

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 Community Affairs

BILL: CS/SB 1160

INTRODUCER: Health Policy Committee and Senator Bullard

SUBJECT: Onsite Sewage Treatment and Disposal Systems

DATE: March 27, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Fav/CS
2.	Toman	Yeatman	CA	Favorable
3.			EP	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1160 amends section 381.0065, F.S., to:

- Provide that inspection reports of aerobic treatment units (ATU) may be submitted electronically to the Department of Health (DOH);
- Clarify that a property owner of an owner-occupied single-family residence may be approved and permitted by the DOH as a maintenance entity for his or her own ATU system upon written certification from the manufacturer that they have received training on the proper installation and maintenance of the unit;
- Clarify that maintenance entities must conspicuously disclose that a property owner of a owner-occupied single-family residence has the right to maintain his or her own ATU system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on such a system, but is subject to all permitting requirements;
- Provide that a septic tank contractor license under ch. 489, part III, F.S., must not be denied the access to ATU training and spare parts by the manufacturer for maintenance entities;
- Allow component parts for ATUs to be replaced with parts that meet the manufacturer's specifications but are manufactured by others after the original warranty period for the ATU expires;

- Require Monroe County property owners who are not scheduled to be served by a central sewer by December 31, 2015, to comply with certain concentration level standards;
- Provide that a tested and certified onsite sewage treatment and disposal system (OSTDS) that reduces nitrogen concentrations by at least 70 percent is deemed to be in compliance with current nitrogen standards;
- Allow Monroe County property owners that have recently installed OSTDS in areas scheduled to be served by central sewer systems to continue to use the systems until 2020; and
- Provide for the extension of building permits for property owners within the Florida Keys Area of Critical State Concern.

This bill substantially amends section 381.0065 of the Florida Statutes.

II. Present Situation:

The Bureau of Onsite Sewage Programs (Bureau), within the DOH, develops statewide rules and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of septic systems within the state.¹ The Bureau also licenses over 700 septic tank contractors² and oversees 2.5 million onsite wastewater systems in Florida.³

In Florida, septic systems are referred to as onsite sewage treatment and disposal systems (OSTDS). An OSTDS can contain any one of the following components: a septic tank; a subsurface drainfield; an ATU; 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.⁴ Septic tanks are tanks in the ground that treat sewage without the presence of oxygen. Sewage flows from a home or business through a pipe into the first chamber, where solids are removed. The liquid then flows into the second chamber where anaerobic bacteria in the sewage break down the organic matter, allowing cleaner water to flow out of the second chamber.⁵

¹ The DOH does not permit the use of onsite sewage treatment and disposal systems where the estimated domestic sewage flow from the establishment is over 10,000 gallons per day (gpd) or the commercial sewage flow is over 5,000 gpd; where there is a likelihood that the system will receive toxic, hazardous or industrial wastes; where a sewer system is available; or of any system or flow from the establishment is currently regulated by the DEP. The DEP issues the permits for systems that discharge more than 10,000 gpd.

² About the Division of Disease Control and Health Protection, found at: <http://www.myfloridaeh.com/about/index.html>, last visited on Mar. 27, 2013.

³ Division of Disease Control and Health Protection fact sheet, found at: <http://www.myfloridaeh.com/about/EHfactsheet2012.pdf>; last visited on Mar. 15, 2013.

⁴ Department of Environmental Protection (DEP) website on septic systems. See <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm>

⁵ The EPA's *Primer for Municipal Wastewater Treatment Systems*, 2005, p. 22, found at http://water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf, last visited on Mar. 15, 2013.

Aerobic Treatment Units

The ATUs are similar to septic tanks, except that air is introduced and mixed with the wastewater inside the tank.⁶ Aerobic (requiring oxygen) bacteria consume the organic matter in the sewage.⁷ The effluent discharge from an aerobic system is typically released through a sub-surface distribution system or may be disinfected and discharged directly into surface water.⁸

The ATUs require the removal and disposal of solids that accumulate in the tank. Therefore, routine maintenance is necessary for them to function properly. The National Sanitation Foundation requires ATU manufacturers to provide an initial two-year warranty with two inspections per year.⁹ According to the DOH analysis, there are 11,600 ATUs in operation in Florida, with 8,770 in four counties: Brevard, Charlotte, Franklin, and Monroe.

Pursuant to s. 381.0065, F.S., and Rule 64E-6.012, F.A.C., owners of ATUs are required to enter into a maintenance entity service agreement with a maintenance entity that is permitted by the DOH. That agreement must initially be for a period of at least two years and subsequent maintenance agreement renewals must be for at least one-year periods for the life of the system. The maintenance entity must obtain a system operating permit from the DOH for each ATU under service contract. The maintenance entity, which sets the fee for service contracts, must inspect each ATU at least twice each year and report quarterly to the DOH the number of ATUs inspected and serviced.

Furthermore, maintenance entities are required to provide documentation that they have been trained by the ATU manufacturer, who sets the maintenance requirements, and have access to required manuals and spare repairs. Maintenance entities are also required to be registered as either a state-licensed septic tank contractor or a state-licensed plumber.

Homeowners are exempt from the requirement that a person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under ch. 489, part III, F.S.,¹⁰ but the homeowner must be permitted as a maintenance entity by the DOH and be trained and certified by the manufacturer. The annual maintenance entity permit fee is \$25.

Florida Keys Area of Critical State Concern

In 1972, the Florida Legislature adopted the Environmental Land and Water Management Act, which provided the basis for the state to designate an Area of Critical State Concern. To be designated, an area must contain, or have a significant impact upon, environmental or natural

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ The National Sanitation Foundation is an “independent, not-for-profit organization that provides standards development, product certification, auditing, education, and risk management for public health and the environment”. See http://www.nsf.org/business/about_NSF/

¹⁰ s. 381.0065(4), F.S.

resources of regional or statewide importance where uncontrolled private or public development would cause substantial deterioration of such resources.¹¹

In 1979, Monroe County, including its municipalities and the Florida Keys, was designated as an Area of Critical State Concern pursuant to the “Florida Keys Area Protection Act.”¹² The legislative intent was to establish a land use management system for the Florida Keys that would:

- Protect the natural environment and improve the near shore water quality;
- Support a diverse economic base that promotes balanced growth in accordance with the capacity of public facilities;
- Promote public land acquisition and ensure that the population of the Florida Keys can be safely evacuated;
- Provide affordable housing in close proximity to places of employment; and
- Protect property rights and promote coordination among governmental agencies that have permitting jurisdiction.

In 1996, Administration Commission Rule 28-20, F.A.C., was adopted. The rule contained a Work Program which, when complete, would improve water quality and better protect habitats for threatened and endangered species, and resolve other challenges. Of particular concern was the declining water quality of the near shore environment due to a lack of central sewer facilities, the loss of habitat for state and federally listed endangered species, public safety in the event of hurricanes, and a deficit of affordable housing.¹³

Concerns about water quality resulted in legislative action¹⁴ which required that by December 2015, all sewage disposal in the Florida Keys must be upgraded to meet advanced wastewater treatment standards that reduce the amount of nitrogen, phosphorus, biological oxygen demand and total suspended solids.¹⁵ As a result, when the construction of the central sewage system is concluded, approximately 23,000 septic tanks will be eliminated.¹⁶ The bond financing in the Save our Everglades Program, approved by the Florida Legislature in 2012, and the extension of the Monroe County Infrastructure Sales Tax will provide the foundation to complete the central sewer by 2015.

Nitrogen Reduction

The 2008 Legislature tasked the DOH with conducting a six-year study to develop passive strategies for nitrogen reduction for OSTDS. Regardless of the source, excessive nitrogen has negative effects on public health and the environment. The project is in its fourth year and is within the original \$5.1 million budget. The final phase of the project is 2013-2015 and project tasks will be to complete monitoring and other field activities, perform additional testing as

¹¹ s. 380.05(2)(a), F.S.

¹² s. 380.0552(3), F.S.

¹³ Florida Department of Economic Opportunity, *Florida Keys Area of Critical State Concern Annual Report*, p. 11, 2012, available at: www.floridajobs.org/fdcp/dcp/acsc/Files/2012FLKeysReport.pdf (last viewed on March 27, 2013).

¹⁴ Chapter 2010-205, Laws of Florida.

¹⁵ Section 381.0065(4)(l), F.S.

¹⁶ See *supra* FN 13.

deemed appropriate by the Legislature, and make final reporting recommendations on onsite sewage nitrogen reduction strategies for Florida's future.¹⁷

Current law requires OSTDS to cease discharge by December 31, 2015, or comply with the DOH rules and provide the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:¹⁸

- Biochemical Oxygen Demand of 10 mg/l;
- Suspended Solids of 10 mg/l;
- Total Nitrogen of 10 mg/l; and
- Total Phosphorus of 1 mg/l.

Tests performed by the nitrogen reduction study have produced results of reduction in total nitrogen of over 95 percent with a final effluent concentration of 2.6 mg/l or less for several of the systems.¹⁹

III. Effect of Proposed Changes:

The CS amends s. 381.0065, F.S., to:

- Within the Florida Keys area, extend building permits and any permit issued pursuant to part IV of ch. 373, F.S., regarding management and storage of surface waters, which expire between January 1, 2012, and January 1, 2016, for a period of three years after the expiration date of the permit. This extension also applies local government-issued permits and does not prohibit conversion from the construction phase to the operation phase of a permit. Also, the bill sets a maximum extension of seven total years for the listed extensions in combination with this extension.
- Exclude Monroe County property owners who are scheduled to be served by a central sewer by December 31, 2015, from the requirement to comply with the listed concentration level standards.²⁰
- Provide that a tested and certified OSTDS in areas not scheduled to be served by a central sewer by December 31, 2015 that reduces nitrogen concentrations by at least 70 percent is deemed to be in compliance with current nitrogen standards.
- Allow Monroe County property owners that have recently installed OSTDS in areas scheduled to be served by central sewer systems to continue to use the systems until 2020.
- Provide that inspection reports of ATUs may be submitted electronically to the DOH.
- Clarify that a property owner of an owner-occupied single-family residence may be approved and permitted by the DOH as a maintenance entity for his or her own ATU system upon written certification from the manufacturer that the owner has received training on the proper installation and maintenance of the unit.

¹⁷ See Florida Department of Health, *Status Report on Phase II and Phase III of the Florida Onsite Sewage Nitrogen Reduction Strategies Study*, February 1, 2013, available at: <http://www.myfloridaeh.com/ostds/research/Nitrogen.html> (last viewed on March 27, 2013).

¹⁸ Section 381.0065(4)(l), F.S.

¹⁹ *Id.*, n. 17

²⁰ s. 381.0065(4)(l)2.b., F.S.

- Clarify that ATU maintenance entities must conspicuously disclose that a property owner of a owner-occupied single-family residence has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on such a system, but is subject to all permitting requirements.
- Provide that a septic tank contractor licensed under ch. 489 part III, F.S., must not be denied the access to ATU training and spare parts by the manufacturer for maintenance entities.
- Allow component parts for ATUs to be replaced with parts that meet the manufacturer's specifications but are manufactured by others after the original warranty period for the ATU expires. The maintenance entity shall maintain documentation of substitute part equivalency for 2 years.

The effective date of the bill is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1160 may have a positive fiscal impact on owners with ATU systems by allowing them to maintain their own systems however, home-owners may see an up-front cost for the training necessary to maintain their own systems.

C. Government Sector Impact:

The DOH would have to amend Rule 64E-6.012, F.A.C., to comply with the changes in the bill and the DOH estimates the cost of notices and meetings will be \$5,000, which can be absorbed within their existing resources.

VI. Technical Deficiencies:

Lines 207-210 of the bill read in part:

3. A manufacture may not deny a septic tank contractor licensed under part III of chapter 489 access to aerobic treatment unit system training or spare parts for maintenance entities.

The intent may have been for “manufacture” to instead be “manufacturer.”

VII. Related Issues:

Single Subject Rule

Section 6, Article III of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith.” The subject shall be briefly expressed in the title.²¹ The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.²² The requirement does not unduly restrict the scope or operation of a law. The single subject may be as broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.²³ The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.²⁴ A violation of the one-subject limitation renders inoperative any provision contained in an act which is not fairly included in the subject expressed in the title or which is not properly connected with that subject.²⁵ Among the multitude of cases on the subject, the Florida Supreme Court has held that tort law and motor-vehicle-insurance law were sufficiently related to be included in one act without violating the one-subject limitation,²⁶ but that a law containing changes in the workers’ compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.²⁷

It is possible that the provisions in the bill which extend and renew permit expiration dates of building permits may be viewed as not properly connected with the bill title, Onsite Sewage Treatment and Disposal Systems.

Local Bills

A special or local law is a law:

relating to, or designed to operate upon, particular persons or things, or one that purports to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal; a local law is one relating to, or designed to operate only in, a specifically indicated part of the state, or one that purports to operate within classified territory when classification is not permissible or the classification adopted is illegal.²⁸

²¹ *Franklin v. State*, 887 So. 2d 1063, 1072 (Fla.2002).

²² *Santos v. State*, 380 So. 2d 1284 (Fla. 1980).

²³ *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).

²⁴ *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

²⁵ *Ex parte Knight*, 41 So. 786 (Fla. 1906).

²⁶ *State v. Lee*, 356 So. 2d 276 (Fla. 1978).

²⁷ *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991).

²⁸ *Lawnwood Medical Center Inc. v. Seeger, M.D.*, 959 So. 2d 1222 (Fla. 1st DCA 2007) *affirmed by* 990 So. 2d 503 (Fla. 2008) (finding that the reorganization granted a privilege to a private corporation, the Florida Supreme Court did not reach

Article 3, section 10 of the Florida Constitution provides:

No special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.

Because the building permit provisions in the bill apply solely to the Florida Keys area, it is possible the bill may be considered a local bill and therefore be subject to special law requirements in the Constitution.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy Committee on March 20, 2013:

The CS substantially amends SB 1160 to:

- Provide that inspection reports may be submitted electronically to the DOH.
- Clarify that a property owner of an owner-occupied single-family residence may be approved and permitted by the DOH as a maintenance entity for his or her own system upon written certification from the manufacturer that they have received training on the proper installation and maintenance of the unit.
- Clarify that maintenance entities must conspicuously disclose that a property owner of an owner-occupied single-family residence has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on such a system, but is subject to all permitting requirements.
- Provide that a septic tank contractor license under ch. 489, part III, F.S., must not be denied the access to training and spare parts by the manufacturer for maintenance entities.
- Allow component parts for ATUs to be replaced with parts that meet the manufacturer's specifications but are manufactured by others after the original warranty period for the ATU expires.
- Exclude Monroe County property owners who are scheduled to be served by a central sewer by December 31, 2015, from the requirement to comply with certain concentration level standards.
- Provide that a tested and certified OSTDS that reduces nitrogen concentrations by at least 70 percent is deemed to be in compliance with current nitrogen standards.
- Allow Monroe County property owners that have recently installed OSTDS in areas scheduled to be served by central sewer systems to continue to use the systems until 2020.

the impairment of contracts issue; the appellate court, however, ruled that provisions changing the governance of the medical facility violated the impairment of contracts clause of the state constitution).

- Provide for the extension of building permits for property owners within the Florida Keys Area of Critical State Concern.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
