

STORAGE NAME: h0177.hcl

DATE: February 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: HB 177

RELATING TO: Onsite Sewage Treatment & Disposal

SPONSOR(S): Rep. Argenziano

COMPANION BILL(S): None.

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

- (1) HEALTH CARE LICENSING & REGULATION
 - (2) COMMUNITY AFFAIRS
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

The bill 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 eliminates the annual aerobic treatment unit maintenance entity fee of not less than \$25 nor more than \$150. The current fees, as set by the Department of Health, are \$150 for the permit fee and \$25 for the maintenance entity fee.

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 \$85,000 in FY 2000-2001. There is no cost to local government. There will be a \$100 savings to homeowners who have ATUs and \$25 savings to maintenance entities.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Onsite sewage treatment and disposal systems (OSTDS) are regulation 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 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.

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 installed, 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.

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.

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 and to report to the county health department any owner who does not renew their maintenance agreements and 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 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 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 eliminates the annual aerobic treatment unit maintenance entity fee of not less than \$25 nor more than \$150.

The department reports that if the ATU annual operating permit fee is reduced from \$150 per year to a maximum of \$100 per year and the \$25 ATU maintenance entity permit fee is eliminated, it would not generate enough funds to cover the costs of administering the program.

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 annual operating 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?

The maintenance entity permit fee is deleted thereby eliminating the requirement that septic tank contractors and plumbers pay a fee to the Department of Health in order to service and maintain aerobic treatment units. Homeowners would undoubtedly still need a maintenance entity to service their ATUs.

(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?

No.

- 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 is reduced from not less than \$150, or more than \$300 to not less than \$50, or more than \$100. The permit fee of \$25 for an aerobic treatment unit maintenance entity is eliminated.

- 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.

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. 381.0066, F.S., to reduce the annual operating permit fee for aerobic treatment units to not less than \$50 or more than \$100. Present law allows the department to charge a fee of not less than \$150 or no more than \$300. The bill also eliminates the annual aerobic treatment unit maintenance entity permit fee of not less than \$25 or more than \$150. The department charges \$25 for this permit.

Section 2. Amends s. 381.0065, F.S., to correct a cross-reference.

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)	(\$85,000)

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Revenues:		
Department of Health	(\$120,000)	(\$85,000)

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, costs for enforcement against non-compliant aerobic treatment units will have to be borne by the public sector from general revenue funding because the proposed funding of \$50-\$100 will be inadequate to continue regulation of the program.

2. Direct Private Sector Benefits:

The bill will save property owners \$100 annually and aerobic treatment maintenance entities \$25 annually; however, according to the department, the savings may be offset by increased maintenance costs and losses to the consumer from dealing with non-certified maintenance entities.

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 \$50.00, 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.

At the proposed minimum fee (\$50), there would be a net loss of \$85.38 per permitted unit. At the proposed maximum fee (\$100), there would be a loss of \$35.38 per permitted unit. Program expenses are associated with the monitoring of non-permitted ATUs, monitoring of maintenance entities and their inspection reports, and responding to unit operational complaints. These activities necessitate either a fee of at least \$150 per permitted ATU, or the appropriation of general revenue to make up the difference between program costs and funds generated through the permitting of ATUs permitted after July 1, 1991.

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.

COMMENTS:

The Department of Health provided an analysis of HB 177 and stated its opposition due to its negative fiscal impact and potential public health consequences from operating aerobic treatment units in non-compliance with the manufacturer's specification. The bill sponsor responded to this opposition as "both misleading and faulty in its premises." The sponsor asserts that the agency has changed its inspection practice and now "proposes to inspect each system twice a year, thus giving support to the argument that the proposed tax reduction will leave insufficient monies to continue the program." The sponsor further asserts that, "there exists absolutely no basis for the Department's Rule in compelling the ATU owners/lessees to contract with maintenance entity."

The Department of Health states that it supports allowing state licensed "wastewater treatment plant operators" to also qualify as maintenance entities (presently, only a registered septic tank contractor or a licensed plumber can perform this service). It is felt that this expansion would open the ATU maintenance entity field to additional qualified professionals and give ATU owners more choices regarding the servicing of their unit.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

STORAGE NAME: H0177.hcl

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PAGE 10

VI. SIGNATURES:

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