SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 3, 1998 Revised: _____ _____ _____ _____

Subject: Water Quality

	Analyst	Staff Director	Reference	Action
1.	Gee	Voigt	NR	Favorable/CS
2.			WM	
3.				
4.				
5.				

I. Summary:

This bill contains several provisions designed to lead to improved water quality. It requires the Department of Environmental Protection (DEP) and the Department of Health (DOH) to conduct a study to identify the role of onsite sewage treatment and disposal systems (OSTDs) in causing water quality problems and requires the DEP to adopt procedures for determining which waters are nutrient-impaired.

The bill authorizes the DEP to sell loans from the Sewage Treatment Revolving Loan Fund, and authorizes the DEP, water management districts, and local governments to calculate maximum loads for waterbodies, which must be approved by the DEP secretary.

The Department of Health is authorized to adopt rules establishing a program for the bacteriological sampling of beach waters. The authority to issue health advisories due to the results of such sampling is preempted to the department.

This bill substantially amends sections 403.1835 and 403.804 and creates sections 403.0863, 514.095, and an as yet unnumbered section of the Florida Statutes.

II. Present Situation:

The Natural Resources Committee staff completed an interim project entitled “Sewage Treatment Issues in Coastal Areas,” and reported its findings in December 1997. In the report, staff identified and examined federal, state, and local laws relating to water quality issues, reviewed biennial water quality assessments completed by the DEP, and met with state, local, and private sector representatives regarding wastewater treatment facility and OSTD issues.

The report's findings indicated that, while the available evidence indicates that Florida's overall water quality is good, a number of areas have been identified as having poor water quality. Of these, the DEP has isolated several areas where the degradation in water quality is due to elevated nitrate, phosphorus, or chlorophyll levels. Some of these areas contain wastewater treatment facilities that discharge to surface waters; some, however, do not. In fact, the available information leads to the conclusion that, typically, more than one factor is involved in degraded water quality. Wastewater treatment facilities can, and often do, have an impact. OSTDs sited in inappropriate locations, soil conditions, and densities do not function properly in the disposal of wastes. The DEP reports that urban stormwater is a major factor in poor water quality, as is runoff from agricultural and manufacturing operations. Recently, studies have indicated that atmospheric deposition may play a greater factor than previously thought. The concerted effect of some or, all, of the factors identified makes resolution of water quality problems particularly difficult.

The Legislature and water management districts, pursuant to s. 373.453, F.S., the Surface Water Improvement and Management Act (SWIM)), have identified water bodies of regional and statewide significance in need of protection and restoration.

The federal Clean Water Act requires the states to calculate the total maximum load for each constituent of its water quality standards. Although this is not a new requirement, Florida and most other states have yet to do so. Recently, lawsuits have been filed in several states demanding that the Environmental Protection Agency enforce the requirement.

Pursuant to s. 403.1835, F.S., loans for the construction of sewage treatment facilities are made to local governments from the Sewage Treatment Revolving Loan Fund. There have been suggestions that the state ought to leverage these loans by selling them in the financial market at a discount. Although this could result in substantially-increased funds for the program in the short-term, the state would be forgoing increased revenues over time.

The quality of Florida's beaches is a primary reason Florida is one of the top tourist destinations in the world. Media reports over the last few summers have pointed out that many Florida beaches are not routinely tested for bacteriological quality. To respond to this problem and enhance public health protection, the Department of Health has proposed a statewide bacteriological sampling program for Florida's gulf and ocean beaches.

III. Effect of Proposed Changes:

Section 1. This section requires the research review and advisory committee established pursuant to s. 381.0065(4)(n), F.S., to conduct a study to identify the role of OSTDs in causing water quality problems. The study will identify areas of the state which have impaired water quality and need corrective actions to avoid further deterioration in water quality conditions. The DOH's Technical Review and Advisory Committee will approve the parameters of the study, with input from the DEP and the DOH. The departments will provide the necessary staff and support for the study. A final report and recommendations for corrective actions and implementing legislation

must be submitted to the Governor, President of the Senate, and Speaker of the House by January 15, 1999.

Section 2. Section 403.0863, F.S., is created to require the DEP to adopt, by rule, procedures for determining which waters are nutrient-impaired. For these purposes, nutrient impairment will be established using the following criteria, at a minimum:

1. Excessive levels of chlorophyll-a as determined by methods established in department rule;

2. Excessive algal growth potential as determined by methods established in department rule;

3. Nutrient concentrations at levels that cause an imbalance in natural populations of aquatic flora or fauna; and

4. A high trophic state index, as determined by methods established in department rules, which is indicative of eutrophic conditions.

Section 3. Section 403.1835, F.S., is amended to provide intent that the sewage treatment facilities revolving loan program be self-perpetuating. The DEP is authorized to administer the fund's portfolio of loans, including having the authority to sell or pledge the loans, or any portion of the loans, with approval of the Governor, the Treasurer, and the Comptroller, sitting as the State Board of Administration, to ensure compliance with s. 403.1835(1), F.S. The DEP may hire experts to assist the department in the administration of the portfolio of loans. Any such hiring must occur through requests for proposal.

This section also includes projects located within the geographic area encompassed by any SWIM plan adopted pursuant to s. 373.456, F.S., with other types of projects receiving a preference for loans.

The bill requires that the proceeds of any loans sold be deposited into the fund and permits such moneys to be used for administering the fund. Any principal and interest payments with respect to loans held by the fund must be deposited into the fund. The DEP is also authorized to adopt approaches which will help ensure the continuing viability of the fund.

Section 4. Section 403.804, F.S., is amended to allow the DEP, a water management district, or a local environmental program to apply a numeric or narrative water quality standard for a particular constituent adopted by the Environmental Regulation Commission by calculating the constituent's maximum load for a specific water body and implement the maximum load calculation through its permitting process. Prior to implementation of the maximum load:

1. The department, a water management district, or a local program having delegated authority under s. 403.182, F.S., must have prepared a plan of study for the maximum load calculation; and

2. The secretary of the department must have approved the maximum load calculation after notice of proposed agency action under chapter 120, F.S. The secretary's approval of the maximum load calculation is the sole point of entry for a challenge to the maximum load calculation for that watercourse or water body.

The department, a water management district, or a local program having delegated authority under s. 403.182, F.S., shall consider the contributions of both point source and nonpoint source pollutant loads in calculating and implementing a maximum load. The department may, by rule, establish procedures for pollutant trading in areas where a maximum load calculation has been approved. Such procedures may be implemented through permits or other authorizations, must be legally binding, and must result in a higher level of water quality protection than could be achieved in the absence of pollutant trading.

Rule adoption under chapter 120, F.S., is not required to implement the maximum load calculation. The provisions of this section do not alter any applicable state water quality standards or restrict the authority otherwise granted to the department or a water management district under this chapter or chapter 373, F.S.

Section 5. The Department of Health is authorized to establish by rule health standards and procedures for bacteriological sampling of beach waters and to issue beach health advisories.

Section 6. The act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill has no direct impact on the private sector, although testing to ensure the safety of beach waters could benefit tourism over time.

C. Government Sector Impact:

The DEP and DOH will incur undetermined costs in conducting the study required by section 1 of the bill, and the DEP should experience some undetermined costs in promulgating the required rule establishing procedures for determining when a watershed is nutrient-impaired.

The provisions in section 3 allow a type of leveraging of funds to take place in order to make available more funds in the short-term for sewer construction projects. However, over the long-term there will likely be less funds available for sewer construction projects, because the loan portfolio is sold at a discount and therefore less money is returned from the original loan agreement in order to receive the present value of cash.

The Department of Health reports that it will need $250,000 to conduct the monthly sampling of beach waters at two-mile intervals. Approximately 4,200 samples would be taken annually.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.