

Greenward

A compendium of news and opinions about government, golf and the environment

An update on new state legislation affecting turfgrass

NOTE: *The following report by Dr. Tom Latta, chairman of the Florida Turfgrass Association External Affairs Committee, is edited from a mail-out five weeks ago to FTGA members. Many changes have occurred since then and may continue to occur when the Legislature meets in special sessions. The Update notes were added on March 13. The FTGA External Affairs Committee will bring you a legislative recap in a future issue.*

It is not appropriate for an employee of a club to publically speak out on sensitive issues which might affect the operation of the club without the approval and support of the membership and officers. However, as a taxpaying citizen, you do have a right to express yourself to your elected officials concerning pending legislation which can have a disastrous effect on common sense turf management.. — Joel Jackson.

BY DR. T. M. LATTA
CHAIRMAN, EXTERNAL AFFAIRS COMMITTEE, FTGA

Many bills introduced this year have the potential to affect turfgrass interests. This summarizes the major issues.

Fertilizer Bill

Senate Bill 1520 (Senator Souto) This is a major rewrite of the existing fertilizer bill. The major controversy covers the fee for registering a fertilizer. (Fee hikes are in the wind. The State has no general revenue money to support such programs. The current thought is that fees raised by the activity must support the costs of the activity.)

Pesticides

House Bill 2431 and Senate Bill 1430: That part of the Florida Pesticide Law dealing with applicator certification is up for sunset review this year. The Senate is dealing with the issue narrowly: reenact the applicator certification language in Ch. 487. The House of Representatives took a much more ambitious

approach, and rewrote the entire Pesticide Law as PCB RR 92-19.

If anyone has read Ch. 487 recently, you know what a confusing statute it is. Definitions appear in multiple locations, there is little consistency or flow to the language because the statute was created at different times in different Legislative bills. This product by the House Regulatory Reform staff is a major consolidation, and is an excellent effort. Surprisingly, there has been little controversy so far about the House bill, despite some language, long sought by people in the industry, making clear that the Department of Agriculture has exclusive State regulatory authority over pesticides.

[UPDATE: A major controversy has erupted over pre-emption and the outcome is uncertain at this writing.]

Preemption. You've undoubtedly heard the Supreme Court decided in the Casey, Wisconsin case that FIFRA does not preempt local regulation of pesticides, including pesticide use. Enacting regulations on use was up to the states (as long as these do not conflict with or expand upon Federal regulations. Bottom line: states can do what they want.

Florida law has been silent on the subject of exclusivity. Some departments, water management districts, regional planning councils, cities, and other government organizations attempt on occasion to regulate pesticide use through permits, development orders, licenses, etc. This year we made a major effort to get this regulatory authority clarified by having the statute declare unambiguously that the Department of Agriculture and the Florida Pesticide Law provide the sole regulatory framework for pesticides. The reasons for this are threefold:

1. If local jurisdictions can establish conditions of use, they have an obvious registration function. Their demands for additional data, backup and support upon manufacturers will impose an additional cost burden on registrants. It also weakens the registration functions of both the Department of Agriculture and EPA. Manufacturers will not know who has the final authority governing product registration. The inevitable consequence will be the withdrawal from Florida of products and registrations we desperately need.

2. Pesticide users should know the rules of the road and these rules should not change with every county or city line. Also, city and county regulations are often under-publicized (in ordinances) or completely hidden (in permits, occupational licenses, or other file drawer documents). It will be almost impossible for a person to know the rules of pesticide use, or how to comply with them. Furthermore, a pattern of infractions could checkmate the use of pesticides, even by conscientious professionals.

3. Regulatory decisions on pesticides should be made in a scientific forum, not driven by public hysteria, emotion, political posturing, or grandstanding. Often, unfortunately, local public policy discussions on pesticides are carried out in newspaper headlines, rather than in reasoned technical discussions. This opens a tremendously fertile ground for abuse. Preempting pesticide use regulations to the State level helps ensure (but does

not guarantee!) that decisions are predicated upon scientific data and objective analyses of risk, rather than emotion.

In my view, this language is critically important for the future of pesticides in the state.

Chemically Sensitive Persons. Another concern with the pesticides bill is the protection of chemically sensitive individuals. An amendment was offered (turned down in Committee) which said:

“Registry.. .the Department shall provide all certified applicators with the names, addresses and notification parameters and other necessary information regarding the persons on the Registry for Pesticide Sensitive Persons, as established in Section 482.2265 (3). Any certified applicator must notify the person on the Registry at least 24 hours before applying a pesticide, or having pesticides applied by an employee or other person pursuant to his authority, to: (1) A property adjacent or contiguous to the specified resident’s property of the person on the Registry, or (2) A property within the notification parameters, as established pursuant to Section 482.2265(3) (d), of a person on the Registry needing extra distance notification.”

Again, this is an over simplistic approach which imposes a burden on all certified applicators on behalf of (currently 24) persons on the Registry, whether or not the certified applicators need to be certified to use the pesticide

The wording requires 24 hours advance notice of all spraying, limiting your ability to respond quickly to a disease outbreak. It establishes no conditions or classes of sensitivity; the only criteria is contiguous property. A sensitive person living on the fourth floor of a condominium by Hole 15 would get 24 hours notice before you could spray fungus on the first green.

I talked to the sponsor and committed to work with chemically sensitive persons to establish fair and equitable rules for their protection. However, we feel that the protection levels should be tied to medically demonstrable conditions and situations. We do not want reasonable protection to become a weapon for anti-pesticide forces to prohibit pesticide use.

Just an observation by the External Affairs Committee. We have been working with the pest control industry on the pest control legislation for the past several years, where this issue has continued to come up. We face a group of energetic, dedicated individuals who truly believe they are systematically being poisoned by exposure to pesticides in their environment. I don’t know anyone who wishes harm to these people, or who would be unwilling to modify his pesticide use or use practices in order to accommodate a genuine medical problem. The difficulty, of course, is to separate genuine medical problems from psychological problems or political problems. We will continue to work on this issue sincerely and honestly, but it is very, very challenging.

Pest Control

(HB 2341 and SB 0078) The House Regulatory Reform Committee has made a major rewrite of the pest control statute, Ch. 482. FPCA, FTGA, HRS and other interested parties have been working for the better part of a year to come up with a consensus. They have.

The bill moves several regulations now in the rules into the statute. These include provision for yardmen to do limited spraying if the customer/homeowner provides the materials and the sprayer. It also provides for registration of lawn maintenance people in a special category, allowing them to do limited spraying:

“to make applications of herbicides for controlling weeds in plant beds and to practice integrated pest management on ornamental plants using the following materials: low toxicity insecticides that are designated with the United States Environmental Protection Agency signal word “CAUTION” only, or insecticidal soaps, horticultural oils, or bacillus thuringiensis (BT) formulations. Application equipment used by a person certified pursuant to this section shall be limited to portable, hand-held, 3-gallon compressed air sprayers or backpack sprayers with no more than 5-gallon capacity and may not include power equipment. Certification under this section does not authorize pesticide application to turf.”

This is a major compromise allowing lawn maintenance people limited spray authority, providing they are individually certified. It is the result of a long negotiation between the Lawn Management Association and the Florida Pest Control Association. We believe the compromise position is fair, equitable and workable.

Preemption. The bill also has strengthened the preemption language in the current law to clarify that the statute is intended as *“comprehensive and exclusive regulation of pest control in this state. The provisions of this chapter preempt to the state all regulation of the activities and operations of pest control services, and no local government or political subdivision of the state may enact or enforce ordinances regulating pest control except for the requirement of a local occupational license pursuant to the provisions of chapter 205.”*

This preemption language has been opposed by local governments (particularly counties) in hearings before the House Regulatory Reform Committee. On the House side, the preemption language stayed in the bill.

However, on the Senate side, Senator Forman (Broward County) proposed (and vigorously supported) an amendment striking all preemption language. The amendment passed. The Senate version of the bill (GB 78) is moving on to its next committee without any preemption language.

Senator Forman’s action is a tremendous blow to consistent regulation of pest control in this State. Everyone is trying hard to get preemption put back in the bill, but it’s going to be a tough fight.

Chemically Sensitive Persons. The pest control bill also expands and clarifies the regulations governing the registry of chemically sensitive persons. This covers only “persons with documented pesticide sensitivity” certified by an authorized specialist physician.

To get on the list a person must provide documentation of pesticide sensitivity, including the pesticide or pesticide class to which the person has a sensitivity; or a physician’s statement indicating the person is currently under a physician’s care for a

diagnosed physical or mental condition that the Department has designated warranting inclusion on the registry; or has been certified by a physician to have an ailment or condition that would be significantly aggravated by normal pesticide application.

Persons desiring to be placed on the registry must pay an initial fee of \$50 and an annual renewal fee of \$10.

Persons on the registry shall get at least 24 hours advance notification of a pesticide application to a lawn or plant bed or exterior foliage on property contiguous with or adjacent to the primary residence of the pesticide sensitive individual.

Some persons may be qualified as hypersensitive on a case-by-case basis and receive advance notice at a greater distance, however no distance greater than one-half mile from the outside boundaries of the pesticide sensitive person's property. The greater distance notification also is limited in its application only to the pesticides or pesticide classes to which the person has a documented sensitivity. Notification can be by mail, telephone or personal delivery.

Persons on the Pest Control Notification Registry must provide HRS with the addresses of the properties or residences that fall within the contiguous, adjacent or special distance parameters for notification. HRS will supply this information to pest control operators.

The statute also contains very specific wording limiting the liability of the pest control operator.

Posting. Lastly, the statute provides explicit parameters for signs to be placed on lawns after spraying. This wording was in the rule and has been moved to the statute. The controversy stirred up by this bill (in addition to the preemption issue) include registration of lawn maintenance personnel, opposition by pesticide sensitive individuals, and the size (4" x 5") of the post-spray notification sign (they wanted 8-1/2" x 11").

This bill took an effort by the Pest Control Association and a number of the major companies in the industry. FTGA participated in the later discussions, particularly focusing on the registry of chemically sensitive persons and the preemption language.

[UPDATE: The pest control legislation has now passed both houses. A compromise on preemption (for pest control only, not pesticides) was reached: Regulation of pest control services and pesticide applications by pest control operators is preempted to the state, but local government is given considerable authority to regulate such local issues as storage, containment, zoning, hazardous materials regulation and well-field protection. The final wording will be published in a forthcoming issue.]

Pest Control (again !) and Golf Courses

Those of you who have read Ch 482, the Florida Pest Control Law, know that a pest control license is not required for applications to agricultural areas. Agricultural areas are defined as an area:

"(a) upon which a ground crop, trees or plants are grown for

commercial purposes;

(b) where a golf course, park, nursery or cemetery is located; or
(c) where farming of any type is performed or livestock is raised."

The original version of PCB 92-14, offered by the House Regulatory Reform Committee staff, would have changed the definition of agricultural area to read... *"(b) where a park or nursery is located,"* removing **golf courses** and **cemeteries** from being excluded as agricultural areas.

We first saw this proposal in December, and instantly opposed it. The provision had been offered as a way to require golf courses and cemeteries to post notices after spraying, as they are public places. However, the revised definition would have "back doored" all golf course operators under the Pest Control Law, a tremendous burden.

We convinced the House staff to deal with this issue in Ch. 487, the Florida Pesticide Law, rather than approach the issue of posting in such an oblique fashion. Fortunately, they agreed with this suggestion. Golf courses and cemeteries continue to be considered as agriculture and are exempt from certification, as pest control operators. One for the good guys.

Reorganization — Dept. of Agriculture

Internal organization changes: grouping all divisions under one of three deputy commissioners renaming the Division of Inspection to the Division of Agricultural Environmental Services. (This includes feed, seed, fertilizer and pesticides activities.)

Biodiversity

House Bill 751 (Representative Kelly) Senate companion bill (doing the same thing) sponsored by Senator Weinstein from Coral Springs.

These bills proclaim biological diversity as a public policy goal and establish a task force to establish a "biodiversity task force" in the office of the governor to develop a *"State strategy for conservation of the biological diversity of this state with substantial attention given to education programs, enhanced intergovernmental coordination, information collection and dissemination, incentives to agribusiness and private land owners, incompatible state land uses, preservation of endangered, threatened and special concern species and habitats, and public and private participation."*

We see this as a "feel good" bill, and yet another example of government bureaucracy to create rules and regulations, this time in the name of "biodiversity." Proponents obviously feel otherwise.

Muck Removal

Senate Bill 2176 (Senator Dantzer). Allows removal of organic muck and detritus material down to the mineral subsoil without a dredge-and-fill permit; prevents the Board of Trustees of the Internal Improvement Trust Fund from levying any charges for removal of this organic goop from state lands. Common sense bill, but questionable chance of passage this year.

[**UPDATE:** This provision is moving forward, having been amended to other bills, but the final resolution is uncertain.]

Environmental Reorganization

Senate Bill 1878 (Senator Dantzler) Merges the Department of Environmental Regulation and the Department of Natural Resources into a single department. This won't fly this year, and is one of many bills on the general subject of environmental reorganization. Everybody wants to change the status quo, but there's no consensus on how it should be changed.

Senate Bill 1794 (Senator Kirkpatrick) Reorganizes environmental activities. Merges Bureau of Aquatic Plants into the Game and Fish Commission. Merges DER with Game and Fish Commission in a fuzzy structure with many difficulties (GFC has constitutional status; all other departments report to the Governor or Governor and Cabinet). This bill renames DER as the Department of Environmental Protection and folds in almost all of the Department of Natural Resources. It also creates the "inter-governmental task force on environmental efficiency" which would study the idea of creating a Department of Fish and Wildlife and further reorganizing the Department of Natural Resources out of existence.

House Bill 1903 (Representative Harris) Provides for fees on first landing for foreign vessels (boats or aircraft) to finance additional agricultural inspection; provides for registration of aquatic plant nurseries; transfers aquatic plant nursery inspection from DNR to DACS, eliminating duplication. The bill has passed both Senate and House Ag committees, and goes to Finance and Taxation, and to Appropriations.

[**UPDATE:** Fees have been removed from HB 1903 but aquatic nursery transfer is still alive. Other reorganization bills change daily, or are mired down. Significant change is unlikely this year.]

Aquatic Weed Control

Senate Bill 1438 (Senator Thurman) with companion **House Bill 435 (Representatives Chuck Smith and Mackey)** This reorganizes the Department of Natural Resources Bureau of Aquatic Plants, sending its research activities to IFAS, its regulatory and permitting activities to the water management districts, creating the Aquatic Plant Advisory Council.

All are good moves. A similar bill didn't go anywhere last year, and I don't know the likely fate of this bill. It's yet another environmental reorganization bill, but with a difference: it responds to a real problem.

Call Senator Thurman and Representatives Smith and Mackey and tell them you support this. If we get a little public enthusiasm, there is a chance it might go through.

[**UPDATE:** No action taken yet on this bill. Call anyway and applaud the effort.]

Members of the FTGA External Affairs Committee are: T.M. Latta, chairman, Mark Jarrell, Nick Dennis and Brian Combs.

April Is National Lawn Care Month; practice 'Grasscycling'

April is the month when people all across the country begin tending more than 25 million acres, using more than 61 million power mowers, and spending about a billion hours a year mowing the nation's lawns, parks and sports turf areas.

That's why the Florida Turf Grass Association (FTGA) and the Professional Lawn Care Association of America (PLCAA) support the establishment of April as "National Lawn Care Month."

Through National Lawn Care Month the FTGA and PLCAA hope to create an understanding of the environmental, as well as the recreational and aesthetic, benefits of maintaining healthy lawn grasses.

Lawns help replenish the oxygen supply, prevent soil erosion, increase water retention in the soil, build top soil and even act as evaporation coolers to reduce surrounding air temperatures.

From a less scientific point of view, the care of lawns has become a recreational activity for many Americans, considered more of a hobby than a chore. Indeed, it may be one of the few opportunities we take to exercise and spend time in the sunshine.

The FTGA will be joining the annual Earth Day observation on April 22 to promote "grasscycling" as an ecologically-sound answer to the problem of over-burdened landfill.

"Grasscycling" is a term coined to signify a public awareness campaign about home recycling of grass clippings. With 6,000 landfills expected to close in the next five years and fewer new landfills being opened because of strict licensing procedures, a potential crisis in waste management is on the horizon.

Waste management is the subject of many recent articles promoting recycling and environmentally safe methods of preserving our fragile ecosystem. One of the easiest and most effective ways to prolong the life of our landfills is by recycling clippings and leaves in our own yards, estimated to comprise about 20 percent of landfill material.

According to university research, grass clippings are 85 percent water, so they deteriorate rapidly, returning 20 percent of their nitrogen to fertilize grass roots.

Therefore, clippings can be left on the lawn with no ill effects.

Contrary to popular lawncare "folklore," thatch problems are not caused by grass clippings. The accumulation of dead grass roots on the surface of the soil is actually caused by improper mowing techniques. Mowing more than one-third of the grass blade height causes some of the root system to die. Yet mowing only one-third of the height minimizes shock to the grass and prevents the death of the roots.

When following the one-third rule, every mower is a mulching mower because the clippings are short enough to break down quickly.

If a rainy season or a vacation trip interferes with the one-third Rule, then a mulching mower can make long clippings into short ones by holding them in the mowing chamber longer.