest control business; or

(c) The application of pesticides or fertilizers by unlicensed or uncertified personnel under the supervision of the certified person.

(8) The department may provide information concerning the certification status of persons certified under this section to other local and state governmental agencies. The department is encouraged to create an online data base that lists all persons certified under this section.

(9) Yard workers who apply fertilizer only to individual residential properties using fertilizer and equipment provided by the residential property owner or resident are exempt from the requirements of this section.

(10) The department may adopt rules to administer this section.

Section 8. This act shall take effect July 1, 2009.

Approved by the Governor June 18, 2009.

Filed in Office Secretary of State June 18, 2009.