

**STORAGE NAME:** h0957a.ca

**DATE:** April 12, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
COMMUNITY AFFAIRS  
ANALYSIS**

**BILL #:** HB 957

**RELATING TO:** Onsite Sewage Treatment & Disposal

**SPONSOR(S):** Representative Argenziano

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) HEALTH CARE LICENSING & REGULATION (HFC) YEAS 10 NAYS 0
  - (2) COMMUNITY AFFAIRS (PRC) YEAS 8 NAYS 0
  - (3) FINANCE & TAXATION (FRC)
  - (4) HEALTH & HUMAN SERVICES APPROPRIATIONS (FRC)
  - (5)
- 

**I. SUMMARY:**

The bill provides for the regulation of maintenance entities for performance-based treatment systems and aerobic treatment systems. The bill establishes minimum standards for maintenance entities and requires them to file a surety bond with the department to cover the cost of annual permitting for all systems they have under a maintenance contract.

The bill provides minimum inspection and sampling criteria for performance-based treatment systems and aerobic treatment systems. It revises the operating permit fee for these systems from a current range of \$150 to \$300 to not more than \$50. A fee is established for a maintenance entity permit for performance-based treatment systems.

According to the Department of Health, this bill reduces DOH's revenues by \$120,000 in FY 2000-01 and \$170,000 in FY 2001-02. There is no cost to local government. There will be an annual \$100 savings to homeowners who have ATUs.

**See Part VI, AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES section, for the effect of the amendments traveling with the bill. The amendment adopted by the Committee on Health Care Licensing & Regulation changes the number of times that the owner of an ATU must allow the Department of Health to conduct an inspection from twice each year to once each year. The amendment adopted by the Committee on Community Affairs removes the surety bond provisions from the bill.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Onsite sewage treatment and disposal systems (OSTDS) are regulated pursuant to sections 381.0065 - 381.0067, Florida Statutes. An OSTDS 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 dosing 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 Department of Health (DOH) is required to issue a permit for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems where a publicly owned or investor-owned sewerage system is not available. The department is also required to conduct inspections and complaint investigations for a residence or establishment.

Performance-based treatment systems and aerobic treatment units (ATUs) are mechanical devices which, if properly operated and maintained, provide a high degree of wastewater treatment. These systems are typically used only in cases in which a septic tank system cannot be approved because required setbacks from surface water or wells cannot be achieved, or because there is inadequate area on the property to install a septic tank system.

According to the Department of Health, there are less than 2,000 ATUs in use in Florida compared to 1.8 million septic tank systems. Monroe and Franklin Counties are the only counties in which ATUs are required to be installed, almost exclusively, for new onsite sewage treatment and disposal system installations, and replacement systems for malfunctioning septic tanks. Approximately 50% of Florida counties do not have any ATUs and many other counties have five or less. Ten counties account for more than 75% of all ATUs, with Monroe, Franklin, and Brevard counties accounting for approximately two-thirds of all ATUs in Florida. Moreover, the number of ATUs is expected to increase, particularly in the Florida Keys, where such systems are required.

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Current law does not specifically provide for a maintenance entity for performance-based treatment systems. However, the majority of these units currently incorporate an ATU and would require maintenance under the statute and rule.

Before a property owner of a subdivision or single-family residence constructs, repairs, modifies, abandons, or operates an OSTDS/ATU, he must secure a permit from the DOH. An operating permit is valid for 1 year and must be renewed annually at a cost of \$150 (statutory range for this permit is not less than \$150 or more than \$300). Section 381.0065, Florida Statutes, requires any aerobic treatment unit to be inspected by the department at least annually to assure compliance with the terms of the operating permit.

ATUs must be serviced by an authorized maintenance entity who has been trained by the manufacturer and has access to approved spare parts. A person who maintains or services any portion of an ATU, must receive an ATU maintenance entity permit from the DOH and pay a fee of \$25 (statutory range is not less than \$25 or more than \$150 per year). A maintenance entity is either a registered septic tank contractor or a state licensed plumber regulated pursuant to part III, chapter 489, Florida Statutes.

According to the department, permitted ATUs (installed after July 1, 1991) are inspected twice a year by the Department of Health (county health department) and twice a year by the maintenance entity that services the unit. There is an annual sampling and laboratory analysis of waste material (effluent) to ensure proper operation and to prevent creation of a sanitary nuisance through failure. ATUs that are not functioning properly can dump raw, untreated sewage directly onto the land.

Maintenance entities are required to furnish to the county health departments a listing of all ATUs inspected or serviced during the respective reporting period and to report to the county health department any owner who does not renew their maintenance agreements and enforcement action is required to be taken. The county health department monitors to ensure there is a current maintenance contract and samples for effluent quality.

Based on information provided by the department to the bill sponsor, the monitoring and sampling approach previously used "has not been rigorous enough to ensure that virtually all of the ATUs function in compliance with the performance standards associated with these units." Approximately 40% of ATUs sampled exceeded the treated effluent quality criteria thereby not meeting the established performance standards. The department cited the difficulties in obtaining samples from older units not equipped with a suitable sampling port, but acknowledged that the percentage of units falling short of treatment standards is "too high."

According to the department, the operating permit fee and the maintenance permit fee are used to support administration for monitoring both the permitted and non-permitted ATUs (non-permitted ATUs are units installed prior to July 1, 1991). The fees are also used to pay for the testing of the effluent samples, responding to complaints, and monitoring maintenance entity ATU inspection reports. Residential ATU owners are not billed additionally for the cost of analyzing effluent samples.

There appears to be some confusion regarding the frequency of inspections and the need for homeowners to maintain a service contract and inspections by private firms (plumbers and septic tank contractors). In a December 21, 1998, interoffice memorandum to County Health Department Directors/Administrators, the department detailed the protocol for the sampling, inspection, and evaluation of aerobic treatment units in order to comply with the

statutes and directed the county health departments to inspect ATUs with operating permits twice a year.

**C. EFFECT OF PROPOSED CHANGES:**

The bill provides for the regulation of maintenance entities for performance-based treatment systems and aerobic treatment systems. The bill establishes minimum standards for maintenance entities and requires them to file a surety bond with the department to cover the cost of annual permitting for all systems under a maintenance contract.

The bill provides minimum inspection and sampling criteria for performance-based treatment systems and aerobic treatment systems. It revises the operating permit fee for these systems from a current range of \$150 to \$300 to not more than \$50. A fee is established for a maintenance entity permit for performance-based treatment systems.

The department reports that it is not expected that any significant revenue will be generated from adding a permit fee to performance-based treatment system maintenance entities since the majority of these are already permitted as ATU maintenance entities.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Amends section 381.0065, Florida Statutes, to provide for the regulation of maintenance entities for performance-based treatment systems and aerobic treatment systems. The bill establishes minimum standards for maintenance entities and requires them to file a surety bond with the department to cover the cost of annual permitting for all systems under a maintenance contract.

The bill provides minimum inspection and sampling criteria for performance-based treatment systems and aerobic treatment systems.

**Section 2:** Amends section 381.0066, Florida Statutes, to revise the operating permit fee for these systems from a current range of \$150 to \$300 to not more than \$50. A fee is established for a maintenance entity permit for performance-based treatment systems.

**Section 3:** Provides an effective date of July 1, 2000.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. <u>Revenues:</u>	2000-01	2001-02
Department of Health		
County Health Department Trust Fund	\$60,000	\$85,000
=====		
Total Revenues	\$60,000	\$85,000

2. <u>Expenditures:</u>	2000-01	2001-02
Department of Health		
County Health Department Trust Fund	\$180,000	\$255,000
=====	=====	=====
Total Expenditures	\$180,000	\$255,000
Net Loss	(\$120,000)	(\$170,000)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the DOH, the \$50 operating permit fee would not generate enough funds to cover the costs of administering the program. Therefore, the costs for enforcement against non-compliant systems will be borne by the public sector from general revenue funding.

The bill will save property owners \$100 annually; however, according to the department, the savings may be offset by increased maintenance costs.

D. FISCAL COMMENTS:

The Department of Health provided the following fiscal information:

A permitted ATU costs the health department \$135.38 to administer annually. This uses the midpoint salary, plus benefits, for an Environmental Specialist II (\$25.08), a sampling cost of \$50, and a supervision and administration add-on of 15%. This assumes 2.7 hours of staff time for two inspections and one sample collection plus re-inspection of an estimated 10% of units which would be expected to be found in substantial noncompliance during routine inspections.

With the current \$150 ATU annual operating permit fee, the program is fully self-supporting. If fees are set at \$50, there will be a loss in revenue of \$100 per unit. Amounts shown are based on an estimated 1,200 permitted ATUs in 2000 with a revenue loss of \$100 per unit and an estimated 1,700 permitted ATUs in 2001 with a revenue loss of \$100 per unit. The number of performance-based treatment systems installed in the state is not significant at the current time, but will increase, particularly in the Florida Keys where advanced treatment units are required.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Department of Health is concerned that reducing the number of inspections and analyses of ATUs that the department may conduct each year may result in significant danger to the public health and to the environment. Also, the department is concerned that reducing the current operating permit fee will force this program to operate at a deficit.

The bill sponsor has indicated that the department is only conducting inspections of a small percentage of ATUs in the state. Also, the department lacks the technical personnel to adequately perform these reviews. The sponsor maintains that the \$150 permitting fee is being assessed for a service that is not being performed. The bill requires that owners of ATUs and performance-based systems maintain a contract with a licensed maintenance entity that will conduct inspection to ensure that the systems are operating correctly. Therefore, a reduction in the operating permit fee is necessary.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

One amendment was adopted by the Committee on Health Care Licensing & Regulation on March 8, 2000. The amendment changes the number of times that the owner of an ATU must allow the Department of Health to conduct an inspection from twice each year to once each year.

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Another amendment was adopted by the Committee on Community Affairs on April 12, 2000. The amendment removes the surety bond provisions, which the sponsor feels are too cumbersome and would frustrate the intent of the legislation.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Andrew "Andy" Palmer

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Kyle V. Mitchell

Joan Highsmith-Smith