

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 Community Affairs Committee

BILL: CS/ SB 2018

INTRODUCER: Community Affairs Committee and Senator Baker

SUBJECT: Florida Keys Area

DATE: April 14, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	Favorable
2.	Howes	Yeatman	CA	Fav/CS
3.			FT	
4.			WPSC	
5.				
6.				

I. Summary:

The committee substitute (CS) for Senate Bill 2018 provides for clarification on bonding capacity and the purposes for which the bond proceeds may be expended. Second, it provides additional legislative intent regarding the Florida Keys and revises conditions and procedures for removal of the designation for the Florida Keys Area as an Area of Critical State Concern. Third, the CS adds provisions guiding development related to central and onsite wastewater treatment. It also specifies the standards that both wastewater treatment methods must achieve and reinforces that counties and municipalities are responsible for upgrading or constructing facilities and systems that achieve the standards. Fourth, it extends the wastewater compliance deadline from July 1, 2010, to December 31, 2015, and details the conditions associated with the deadline extension. Finally, the CS repeals certain sections of the Laws of Florida that will be obsolete with passage of the CS.

This CS provides the act shall be effective upon becoming law.

This CS substantially amends sections 215.619, 380.0552, 381.0065, 403.086, Florida Statutes. It also repeals sections 4, 5 and 6 of ch. 99-395, Laws of Florida.

II. Present Situation:

In 1975, the Administration Commission designated the Florida Keys as an Area of Critical State Concern. The designation was challenged and, in 1978, the Florida Supreme Court declared that the designation process constituted an invalid delegation of legislative authority to an administrative agency. In response, the 1979 Florida Legislature, amended the criteria and process for designating Areas of Critical State Concern, and statutorily re-designated the Florida Keys as an Area of Critical State Concern. The City of Key West petitioned and was approved

for removal from the Area of Critical State Concern in 1981.¹ The majority of the rest of Monroe County, including its municipalities, remains within the Area of Critical State Concern.² The Administration Commission oversees growth management provisions in areas included under the designation. Among the elements of the growth management Work Program are the planning, design and implementation of centralized wastewater management systems and upgraded onsite sewage treatment and disposal systems (septic tanks) by municipalities within Monroe County and the county itself.³

Chapter 99-395, Laws of Florida (L.O.F.), as amended, provides requirements and standards for wastewater facilities and septic tanks in Monroe County that must be met by July 1, 2010. Ch. 99-395, L.O.F., applies to all wastewater facilities and septic tanks regardless of ownership; however, local governments or other entities are not required to build new facilities or systems.

Pursuant to the Administration Commission Work Program and the June 2000 Monroe County Sanitary Wastewater Master Plan, the plan has been for local governments to build central facilities and to require package plants and septic tank owners to connect to central systems when available.⁴ Package plant and septic tank owners have generally been waiting for completion of local government facilities because chapter 99-395, L.O.F., gives local governments in the Keys the authority to mandate connection of package plants and onsite systems within 30 days of central system availability. Package plant and septic tank owners have been reluctant to invest in expensive upgrades to their systems to comply with chapter 99-395, L.O.F., only to be forced, in some cases in as little as 30 days, to pay expensive connection fees, impact fees and monthly user charges for central sewer as it becomes available. All package plants and septic tanks not upgraded by July 1, 2010, will be in violation of ch. 99-395, L.O.F., on July 1, 2010. Owners of the systems will be subject to enforcement by the Department of Environmental Protection (DEP) or the Department of Health (DOH) depending on the type of system.

As of February 2010, the cities of Key West, Key Colony Beach and Layton operate facilities in compliance with the July 1, 2010 deadline. The city of Marathon and the Key Largo Wastewater Treatment District are nearing completion of central systems for their service areas but will not meet the July 1, 2010, deadline. The Village of Islamorada and Monroe County, for its unincorporated areas, are in various stages of planning, design and construction of facilities. These facilities are years from completion.

III. Effect of Proposed Changes:

Section 1 amends s. 215.619, F.S., clarifying that bonding capacity shall not exceed a total of \$200 million or \$50 million per year, and eliminates the restriction that all bonds must be issued within four fiscal years. This section provides the purposes for which the bond proceeds may be

¹ Department of Community Affairs, *Florida Keys Area of Critical State Concern Removal of Designation Report*, 2008. Last accessed March 20, 2010. Available at: <<http://www.dca.state.fl.us/fdcp/DCP/acsc/Files/RemovalofDesignationReport.pdf>>.

² § 380.0552, F.S.

³ Administration Commission, Rule 28-20, F.A.C.

⁴ According to the U.S. Environmental Protection Agency, package plants are pre-manufactured treatment facilities used to treat wastewater in small communities or on individual properties capable of processing up to half a million gallons of effluent per day.

used within the Florida Keys Area of Critical State Concern and that proceeds shall be managed by the DEP. Technical and conforming changes are included.

Section 2 amends s. 380.0552, F.S., providing:

- Additional legislative intent concerning the importance of protecting environmentally sensitive lands and nearshore water quality in the Florida Keys, and assurances for safely evacuating the Keys' population.
- Procedures for removal of the Area of Critical State Concern designation upon a demonstration that the intent provisions have been met and all tasks identified in the rules of the Administration Commission have been completed.
- Reporting requirements beginning on November 30, 2010, by the state land planning agency. The agency must report annually to the Administration Commission the progress of the Florida Keys towards completing the tasks required by the rules. In addition, the agency shall recommend removal of the designation if it determines that all tasks have been completed, all pertinent comprehensive plans, development regulations and the administration of such are adequate to protect the Keys, and that a local government has adopted a resolution requesting the removal of the designation.
- A requirement that the Administration Commission, upon receipt of an annual report, determine whether the designation should be removed. If the commission determines that the designation should remain, it is directed to report to the local governments the actions that need to be completed to have the designation removed.
- The Administration Commission's decision concerning the designation is subject to review under ch. 120, F.S.
- Inclusion of additional principles in comprehensive plan amendments that address the amendment to legislative intent in subsection (2) of s. 380.0552, F.S.
- Additional compliance requirements for Keys comprehensive plan amendments. The amendments shall detail construction schedules and financing plans for wastewater management improvements, and they must provide a hurricane evacuation clearance time of 24 hours for permanent residents.

This section also contains technical and conforming changes.

Section 3 amends 381.0065, F.S, incorporating the specific onsite system requirements in ch. 99-395, L.O.F., into s. 381.0065, F.S. The requirements for onsite systems of this section are as follows:

- Highlights the existing policy that local governments are responsible for upgrades and shall comply with schedules adopted by the Administration Commission.
- Requires that septic tanks must cease discharge by December 31, 2015, or comply with new discharge standards.
- Provides that septic tanks discharging to an injection well must provide basic disinfection.
- Requires that on or after July 1, 2010, all new, modified, or repaired septic tanks must comply with new discharge standards. However, if a property is scheduled for central sewer connection by December 31, 2015, and the owner has paid an assessment or connection fee, he or she will be required to meet a set of minimum standards for the septic tank until

connected to a central sewer. Septic tanks meeting the minimum levels of treatment under this provision must be monitored for nitrogen and phosphorus concentrations.

- Directs the DOH to enforce the provisions of this section.
- Allows local government entities to require properties on septic tanks to connect to central sewer within 30 days after notice of it becoming available.

This section also contains technical changes.

Section 4 amends s. 403.086, F.S., incorporating the specific wastewater facility requirements in ch. 99-395, L.O.F., into s. 403.086, F.S. It provides legislative findings that: poorly treated effluent from small wastewater facilities and onsite systems, including septic tanks, harms the coastal environment and threatens the local economy; the only practical and cost-effective way to improve wastewater management is to implement Administration Commission rules and the 2000 Monroe County Sanitary Master Wastewater Plan; and construction and operation of a central wastewater systems is in the public interest. The requirements for domestic wastewater facilities (facilities), including privately owned systems, of this section are as follows:

- Provides provisions to conform deadlines for wastewater systems created in section 3 of the CS for onsite systems.
- Prohibits facilities from discharging wastewater into surface waters.
- Highlights the existing policy that local governments are responsible for constructing and operating central systems by December 31, 2015, and must comply with Administration Commission rules.
- Details design requirements for all new or expanded wastewater facilities beginning December 31, 2015.
- Provides requirements for Class V injection wells along with variances for the operations of other types of injection wells.
- Provides for limited, automatic permit extensions for certain facilities.
- Creates deadlines to bring currently operating wastewater facilities into compliance with new standards.
- Provides additional requirements for discharges, even though in compliance, which are demonstrated to cause a violation of state water quality standards.
- Directs all facilities to monitor effluent for total nitrogen and phosphorus concentrations and maintain a properly certified staff to ensure compliance with DEP rules.
- Allows local government entities to require facilities owned by other entities to connect to central sewer within 30 days after notice of it becoming available.

Section 5 repeals the provisions of chapter 99-395, L.O.F., that are being incorporated into statutory law in sections three and four of this CS.

Section 6 provides that the act shall be effective upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Section 18, Art. VII, of the State Constitution provides that the Legislature may not require a county or municipality to expend funds or take action resulting in the expenditure of funds unless certain criteria are met. This CS requires Monroe County and municipalities within the Florida Keys Area of Critical State Concern to update their comprehensive plans with new elements by December 31, 2015. Monroe County and affected municipalities will be able to meet this requirement within their normal comprehensive plan revision cycles. As such, no additional funds are required.

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:

The private sector will have negligible additional costs to comply with the requirements of this CS as the CS incorporates the requirements of ch. 99-395, L.O.F. However, the CS creates some heightened standards not included in ch. 99-395, L.O.F, which will impact private owners of facilities or septic tanks. Those impacts are indeterminate and will vary based on individual circumstances that cannot be determined at this point.

To comply with the original provisions of ch. 99-395, L.O.F., private owners will be responsible for paying for central sewer connection through assessments or connection fees, impact fees and monthly sewer charges, or paying for upgraded septic tanks. The cost of central sewer service is indeterminate and depends on a wide range of factors, including costs of construction, operation, maintenance and long-term financing costs for both the facility and the individual.

Property values may increase due to central sewer availability. Construction and construction-related jobs inject money into local economies in the short run. Long-term jobs related to facility operation, maintenance, and administration will also be created. Improved local water quality would likely enhance tourism, including eco-tourism, fishing and other water-related activities, which generally provide substantial economic benefits. The financial benefits from these impacts are indeterminate at this time.

C. Government Sector Impact:

This CS does not require any additional expenditures by local governments other than those required under current law. As noted in the “Present Situation” of this analysis, several municipalities have completed or are nearing completion of central sewer systems. The fiscal impacts to these municipalities are negligible.

The estimated cost of the remaining central systems to be completed in other parts of Monroe County within the Area of Critical State Concern will depend on designs necessary to comply with the requirements of the CS, as well as economic circumstances in the next five years. The DEP has provided information that, in July 2009, Monroe County local governments estimated these costs to be just over \$357.3 million. The long-term impact of these costs depends on financing rates, the term over which costs are amortized, and whether or not supplementary grants or other state and federal financial assistance can be secured.

The CS extends the compliance deadline to December 31, 2015, from July 1, 2010. By extending the compliance deadline, the CS may save local governments from having to pay fines, penalties and litigation costs related to missing the 2010 deadline.

The completion of central wastewater systems would provide jobs and likely increase area property values, both of which enhance local economies. Improved local water quality would likely enhance tourism, including eco-tourism, fishing, and other marine recreation. Additionally, once the provisions of this CS are met, the Area of Critical State Concern designation may be removed allowing for responsible development. The direct financial benefit to municipalities and Monroe County from increased property values and additional development is indeterminate but may be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Community Affairs Committee on April 14, 2010:

This committee substitute makes a technical change.

- B. **Amendments:**

None.

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