

STORAGE NAME: h4475a.ca

DATE: April 15, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4475

RELATING TO: Public Health/Sewage Treatment

SPONSOR(S): Representatives Alexander; Harrington and others

COMPANION BILL(S): HB 4329 (s), SB 2542 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE STANDARDS & REGULATORY REFORM W/D
- (2) COMMUNITY AFFAIRS YEAS 9 NAYS 0
- (3) ENVIRONMENTAL PROTECTION
- (4) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (5)

I. SUMMARY:

HB 4475 assigns the Department of Health (Department) sole authority and responsibility for determining the site suitability for onsite sewage treatment and disposal systems (OSTDS). It acknowledges the Department of Community Affairs' (DCA's) responsibility to review and evaluate comprehensive plan amendments that may include OSTDS issues, but specifically precludes it from requiring more restrictive local OSTDS standards or requiring alternative systems.

The bill also revises the composition of the variance review and advisory committee to include representatives of the real estate industry and the public food service industry, requires the Department to staff the committee, and provides for per diem and travel expenses to be reimbursed upon request by a committee member. Responsibilities of the technical review and advisory panel are revised to make its primary purpose to assist the Department's rulemaking. All proposed OSTDS-related rules, except for an emergency rule, must be approved by the panel prior to adoption by the Department. In addition, the panel would be authorized to consider any existing or proposed OSTDS-related state policy and to communicate the panel's vote regarding any such policy to any affected person. The Department is required to staff the panel and to reimburse panel members for per diem and travel expenses if requested.

HB 4475 will have an estimated annual fiscal impact of \$16,800 for per diem and travel expenses.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 381.0065(3)(a), Florida Statutes (F.S.), authorizes the Department of Health (Department) to promulgate rules establishing minimum standards for the use of onsite sewage treatment and disposal systems (OSTDS). Local governments may by local ordinance enact more restrictive OSTDS standards. In some cases, the Department of Community Affairs (DCA) has required as part of its oversight of comprehensive plan amendments enactment of more restrictive local standards, particularly in Areas of Critical State Concern. This process allows for the enactment of standards more specific to local circumstances and concerns that would not necessarily be addressed by a rule of statewide applicability. The Department is also responsible for site evaluations, pursuant to s. 381.065(3)(b), F.S., to determine their suitability for OSTDS. Under the Department's current rules, professional engineers, licensed septic tank contractors, and other certified persons are allowed to perform site evaluations.

Section 381.0065(4), F.S., requires a permit be obtained from the Department for the construction, repair, modification, abandonment, or operation of an OSTDS. Under s. 381.0065(4)(g), F.S., the Department may impose less restrictive OSTDS standards by granting variances. Such variances are subject to specific criteria, which include the absence of any reasonable treatment alternative, and are subject to review by a variance review and advisory committee. This committee, which has been in existence since 1977, is composed of the Department's Division Director for Environmental Health and representatives from the county health departments, the home building industry, the septic tank industry, and the Department of Environmental Protection. Based on information provided by the Department, this committee has reviewed 2001 variance requests since 1990, granting 1443 variances, or 72 percent of the total requested.

In 1993, a technical advisory panel was created in statute (s. 381.0068, F.S.) to assist the Department with rule adoption. The purpose of the panel is to enhance the Department's decision making by drawing on the OSTDS expertise of several interested groups. As originally composed, the panel included a soil scientist, a registered professional engineer with OSTDS work experience, a hydrologist, a home-building industry representative, and a septic tank industry representative. In 1996, it was renamed the technical review and advisory panel and its membership was modified to 1) delete the hydrologist, 2) add a second representative of the home-building industry and require that these two members be recommended by the Florida Home Builders Association, 3) add a representative from the county public health units, 4) add a real estate industry representative recommended by the Florida Association of Realtors, 5) add a second representative of the septic tank industry and require that these two members be recommended by the Florida Septic Tank Association, 6) add a consumer representative, and 7) add an environmental health professional recommended by the Florida Environmental Health Association. At the same time, the panel's responsibilities were expanded to include review of all OSTDS-related rules prior to adoption by the Department.

B. EFFECT OF PROPOSED CHANGES:

HB 4475 assigns the Department sole authority and responsibility to determine site suitability for any proposed OSTDS. In addition, while acknowledging the Department of Community Affairs' responsibility pursuant to s. 163.3177(6)(c), F.S., for reviewing and evaluating comprehensive plan amendments to the sanitary sewer, solid waste, drainage, potable water, and natural groundwater recharge element, the bill precludes the DCA from requiring adoption of OSTDS standards more restrictive than those in the Department of Health's rules, or requiring publicly owned or investor-owned sewerage systems or other treatment processes as an alternative to OSTDS.

The bill also alters the membership of the variance review and advisory board by 1) requiring that the home-building industry representative be recommended by the Florida Home Builders Association, 2) requiring that the septic tank industry representative be recommended by the Florida Septic Tank Association, 3) adding a real estate industry representative recommended by the Florida Association of Realtors, and 4) adding a public food service industry representative whose business uses an OSTDS and is recommended by the Florida Restaurant Association.

In addition, HB 4475 revises the reasonable alternative criterion considered in variance requests to require that "no reasonable, cost-effective, affordable or economically justifiable alternative exists" in order to be granted a variance. The variance review and advisory committee is also required to make its recommendations on a requested variance at the same meeting during which it reviews the request. An exception is allowed for extraordinary circumstances or at the request of the applicant. The Department would be required to staff the variance review and advisory committee and to reimburse committee members for per diem and travel expenses if requested.

Finally, HB 4475 modifies the responsibilities of the technical review and advisory panel. The panel's primary purpose is to assist the Department's rulemaking, and all proposed OSTDS-related rules, except for an emergency rule, be approved by the panel prior to adoption by the Department. In addition, the panel is authorized to consider any existing or proposed OSTDS-related state policy and to communicate the panel's vote regarding any such policy to any affected person. The chair is authorized to take any appropriate action that allows the panel to function. The Department is required to staff the panel and to reimburse panel members for per diem and travel expenses if requested.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The Department would be required to staff the variance review and advisory board and the technical review and advisory panel.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

HB 4475 does not specifically authorize an increase in fees, but the Department has indicated that fee increases will be needed to offset increased program costs resulting from the bill.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 381.0065 and s. 381.0068, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1-- Amends s. 381.0065, F.S., to provide that Department have the sole authorization to determine site suitability for onsite sewage treatment and disposal systems (OSTDS); provides Legislative acknowledgment of DCA's responsibilities for comprehensive plan amendments; provides DCA may not require more stringent standards or conditions of use more stringent than rules adopted by Department; provides that DCA may not require the use of publicly owned or investor-owned sewerage systems as an alternative to the proposed use of OSTDS other than for determination of compliance of a plan amendment; provides no variance may be granted unless the Department is satisfied that no cost-effective, affordable, or economically justifiable alternative exists for the treatment of the sewage; and provides changes to the variance review and advisory committee membership and criteria it considers when determining and recommending a variance request.

Section 2 -- The Department must staff a technical review and advisory panel to assist in rulemaking; the panel must consider proposed or existing state policy or issues relating to onsite sewage treatment and disposal systems; provides that the panel approve rules and all minutes must be recorded on all votes of proposed rules, describing the general discussions and comments.

Section 3 -- Provides for an effective date of upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Department estimates that \$16,800 will be required annually to reimburse members of the variance review and advisory board and the technical review and advisory panel for per diem and travel expenses.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments below.

2. Recurring Effects:

See Fiscal Comments below.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments below.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

The Department opines that HB 4475 preempts local regulation of OSTDS and might potentially eliminate any accompanying fees currently collected by local governments. As a result, the Department predicts a reduction in local revenues. As examples, the department estimates that the Hillsborough County Health Department would lose \$50,000 in annual revenues and the Orange County Health Department would lose \$74,000 annually. Based on the review of the bill by committee staff, it is unclear that HB 4475 preempts local regulation of OSTDS. This statement is provided only to reflect information provided by the Department.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

The bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

The Department of Health does not support this bill.
The Department of Community Affairs does not support this bill.
The Florida Home Builders Association supports this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1998, the Committee on Community Affairs amended HB 4475 by adopting Amendment 1s, a substitute "strike everything" amendment. As compared to HB 4475, Amendment 1s:

- ▶ Removes the provision that the Department shall have sole authority and responsibility for determining site suitability for OSTDS;
- ▶ Removes the provisions limiting actions that DCA may take when considering comprehensive plan amendments;
- ▶ Provides that the real estate industry representative on the variance review and advisory committee must be a developer in the state that develops lots using OSTDS;
- ▶ Places limits on guttering requirements for residential units that use OSTDS;
- ▶ Provides for the technical review and advisory panel to directly communicate to the Legislature the result of any vote by the panel on its position regarding OSTDS policy, issues, or proposed legislation;
- ▶ Removes the requirement that the technical review and advisory panel approve any OSTDS rule prior to its adoption by the Department and requires that the panel's position on any proposed rule be made a part of the rulemaking record and be admissible into the record of any rule challenge; and
- ▶ Provides for a 30-year period that the first \$1.9 million deposited to the Solid Waste Management Trust Fund be transferred to the State Housing Trust Fund and appropriated each year for the purpose of funding local government infrastructure primarily related and necessary to housing.

The Committee then passed the bill as amended.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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