

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 285 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Natural Resources & Public Lands Subcommittee; Agriculture & Property Rights Subcommittee; Fine and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1748

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	9 Y, 5 N, As CS	Thompson	Smith
2) Natural Resources & Public Lands Subcommittee	14 Y, 1 N, As CS	Moore	Shugar
3) Commerce Committee			

SUMMARY ANALYSIS

Each person in the state generates approximately 100 gallons of domestic wastewater per day. This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways. In Florida, one of the systems utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS), commonly referred to as a septic tank. Oversight of OSTDSs is handled by the Florida Department of Health (DOH) in each county. The OSTDS duties of DOH include application reviews, site evaluations, permitting, complaint investigations, and inspections.

DOH estimates that approximately 30 percent of the state's domestic wastewater is generated from 2.6 million OSTDSs. DOH maintains a database of the number of OSTDSs in each county in the state, but the database is incomplete.

There are several disclosures required in real estate transactions, but there is no requirement that a seller of real property inform a prospective purchaser of the existence of an OSTDS on the property. A permit issued by DOH for the installation, modification, or repair of an OSTDS must transfer with the title to the property in a real estate transaction. An inspection of an OSTDS system may not be mandated at the point of sale in a real estate transaction. However, nothing prohibits a voluntary inspection of an OSTDS.

The bill requires DOH to, by January 1, 2019:

- Identify all OSTDSs in the state, including, at a minimum, the location and operational condition of the systems and any other available information DOH deems appropriate;
- Incorporate the information into and update the current database of OSTDSs; and
- Generate a report from the database that includes, at a minimum, the total number of OSTDSs in the state, the number of OSTDSs in each county, and a statewide map of OSTDSs, and submit the report to the Governor, the President of the Senate and the Speaker of the House of Representatives.

The bill requires the seller of real property to provide a prospective purchaser with a disclosure summary before or at the execution of the contract for sale if the property contains or will contain an OSTDS and requires the prospective purchaser to acknowledge in writing the receipt of the disclosure summary. The bill requires the disclosure summary to be conspicuous, in boldface type, and in a form substantially similar to that contained in the bill.

The fiscal impact on state government and the private sector is indeterminate. The bill does not appear to have a fiscal impact on local governments. See the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for discussion.

The bill has an effective date of July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0285c.NRPL

DATE: 3/28/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Each person in the state generates approximately 100 gallons of domestic wastewater¹ per day.² This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.³ In Florida, one of the systems utilized to treat domestic wastewater is an onsite sewage treatment and disposal system⁴ (OSTDS), commonly referred to as a septic tank.⁵ Oversight of OSTDSs is handled by the Environmental Health Section of the Florida Department of Health (DOH) in each county.⁶

OSTDSs are required to be permitted and inspected by DOH before they are placed into operation.⁷ OSTDSs are required to be located and installed so that with proper maintenance the systems function in a sanitary manner, do not create sanitary nuisances or health hazards and do not endanger the safety of any domestic water supply, groundwater or surface water. Sewage waste and effluent from OSTDSs may not be discharged onto the ground surface or directly or indirectly discharged into ditches, drainage structures, ground waters, surface waters, or aquifers.⁸

Number of OSTDSs

DOH regulates approximately 30 percent of the state's domestic wastewater from an estimated 2.6 million OSTDSs.⁹ DOH maintains a database of the number of OSTDSs in each county in the state, known as *Septic Search*, but the database is incomplete.¹⁰

Real Estate Disclosures

Currently, there are several disclosures required in real estate transactions (e.g., community development district disclosure,¹¹ ad valorem tax disclosure,¹² homeowners' association disclosure,¹³

¹ "Domestic wastewater" is defined in s. 367.021(5), F.S., as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants. "Domestic wastewater" is defined in ch. 62-600.200(25), F.A.C., as the wastewater derived principally from dwellings, business buildings, institutions, and the like; sanitary wastewater; sewage.

² DEP's Domestic Wastewater Program, available at <http://www.dep.state.fl.us/water/wastewater/dom/index.htm> (last viewed Feb. 13, 2017).

³ ss. 381.0065(1) and 403.021, F.S.

⁴ s. 381.0065(2)(k), F.S., defines an "OSTDS" as a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403, F.S.

⁵ ss. 381.0065(2)(k) and (3), F.S.; chs. 62-600, and 62-701, F.A.C.

⁶ ss. 381.006(7) and 381.0065, F.S.; rule 62-600.120, F.A.C.; DEP's *Wastewater - Septic Systems*, available at <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm> (last visited Feb. 13, 2017).

⁷ s. 381.0065(4), F.S.; r. 64E-6.003, F.A.C., r. 64E-6.004, F.A.C.

⁸ r. 64E-6.005, F.A.C.

⁹ DOH's *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last viewed Feb. 14, 2017).

¹⁰ *Id.*, see *Septic Search*.

¹¹ s. 190.048, F.S.

¹² s. 689.261, F.S.

¹³ s. 720.401, F.S.

subsurface rights disclosure,¹⁴ radon gas disclosure¹⁵), but there is no requirement that a seller of real property inform a prospective purchaser of the existence of an OSTDS on the property.

A permit issued and approved by DOH for the installation, modification, or repair of an OSTDS must transfer with the title to the property in a real estate transaction. A title may not be encumbered at the time of transfer by new permit requirements by a governmental entity for an OSTDS which differ from the permitting requirements in effect at the time the system was permitted, modified, or repaired. An inspection of a system may not be mandated at the point of sale in a real estate transaction.¹⁶ However, nothing prohibits a voluntary inspection of an OSTDS.

Voluntary OSTDS Inspections

DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* must be applied in a voluntary OSTDS inspection, with limited exceptions (e.g., an increase in sewage flow or change in sewage characteristics, or failure of the system, for aerobic treatment units and performance-based treatment systems).¹⁷ The inspection is designed to assess the condition of a system at a particular moment in time and will identify substandard systems (e.g., systems without drainfields). The inspection is not designed to determine precise code compliance or provide information to demonstrate that the system will adequately serve the use to be placed upon it by the existing or subsequent owner. However, an inspector may provide as much information about the system at their professional discretion.

DOH employees are prohibited from performing these inspections. The inspection must be conducted by a master septic tank contractor, registered septic tank contractor, state-licensed plumber, or a certified environmental health professional.¹⁸ The inspector must provide the person requesting the inspection with a copy of DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* and written notice of their right to request an inspection based on part or all of the standards.¹⁹ Unless the person requesting the inspection specifies in writing that parts of a system be omitted, the inspection will include a tank inspection, a drainfield inspection, an inspection of pumps, siphons and alarms if part of the system, and a written assessment of the condition of the system.²⁰

Effect of Proposed Changes

The bill amends s. 381.0065, F.S., to require DOH to, by January 1, 2019:

- Identify all OSTDSs in the state, including, at a minimum, the location and operational condition of the systems and any other available information DOH deems appropriate;
- Incorporate the information into and update the current database of OSTDSs; and
- Generate a report from the database that includes, at a minimum, the total number of OSTDSs in the state, the number of OSTDSs in each county, and a statewide map of OSTDSs, and submit the report to the Governor, the President of the Senate and the Speaker of the House of Representatives.

The bill creates s. 689.30, F.S., to require the seller of property to provide a prospective purchaser with a disclosure summary before or at the execution of the contract for sale if the property contains or will

¹⁴ s. 689.29, F.S.

¹⁵ s. 404.056(5), F.S.

¹⁶ s. 381.0065(4)(w), F.S.

¹⁷ r. 64E-6.001(5), F.A.C.; DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* (May 2000),

http://indianriver.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/_documents/voluntary-inspection-form-ocrd.pdf (last viewed Mar. 27, 2017).

¹⁸ Id.; see s. 381.0101, F.S., for environmental health professionals.

¹⁹ r. 64E-6.001(5), F.A.C.

²⁰ DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* (May 2000),

http://indianriver.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/_documents/voluntary-inspection-form-ocrd.pdf (last viewed Mar. 27, 2017).

contain an OSTDS and requires the prospective purchaser to acknowledge in writing the receipt of the disclosure summary. The bill requires the disclosure summary to be conspicuous, in boldface type, and in a form substantially similar to the following:

ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEM DISCLOSURE SUMMARY

THE PROPERTY CONTAINS AN ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEM (SYSTEM). A SYSTEM THAT IS NOT PROPERLY DESIGNED, CONSTRUCTED, AND MAINTAINED IS OFTEN A SOURCE OF NUTRIENTS AND FECAL COLIFORM BACTERIA IN GROUNDWATER. GROUNDWATER IS THE SOURCE OF MOST DRINKING WATER IN THE STATE. A SYSTEM HAS A LIFE SPAN OF APPROXIMATELY 25 YEARS IF PROPERLY MAINTAINED AND USED. ALL SYSTEM TANKS SHOULD BE PUMPED OUT EVERY 3 TO 5 YEARS TO PREVENT SYSTEM FAILURE. YOU SHOULD REQUEST AN INSPECTION AND ASSESSMENT OF THE SYSTEM. ALL SYSTEM TANKS SHOULD BE PUMPED AND VISUALLY INSPECTED TO DETERMINE THEIR CAPACITY AND WATER TIGHTNESS. THE DRAINFIELD AREA SHOULD BE PROBED TO DETERMINE ITS LOCATION, SIZE, CONFIGURATION, AND TYPE OF DRAINFIELD MATERIAL. IF YOUR SYSTEM CONTAINS ADDITIONAL COMPONENTS, SUCH AS PUMPS OR ALARMS, THEY SHOULD ALSO BE INSPECTED. THE EVALUATOR MUST PROVIDE YOU WITH A COPY OF THE DEPARTMENT OF HEALTH *PROCEDURE FOR VOLUNTARY INSPECTION AND ASSESSMENT OF EXISTING SYSTEMS* AND WRITTEN NOTICE OF YOUR RIGHT TO REQUEST AN EVALUATION BASED ON ALL OR PART OF THE STANDARDS. THE EVALUATION IS FOR YOUR USE AND IS INTENDED TO LET YOU MAKE AN INFORMED DECISION. IF THE EVALUATION SHOWS THE SYSTEM IS SUBSTANDARD, DAMAGED, OR THE FUNDAMENTAL OPERATIONAL CONDITION IS NOT AS DESIGNED, IT IS STRONGLY RECOMMENDED THAT THE SYSTEM IS REPAIRED, MODIFIED, OR REPLACED, AS APPROPRIATE. IF REPAIRS OR MODIFICATIONS TO THE SYSTEM ARE MADE, A PERMIT IS REQUIRED FROM THE COUNTY HEALTH DEPARTMENT. IF YOU HAVE ANY QUESTIONS CONCERNING THE SYSTEM, CONTACT THE COUNTY HEALTH DEPARTMENT FOR INFORMATION.

The bill provides that the term “OSTDS” has the same meaning as provided in s. 381.0065, F.S.

B. SECTION DIRECTORY:

- Section 1** amends s. 381.0065, F.S., related to OSTDSs; regulation.
- Section 2** creates s. 689.30, F.S., related to disclosure of an OSTDS in the sale of property.
- Section 3** provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fiscal impact to state government revenues is indeterminate. According to DOH, a repair and inspection permit fee is \$300.²¹ If an OSTDS disclosure results in an inspection of an OSTDS, which shows the OSTDS is in need of repair and the OSTDS is subsequently repaired, then DOH may see an increase in revenues from repair and inspection permit fees.

²¹ Id.

2. Expenditures:

The fiscal impact to state government expenditures is indeterminate. To the extent that DOH is not able to absorb the requirements of the bill under existing agency resources, DOH may incur costs in determining the number, location, and operational condition of OSTDSs in the state, updating the OSTDS database, and generating the OSTDS report to the Governor and Legislature.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- Revenues:

The bill does not appear to impact local government revenues.

- Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on the private sector is indeterminate. According to DOH, the cost of an OSTDS inspection is estimated to be between \$100 and \$500.²² If more OSTDS inspections occur as a result of the OSTDS disclosure, this would generate business for those that perform OSTDS inspections. The bill may also generate business for those that repair or replace OSTDSs. Property owners who choose to voluntarily inspect an OSTDS system may benefit in having knowledge of the condition and performance of the OSTDS in their consideration of purchasing the property. The bill may lead to more repairs that may reduce system failures.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

²² Florida Department of Health, Agency Analysis of 2017 HB 285, p. 4 (Mar. 2, 2017).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2017, the Agriculture & Property Rights Subcommittee adopted one amendment to HB 285. The amendment requires system inspections before the sale of any property within designated impaired waterways and watershed areas, and provides the inspections are valid for one year. The bill was reported favorably as a committee substitute.

On March 27, 2017, the Natural Resources & Public Lands Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Removes the requirement for an OSTDS to be inspected before a sale of property if the OSTDS is located within an impaired waterway and its watershed.
- Requires DOH, by January 1, 2019, to:
 - Identify all OSTDSs in the state, including, at a minimum, the location and operational condition of the system and any other available information DOH deems appropriate;
 - Incorporate the information into and update the current database of OSTDSs; and
 - Generate a report from the database that includes, at a minimum, the total number of OSTDSs in the state, the number of OSTDSs in each county, and a statewide map of OSTDSs, and submit the report to the Governor, the President of the Senate and the Speaker of the House of Representatives.
- Requires the seller of property to disclose to the purchaser either before or at the execution of the contract for sale the existence of an OSTDS on the property.
- Requires the prospective purchaser to acknowledge in writing having received the OSTDS disclosure.
- Requires the OSTDS disclosure to be conspicuous, in boldface type, and in substantially similar form as the OSTDS disclosure provided in the bill.
- Provides that the term "OSTDS" has the same meaning as in s. 381.0065, F.S.

The analysis is drafted to the committee substitute as approved by the subcommittee.