

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

BILL: CS/SB 1748

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Stewart

SUBJECT: Onsite Sewage Treatment and Disposal System Inspections

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1748 requires the Department of Health (DOH), by January 1, 2019, to identify and locate all onsite sewage treatment and disposal systems (OSTDS) in the state; update the current database of OSTDSs with the new information; and generate and submit, to the Governor and the Legislature, a report from the database which includes:

- The total number of OSTDSs in the state;
- The number of OSTDSs in each county; and
- A statewide map of the systems.

The bill also requires a seller of property to provide a prospective purchaser with a disclosure summary before or at the execution of the contract for sale if the property contains or will contain an OSTDS. The summary must be conspicuous, in boldface type, and in a form as stated in the bill. Finally, the bill requires that the prospective purchaser acknowledge in writing the receipt of the summary.

II. Present Situation:

Government-mandated evaluations and inspections program for onsite sewage treatment and disposal systems (OSTDS) at the point of sale in a real estate transaction are prohibited by law, and may not be mandated by any governmental agency, county or municipality in the state.¹ If a

¹ Section 381.0065, F.S.

county or municipality develops and adopts an ordinance to implement an OSTDS inspection and evaluation program, the program may not deviate from the requirements in s. 381.00651, F.S., which includes the prohibition against government-mandated point-of-sale inspections.²

Each person in the state generates approximately 100 gallons of domestic wastewater³ per day.⁴ This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.⁵ In Florida, one of the systems utilized to treat domestic wastewater is an OSTDS,⁶ commonly referred to as a septic tank.⁷ Oversight of OSTDSs is handled by the Environmental Health Section of the Florida Department of Health (DOH) in each county.⁸

OSTDSs are required to be permitted and inspected by DOH before they are placed into operation.⁹ OSTDSs are required to be located and installed so that with proper maintenance the systems function in a sanitary manner, do not create sanitary nuisances or health hazards and do not endanger the safety of any domestic water supply, groundwater or surface water. Sewage waste and effluent from OSTDSs may not be discharged onto the ground surface or directly or indirectly discharged into ditches, drainage structures, ground waters, surface waters, or aquifers.¹⁰

Number of OSTDSs

There are approximately 2.1 million properties that use an OSTDS in Florida.¹¹ Some of these parcels contain more than one OSTDS. Consequently, DOH regulates approximately 30 percent of the state's domestic wastewater from an estimated 2.6 million OSTDSs.¹² This data was gathered from the Florida Water Management Inventory Project (Inventory Project).¹³

² Florida Department of Health, *Agency Analysis of 2017 HB 285*, 2 (Mar. 2, 2017).

³ "Domestic wastewater" is defined in s. 367.021(5), F.S., as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

⁴ DEP's Domestic Wastewater Program, available at <http://www.dep.state.fl.us/water/wastewater/dom/index.htm> (last visited April 16, 2017).

⁵ Sections 381.0065(1) and 403.021, F.S.

⁶ Section 381.0065(2)(k), F.S., defines an "onsite sewage treatment and disposal system" as a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.

⁷ Section 381.0065(2)(k) and (3), F.S.; Fla. Admin. Code Chs. 62-600 and 62-701.

⁸ Sections 381.006(7) and 381.0065, F.S.; Fla. Admin. Code R. 62-600.120; DEP's *Wastewater - Septic Systems*, available at <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm> (last visited Apr. 17, 2017).

⁹ Section 381.0065(4), F.S.; Fla. Admin. Code R. 64E-6.003, Fla. Admin. Code R. 64E-6.004.

¹⁰ Fla. Admin. Code R. 64E-6.005.

¹¹ Florida Department of Health, *Agency Analysis of 2017 HB 285*, 3-4 (Mar. 2, 2017).

¹² DOH's *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited April 16, 2017).

¹³ Florida Department of Health, *Florida Water Management Inventory Project*, available at: <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/flwmi/index.html> (last visited April 16, 2017).

DOH has been working on the Inventory Project since April 2014 with federal funding support from the Environmental Protection Agency (EPA) and the Centers for Disease Control (CDC).¹⁴ These efforts also include state funding support from the Onsite Sewage Program. The Inventory Project primarily uses three main data source categories:

- Compiled county property appraiser data from the Florida Department of Revenue;
- Data in multiple formats submitted voluntarily from hundreds of cooperating Department of Environmental Protection regulated wastewater treatment facilities; and
- Data from the DOH Environmental Health Database system containing permitting and inspection records for regulated entities.¹⁵

According to DOH, after compiling all Inventory Project data sources, a determination is made for every property in the state regarding the drinking water source (private or public water supply) and wastewater treatment method (OSTDS or sewer). Project information and maps are available on the DOH website.¹⁶

Real Estate Disclosures

There are several disclosures required in real estate transactions (e.g., community development district disclosure,¹⁷ ad valorem tax disclosure,¹⁸ homeowners' association disclosure,¹⁹ subsurface rights disclosure,²⁰ radon gas disclosure²¹), but there is no requirement that a seller of real property inform a prospective purchaser of the existence of an OSTDS on the property.

A permit issued and approved by DOH for the installation, modification, or repair of an OSTDS must transfer with the title to the property in a real estate transaction. A title may not be encumbered at the time of transfer by new permit requirements by a governmental entity for an OSTDS which differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired. An inspection of a system may not be mandated at the point of sale in a real estate transaction.²² However, nothing prohibits a voluntary inspection of an OSTDS.

Voluntary OSTDS Inspections

Designed to assess the condition of a system at a particular moment in time and identify substandard systems (e.g., systems without drainfields), the DOH *Procedure for Voluntary Inspection and Assessment of Existing Systems* must be applied in a voluntary OSTDS inspection, with limited exceptions (e.g., an increase in sewage flow or change in sewage characteristics, or failure of the system, for aerobic treatment units and performance-based

¹⁴ Florida Department of Health, *Agency Analysis of 2017 CS/CS/HB 285*, 2 (Apr. 4, 2017).

¹⁵ *Id.*

¹⁶ Information on the *Florida Water Management Inventory Project* is available at: <http://floridahealth.gov/flwmi> (last visited Apr. 16, 2017). Information on *Florida Water Management Inventory Project* maps is available at: <https://gis.flhealth.gov/flwmi> (last visited April 17, 2017).

¹⁷ Section 190.048, F.S.

¹⁸ Section 689.261, F.S.

¹⁹ Section 720.401, F.S.

²⁰ Section 689.29, F.S.

²¹ Section 404.056(5), F.S.

²² Section 381.0065(4)(w), F.S.

treatment systems).²³ The inspection is not designed to determine precise code compliance or provide information to demonstrate that the system will adequately serve the use to be placed upon it by the existing or subsequent owner.

DOH employees are prohibited from performing these inspections. The inspection must be conducted by a master septic tank contractor, registered septic tank contractor, state-licensed plumber, or a certified environmental health professional.²⁴ The inspector must provide the person requesting the inspection with a copy of DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* and written notice of their right to request an inspection based on part or all of the standards.²⁵ Unless the person requesting the inspection specifies in writing that parts of a system be omitted, the inspection will include a tank inspection, a drainfield inspection, an inspection of pumps, siphons, and alarms if part of the system, and a written assessment of the condition of the system.²⁶

III. Effect of Proposed Changes:

CS/SB 1748 amends statutory provisions regulating onsite sewage treatment and disposal systems (OSTDS) by requiring the Department of Health (DOH), by January 1, 2019, to:

- Identify all OSTDSs in the state, the identification to include, at a minimum, the location of the systems and any other available information DOH deems appropriate;
- Incorporate and update the information regarding the OSTDSs in the current database of OSTDSs; and
- Generate and submit, to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a report from the database which include, at a minimum:
 - The total number of OSTDSs in the state;
 - The number of OSTDSs in each county; and
 - A statewide map of the systems.

The bill also creates a new statutory section relating to conveyances of land that requires a seller of property to provide a prospective purchaser with a disclosure summary before or at the execution of the contract for sale if the property contains or will contain an OSTDS. The new section provides that the term “onsite sewage treatment and disposal system” has the same meaning as in s. 381.0065, F.S. The prospective purchaser also must acknowledge in writing the receipt of the disclosure summary. The bill requires that the disclosure summary be conspicuous, in boldface type, and in a form substantially similar to the following:

²³ Fla. Admin. Code R. 64E-6.001(5); DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* (May 2000), http://lee.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/installers/_documents/ostds-voluntary-inspections.pdf (last visited Apr. 17, 2017).

²⁴ *Id.*; see s. 381.0101, F.S., for environmental health professionals.

²⁵ Fla. Admin. Code R. 64E-6.001(5).

²⁶ DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* (May 2000), http://lee.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/installers/_documents/ostds-voluntary-inspections.pdf (last visited Apr. 17, 2017).

ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEM
DISCLOSURE SUMMARY

THIS PROPERTY CONTAINS AN ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEM. WHEN NOT PROPERLY DESIGNED, CONSTRUCTED, AND MAINTAINED, SUCH SYSTEMS ARE OFTEN SOURCES OF SIGNIFICANT NUTRIENT AND OTHER TYPES OF POLLUTION IN SURFACE WATER AND GROUNDWATER. SYSTEMS SHOULD BE REGULARLY INSPECTED AND MAINTAINED TO MINIMIZE SYSTEM FAILURE AND THE DISCHARGE OF POLLUTION. ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE LOCAL COUNTY HEALTH DEPARTMENT.

... (Purchaser's Initials) ...

The bill takes effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The costs to sellers of property of preparing the disclosure summary required by the bill are anticipated to be insignificant.

C. Government Sector Impact:

DOH will incur costs to identify all OSTDSs in the state and to generate the report required by the bill. In order to identify and map all of the state's OSTDSs, DOH anticipates needing to tie the Bureau of Environmental Health's Environmental Health Database (EHD) to the Inventory Project so that permitting data can display on mapped parcels. This will result in additional programming and upgrade costs.

DOH estimates a one-time cost of \$325,000 to:

- Upgrade the EHD to share real-time data with the inventory; and
- Enhance Inventory Project mapping tools to publicly display the EHD permitting and inspection data.

DOH also estimates ongoing annual costs of \$350,000 to keep the Inventory Project and EHD information up-to-date as new properties are developed and existing properties are converted from sewer to septic.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 689.30 of the Florida Statutes.

This bill substantially amends section 381.0065 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on April 19, 2017:

The amendment removes the substance of the bill and replaces it with the following:

- Requires the Department of Health, by January 1, 2019, to:
 - Identify all OSTDSs in the state, by location and any other appropriate available information;
 - Incorporate the information into, and update, the current database of OSTDSs; and
 - Generate and submit, to the Governor and the Legislature, a report from the database which includes:
 - The total number of OSTDSs in the state;
 - The number of OSTDSs in each county; and
 - A statewide map of the systems.
- Requires a seller of property to provide a prospective purchaser with a disclosure summary before or at the execution of the contract for sale if the property contains or will contain an OSTDS.
- The prospective purchaser must acknowledge in writing the receipt of the summary.
- The summary must be conspicuous, in boldface type, and in a form as stated in the amendment, all in caps and to wit:
 - The property contains an OSTDS.

²⁷ Florida Department of Health, *Agency Analysis of 2017 CS/CS/HB 285*, 7 (Apr. 4, 2017).

- When not properly designed, constructed, and maintained, such systems are often sources of significant nutrient and other pollution in surface water and groundwater.
- Systems should be regularly inspected and maintained.
- More information may be obtained from the local county health department.
- Provides a statutory reference for the definition of onsite sewage treatment and disposal system.
- Changed the effective date of the bill to October 1, 2017.

B. Amendments:

None.