

RESOLUTION 11- 3

A RESOLUTION STRONGLY URGING THE STATE LEGISLATURE TO RESPECT THE CONSTITUTIONAL AND STATUTORY HOME RULE AUTHORITY OF LOCAL GOVERNMENTS WITH RESPECT TO THE ENACTMENT, MONITORING AND ENFORCEMENT OF NITROGEN AND PHOSPHORUS CONTROL ORDINANCES, WHICH INCLUDE PROHIBITIONS ON EXCESSIVE FERTILIZATION OF LAWNS AND RULES REASONABLY RELATED THERETO; DIRECTING THE CITY MANAGER TO FORWARD A COPY OF THIS RESOLUTION TO THE GOVERNOR, THE STATE SENATE PRESIDENT AND THE STATE HOUSE SPEAKER; DIRECTING THE CITY MANAGER TO FORWARD A COPY OF THIS RESOLUTION TO THE OVER 50 LOCAL GOVERNMENT JURISDICTIONS WHO HAVE ENACTED REASONABLE REGULATIONS ATTEMPTING TO LIMIT EXCESSIVE NITROGEN AND PHOSPHORUS ENTERING THEIR LOCAL WATERWAYS THROUGH OVER FERTILIZATION OF LAWNS AND OTHER VEGETATION, AS WELL AS THOSE JURISDICTIONS THAT ARE CONSIDERING SUCH LEGISLATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marco Island has recognized the detrimental effects of the introduction of excessive amounts of nitrogen and to some extent phosphorus into the local bays and estuaries surrounding Marco Island; and

WHEREAS, excessive nitrogen has been directly linked to harmful nuisance drift algal blooms on area beaches, fish kills and other abnormal or exacerbated events in our surrounding rivers, bays and estuaries; and

WHEREAS, approximately 50 local government jurisdictions have enacted ordinances to reasonably regulate the excessive use of fertilizer and the attendant introduction of nitrogen and phosphorus into the local waterways of their jurisdiction; and

WHEREAS, there are currently proposed State legislative bills which will completely preempt the authority of all local government jurisdictions to reasonably regulate fertilizer and the introduction of nitrogen and phosphorus into local waterways; and

WHEREAS, it is critical that the State legislature respect the constitutional and statutory Home Rule authority of local government jurisdictions and understand that the regulation of these issues can only be effective if they are enacted, monitored and enforced at the local jurisdiction level;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marco, Florida, that:

SECTION 1. (a) It is hereby requested that the Florida Legislature refrain from any preemption of local government authority and respect local governments' constitutional and statutory Home Rule powers with respect to the enactment, monitoring and enforcement of

nitrogen and phosphorus control ordinances, which include prohibitions on excessive fertilization of lawns and rules reasonably related thereto.

(b) In the event that any legislation is enacted by the State legislature contrary to the above request, it is strongly urged that the State legislature leave all existing local ordinances fully intact and "grandfathered" in their entirety and, further, that all local jurisdictions be authorized to adopt more restrictive regulations than those enacted in any "State Model" or statewide regulation.

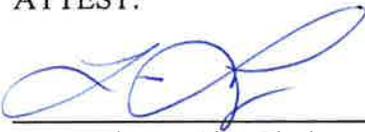
SECTION 2. The City Manager is hereby directed to forward a copy of this Resolution to Governor Scott, State Senate President Michael Haridopolos, Speaker of the State House of Representatives Dean Cannon, and the local legislative delegation.

SECTION 3. The City Manager is hereby directed to forward a copy of this Resolution to the over 50 local government jurisdictions who have enacted reasonable regulations attempting to limit the excessive nitrogen and phosphorus entering their local waterways through over fertilization of lawns and similar vegetation, as well as those jurisdictions that are considering such legislation.

SECTION 4. Effective date. This Resolution shall take effect immediately upon adoption.

PASSED in open and regular session of the City Council of the City of Marco Island, Florida, this 21st day of March 2011.

ATTEST:



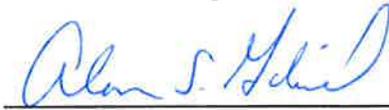
Laura Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Chairman

Reviewed for legal sufficiency:



Alan L. Gabriel, City Attorney



Southwest Florida Regional Planning Council

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(239)338-2550 FAX (239)338-2560 SUNCOM (239)748-2550

March 17, 2011

The Honorable Gary Aubuchon
Chair, Southwest Florida Legislative Delegation and Rules & Calendar Committee
422 The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300

Re: Opposition to State fertilizer rule preemption of local ordinances
House Bill 457 and Senate Bill 606

Dear Representative Aubuchon:

In 2009, a statewide Fertilizer Rule was adopted that provides a baseline for the regulation of residential use of fertilizer with a primary objective of reducing the water quality impacts associated with fertilizer. Unfortunately, this adopted rule was not stringent enough to protect water quality in South Florida, particularly in aquatic preserves, national estuaries, coastal estuarine waters and natural wetlands and waterbodies that have naturally low levels of nutrients. The existing rule provided opportunities to local governments to adopt stricter standards and grandfathered existing local government ordinances that provided better protections for the waters and economy of Southwest Florida.

The Southwest Florida Regional Planning Council (SWFRPC) understands that HB 457 and SB 606 include language that would preempt local governments' authority to protect these valuable resources and the thousands of jobs associated with the tourism, fisheries, and development industries associated with excellent water quality, clean beaches and a healthy environment. Both HB 457 and SB 606 raise barriers to local governments' ability to adopt fertilizer rules stricter than the State's standard based on the scientifically established needs for protected waterbodies. This proposed legislation comes without funding to implement the weaker statewide standards. This proposed legislation creates financial burdens on the essential implementation of the Impaired Waters Rule, businesses and utilities that depend upon clean waters and local governments that are prepared to enforce their own standards. Also, the proposed legislation violates state standards deferring to home rule and do not grandfather prior adopted local government fertilizer rules.

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Within the SWFRPC region, local governments consider the regulation of residential fertilizer to be one of the important tools available to them to meet water quality standards in water bodies that have Total Maximum Daily Loads (TMDLs) imposed.

Fertilizer regulations should acknowledge the impacts on water quality from excess nutrients due to the misapplication of fertilizer. Florida Department of Environmental Protection (FDEP) and the South Florida Water Management District (SFWMD) are excellent sources for solid scientific information on these issues. Moreover, any improvements to the existing fertilizer regulations should be consistent with the SWFRPC's Fertilizer Resolution, which has gone through an extensive scientific vetting process by the Florida Department of Environmental Protection, the Florida Department of Agriculture and Consumer Services, the University of Florida and the Institute of Food and Agricultural Services Cooperative Extension, and many local and statewide representatives of fertilizer businesses.

(http://www.swfrpc.org/content/LWCW/Final_Fertilizer_Resolution_031507.pdf)

For the State of Florida to even consider preempting local communities from establishing their own standards borders on infringement of local home rule. One statewide standard for fertilizer control will not work because every locality has its own unique water quality needs. Florida's rules already acknowledge locality uniqueness in the TMDL process, where stormwater permitting requirements are very specific, focusing area by area, watershed by watershed, stream by stream and estuary by estuary to determine precise regulatory requirements to bring water quality levels, including nutrients, to an acceptable standard. Finally, the cost to *prevent* fertilizer pollution is far less than the funds that will be required to clean up our waters *after* the fact.

The Southwest Florida Regional Planning Council has unanimously voted to oppose any amendments to the existing fertilizer regulations that would pre-empt local governments' oversight and regulation of fertilizer and thus impair the implementation of adopted local government fertilizer regulations and ordinances.

We live in a State surrounded by and dependent on water, where pristine beaches and estuaries are among our greatest assets. The health and economy of southwest Florida depends upon the quality of the waters where our citizens fish, recreate and live. Now is the time to address water quality as our priority, not to weaken the protections we have undertaken. Our environment, tourism, economy and our very way of life are at stake.

TO: Representative Gary Aubuchon
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We are looking to your office for the leadership required to protect and support fertilizer regulations that improve, not impair, water quality and truly protect Florida.

Sincerely,

SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL

A handwritten signature in cursive script, appearing to read "Charles Kiester".

Charles Kiester
Chair

CK/JB/nlg

TO: Representative Gary Aubuchon
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cc: Representative Matt Caldwell, Florida House of Representatives – District 73
Representative Denise Grimsley, Florida House of Representatives – District 77
Representative Doug Holder, Florida House of Representatives – District 70
Representative Matt Hudson, Florida House of Representatives – District 101
Representative Paige Kreegel, Florida House of Representatives – District 72
Representative Jeanette Nunz, Florida House of Representatives – District 112
Representative Kathleen Passidomo, Florida House of Representatives – District 76
Representative Ray Pilon, Florida House of Representatives – District 69
Representative Kenneth Roberson, Florida House of Representatives – District 71
Representative Darryl Rouson, Florida House of Representatives – District 55
Representative W. Greg Steube, Florida House of Representatives – District 67
Representative Trudi Williams, Florida House of Representatives – District 75

Senator JD Alexander, Florida Senate – District 17
Senator Lizbeth Benacquisto, Florida Senate – District 27
Senator Michael Bennett, Florida Senate – District 21
Senator Larcenia Bullard, Florida Senate – District 39
Senator Nancy Detert, Florida Senate – District 23
Senator Garrett Richter, Florida Senate – District 37

Representative Steve Crisafulli, Chair, Agriculture and Natural Resources Subcommittee
Representative Ritch Workman, Chair, Community and Military Affairs
Senator Charles S. Dean, Chair, Committee on Environmental Preservation and Conservation
Senator Michael Bennett, Chair, Committee on Community Affairs
Senator Gary Siplin, Chair, Committee on Agriculture

Governor Rick Scott
Attorney Pam Bondi, Florida Attorney General
Hon. Adam Putnam, Director - Florida Department of Agriculture & Consumer Services
Hon. Herschel Vinyard, Secretary - Florida Department of Environmental Protection
Hon. Joe Collins, Chair - South Florida Water Management District
Ms. Carol Wehle, Executive Director - South Florida Water Management District
Hon. Ronald Oakley, Chair - Southwest Florida Water Management District
Mr. Dave Moore, Executive Director - Southwest Florida Water Management District

Ms. Terry Joseph, Executive Director - West Florida Regional Planning Council
Mr. Charles Blume, Executive Director - Apalachee Regional Planning Council
Mr. Scott Koons, Executive Director - North Central Florida Regional Planning Council
Mr. Brian Teeple, Executive Director - Northeast Florida Regional Planning Council
Mr. Michael Moehlman, Executive Director - Withlacoochee Regional Planning Council
Mr. Philip Laurien, Executive Director - East Central Florida Regional Planning Council
Ms. Patricia Steed, Executive Director - Central Florida Regional Planning Council
Mr. Manny Pumariega, Executive Director - Tampa Bay Regional Planning Council
Mr. Michael Busha, Executive Director - Treasure Coast Regional Planning Council
Mr. Jack Osterholt, Interim Executive Director - South Florida Regional Planning Council