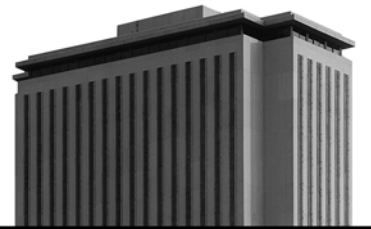




# LEGISLATIVE ISSUE BRIEFS



## CONSUMER FERTILIZER PREEMPTION

### BACKGROUND

Local governments have been regulating consumer fertilizer use with increasing frequency due to concerns over water quality and stormwater runoff. The fertilizer industry claims local regulations are piecemeal, not based on science, and unduly restrictive. In 2007, the legislature created the Consumer Fertilizer Task Force to provide recommendations on policies and programs addressing consumer fertilizers. The Task Force was comprised of 13 individuals representing a range of stakeholder interests--including the Florida League of Cities and the Florida Association of Counties.

The Task Force unanimously adopted the Final Report containing various recommendations including the licensure or certification of individuals commercially applying consumer fertilizers; recommending a dedicated revenue source to provide public education regarding the appropriate use of consumer fertilizers; and of primary importance, the use of an optional model ordinance for local governments wishing to regulate the use of consumer fertilizers.

The Task Force recommended that a local government be authorized to adopt more stringent provisions to the model ordinance provided it can demonstrate that it meets at least one of the following criteria:

- It has verified impaired waters and is facing existing or possible Total Maximum Daily Loads (TMDL) requirements (under state and federal laws); or
- It has verified harm to human health or harm to the environment that warrants additional consumer fertilizer requirements; or
- That it will improve water quality or prevent future impacts of consumer fertilizers on the environment.

HB 1267 (Nelson) and SB 2352 (Aronberg) **require** local governments to adopt, by a date certain, the “Model Ordinance for Consumer Fertilizer Use and Application” developed by the Fertilizer Task Force. SB 2352 imposes an October 1, 2008 deadline for enacting the model ordinance while HB 1267 imposes a December 31, 2008 deadline.

HB 1267 exempts local governments from enacting the Model Ordinance if they had a fertilizer ordinance in place by January 15, 2008, while SB 2352 would grandfather ordinances approved prior to July 1, 2008.

HB 1267 and SB 2352 preempt local government authority to adopt more stringent regulations unless certain thresholds are met. These thresholds vary significantly from the Task Force recommendations. The bills specify that local government can only adopt more stringent provisions if it can demonstrate at least one of the following criteria:

- *The county or municipal government has a verified impaired water body that exists within its jurisdiction;*
- *A total maximum daily loads requirement for the impaired water body exists under state and federal laws, and*
- *A more restrictive ordinance has been adopted as a part of a basin management action plan.*

In addition, the bills authorize local governments to adopt more stringent provisions than the Model Ordinance if the Environmental Regulation Commission of the Department of Environmental Protection (DEP) finds the additional or more stringent provision is necessary based on “sound scientific principles”.

While the bills include provisions prohibiting local governments that fail to adopt the Model Ordinance from receiving state funds for consumer fertilizer educational efforts, there is no revenue source currently dedicated to these education efforts.

**STATUS:**

HB 1267 passed favorably with CS and 3 Amendments by Environment & Natural Resources Council on March 26, 2008. Currently the bill is in the House Policy and Budget Council. SB 2352 passed favorably with CS by Agriculture on March 27, 2008 and is scheduled to be considered by the Senate Community Affairs committee on April 17.

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