HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 375	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	State Affairs Committee; Health Quality Subcommittee; Agriculture & Natural Resources Subcommittee; Roberson	117 **Y's**	0 **N's**
COMPANION BILLS:	(CS/CS/CS/SB 1160)	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 375 passed the House on April 17, 2013, and subsequently passed the Senate on April 25, 2013. The bill provides that a onsite sewage treatment and disposal system (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, must comply with Department of Health (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 unincorporated Monroe County, excluding special wastewater districts, 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 deletes the requirement that the technical review advisory panel assist DOH in the development of performance criteria applicable to engineer designed OSTDS. The bill also deletes the requirement for maintenance entities to obtain a system operating permit from DOH for each anaerobic treatment unit (ATU) under service contract. The bill provides that engineer-designed OSTDS and 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 engineer-designed OSTDS or their 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 for engineer-designed OSTDS and ATUs 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. The bill requires property owners to obtain biennial system operating permits for each engineer-designed OSTDS instead of the maintenance entity. The bill also requires property owners to obtain biennial operating permits for each ATU. 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 a 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.

The bill was approved by the Governor on May 30, 2013, ch. 2013-79, L.O.F., and became effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 Foundation[8] 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 obtain a system operating permit from DOH for each ATU under a service contract. The maintenance

[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).

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 action[13] 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 unincorporated Monroe County, excluding special wastewater districts, 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 that the technical review advisory panel assist DOH in the development of performance criteria applicable to engineer designed OSTDS. The bill also deletes the requirement for maintenance entities to obtain a system operating permit from DOH for each ATU under service contract.

The bill also amends s. 381.0065(4)(j) and (u), F.S., to provide that engineer-designed OSTDS and 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

[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.*

maintenance entity for his or her own engineer-designed OSTDS or their 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.

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

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.

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.

[19] *Supra* FN 9