

STORAGE NAME: h0177s1.ca

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: CS/HB 177

RELATING TO: Onsite Sewage Treatment & Disposal

SPONSOR(S): Committee on Health Care Licensing & Regulation and Representative Argenziano

COMPANION BILL(S): SB 2634 (s)

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 0
- (2) COMMUNITY AFFAIRS
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

CS/HB 177 provides for the regulation of maintenance entities for performance-based treatment systems and aerobic treatment systems. The bill establishes minimum standards for maintenance entities and requires them to file a surety bond with the department to cover the cost of annual permitting for all systems under maintenance contract.

The bill provides minimum inspection and sampling criteria for performance-based treatment systems and aerobic treatment systems. It revises the operating permit fee for these systems from a current range of \$150 to \$300 to not more than \$50. A fee is established for a maintenance entity permit for performance-based treatment systems.

Performance-based treatment systems and aerobic treatment units (ATUs) are mechanical devices which, if properly operated and maintained, provide a high degree of wastewater treatment. These systems are typically used only in cases in which a septic tank system cannot be approved because required setbacks from surface water or wells cannot be achieved, or because there is inadequate area on the property to install a septic tank system.

According to the department, permitted ATUs (installed after July 1, 1991) are inspected twice a year by the Department of Health (county health department) and twice a year by the maintenance entity that services the unit. There is an annual sampling and laboratory analysis of waste material (effluent) to ensure proper operation and to prevent creation of a sanitary nuisance through failure. ATUs that are not functioning properly can dump raw, untreated sewage directly onto the land. The county health department monitors to ensure there is a current maintenance contract and samples for effluent quality. The maintenance entity furnishes the county health departments a listing of all ATUs inspected or serviced during the respective reporting system.

According to the Department of Health, this bill will reduce revenues by \$120,000 in FY 1999-00 and \$170,000 in FY 2000-2001. There is no cost to local government. There will be a \$100 savings to homeowners who have ATUs.

(See VI. Amendments or Committee Substitute Changes section)

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Onsite sewage treatment and disposal systems (OSTDS) are regulated pursuant to ss. 381.0065 - 381.0067, F.S. An OSTDS is defined 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 dosing 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, on other land to which the owner has the legal right to install a system.”

The Department of Health (DOH) is required to issue a permit for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems (OSTDS) where a publicly owned or investor-owned sewerage system is not available. The department is also required to conduct inspections and complaint investigations for a residence or establishment.

Performance-based treatment systems and aerobic treatment units (ATUs) are mechanical devices which, if properly operated and maintained, provide a high degree of wastewater treatment. These systems are typically used only in cases in which a septic tank system cannot be approved because required setbacks from surface water or wells cannot be achieved, or because there is inadequate area on the property to install a septic tank system.

According to the Department of Health, there are less than 2,000 ATUs in use in Florida compared to 1.8 million septic tank systems. Monroe and Franklin Counties are the only counties in which ATUs are required to install, almost exclusively, for new onsite sewage treatment and disposal system installations, and replacement systems for malfunctioning septic tanks. Approximately 50% of Florida counties do not have any ATUs and many other counties have five or less. Ten counties account for over 75% of all ATUs, with Monroe, Franklin, and Brevard counties accounting for approximately two-thirds of all ATUs in Florida.

Current law does not specifically provide for a maintenance entity for performance-based treatment systems. However, the majority of these units currently incorporate an ATU and would require maintenance under the statute and rule.

Before a property owner of a subdivision or single-family residence constructs, repairs, modifies, abandons, or operates an OSTDS/ATU, he must secure a permit from the DOH. An operating permit is valid for 1 year and must be renewed annually at a cost of \$150 (statutory range for this permit is not less than \$150 or more than \$300). Chapter 98-151, Laws of Florida, requires any aerobic treatment unit to be inspected by the department at least annually to assure compliance with the terms of the operating permit.

ATUs must be serviced by an authorized maintenance entity who has been trained by the manufacturer and has access to approved spare parts. A person who maintains or services any portion of an ATU, must receive an ATU maintenance entity permit from the DOH and pay a fee of \$25 (statutory range is not less than \$25 or more than \$150 per year). A maintenance entity is either a registered septic tank contractor or a state licensed plumber regulated pursuant to part III, chapter 489, F.S.

According to the department, permitted ATUs (installed after July 1, 1991) are inspected twice a year by the Department of Health (county health department) and twice a year by the maintenance entity that services the unit. There is an annual sampling and laboratory analysis of waste material (effluent) to ensure proper operation and to prevent creation of a sanitary nuisance through failure. ATUs that are not functioning properly can dump raw, untreated sewage directly onto the land.

Maintenance entities are required to furnish to the county health departments a listing of all ATUs inspected or serviced during the respective reporting period. In addition, they are to report to the county health department any owner who does not renew their maintenance agreements and

subsequent enforcement action is required to be taken. The county health department monitors to ensure there is a current maintenance contract and samples for effluent quality.

Based on information provided by the department to the bill's sponsor, the monitoring and sampling approach previously used "has not been rigorous enough to ensure that virtually all of the ATUs function in compliance with the performance standards associated with these units." Approximately 40% of ATUs sampled exceeded the treated effluent quality criteria thereby not meeting the established performance standards. The department cited the difficulties in obtaining samples from older units not equipped with a suitable sampling port, but acknowledged that the percentage of units falling short of treatment standards is "too high."

According to the department, the operating permit fee and the maintenance permit fee are used to support administration for monitoring both the permitted and non-permitted ATUs (non-permitted ATUs are units installed prior to July 1, 1991). The fees are also used to pay for the testing of the effluent samples, responding to complaints, and monitoring maintenance entity ATU inspection reports. Residential ATU owners are not billed additionally for the cost of analyzing effluent samples.

There appears to be some confusion regarding the frequency of inspections and the need for homeowners to maintain a service contract and inspections by private firms (plumbers and septic tank contractors). In a December 21, 1998, interoffice memorandum to County Health Department Directors/Administrators, the department detailed the protocol for the sampling, inspection, and evaluation of aerobic treatment units in order to comply with the statutes and directed the county health departments to inspect ATUs with operating permits twice a year.

B. EFFECT OF PROPOSED CHANGES:

The bill provides for the regulation of maintenance entities for performance-based treatment systems and aerobic treatment systems. The bill establishes minimum standards for maintenance entities and requires them to file a surety bond with the department to cover the cost of annual permitting for all systems under maintenance contract.

The bill provides minimum inspection and sampling criteria for performance-based treatment systems and aerobic treatment systems. It revises the operating permit fee for these systems from a current range of \$150 to \$300 to not more than \$50. A fee is established for a maintenance entity permit for performance-based treatment systems.

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?

Yes. New rules would have to be promulgated to determine the fee for the maintenance entity permit.

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

No.

(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?

None.

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

None.

(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?

A maintenance entity permit fee of not less than \$25 is established for a performance-based treatment system.

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

No.

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

Yes. The annual fee for an operating permit for aerobic treatment units and performance-based treatment systems is reduced from not less than \$50, or more than \$300, to not more than \$50.

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

N/A

3. Personal Responsibility:

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

N/A

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

Yes. The cost of implementation is paid for by the purchasers of an aerobic treatment unit or performance-based treatment system.

4. Individual Freedom:

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

Yes.

- 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?

N/A

- 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:

Sections 381.0065 and 381.0066, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 381.0065, F.S., to provide for the regulation of maintenance entities for performance-based treatment systems and aerobic treatment systems. The bill establishes minimum standards for maintenance entities and requires them to file a surety bond with the department to cover the cost of annual permitting for all systems under maintenance contract.

The bill provides minimum inspection and sampling criteria for performance-based treatment systems and aerobic treatment systems.

Section 2. Amends s. 381.0066, F.S., to revise the operating permit fee for these systems from a current range of \$150 to \$300 to not more than \$50. A fee is established for a maintenance entity permit for performance-based treatment systems.

Section 3. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Revenues:	FY 1999-00	2000-2001
Department of Health	(\$120,000)	(\$170,000)

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Revenues:		
Department of Health	(\$120,000)	(\$170,000)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

According to the DOH, the \$50 operating permit fee would not generate enough funds to cover the costs of administering the program. Therefore the costs for enforcement against non-compliant systems will be borne by the public sector from general revenue funding.

2. Direct Private Sector Benefits:

The bill will save property owners \$100 annually; however, according to the department, the savings may be offset by increased maintenance costs.

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

Competition may open up in the maintenance entity market and drive down the costs of servicing the units.

D. FISCAL COMMENTS:

The Department of Health provided the following fiscal information:

A permitted ATU costs the health department \$135.38 to administer annually. This uses the midpoint salary, plus benefits, for an Environmental Specialist II (\$25.08), a sampling cost of \$50, and a supervision and administration add-on of 15%. This assumes 2.7 hours of staff time for two inspections and one sample collection plus re-inspection of an estimated 10% of units which would be expected to be found in substantial noncompliance during routine inspections.

With the current \$150 ATU annual operating permit fee, the program is fully self-supporting. If fees are set at \$50, there will be a loss in revenue of \$100 per unit. Amounts shown are based on 1,200 permitted ATUs in 1999 with a revenue loss of \$100 per unit and 1,700 permitted ATUs in 2000 with a revenue loss of \$100 per unit. The number of performance-based treatment systems installed in the state is not significant at the current time, but will increase, particularly in the Florida Keys where advanced treatment units are required.

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 in the aggregate.

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

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

V. COMMENTS:

The Department of Health provided an analysis of CS/HB 177 and stated that it supports the bill with an amendment that supports the current operating permit fee.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Health Care Licensing & Regulation Committee reported favorably HB 177 as a committee substitute on March 18, 1999. The bill, as introduced, provides that the annual operating permit fee for aerobic treatment units (ATUs) shall be not less than \$50 nor more than \$100, rather than not less than \$150 nor more than \$300. It also eliminated the annual aerobic treatment unit maintenance entity fee of not less than \$25 nor more than \$150.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Lucretia Shaw Collins

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AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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