

**STORAGE NAME:** h0879s2.ric.doc

**DATE:** February 28, 2002

## HOUSE OF REPRESENTATIVES

### COUNCIL FOR READY INFRASTRUCTURE ANALYSIS

**BILL #:** CS/CS/HB 879

**RELATING TO:** Pollution Reduction

**SPONSOR(S):** Council for Ready Infrastructure, Committee on Natural Resources & Environmental Protection, Representative(s) Spratt, Attkisson & others

**TIED BILL(S):**

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

- (1) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 13 NAYS 0
  - (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 14 NAYS 0
  - (3) COUNCIL FOR READY INFRASTRUCTURE YEAS 16 NAYS 0
  - (4)
  - (5)
- 

I. SUMMARY:

The bill amends s. 373.4595, F.S., relating to the Lake Okeechobee Protection Program, to provide that projects making use of private lands to reduce nutrient loadings or concentrations within the basin are eligible to receive grants from the Department of Environmental Protection (DEP), the Department of Agriculture & Consumer Services (DACCS), or the South Florida Water Management District (SFWMD), the coordinating agencies responsible for implementing the program. For projects of equal priority within the program, priority will be given to those involving public/private partnerships or federal matching funds, and those that make the best use of nutrient reduction methods such as restoration of the natural hydrology of the basin, and increasing aquifer recharge. Eligible projects include the purchase of conservation and flowage easements, hydrologic restoration of wetlands, and the creation of treatment wetlands. No later than July 1, 2003, the Department of Health will require all entities within the Lake Okeechobee watershed and the remaining areas of Okeechobee, Hendry, and Glades counties that dispose of septage by land application to limit those applications based on phosphorus loading.

The bill also amends s. 403.067, F.S., to provide that interim measures, best management practices, or other measures may be developed and voluntarily implemented for water bodies for which total maximum daily loads or allocations (TMDLs) for agricultural and non-point, non-agricultural source pollutants have not been established. The implementation of pollution control programs can be considered by DEP when determining if a water body needs to be added to the TMDL development list.

The bill amends s. 403.131, F.S., to provide that professional engineers licensed pursuant to chapter 471, Florida Statutes, are not agents of an owner or tenant for purposes of assessing fines for unpermitted dredging and filling, or trimming of mangroves. Finally, the bill amends s. 381.0066, F.S., to repeal the sunset of a \$5 fee imposed on new system construction permits to be used for onsite sewage treatment and disposal system research, demonstration, and training projects.

The bill takes effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input 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:

Less Government: The bill does not support less government because the bill creates further restrictions on activities authorized within the watershed right now, and creates an additional layer of projects that must be considered for priority funding.

Lower Taxes: The bill also repeals the sunset of a \$5 fee added on to new system construction permits to be used for onsite sewage treatment and disposal system research, demonstration and training projects.

B. PRESENT SITUATION:

**Lake Okeechobee**

During the 2000 Regular Session, the Legislature created the "Lake Okeechobee Protection Act" to coordinate and expedite existing programs to achieve initial phosphorus load reductions to and within the watershed, 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 revolving loan program of the Department of Environmental Protection (DEP).

Domestic wastewater residuals (wastewater treatment facilities) and septage (on-site sewage disposal systems) 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 hard during the past 10 years to regulate 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.

**Wastewater Facilities**

The DEP permits approximately 4,130 wastewater facilities in Florida that discharge treated wastewater into either the ground or surface waters of the state. The department estimates that approximately 560 facilities discharge to surface waters, and they 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.

Pursuant to s. 381.0065, F.S., and chapter 64E-6 of the Florida Administrative Code, the Department of Health (DOH) regulates onsite sewage disposal systems such as aerobic treatment units, septic tanks, pump tanks, or solids or effluent pumps. When an onsite sewage treatment and disposal system is pumped, the resulting mixture of sludge, fatty materials, human feces, and wastewater is called septage. The land application of septage is not specifically addressed in the Lake Okeechobee Protection Act.

### **Wastewater Septage Management**

Pursuant to s. 381.0065(3)(b), F.S., and under an Interagency Agreement with the DEP executed in September 2001, the DOH regulates septage management facilities intending to treat 10,000 gallons or less per day on a monthly average daily flow with no more than 20,000 gallons treated on any given day, including the land application of septage from these facilities at sites regulated and approved by DOH. The DEP regulates septage management facilities intending to treat more than 10,000 gallons per day on a monthly average daily flow with more than 20,000 gallons treated on any given day. The land application of septage from these facilities is regulated and approved by DEP.

DOH's rule governing the land application of septage provides for treatment by an approved septage-stabilization process, and for uniform application over a site. Land application on playgrounds, parks, golf course, lawns, hospital grounds, or other unrestricted public access areas where frequent human contact is likely to occur is prohibited. Domestic septage cannot be used for growing or cultivating tobacco, root crops, leafy vegetables, or vegetables that are eaten raw. Application is limited to sod farms, pasture lands, forests, highway shoulders and medians, plant nursery use, land reclamation projects, and soil used for growing human food chain crops. Land application within 3000 feet of Class I (potable) water bodies or Outstanding Florida Waters is prohibited, as is application within 2000 feet of any surface water bodies except canals or bodies of water used for irrigation within but not discharging from the site.

DEP's rule (62-640, F.A.C.) defines septage exactly the same way and provides that if properly treated with lime, septage can meet the Class B residual uses. Restrictions include a prohibition from use in unrestricted public access areas such as playgrounds, golf courses, parks, lawns and hospital grounds, and use is limited to agricultural sites, forests, roadway shoulders and medians.

### **Wastewater Residuals Management (Sludge)**

Residuals are the solid, semisolid, or liquid residues remaining after treatment of domestic wastewater. More commonly known as "sludge," residuals can contain high amounts of phosphorus. Runoff from lands fertilized with residuals can cause water quality problems depending on the phosphorus load, and the sensitivity of the receiving water body.

Under DEP rules, 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 forestlands, 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.

**Chapter 2001-173, Laws of Florida (CS/SB 1662, 1<sup>st</sup> Eng.)**

The 2001 Legislature enacted chapter 2001-173, Florida Statutes, which provides an incentive to 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 residual and septage by land spreading in the Lake Okeechobee watershed. These entities are authorized to assess an "environmental protection disposal fee" as an additional line item if **residual** treatment and disposal is done at an approved alternative treatment methodology facility within areas designated as rural areas of critical economic concern. The disposal fee may be assessed outside of the regular sewer rate and is not to be considered a rate increase under PSC standards. Proceeds from the fee are to be used for treatment and disposal of wastewater residuals, including any treatment technology that helps reduce residual volume. However, the proceeds cannot be used for the transportation or shipment costs for disposal relating to land applications within the Lake Okeechobee watershed, no matter what the alternative treatment may be.

C. EFFECT OF PROPOSED CHANGES:

**Please see "SECTION-BY-SECTION" ANALYSIS BELOW.**

D. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Amends s. 373.4595, F.S., to provide eligibility requirements for projects receiving priority consideration for grant funds. Provides that projects eligible for consideration include the purchase of conservation and flowage easements, hydrological restoration of wetlands, and creating treatment wetlands. Provides that projects making use of private lands to reduce nutrient loads and concentrations by restoring the hydrology of a basin, or increasing aquifer recharge are some of the projects eligible for grant consideration. Provides that when projects are of equal priority, extra consideration must be given to projects with a public/private partnership, or federal matching funds.

Provides that the Department of Health must require all entities disposing of septage within the Lake Okeechobee watershed and the remaining areas of Okeechobee, Glades, and Hendry Counties to submit by July 1, 2003, an agricultural use plan that limits the application of septage based on phosphorus loading. Provides that by July 1, 2005, phosphorus loading from septage applications will not exceed the limits establish in the SFWMD's WOD program.

Expands those entities for which DACS shall initiate rulemaking for the development of conservation or nutrient management plans to limit land application of manure to include entities land-applying manure within the remaining areas of Okeechobee, Glades, and Hendry Counties as well as within the Lake Okeechobee watershed.

**Section 2.** Amends s. 381.0066, F.S., to repeal the sunset of a \$5 fee imposed on new system construction permits to be used for onsite sewage treatment and disposal system research, demonstration, and training projects.

**Section 3.** Amends s. 403.067, F.S., to provide that interim measures, best management practices, or other measures may be developed and voluntarily implemented for water bodies for which TMDLs have not been developed. Provides that the implementation of such pollution control programs must be considered by DEP when considering if a water body should be added to a TMDL development list.

**Section 4.** Amends s. 403.121, F.S., to provide that professional engineers licensed under chapter 471, F.S., that have prepared or signed a dredge and fill permit application, or mangrove trimming

permit application, are not agents of the owner or tenant for penalties resulting from unpermitted or unauthorized activities.

**Section 5.** 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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private property owners who voluntarily participate in nutrient reduction programs may see an economic benefit through the receipt of grant funds under the program.

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:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 30, 2002, the Natural Resources & Environmental Protection Committee adopted amendments to HB 879, which were incorporated into a committee substitute. The CS/HB 879 made the following changes to HB 879 as filed:

- Clarified that projects eligible to participate in the grant program are projects that fall within the scope of the Lake Okeechobee Watershed Phosphorus Control Program.
- Expands areas required to reduce phosphorus loads from residual land applications to include the remaining areas of Okeechobee, Hendry, and Glades counties.
- Requires entities disposing of septage within the Lake Okeechobee watershed and the remaining areas of Okeechobee, Hendry, and Glades counties to prepare an agriculture use plan to be submitted to the Department of Health no later than July 1, 2003, that limits land applications of septage based on phosphorus loads.
- Requires entities that land-apply manure within the remaining areas of Okeechobee, Glades, and Hendry Counties to develop conservation and nutrient management plans to limit application based on phosphorus loads.

On February 21, 2002, the Council for Ready Infrastructure adopted amendments to the CS/HB 879, which were incorporated into a council substitute. The CS/CS/HB 879 makes the following changes to CS/HB 879:

- Clarifies that projects that make use of private lands to reduce nutrient loads or concentrations are eligible for priority funding under the grants awarded through the Lake Okeechobee Watershed Phosphorous Control Program. Adds the creation of treatment wetlands to the eligible projects category.
- Repeals the sunset of a \$5 fee imposed on new system construction permits to be used for onsite sewage treatment and disposal system research.
- Authorizes interim measures, best management practices, or other measures to be developed and voluntarily implemented for water bodies where TMDLs have not been established. Provides that DEP can consider the implementation of such pollution control programs when determining if a water body should be added to a TMDL list.
- Provides that professional engineers licensed under chapter 471, F.S., are not considered as agents of the owner or tenant when preparing or signing permit applications for dredge-and-fill permits, or mangrove trimming permits, when DEP assesses penalties for unpermitted activities.

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VII. SIGNATURES:

COMMITTEE ON HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

Staff Director:

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Wayne S. Kiger

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Staff Director:

Lynn Dixon

Lynn Dixon

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

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