

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 Environment and Natural Resources

BILL: SB 1022

INTRODUCER: Senator Albritton

SUBJECT: Onsite Treatment and Disposal Systems

DATE: March 25, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Pre-meeting
2.			AEG	
3.			AP	

I. Summary:

SB 1022 transfers the Department of Health’s program for onsite sewage treatment and disposal systems to the Department of Environmental Protection (DEP) through a type two transfer. The bill requires DEP to convene an onsite sewage treatment and disposal systems technical advisory committee. DEP is required to adopt rules, taking into account the recommendations of the technical advisory committee, which are intended to increase the availability of cost-effective, low-maintenance, nutrient-removing onsite systems in the marketplace.

The bill requires that consolidated water management district annual plans be submitted to the Office of Economic and Demographic Research and include any septic to sewer conversion and septic tank remediation projects when listing the projects identified to implement Basin Management Action Plans or recovery and prevention strategies. The bill requires DEP to submit to the Office of Economic and Demographic Research the project cost estimates required for new or revised Basin Management Action Plans, including any septic to sewer conversion and septic tank remediation projects costs.

The bill eliminates the Department of Health’s research review and advisory committee and technical review and advisory panel that advise and assist the department on onsite sewage treatment and disposal systems.

II. Present Situation:

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDS) (commonly referred to as “septic systems”) can contain any one or more of the following components: a septic tank; a subsurface drainfield; an aerobic treatment unit; a graywater tank; a laundry wastewater tank; a grease interceptor; a pump tank; a waterless incinerating or organic waste-composting toilet; and a

sanitary pit privy.¹ OSTDSs generally consist of two basic parts: the septic tank and the drainfield.² The septic tank is a watertight box with an inlet pipe and an outlet pipe.³ Wastewater flows from the building to the septic tank through the sewer pipe. The septic tank treats the wastewater naturally by holding it in the tank long enough for solids and liquids to separate. Solids heavier than water settle at the bottom of the tank forming a layer of sludge, leaving a layer of partially clarified wastewater. The layers of sludge remain in the septic tank where bacteria found naturally in the wastewater work to break down the solids. The sludge that cannot be broken down remains in the tank until the tank is pumped. The layer of clarified liquid flows from the septic tank to the drainfield, which helps to uniformly distribute the wastewater in the drainfield. The drainfield is generally a series of trenches lined with gravel or coarse sand, buried one to three feet below ground. Perforated pipes run through the trenches to distribute the wastewater. The drainfield treats the wastewater by allowing it to slowly trickle from the pipes out into the gravel and down through the soil, which acts as a biological filter to remove pathogens and excess nutrients.⁴

The Department of Health (DOH) administers OSTDS programs, develops statewide rules, and provides training and standardization.⁵ DOH must inspect and issue a permit for an OSTDS prior to construction, modification, or operation.⁶ Sewage waste and effluent from OSTDSs may not be discharged onto the ground or into groundwaters, surface waters, or aquifers.⁷ The permitting and inspection of OSTDSs is regulated by the environmental health section of county health departments and DOH's Bureau of Onsite Sewage Programs.⁸ County health departments are described as state-local partnerships, and they are units of DOH that are located in each of Florida's 67 counties.⁹ DOH has an interagency agreement with the Department of Environmental Protection (DEP) which clarifies responsibilities between the two departments.¹⁰

¹ DEP, *Septic Systems*, <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Mar. 21, 2019); See s. 381.0065(2)(k), F.S. "Onsite sewage treatment and disposal system" is defined 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 chapter 403."

² DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Mar. 21, 2019).

³ West Virginia University Energy Institute, National Environmental Services Center, *What is a Septic System? How Do I Maintain One?*, http://www.nesc.wvu.edu/subpages/septic_defined.cfm (last visited Mar. 21, 2019).

⁴ *Id.*

⁵ Section 381.006(7), F.S.; Section 381.0065(3), F.S.

⁶ Section 381.0065(4), F.S.; Fla. Admin. Code Chapter 64E-6.

⁷ Fla. Admin. Code R. 64E-6.005.

⁸ Fla. Admin. Code Chapter 64E-6; DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Mar. 21, 2019); DEP, *Septic Systems*, <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Mar. 21, 2019).

⁹ Chapter 154, part I, F.S.; DOH, *County Health Departments*, <http://www.floridahealth.gov/programs-and-services/county-health-departments/index.html> (last visited Mar. 21, 2019).

¹⁰ *Interagency Agreement Between the Department of Environmental Protection and the Department of Health for Onsite Sewage Treatment and Disposal Systems* (Sept. 30, 2015), available at https://floridadep.gov/sites/default/files/HOHOSTDS_9_30_15.pdf (last visited Mar. 24, 2019).

DOH established the Technical Review and Advisory Panel to assist in the adoption of rules for OSTDSs and to review and comment on any legislation or existing policy related to OSTDSs.¹¹ All rules proposed by DOH that relate to OSTDSs must be presented to the panel for review and comment prior to adoption.¹² DOH's research and review advisory committee advises DOH on directions for new research, reviews and ranks proposals for research contracts, and reviews and provides comments on draft research reports regarding the OSTDS industry.¹³

There are an estimated 2.6 million OSTDS systems in Florida, providing wastewater disposal for 30 percent of the state's population.¹⁴ In some areas, development is dependent on OSTDSs due to the cost and time it takes to install central sewer systems. For example, in rural areas and low-density developments, central sewer systems are not cost effective. Less than one percent of septic systems in Florida are actively managed.¹⁵ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.¹⁶ In Florida, approximately 30-40 percent of the nitrogen levels are reduced in a system that is installed 24 inches or more from groundwater.¹⁷ This leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.¹⁸

Total Maximum Daily Loads and Basin Management Action Plans

A total maximum daily load (TMDL), which must be adopted by rule, is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards.¹⁹ Waterbodies or sections of waterbodies that do not meet the established water quality standards are deemed impaired. Pursuant to the federal Clean Water Act, DEP is required to establish a TMDL for impaired waterbodies.²⁰ A TMDL for an impaired waterbody is defined as the sum of the individual waste load allocations for point sources and the load allocations for nonpoint sources and natural background.²¹ Waste load allocations are pollutant loads attributable to existing and future point sources. Load allocations are pollutant loads attributable to existing and future nonpoint sources. Point sources are discernible, confined,

¹¹ Section 381.0068, F.S.

¹² Section 381.0068(2), F.S.

¹³ Section 381.0065(4)(o), F.S.

¹⁴ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Mar. 21, 2019).

¹⁵ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/2008-11-06.pdf> (last visited Mar. 21, 2019). The report begins on page 58 of the PDF.

¹⁶ *Id.*

¹⁷ DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/draftlegreportsm.pdf> (last visited Mar. 6, 2019).

¹⁸ University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Feb. 2014), available at <http://edis.ifas.ufl.edu/pdf/SS/SS55000.pdf> (last visited Mar. 21, 2019).

¹⁹ DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/dear/water-quality-evaluation-tmdl/content/total-maximum-daily-loads-tmdl-program> (last visited Mar. 21, 2019).

²⁰ Section 403.067, F.S.

²¹ Section 403.031(21), F.S.

and discrete conveyances including pipes, ditches, and tunnels. Nonpoint sources are unconfined sources that include runoff from agricultural lands or residential areas.²²

DEP is the lead agency in coordinating the development and implementation of TMDLs.²³ Basin management action plans (BMAPs) are one of the primary mechanisms DEP uses to achieve TMDLs.²⁴ BMAPs are plans that use existing planning tools to address the entire pollution load, including point and nonpoint discharges, for a watershed. BMAPs generally include:

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices and non-regulatory and incentive-based programs, including cost sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.²⁵

DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.²⁶ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations. Each new or revised BMAP must include a list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project.²⁷

Office of Economic and Demographic Research

The Office of Economic and Demographic Research (EDR) is a research arm of the Florida Legislature, principally focused on forecasting economic and social trends that affect policy making, revenues, and appropriations.²⁸ EDR also researches projects for legislative committees, and works with agencies, statewide commissions, and task forces that have legislators among their membership to assess the impact of proposals they are considering submitting to the Legislature.²⁹ EDR provides information related to a broad array of subjects.³⁰

In 2016, the Legislature passed a law requiring EDR to conduct an annual assessment of Florida's water resources and conservation lands.³¹ The assessment must include historical and

²² Fla. Admin. Code R. 62-620.200(37). "Point source" is defined as "any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged."

²³ Section 403.067(7)(b), F.S.

²⁴ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Mar. 21, 2019).

²⁵ Section 403.067(7), F.S.

²⁶ *Id.*

²⁷ Section 403.067(7)(a)4.c., F.S.

²⁸ EDR, *Welcome*, <http://edr.state.fl.us/Content/> (last visited Mar. 24, 2019).

²⁹ EDR, *Functions of EDR*, <http://edr.state.fl.us/Content/about/functions.cfm> (last visited Mar. 24, 2019).

³⁰ Section 216.136, F.S.

³¹ Ch. 2016-1, Laws of Fla.; see s. 403.928, F.S.; see EDR, *Annual Assessment of Florida's Water Resources and Conservation Lands, 2019 Edition* (2019), available at http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2019Edition.pdf (last visited Mar. 24, 2019).

current expenditures, and projections of future expenditures, by government entities and public and private utilities for water quality protection and restoration.³² Various agencies and local governmental entities are directed to aid EDR with their respective areas of expertise and provide EDR access to any information, confidential or otherwise, that EDR considers necessary to complete the assessment.³³ The assessment must be submitted to the Legislature by January 1 each year.³⁴ EDR has begun the process of evaluating the data and methodology used to forecast expenditures that are necessary to comply with federal and state laws and regulations governing water quality.³⁵ EDR indicates that subsequent editions of its Annual Assessment of Florida's Water Resources and Conservation Lands will further analyze the future expenditures necessary to comply with laws governing water supply and water quality.³⁶

Type Two Transfers

Florida law defines a type two transfer as the merging of an existing department, program, or activity into another department.³⁷ Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held previous to the transfer. The program or activity also retains its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between the program and the revenue source is retained. Unless otherwise provided by law, the administrative rules of any department involved in the transfer remain in effect until specifically changed.³⁸

Consolidated Annual Reports

By March 1 of each year, Florida's water management districts are required to submit a consolidated annual report to the Governor, the President of the Senate, the Speaker of the House, and DEP.³⁹ The water management districts must also provide copies of the report to the chairs of the legislative committees having substantive or fiscal jurisdiction over water management districts and the governing boards of all county entities having jurisdiction or deriving any funds for operations of the district.⁴⁰ The report must also be made available to the public in either a printed or electronic format.⁴¹ The consolidated annual reports inform the state about the status of each district's programs and water resources, and the reports must contain numerous elements including statutorily required plans and reports.⁴²

³² Section 403.928(1)(a)2., F.S.

³³ Section 403.928(5), (6), F.S.

³⁴ Section 403.928(7), F.S.

³⁵ EDR, *Annual Assessment of Florida's Water Resources and Conservation Lands, 2019 Edition*, 2 (2019), available at http://edr.state.fl.us/Content/natural-resources/LandandWaterAnnualAssessment_2019Edition.pdf (last visited Mar. 24, 2019).

³⁶ *Id.* at 3.

³⁷ Section 20.06(2), F.S.

³⁸ *Id.*

³⁹ Section 373.036(7)(a), F.S.

⁴⁰ *Id.*

⁴¹ *Id.*; see Northwest Florida Water Management District, *Consolidated Annual Reports*, <https://www.nwfwater.com/Data-Publications/Reports-Plans/Consolidated-Annual-Reports> (last visited Mar. 21, 2019).

⁴² Section 373.036(7)(b)–(e), F.S.

III. Effect of Proposed Changes:

Section 1 transfers all of the Department of Health's (DOH) powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, existing contracts, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the regulation of onsite sewage treatment and disposal systems (OSTDS) and relating to DOH's onsite sewage program to the Department of Environmental Protection (DEP). The bill transfers the program through a type two transfer.

Section 2 amends s. 373.036, F.S., which requires DEP and the water management districts to develop certain plans for water resources and specifies what the plans must include.

The bill requires each water management district to submit its consolidated annual report to the Office of Economic Demographic Research (EDR), in addition to the recipients under existing law. The bill requires that the consolidated water management district annual plans include any septic to sewer conversion and septic tank remediation projects when listing the specific projects identified to implement Basin Management Action Plans or to implement recovery and prevention strategies.

Section 6 amends s. 381.0065, F.S., which pertains to the regulation of OSTDSs. The bill eliminates DOH's research review and advisory committee for OSTDSs. The bill requires DEP to convene a technical advisory committee for OSTDSs. The bill requires the technical advisory committee to:

- Consist of at least five, but no more than nine, members representing the home building industry, the real estate industry, the OSTDS industry, septic tank contractors, engineers, and local governments. Members are required to provide for their own expenses
- Assist in developing rules that increase the availability of nutrient-moving onsite systems in the marketplace, including such systems that are cost-effective, low maintenance, and reliable.
- Consider and recommend regulatory options, such as fast-track approval, prequalification, and expedited permitting to facilitate the introduction and use of nitrogen moving systems that have been reviewed and approved by a national agency or organization, such as NSF/ANSI 245 systems approved by NSF International.⁴³
- Dissolve on July 1, 2020.

The bill requires DEP to initiate rulemaking by January 1, 2020, and adopt rules, taking into account the recommendations of the technical advisory committee, which are intended to increase the availability of cost-effective, low-maintenance, nutrient-removing onsite systems in the marketplace. The bill's subsection of s. 381.0065, F.S., requiring the technical advisory committee and the rulemaking dissolves on July 1, 2020.

⁴³ The Public Health and Safety Organization, *NSF/ANSI 245: Nitrogen Reduction*, available at <http://www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater/nitrogen-reduction> (last visited Mar. 2, 1 2019). National Sanitation Foundation/American National Standards Institute (NSF/ANSI) 245 is a certification applied to a OSTDSs that defines total nitrogen reduction requirements. An NSF/ANSI 245 certified system covers residential wastewater treatment systems with rated capacities between 400 and 1,500 gallons per day. To achieve certification, treatment systems must produce an acceptable quality of effluent during a six-month (26-week) test.

Section 8 repeals s. 381.0068, F.S., which requires DOH to establish a technical review and advisory panel to assist DOH with rule adoption and contains requirements for the members and operations of the panel. The bill eliminates the technical review and advisory panel under DOH.

Section 9 amends s. 403.067, F.S., pertaining to the establishment and implementation of total maximum daily loads. The bill requires DEP to submit to EDR the project cost estimates required for new or revised Basin Management Action Plans, including any septic to sewer conversion and septic tank remediation projects costs.

Sections 3–8 and 10 of the bill contain conforming changes to the Florida Statutes that implement the bill’s type two transfer of DOH’s onsite sewage program to DEP, contained in section 1 of the bill.

Sections 11–22 of the bill reenact the following provisions of the Florida Statutes for the purpose of incorporating the amendment to s. 373.036, F.S., in section 2 of the bill: ss. 373.026(8)(b); 373.0363(5); 373.042(3); 373.199(7); 373.414(1)(b); 373.4592 (4)(d), (13), and (14); 373.45926(3); 373.4595(6); 373.463(3); 373.470(7); 373.536(6)(a) and (b); and 373.707(8), F.S.

Section 23 states that the act shall take effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill requires DEP to merge into its department a large program transferred from DOH. If the revenue sources for the program do not cover all of the costs associated with the program then this transfer may cause DEP to incur additional costs. The bill also requires DEP to initiate rulemaking, which may cause DEP to incur additional costs. Therefore, the bill may have a negative, indeterminate impact on DEP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.036, 373.807, 381.006, 381.0064, 381.0065, 381.00651, 403.067, and 381.0061.

This bill reenacts the following sections of the Florida Statutes: 373.026(8)(b); 373.0363(5); 373.042(3); 373.199(7); 373.414(1)(b); 373.4592(4)(d), (13), and (14); 373.45926(3); 373.4595(6); 373.463(3); 373.470(7); 373.536(6)(a) and (b); and 373.707(8).

The bill repeals section 381.0068 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.

B. Amendments:

None.