

**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 Environmental Preservation and Conservation

BILL: CS/SB 1160

INTRODUCER: Health Policy Committee and Senator Bullard

SUBJECT: Onsite Sewage Treatment and Disposal Systems

DATE: April 7, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Fav/CS</b>
2.	Toman	Yeatman	CA	<b>Favorable</b>
3.	Hinton	Uchino	EP	<b>Pre-meeting</b>
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 s. 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 property owners of owner-occupied single-family residences may be approved and permitted by the DOH as a maintenance entity for their own ATU system upon written certification from the manufacturer that they have received training on the proper installation and maintenance of ATU systems;
- Clarify that maintenance entity service contracts must conspicuously disclose that property owners of owner-occupied single-family residences have the right to maintain their own ATU systems and are exempt from contractor registration requirements for performing construction, maintenance, or repairs on an ATU system, but are subject to all permitting requirements;
- Provide that a septic tank contractor licensed under ch. 489, part III, F.S., must not be denied 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.

CS/SB 1160 substantially amends s. 381.0065 of the Florida Statutes.

## II. Present Situation:

The Bureau of Onsite Sewage Programs (Bureau), part of 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 OSTDSs within the state.<sup>1</sup> The Bureau also licenses over 700 septic tank contractors and oversees 2.3 million onsite wastewater systems in Florida.<sup>2</sup>

In Florida, septic systems are referred to as OSTDSs. 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.<sup>3</sup> 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 settle out. The liquid then flows into the second chamber where anaerobic bacteria, which do not require oxygen, in the sewage break down the organic matter, allowing cleaner water to flow out of the second chamber into a drainfield.<sup>4</sup>

### Aerobic Treatment Units

ATUs are similar to septic tanks, except that air is introduced and mixed with the wastewater inside the tank.<sup>5</sup> Aerobic bacteria, which require oxygen, consume the organic matter in the

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<sup>1</sup> 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.

<sup>2</sup> DOH, Division of Disease Control and Health Protection, *About Us*, <http://www.myfloridaeh.com/about/index.html> (last visited Apr. 6, 2013).

<sup>3</sup> See Department of Environmental Protection (DEP) *Wastewater: Septic Systems*, <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm> (last visited Apr. 6, 2013).

<sup>4</sup> EPA, *Primer for Municipal Wastewater Treatment Systems*, 2004, p. 22, available at [http://water.epa.gov/aboutow/owm/upload/2005\\_08\\_19\\_primer.pdf](http://water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf) (last visited Apr. 6, 2013).

<sup>5</sup> *Id.*

sewage.<sup>6</sup> The effluent discharge from an aerobic system is typically released through a drainfield or may be disinfected and discharged directly into surface water.<sup>7</sup>

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.<sup>8</sup> According to the DOH analysis, there are 11,600 ATUs in operation in Florida, 8,770 of which are in four counties: Brevard, Charlotte, Franklin, and Monroe.<sup>9</sup>

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, which sets the maintenance requirements, and have access to required manuals and spare parts. Maintenance entities are also required to be registered as either state-licensed septic tank contractors or state-licensed plumbers.

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 OSTDS without being registered under part III of ch. 489, F.S.,<sup>10</sup> 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 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 resources of regional or statewide importance where uncontrolled private or public development would cause substantial deterioration of such resources.<sup>11</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 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/](http://www.nsf.org/business/about_NSF/) (last visited Apr. 6, 2013).

<sup>9</sup> DOH, *Senate Bill 1160 Analysis* (Feb. 27, 2013) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>10</sup> Section 381.0065(4), F.S.

<sup>11</sup> Section 380.05(2)(a), F.S.

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.”<sup>12</sup> 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, Rule 28-20, F.A.C., was adopted. The rule contained a Work Program that, 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.<sup>13</sup>

Concerns about water quality resulted in legislative action. Chapter 2010-205, Laws of Florida, 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.<sup>14</sup> As a result, when the construction of the central sewage system is concluded, approximately 23,000 septic tanks will be eliminated.<sup>15</sup> The bond financing in the Save our Everglades Program, approved by the Legislature in 2012, and the extension of the Monroe County Infrastructure Sales Tax will provide the foundation to complete the central sewer by 2015.

### **Development Orders**

Pursuant to s. 163.3164, F.S., development orders are any orders granting, denying, or granting with conditions an application for a development permit, which includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.<sup>16</sup> Development orders have been extended by several laws since 2009 in order to provide relieve to developers during the recent economic downturn.

### **Nitrogen Reduction**

In 2008 the Legislature directed the DOH to conduct a six-year study to develop passive strategies for nitrogen reduction for OSTDS. Regardless of the source, excessive nitrogen has

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<sup>12</sup> Section 380.0552(3), F.S.

<sup>13</sup> 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](http://www.floridajobs.org/fdcp/dcp/acsc/Files/2012FLKeysReport.pdf) (last visited Apr. 6, 2013).

<sup>14</sup> Section 381.0065(4)(l), F.S.

<sup>15</sup> See *supra* note 13.

<sup>16</sup> Sections 163.3164(15) and (16), F.S.

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 from 2013 to 2015. Project tasks will be to complete monitoring and other field activities, perform additional testing as deemed appropriate by the Legislature, and make final reporting recommendations on onsite sewage nitrogen reduction strategies for Florida's future.<sup>17</sup>

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

- 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.<sup>19</sup>

### III. Effect of Proposed Changes:

**Section 1** of the CS amends s. 381.0065, F.S., to:

- Extend building permits and any permit issued within the Florida Keys area 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 to local government-issued permits and does not prohibit conversion from the construction phase to the operation phase of a permit. Also, the CS 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;<sup>20</sup>
- Provide that a tested and certified OSTDS in areas not scheduled to be served by a central sewer by December 31, 2015, which 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 OSTDSs 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 property owners of owner-occupied single-family residences may be approved and permitted by the DOH as a maintenance entity for their own ATU system upon written certification from the manufacturer that the owner has received training on the proper installation and maintenance of the unit;

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<sup>17</sup> See DOH, *Status Report on Phase II and Phase III of the Florida Onsite Sewage Nitrogen Reduction Strategies Study*, Feb. 1, 2013, <http://www.myfloridaeh.com/ostds/research/Nitrogen.html> (last visited on Apr. 6, 2013).

<sup>18</sup> Section 381.0065(4)(l), F.S.

<sup>19</sup> *Supra* note 17.

<sup>20</sup> Section 381.0065(4)(l)2.b., F.S.

- Clarify that ATU maintenance entities must conspicuously disclose that property owners of owner-occupied single-family residences have the right to maintain their own systems and are exempt from contractor registration requirements for performing construction, maintenance, or repairs on their systems, but are subject to all permitting requirements;
- Provide that a septic tank contractor licensed under part III of ch. 489, F.S., must not be denied access to ATU training and spare parts by the manufacturer for maintenance entities; and
- 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 two years.

**Section 2** provides an effective date of July 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

See Related Issues section of this analysis.

#### **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.

An ATU requires a significant financial commitment to install and operate over the life of the system. Hooking up to a central sewer system is also a significant investment. For residents who have installed an ATU since July 1, 2010, the CS provides assurance that they may continue to operate their ATUs until December 31, 2020.

Owners with a conventional OSTDS do not have to meet the heightened effluent standards for biological oxygen demand, suspended solids, nitrogen, and phosphorous if they will be hooked up to centralized sewer by December 31, 2015.

Given the constitutional issues addressed in the related issues section regarding the extension of development orders it is likely that the provisions included with the extension of development orders will have no effect.

### C. Government Sector Impact:

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

## VI. Technical Deficiencies:

Lines 207-210 of the CS 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.

Use of the word “manufacture” appears to be a scrivener’s error. The correct word should be “manufacturer.”

## VII. Related Issues:

### Single Subject Rule

Article III, section 6 of the Florida Constitution requires every law to “embrace but one subject and matter properly connected therewith.” The subject shall be briefly expressed in the title.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.<sup>24</sup> 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.<sup>25</sup> 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

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

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

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

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

<sup>25</sup> *Ex parte Knight*, 41 So. 786 (Fla. 1906).

limitation,<sup>26</sup> but that a law containing changes in the workers' compensation law and legislation concerning comprehensive economic development violated the one-subject limitation.<sup>27</sup>

It is possible that the provisions in the CS that extend and renew permit expiration dates of building permits may be viewed as not properly connected with the CS 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.<sup>28</sup>

Article III, 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 CS apply solely to the Florida Keys area, it is possible the CS 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 property owners of an owner-occupied single-family residence may be approved and permitted by the DOH as a maintenance entity for their own systems upon written certification from the manufacturer that they have received training on the proper installation and maintenance of the unit;

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

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

<sup>28</sup> *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 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).



- Clarify that maintenance entities must conspicuously disclose that property owners of owner-occupied single-family residences have the right to maintain their own systems and are exempt from contractor registration requirements for performing construction, maintenance, or repairs on their systems, but are subject to all permitting requirements;
- Provide that a septic tank contractor licensed under part III of ch. 489, 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 OSTDSs 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.

B. Amendments:

None.