

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 375 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): State Affairs Committee; Health Quality Subcommittee; Agriculture & Natural Resources Subcommittee; Roberson
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Renner	Blalock
2) Health Quality Subcommittee	13 Y, 0 N, As CS	Guzzo	O'Callaghan
3) State Affairs Committee	17 Y, 0 N, As CS	Renner	Camechis

SUMMARY ANALYSIS

The Bureau of Onsite Sewage Programs (Bureau), within the Department of Health (DOH), issues permits for the installation and repair of Onsite Sewage Treatment and Disposal Systems (OSTDS), including aerobic treatment units (ATUs), within the state and licenses septic system contractors.

Current law provides that owners of ATUs are required to maintain a maintenance service agreement with a maintenance entity permitted by DOH. The maintenance entity must obtain a system operating permit from DOH for each ATU under a 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 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. 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 contractor registration requirement, but must be permitted as a maintenance entity by DOH and be trained and certified by the manufacturer.

Current law provides specific OSTDS requirements for Monroe County. OSTDS are required to cease discharge by December 31, 2015, or must comply with DOH rules and provide a level of treatment to ensure a certain standard of water quality is met. In areas scheduled to be served by central sewer by December 31, 2015, an onsite sewage treatment and disposal system may be repaired to meet certain minimum standards.

The bill provides that a OSTDS in Monroe County that has been tested and certified to reduce nitrogen by at least 70 percent is deemed to be in compliance with certain effluent levels. The bill also provides that OSTDS in Monroe County, which are in areas not scheduled to be served by central sewer, the OSTDS must comply with DOH rules and provide the level of treatment that meets certain effluent limitations by December 31, 2015. These systems do not have to cease discharge by December 31, 2015. In addition, the bill provides that in areas scheduled to be served by central sewer by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewer system, the property owner may install a holding tank with a high water alarm or an OSTDS meeting certain standards. The bill provides that OSTDS in Monroe County installed after July 1, 2012, that comply with established effluent limitations, are not required to connect to a central sewer system until December 31, 2020.

The bill deletes the requirement for maintenance entities to obtain a system operating permit from DOH for each ATU under service contract. The bill provides that maintenance entity inspection reports may be submitted electronically to DOH. The bill also provides that a property owner of an owner-occupied single-family residence may be approved and permitted by DOH as a maintenance entity for his or her own ATU system upon written certification from the manufacturer's representative that they have received training on the proper installation and service of the system. The bill provides that maintenance entity service agreements must conspicuously disclose that the property owner 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 system, but is subject to all permitting requirements. The bill provides that a licensed septic tank contractor cannot be denied access by the manufacturer to ATU system training or spare parts for maintenance entities. After the original warranty period, component parts for ATUs can be replaced with parts that meet the manufacturer's specifications but are manufactured by others. Lastly, the bill provides that the owner of an ATU system must obtain an annual system operating permit from DOH.

The bill appears to have a potentially insignificant, negative fiscal impact of \$5,000 on DOH as a result of having to amend a rule.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Bureau of Onsite Sewage Programs (Bureau), within the Department of Health (DOH), develops statewide rules and provides training and standardization for county health department employees responsible for issuing permits for the installation and repair of Onsite Sewage Treatment and Disposal Systems (OSTDS) within the state.¹ The Bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates OSTDS contracting complaints.²

An OSTDS can contain any one of the following components: septic tank; subsurface drainfield; aerobic treatment unit (ATU); graywater tank; laundry wastewater tank; grease interceptor; pump tank; waterless, incinerating or organic waste-composting toilet; and sanitary pit privy.³ 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.⁴ ATUs are similar to septic tanks, except that air is introduced and mixed with the wastewater inside the tank.⁵ Aerobic (requiring oxygen) bacteria consume the organic matter in the sewage.⁶ 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.⁷

Aerobic Treatment Units

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 Foundation⁸ requires ATU manufacturers to provide an initial two-year warranty with two inspections per year. There are 11,600 ATUs in operation in Florida, with 8,770 in four counties: Brevard, Charlotte, Franklin, and Monroe.⁹

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 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

¹ The DOH does not permit the use of OSTDS 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 Department of Health, Bureau of Onsite Sewage, available at:

<http://www.doh.state.fl.us/environment/ostds/OSTDSdescription.htm> (last viewed on March 15, 2013).

³ Department of Environmental Protection (DEP), Septic Systems, available at:

<http://www.dep.state.fl.us/water/wastewater/dom/septic.htm> (last viewed on March 15, 2013).

⁴ Environmental Protection Agency, Primer for Municipal Wastewater Treatment Systems, September 2004, available at: water.epa.gov/aboutow/owm/upload/2005_08_19_primer.pdf (last viewed on March 15, 2013).

⁵ Id.

⁶ Id.

⁷ Id.

⁸ 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/ (last viewed on March 15, 2013).

⁹ CS/HB 375 Bill Analysis, Economic Statement and Fiscal Note, Department of Health, February 6, 2013 (on file with committee staff).

obtain a system operating permit from DOH for each ATU under a service contract. The maintenance entity, which sets the fee for service contracts, must inspect each ATU at least twice per year and report quarterly to 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 contractor registration requirement, but must be permitted as a maintenance entity by 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 resources of regional or statewide importance where uncontrolled private or public development would cause substantial deterioration of such resources.¹⁰

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."¹¹ 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.¹²

Concerns about water quality resulted in legislative action¹³ which required that by December 2015, all OSTDS 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.¹⁴ As a result, when the construction of the central sewage system is concluded, approximately 23,000 septic tanks will be eliminated.¹⁵ 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

¹⁰ Section 380.05(2)(a), F.S.

¹¹ Section 380.0552(3), F.S.

¹² Florida Department of Economic Opportunity, *Florida Keys Area of Critical State Concern Annual Report*, 2012, available at: www.floridajobs.org/fdcp/dcp/acsc/Files/2012FLKeysReport.pdf (last viewed on March 15, 2013).

¹³ Chapter 2010-205, Laws of Florida.

¹⁴ Section 381.0065(4)(l), F.S.

¹⁵ See *supra* FN 12.

The 2008 Legislature tasked DOH with conducting a 6-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 deemed appropriate by the Legislature, and make final reporting recommendations on onsite sewage nitrogen reduction strategies for Florida's future.¹⁶

Current law requires OSTDS to cease discharge by December 31, 2015, or comply with 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:¹⁷

- 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.¹⁸

Effect of Proposed Changes

The bill amends s. 381.0065(4)(l), F.S., to provide that a OSTDS in Monroe County that has been tested and certified to reduce nitrogen by at least 70 is deemed to be in compliance with the effluent concentrations described above.

The bill also provides that for OSTDS located in Monroe County, which are in areas not scheduled to be served by central sewer, the systems must comply with DOH rules and provide the level of treatment that meets the effluent limitations provided above by December 31, 2015. These systems do not have to cease discharge by December 31, 2015.

In addition, the bill provides that in areas scheduled to be served by central sewer by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewer system, the property owner may install a holding tank with a high water alarm or an OSTDS meeting certain standards.

The bill also provides that OSTDS in Monroe County installed after July 1, 2010, that comply with established effluent limitations, are not required to connect to a central sewer system until December 31, 2020.

The bill amends s. 381.0065 (4)(u), F.S., to delete the requirement for maintenance entities to obtain a system operating permit from DOH for each ATU under service contract. The bill provides that ATU inspection reports can be submitted electronically to DOH. The bill also provides that a property owner of an owner-occupied single-family residence may be approved and permitted by DOH as a maintenance entity for his or her own ATU system upon written certification from the manufacturer's representative that they have received training on the proper installation and service of the system.

In addition, the bill provides that maintenance entity service agreements must conspicuously disclose that the property owner has the right to maintain his or her own system and is exempt from contractor registration requirements for performing construction, maintenance, or repairs on the system, but is subject to all permitting requirements.

¹⁶ 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 15, 2013).

¹⁷ Section 381.0065(4)(l), F.S.

¹⁸ *Id.*

The bill provides that a licensed septic tank contractor cannot be denied access by the manufacturer to ATU system training or spare parts for maintenance entities. After the original warranty period, component parts for ATUs can be replaced with parts that meet the manufacturer's specifications but are manufactured by others.

Lastly, the bill provides that the owner of an ATU system must obtain an annual system operating permit from DOH.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065 (4), F.S., providing that certain systems constitute compliance with nitrogen standards; requiring systems in certain areas of Monroe County to comply with specified rules and standards; deleting a requirement for new, modified, and repaired systems to meet specified standards; authorizing property owners in certain areas of Monroe County to install certain tanks and systems; providing that certain systems in Monroe County are not required to connect to the central sewer system until a specified date; deleting a requirement for maintenance entities to obtain certain permits; authorizing electronic submission of certain reports; authorizing certain property owners to be approved and permitted as maintenance entities for ATU systems under certain conditions; prohibiting manufacturers from denying certain septic tank contractors access to ATU system training and spare parts; authorizing certain replacement parts for ATU systems.

Section 2. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Health would have to amend Rule 64E-6.012, F.A.C., to comply with the changes in the bill and estimates the cost of notices and meetings will be \$5,000.¹⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁹ *Supra* FN 9.
STORAGE NAME: h0375e.SAC
DATE: 4/5/2013

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of ATU systems that receive the maintenance and repair training may save money from being able to perform their own maintenance inspections and repairs. However, there may be a cost associated with completing the training.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently, there is a requirement that maintenance entities report quarterly to DOH of the number of ATUs inspected and serviced. There does not appear to be any reporting requirement for ATU owners performing their own maintenance.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2013, the Agriculture & Natural Resources Subcommittee amended and reported HB 375 favorably as a committee substitute (CS). The CS does the following:

- Provides that inspection reports may be submitted electronically to the DOH.
- Provides 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.
- Provides 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 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.
- Provides that a septic tank contractor license under Part III of chapter 489 shall not be denied the access to training and spare parts by the manufacturer for maintenance entities. Component parts for ATUs after the original warranty period may be replaced with parts that meet the manufacturer's specifications but are manufactured by others.

On March 12, 2013, the Health Quality Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Requires 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.

- Provides that a tested and certified OSTDS that reduces nitrogen concentrations by at least 70 percent is deemed to be in compliance with current standards.
- Allows 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.
- Provides for the extension of building permits for property owners within, the Florida Keys Area of Critical State Concern, and an area scheduled to be served by a central sewage system.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

On April 3, 2013, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Provides clean up language to help DOH when evaluating onsite sewage treatment and disposal systems.
- Provides that onsite sewage treatment and disposal systems that are not scheduled to be served by a central sewer must comply with DOH rules and provide the level of treatment that meets certain effluent limitations by December 31, 2015.
- Allows for homeowners to receive their certificate of occupancy until the central sewer is installed.
- Deletes the requirement for a maintenance entity to obtain an operating permit from DOH for each aerobic treatment unit that is under contract.
- Provides that owners of aerobic treatment unit systems must obtain an annual operating permit from DOH, thus, placing the responsibility on the homeowner instead of the maintenance entity.
- Removes a provision extending building and Environmental Resource Permits within the Florida Keys Area of Critical State Concern.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.