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DATE: April 20, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS**

BILL #: HB 1491
RELATING TO: Wastewater Residual Reduction Act
SPONSOR(S): Representative(s) Attkisson and Machek

TIED BILL(S):

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

- (1) HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 9 NAYS 2
 - (2) UTILITIES AND TELECOMMUNICATIONS YEAS 14 NAYS 0
 - (3) FISCAL POLICY AND RESOURCES YEAS 12 NAYS 0
 - (4) COUNCIL FOR READY INFRASTRUCTURE YEAS 16 NAYS 0
 - (5)
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I. SUMMARY:

The bill creates the "Florida Wastewater Residual Reduction Act" to provide protections to the Lake Okeechobee Watershed, the waters of the state, and the ecosystem south of Lake Okeechobee. The bill requires that prior to disposal as land spreading, wastewater residual sludge from utility operations and septic tank removal be treated to minimum levels established by the Department of Environmental Protection (DEP). Financial incentives are offered to private and government-owned utilities to encourage participation in the act.

The bill does not have a fiscal impact on state government and will have an indeterminate fiscal impact on local government. This bill will take effect upon becoming law.

On April 4, 2001, the House Committee on Natural Resources & Environmental Protection adopted a "strike-everything" amendment to the bill. Please see the Amendments section of the bill analysis for an explanation of the amendment.

On April 19, 2001, the Committee on Fiscal Policy & Resources adopted two amendments to the strike-everything amendment. Please see the Amendments section of the bill analysis for an explanation of the amendments.

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:

Wastewater Facilities

The Department of Environmental Protection (DEP) permits approximately 4,130 wastewater facilities in Florida that discharge treated wastewater into either the ground or surface waters of the state. DEP estimates that approximately 560 facilities discharge to surface waters, and are subject to the federal requirements of the National Pollution Discharge Elimination System (NPDES). The more than 3,000 remaining facilities are permitted for groundwater discharges. Domestic wastewater facilities primarily collect and treat sanitary wastewater or sewage from homes, business buildings, and institutions, and make up two-thirds (2,750) of the individually permitted facilities in Florida. Wastewater treatment facilities are licensed under the rules of the DEP found in chapter 62-640 of the Florida Administrative Code.

Wastewater Residuals Management (Sludge)

The residual solid material, which remains after wastewater has been treated, is more commonly known as "sludge". Under the DEP rule, sludge is divided into three categories: Class AA, Class A, and Class B. All three classes have to meet the reduction criteria related to pathogens such as fecal coliform or salmonella. Class AA residuals must meet additional requirements prior to distribution and marketing for use as fertilizers on agricultural lands, lawns, home gardens, reclamation sites, or forest lands, and are the highest quality of residuals being distributed and marketed. The level of treatment for residual material is based on disposal methods and proposed use.

Lake Okeechobee

Residuals can contain high levels of phosphorus, a nutrient that can cause water quality problems depending on the concentration and amounts being discharged into surface waters such as Lake Okeechobee. Despite past and continuing efforts to reduce phosphorus loading in the Lake Okeechobee watershed, the current loading to the lake is considered in excess of the amount of phosphorus that even a healthy, functioning Lake Okeechobee could be expected to assimilate without adverse impacts. Agricultural activities are believed to be the major contributor of phosphorus to the lake, but the DEP and agricultural interests have worked together during the past 10 years to limit phosphorus discharges into the lake through best management practices and land use regulation. Also, phosphorus runoff into the lake is compounded by excessive amounts of phosphorus within the lake itself.

During the 2000 Regular Session, the Legislature created the "Lake Okeechobee Protection Plan" to coordinate and expedite existing programs to achieve initial phosphorus load reductions, and to create a long-term framework for achieving subsequent phosphorus load reductions. Among other goals, the Plan provided that projects reducing the phosphorus load originating from domestic wastewater systems within the Lake Okeechobee watershed receive funding priority under the DEP's wastewater treatment program.

Public Service Commission

The Public Service Commission (PSC) currently has jurisdiction over the sewer rates of 36 counties in Florida, and must generally approve rate increases. The rates of 27 wastewater utilities in Highlands, Palm Beach, Martin and St. Lucie counties are regulated by the PSC. Section 367.022, F.S., provides that water and wastewater systems owned, operated, managed, or controlled by governmental authorities, including facilities operated by private firms under contract to local governments, are exempt from PSC regulation. Facilities in the remaining 31 counties, including Glades, Hendry, and Okeechobee counties, are not regulated under PSC authority.

C. EFFECT OF PROPOSED CHANGES:

The bill proposes the following:

- Wastewater residual sludge from utility operations and septic removal must be treated to minimum standards, established by the DEP, prior to disposal as land spreading;
- Private and government-owned utilities may establish an environmental protection disposal fee over and above the present sewer rate to treat wastewater residual sludge;
- Utilities using wastewater residual treatment facilities within rural areas of critical economic concern may impose an environmental protection disposal fee over and above existing operation and disposal fees.
- The environmental protection disposal fee, which is imposed by private utilities and by utilities and utility authorities owned by or under the control of local or regional government, will not be considered a rate increase under the rules of the PSC.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates the "Florida Wastewater Residual Reduction Act."

Section 2. Provides that for the protection of the Lake Okeechobee Watershed, the waters of the state, and the ecosystem south of Lake Okeechobee, wastewater residual sludge from utility operations and septic removal must be treated to a minimum standard established by the DEP prior to disposal as land spreading.

Provides that private and government-owned utilities may impose an environmental protection disposal fee that is over and above the current customer sewer rate. Provides that utilities using wastewater residual treatment facilities in rural areas of critical economic concern as designated by the Governor, or counties meeting the requirements of section 18, chapter 92-132, Laws of Florida, providing for financial assistance due to adverse impacts caused by environmental cleanups initiated by a state or regional agency, can impose an environmental protection disposal fee that will not be reduced from an existing disposal fee.

Provides that for private utilities, and for utilities and utility authorities owned by or under the exclusive control of local or regional government using the provisions of this act, the environmental protection disposal fee will not be considered a rate increase under the rules of the PSC.

Provides that utilities using the provisions of the act can immediately include the environmental disposal fee in their sewer invoices.

Section 3. Provides that the bill will take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. When a utility company chooses to participate in this program, the county in which it is situated is authorized to create an environmental protection disposal fee that is over and above existing sewer and wastewater disposal fees to treat wastewater residual sludge. No limitation is placed on the fee. Proceeds must be used for the treatment and disposal of wastewater residuals.

2. Expenditures:

Indeterminate, as the program created is voluntary. However, funds expended in the implementation of the program can be recouped in the assessment of the disposal fee.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The general public will pay for the costs of the program as utilities participating in the program are authorized to pass the costs on to the consumer, in the form of a county imposed fee.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require municipalities or counties to spend money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Some clarification of DEP rule-making authority may be necessary.

C. OTHER COMMENTS:

The wording of the bill implies that wastewater residual sludge may be treated to the absolute minimum of any standard set forth by the DEP. The sponsor may want consider language providing treatment standards implemented in accordance with appropriate rules of the DEP to protect and meet water quality standards.

The bill provides no guidelines for utilities to look to when establishing an environmental protection disposal fee. Further, since the PSC sets the rate for some wastewater facilities within the state, provisions of subsection (2)(b), exempting the environmental protection disposal fee from PSC rate regulation, appear to create a conflict. Also, language including areas meeting the criteria established in section 18, chapter 92-132, Laws of Florida (providing that local governments adversely impacted by environmental cleanup initiatives conducted by a state or regional agency be given preferential treatment for grants, loans, or other financial aid) may be overly broad.

Various Legislators have expressed concerns about two primary issues:

- The "environmental protection disposal fee" being assessed outside of regulation by the Public Service Commission, and
- Air emissions resulting from alternative treatment methods.

The bill's sponsor indicated that the primary purpose of the bill is to provide additional protections in the Lake Okeechobee watershed by providing incentives for alternative methods of disposal for wastewater residuals. Examples of these methods include:

- Incineration – burning and incinerating residuals to produce methane gas to create electricity.
- Pelletization – treatment to create a solid pellet sold as fertilizer.

Any wastewater treatment facility, whether treating for land spreading or an alternative method of disposal, is permitted under the authority of the Department of Environmental Protection.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4, 2001, the House Committee on Natural Resources & Environmental Protection adopted one strike-everything amendment. The amendment provided the following:

- Authorizes private and government-owned utilities within Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Okeechobee, Highlands, Hendry and Glades counties that dispose of wastewater residual sludge by land spreading in the Lake Okeechobee watershed, to impose an

“environmental protection disposal fee” if wastewater treatment and disposal is done by an approved alternative treatment at a facility located within a rural area of critical economic concern.

- Provides that the “environmental protection disposal fee” is over and above the current sewer rate.
- Provides that notwithstanding current provisions of law, the “environmental protection disposal fee” is not a part of the present sewer rate to existing customers.
- Authorizes the county commission in a county in which the alternative treatment facility is located, or the county commission’s designee, to establish the “environmental protection disposal fee”.
- Provides that “environmental protection disposal fees” are not rate increases under the rules of the PSC.
- Provides that proceeds from “environmental protection disposal fee” can be used for treatment and disposal of wastewater residuals and technology that helps reduce the volume of sludge requiring final disposal, but that the proceeds can not be used for the transportation or shipment costs of sludge disposal, or costs relating to land spreading in the Lake Okeechobee watershed.

On April 19, 2001, the Committee on Fiscal Policy & Resources adopted two amendments to the strike-everything amendment. The first amendment specifies that every 3 years the Public Service Commission or an independent auditor hired by the county shall audit any facility receiving the environmental protection disposal fee. This audit is to be presented to the President of the Senate and the Speaker of the House of Representatives. The second amendment specifies that the fee shall be fixed no higher than the amount necessary to recover the prudent cost of providing the service.

VII. SIGNATURES:

COMMITTEE ON FISCAL POLICY AND RESOURCES:

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