

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: SB 1748

INTRODUCER: Senator Stewart

SUBJECT: Onsite Sewage Treatment and Disposal System Inspections

DATE: April 18, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1748 requires that an inspection of an onsite sewage treatment and disposal system (OSTDS) must be performed by one or more of the following:

- A septic tank contractor or master septic tank contractor registered under Part III of ch. 489, F.S.;
- A professional engineer who has wastewater treatment system experience and is licensed under ch. 471, F.S.; or
- An environmental health professional certified under ch. 381, F.S., in the area of onsite sewage treatment and disposal system evaluation.

The bill requires that an OSTDS inspection be completed before any real estate transaction involving the sale of property that is within 1,000 feet of Florida waters. It also establishes requirements for such OSTDS inspections of systems on property within 1,000 feet of Florida waters, including timelines for the buyer to make needed repairs to an OSTDS and administrative penalties for failing to remedy deficiencies within those timelines.

SB 1748 requires the Department of Health (DOH) to adopt rules to implement the OSTDS inspection requirements for properties within 1,000 feet of Florida waters, including adopting a standard for when repairs are required based on overall OSTDS regulation.

Finally, the bill reenacts paragraph (a) of subsection (6) of s. 381.00651, F.S., which requires an evaluation and assessment of each OSTDS once every 5 years and prohibits a local government ordinance from mandating such an evaluation at the point of sale in a real estate transaction.

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 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

¹ Section 381.0065, F.S.

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

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

¹⁵ Florida Department of Health, *Agency Analysis of 2017 CS/CS/HB 285*, 2 (Apr. 4, 2017).

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.

characteristics, or failure of the system, for aerobic treatment units and performance-based 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:

SB 1748 requires that an inspection of an onsite sewage treatment and disposal system (OSTDS) must be performed by one or more of the following:

- A septic tank contractor or master septic tank contractor registered under Part III of ch. 489, F.S.;
- A professional engineer who has wastewater treatment system experience and is licensed under ch. 471, F.S.; or
- An environmental health professional certified under ch. 381, F.S., in the area of onsite sewage treatment and disposal system evaluation.

The bill requires that an OSTDS inspection be completed before any real estate transaction involving the sale of property that is within 1,000 feet of Florida waters. It also establishes the following requirements for such OSTDS inspections of systems on property within 1,000 feet of Florida waters:

- The inspection of any OSTDS on the property is valid for one year after the date the inspection is finished;
- The inspection must include fully emptying the onsite sewage treatment and disposal system and cleaning the walls of the system in order to conduct a full inspection of its surfaces;
- If the inspection indicates that repairs are needed to the OSTDS, the inspector must notify the Department of Health (DOH) of the need for such repairs;
- Upon the closing of a real estate transaction involving a property needing such repairs, the seller must notify DOH of the sale;

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://indianriver.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/_documents/voluntary-inspection-form-ocrd.pdf (last visited Apr. 17, 2017).

- The buyer of the property has 6 months after the date of sale to make such repairs, however, DOH may, upon the request of the buyer, grant a reasonable extension of time for such repairs for ongoing construction or renovations occurring on the property;
- If the seller obtains more than 1 inspection within 1 year before the closing of the real estate transaction, DOH must determine, based on a review of all inspections submitted during this period, the repairs to the system required to be made by the buyer and provide notice of its determination to the buyer, who has 6 months from the date of receipt of such notice to make the repairs;
- After the expiration of the time prescribed for the buyer to make repairs to the system, DOH must inspect the system to ensure that the repairs have been completed properly; and
- If DOH finds that the system has not been repaired to sufficiently remedy the system deficiencies noted in the initial inspection, DOH must notify the buyer of such deficiency within 15 days of the finding of insufficient repair, after which the buyer has 45 days to remedy the deficiency. Upon reinspection, if DOH finds that the buyer still has failed to remedy the deficiency, the buyer is subject to an administrative penalty of up to \$500 and an ongoing penalty of \$10 per day until the buyer reasonably demonstrates, to the satisfaction of DOH, that repair work to remedy the deficiency has been initiated and will be properly and timely completed.

SB 1748 requires DOH to adopt rules to implement the OSTDS inspection requirements for properties within 1,000 feet of Florida waters, including adopting a standard for when repairs are required based on overall OSTDS regulation.

The bill reenacts paragraph (a) of subsection (6) of s. 381.00651, F.S., which requires an evaluation and assessment of each OSTDS once every 5 years and prohibits a local government ordinance from mandating such an evaluation at the point of sale in a real estate transaction.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 direct economic impact on the private sector is indeterminate. According to DOH, the cost of an OSTDS inspection is estimated to be between \$100 and \$500.²⁷ If more OSTDS inspections occur as a result of the bill or the requirement that an OSTDS inspection be completed before the sale of a property within 1,000 feet of Florida waters, this would generate business for those that perform OSTDS inspections. The bill may also generate business for those that repair or replace OSTDSs. Property owners who choose to voluntarily inspect an OSTDS system may benefit in having knowledge of the condition and performance of the OSTDS in their consideration of marketing the property. The bill may lead to more repairs that may reduce system failures.

C. Government Sector Impact:

The fiscal impact to state government revenues is indeterminate. According to DOH, a repair and inspection permit fee is \$300.²⁸ If the bill's requirements result in an inspection of an OSTDS, which shows the OSTDS is in need of repair and the OSTDS is subsequently repaired, then DOH may see an increase in revenues from repair and inspection permit fees.

The bill requires DOH to adopt rules to implement the OSTDS inspection requirements for properties within 1,000 feet of Florida waters. This will result in indeterminate costs to the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.0065 of the Florida Statutes.

This bill reenacts section 381.00651 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

²⁷ Florida Department of Health, *Agency Analysis of 2017 HB 285*, 4 (Mar. 2, 2017).

²⁸ DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* (May 2000), http://indianriver.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/_documents/voluntary-inspection-form-ocrd.pdf (last visited Apr. 17, 2017).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
