

STORAGE NAME: h1993z.hcl

DATE: June 24, 1999

****FINAL ACTION****

****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
FINAL ANALYSIS**

BILL #: HB 1993

RELATING TO: Onsite Sewage & Disposal Systems

SPONSOR(S): Representative Alexander

COMPANION BILL(S): SB 2288(s) and HB 2229(c)

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

(1)	COMMITTEE ON HEALTH CARE LICENSING & REGULATION	YEAS 11	NAYS 0
(2)	GOVERNMENTAL RULES AND REGULATIONS	YEAS 7	NAYS 0
(3)	WATER & RESOURCE MANAGEMENT	(W/D)	
(4)	HEALTH & HUMAN SERVICES APPROPRIATIONS	(W/D)	
(5)	SENATE NATURAL RESOURCES	(W/D)	
(6)	SENATE FISCAL POLICY	(W/D)	

I. FINAL ACTION STATUS:

HB 1993 was amended and passed the House on April 26, 1999. On April 27, 1999, it was referred to and immediately withdrawn from the Senate Natural Resources and Fiscal Policy Committees and substituted for CS/SB 2288. It was approved by the Governor on June 18, 1999, and codified as chapter 99-395, Laws of Florida.

II. SUMMARY:

HB 1993 amends s. 381.0065, F.S., to establish the definition of "mean annual flood line," "permanent non-tidal surface water body," and "tidally influenced surfaced body water," relating to the distance between an onsite sewage disposal system and any area that either permanently or temporarily has viable surface water.

The bill clarifies and makes consistent the statutes and rules relating to setbacks for onsite sewage systems from surface waters as defined in the bill. It identifies the types of surface water bodies and how the boundaries of those surface waters are to be measured.

Several reports are required to be submitted to the Governor, President of the Senate, and/or Speaker of the House by the following dates:

- ▶ By February 1, 2000, the department is required to conduct a research study and report to the Legislature its findings on the appropriate setback of an onsite sewage treatment and disposal system to a seasonally inundated area;
- ▶ No later than January 1, 2003, the Department of Environmental Protection (DEP) and the Department of Health (DOH) shall report on the "then current state of sewage treatment technology;" and
- ▶ No later than January 1, 2003, Monroe County and the Florida Keys Aqueduct Authority shall report on the implementation of charges, fees, and assessments related to sewage collection, treatment and disposal in Monroe County, and on implementation of the Monroe County Wastewater Master Plan.

HB 1993 authorizes \$5 from each repair permit fee to go towards a hands-on training center for program staff and licensed septic tank contractors. The Department of Health estimates it receives approximately 20,000 repair permits each year thereby providing \$100,000 annually to fund a training center. The department will experience a revenue loss; however, it is anticipated that through additional enforcement activities, the department will generate additional revenues to offset any significant revenue loss.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 381.0065, F.S., establishes a 75 foot setback from surface water on lots platted after 1971 for onsite sewage treatment and disposal systems (OSTDS). The statute also provides a 15 foot setback from areas that contain standing or flowing water for less than 72 hours after a rainfall event. The department has consistently interpreted that language to mean that areas that do contain standing or flowing water for more than 72 hours after a rainfall event must be treated as surface water and are subject to the 75 foot setback.

By rule, the Department of Health has established the mean high water line (tidal) and the ordinary high water line (non-tidal) as the boundary line for the setback. The Florida Home Builders Association has filed a rule challenge over this interpretation and the determination of the boundary line, alleging that the department's rule is vague and arbitrary. The department rule provides for county health department staff to establish this boundary using soil and vegetative indicators. These soils and vegetative indicators are not in rule. On many lots, this determination can be the critical factor in approving or denying a permit application. The statutory setback is necessary to ensure that pathogens and nutrients in the effluent have sufficient contact time with soils to provide treatment and removal before entering surface waters.

The Department of Health coordinates with other federal, state, and local agencies on permitting issues within jurisdictional areas. Applicants in these areas may need to obtain a fill permit from the jurisdictional agency before an onsite system is constructed.

The statute allows a portion of the research surcharge, currently \$5 from each new construction permit, to be used for funding a training center. This surcharge generates \$200,000 each year and all funds are utilized for research related costs.

Currently, the statutes and DOH rules require OSTDS to provide a higher level of sewage treatment than larger sewage treatment facilities permitted by DEP in the Florida Keys. The current statutory requirement is that OSTDS in the Keys are supposed to meet advanced wastewater treatment standards. However, practical OSTDS technology does not exist to meet advanced waste treatment requirements. Practical technology does exist for larger sewage treatment facilities to meet higher standards than they are currently being held to. This discrepancy between treatment requirements has been the source of significant criticism in trying to implement wastewater plans in the Florida Keys.

There is currently no statute or rule requirement that existing approved sewage treatment facilities and OSTDS must be upgraded, at a time certain, to meet higher treatment standards in the Florida Keys. There are no monitoring requirements to determine the level of nutrients in the effluent from individual OSTDS in the Keys.

B. EFFECT OF PROPOSED CHANGES:

The bill defines criteria for the establishment of a "mean annual floodwater line" that would be used as the boundary line for the 75 foot setback from the system to surface waters. Additional language provides a definition of a "permanent non-tidal surface water body." These changes would not explicitly result in a significant change to the setback currently established by county health department staff.

The bill defines "seasonally inundated areas." These areas could be inundated with standing or flowing water for just under 180 days and not be defined as a permanent water body. Instead, the bill requires that a research study be conducted to establish the appropriate setback. Similarly, no setback is temporarily established from drainage ditches that have standing water for more than three days but less than 180 days.

The bill sets aside \$5 from each repair permit to be used for funding a training center for program staff and licensed septic tank contractors with the intent of earmarking funds for the training center without raising existing permit fees.

The bill establishes similar uniform sewage treatment and disposal standards for systems permitted either by DEP or DOH in the Florida Keys. To do this, minimum treatment standards for phosphorus removal are strengthened over the current OSTDS requirements while the overall OSTDS treatment levels are relaxed from advanced waste treatment requirements in current statute. Treatment standards for DEP-permitted systems are strengthened by eliminating all surface water discharges by the year 2006; requiring proper operation, maintenance and performance monitoring of all sewage treatment systems; and requiring the upgrading of all systems to meet the enhanced sewage treatment requirements specified in the bill by the year 2010.

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?

Existing rules will be modified to reflect the changes in the substantive law. This bill will affect Chapter 64E-6, F.A.C., relating to sewage treatment and disposal facilities.

(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?

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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?

Not Applicable.

- 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?

No.

4. Individual Freedom:

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

Not Applicable.

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

Not Applicable.

5. Family Empowerment:

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

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

Not Applicable.

- (2) Who makes the decisions?

Not Applicable.

- (3) Are private alternatives permitted?

Not Applicable.

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

Not Applicable.

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

Not Applicable.

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

Not Applicable.

- 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?

Not Applicable.

- (2) service providers?

Not Applicable.

- (3) government employees/agencies?

Not Applicable.

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 definitions of “mean annual flood line”, “permanent nontidal surface water body”, and “tidally influenced surface water body.”

Section 2. Amends s. 381.0066, F.S., to allow the Department of Health to collect fees for services provided with respect to onsite sewage treatment and disposal systems, and providing that \$5 of that fee is allocated to training centers for the program’s staff.

Section 3. By February 1, 2000, the department is required to report to the Legislature its findings from a research project, applicable to Florida soils, on the appropriate setback of an onsite sewage treatment and disposal system to a seasonally inundated area.

Section 4. Authorizes local government within the Florida Keys area of critical state concern to enact an ordinance.

Section 5. Defines “existing” to mean permitted by DEP or DOH as of the effective date of the act.

Section 6. Provides specified sewage treatment and disposal system requirements in Monroe County. Requires the Department of Environmental Protection and the Department of Health to adopt specified rules.

Section 7. Amends s. 381.0065, F.S., eliminates a requirement that specified onsite sewage treatment and disposal systems meet certain advanced waste treatment concentrations.

Section 8. Requires the Department of Environmental Protection and the Department of Health to report to the Governor, President of Senate, and Speaker of the House on the “then current state of sewage treatment technology.” Specifies what should be addressed in the report. Report is due no later than January 1, 2003.

Section 9. Requires Monroe County and the Florida Keys Aqueduct Authority to report to the Governor, President of Senate, and Speaker of the House on the implementation of charges, fees, and assessments related to sewage collection, treatment and disposal in Monroe County, and on implementation of the Monroe County Wastewater Master Plan. Report is due no later than January 1, 2003.

Section 10. Provides an effective date of upon becoming a law.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects:</u>	1999-00	
<u>Expenditures:</u>		
Department of Health		
Rule promulgation		
Workshops, public hearings, notices,		
printing	\$ 5,000	
2. <u>Recurring Effects:</u>		
<u>Revenues:</u>		
Department of Health	1999-00	2000-01
20,000 estimated repair permits @ \$5		
research charge		
(county health departments 92%)	\$(100,000)	\$(100,000)
(headquarters 8%)		
3. <u>Long Run Effects Other Than Normal Growth:</u>		
None.		
4. <u>Total Revenues and Expenditures:</u>		
<u>Revenues:</u>		
Department of Health	(\$100,000)	(\$100,000)
<u>Expenditures:</u>		
Department of Health	\$ 5,000	

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:

Costs are unknown. The bill requires sampling of OSTDS for phosphorus and nitrogen concentrations as required by department rule. Until a rule is promulgated, it is unknown whether sampling will be on an annual basis or some other frequency, and it is not clear who will be responsible for collecting the sample and paying for the analyses.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

The bill authorizes \$5 of the repair permit fee to earmarked for a training center for program staff and licensed septic tank contractors. The department reports an average of 20,000 repair permits each year which then generate approximately \$100,000 annually for the training center. This diversion will represent a revenue loss to the department. However, the department has recently established a toll free hotline for reporting unlawful septic tank contracting and it anticipates that the increased revenue from enforcement and permitting will offset this funding without a significant revenue loss to the county health departments.

V. 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 of counties or municipalities have to raise revenue 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.

VI. COMMENTS:

The Department of Health indicates that the bill should have a favorable environmental impact on water quality in the Florida Keys, and significantly reduce existing public health concerns. In regard to the provisions relating to the Keys, there should be minimum workload impact on the department.

According to the department, "pending the results of the research study, the bill does not provide any setback from seasonally inundated areas or drainage ditches that have standing or flowing water more than 72 hours but less than 180 days. However, seasonally inundated areas are within the wetland delineation providing DEP with oversight. Mosts water management districts have a 25 foot buffer around the areas and DOH rules would require many remedial measures due ato the soil types. This should be adequate protection during this temporary period."

The department further states, "the Key's portion of this bill primarily addresses environmental water quality. DOH relies upon DEP and the scientific community to determine wastewater treatment levels necessary to maintain and enhance water qualaity in the Florida Keys. There appears to be general consensus among the scientific community and the various state and federal environmental agencies that the sewage treatment levels and other features of this bill would provide enhanced water quality protection. Public health would not be expected to be jeopardized despite the elimination of the advanced waste treatment requirement for OSTDS."

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 1999, the **Health Care Licensing & Regulation Committee** adopted the following amendments:

Amendment #1 - Deletes the definition of "seasonally inundated area."

Amendment #2 - Deletes language relating to the setback of a system from a seasonally inundated area to conform the bill with the previous amendment.

Amendment #3 - Deletes additional language to conform the bill with amendment one.

Amendment #4 - Provides that the department is to conduct a study on the issue of seasonally inundated area setbacks and to report that study to the Legislature by February 1, 2000. Provides that the department may contract with an outside consultant for the study.

On April 23, 1999, the four committee amendments were adopted on the **House Floor** along with an **Amendment to Amendment #4** detailing the role of the technical review advisory panel.

Amendment #5 was adopted on the House Floor to add Sections 4-9 of the bill (explained in the Section-by-Section Analyses).

VIII. SIGNATURES:

COMMITTEE ON COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Katina M. Stamat

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Staff Director:

David M. Greenbaum

David M. Greenbaum

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

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