

STORAGE NAME: h0801a.ca

DATE: March 30, 1999

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

BILL #: HB 801

RELATING TO: Local Government Comprehensive Plans/Septic Tanks

SPONSOR(S): Representative Putnam

COMPANION BILL(S): SB 1580 (s)

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 7 NAYS 1
 - (2) COMMUNITY AFFAIRS YEAS 9 NAYS 1
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill attempts to clarify the scope of the review by the Department of Community Affairs (DCA) of local government comprehensive plan amendments related to wastewater treatment, so that the agency's evaluation focuses on the growth management and planning issues that are within DCA's purview.

The bill acknowledges that the DCA has the responsibility to review and evaluate amendments to the "general sanitary sewer, solid waste, drainage, potable water and natural groundwater aquifer recharge" element in local government comprehensive plans. However, the bill precludes the DCA from requiring more stringent standards or conditions than those imposed by the Department of Health (DOH) regarding the location, installation, and use of onsite sewage treatment and disposal systems (OSTDS), more commonly called septic tanks. Nor will DCA be able to require the use of publicly owned or investor-owned sewerage systems, or other types of sewerage treatment systems, as an alternative to the proposed use of OSTDS, which otherwise is permissible under the chapter of Florida Statutes which governs DOH, and related rules.

The bill grants the DOH the sole authority and responsibility for determining the site suitability for OSTDS.

The bill has no fiscal impact on state tax revenues.

This bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Department of Health (DOH)

Subsection 381.0065(3), F.S., authorizes the Department of Health (DOH) to promulgate rules establishing minimum standards for the use of onsite sewage treatment and disposal systems (OSTDS), and to conduct site evaluations to determine their suitability for OSTDS. Local governments may by local ordinance enact more restrictive OSTDS standards. The DOH is also responsible for site evaluations, pursuant to s. 381.065(3)(b), F.S., to determine their suitability for OSTDS. Under the DOH's current rules, professional engineers, licensed septic tank contractors, and other certified persons are allowed to perform site evaluations.

Subsection 381.0065(4), F.S., requires a permit be obtained from the DOH for the construction, repair, modification, abandonment, or operation of an OSTDS. Under paragraph (g) of subsection 381.0065(4), F.S., the DOH may impose less restrictive OSTDS standards by granting variances. Such variances are subject to specific criteria, which include a hardship not intentionally caused by the action of the application and 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 DOH's Director for Environmental Health and representatives from the county health departments, the home building industry, the septic tank industry, the Department of Environmental Protection, the real estate industry, and the engineering industry.

Department of Community Affairs

Meanwhile, the Department of Community Affairs (DCA) is charged pursuant to chapter 163, F.S., with the review and evaluation of local government comprehensive plans that are designed to guide development within individual communities. Each "comp plan" includes a number of elements, or chapters, on how the county or city plans to address issues, including capital infrastructure, conservation and recreation, transportation, and water/wastewater services. Paragraph (c) of subsection 163.3177(6), F.S., specifies that the element for general sanitary sewer, solid waste, drainage, potable water and natural groundwater aquifer recharge "describe the problems and needs and the general facilities that will be required for solution of the problems and needs." The paragraph also specifies that, "[f]or areas served by septic tanks, soil surveys shall be provided which indicate the suitability of soils for septic tanks."

In some cases, the 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.

Related 1998 Legislation

During the 1998 Legislative Session, HB 4475 was introduced to address concerns that the DCA, when evaluating comp plan amendments, has acted outside its purview in requiring local governments to enact more restrictive wastewater standards to address issues more appropriately under the jurisdiction of DOH. As it progressed through the Legislature, the DCA-related provisions of HB 4475 were removed, and the bill became law (chapter 98-120, Laws of Florida) without the Governor's signature.

B. EFFECT OF PROPOSED CHANGES:

This bill specifies that the suitability of soils for septic tanks shall be determined by the DOH pursuant to the provisions of section 381.0065, F.S., and any rules promulgated to support that section.

The bill prevents the DCA, when reviewing comp plan amendments, from requiring more stringent standards or conditions than those imposed by DOH regarding the location, installation, and use of OSTDS.

The bill prohibits the DCA from requiring the use of publicly owned or investor-owned sewerage systems, or other types of sewerage treatment systems, as an alternative to the proposed use of OSTDS, which otherwise would be permissible under section 381.0065, F.S., and related rules.

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?

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?

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?

No.

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?

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:

Paragraph (c) of subsection 163.3177(6) and subsection 381.0065(1), F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends paragraph (c) of subsection 163.3177(6), F.S., to delete requirement that local government comprehensive plans include soil surveys in communities served by septic tanks; specifies instead that the suitability of soils for septic tanks shall be established pursuant to section 381.0065, F.S., and associated rules.

Section 2: Amends subsection 381.0065(1), F.S., to add to the legislative intention section acknowledgment that DCA has a responsibility to review and evaluate comprehensive plan amendments related to the general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element, pursuant to the agency's authority under chapter 163, F.S.; prevents the DCA from requiring the use of standards or conditions more stringent than those of DOH regarding the location, installation and use of onsite sewage treatment and disposal systems (OSTDS). Specifies that DCA may not require the use of publicly owned or investor-owned sewerage systems, or of other sewerage treatment process as an alternative to OSTDS, which would otherwise be permissible under this section and applicable rules.

Section 3: Provides that this act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

Indeterminate, but likely minimal.

4. Total Revenues and Expenditures:

None.

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:

Indeterminate. Local governments would benefit financially to the extent that they may not be required by DCA to provide wastewater treatment connections to areas as a condition of DCA approving their comprehensive plan amendments for higher densities or change of land use.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Private property owners wishing to develop in areas under DCA's comp plan review may be allowed to use septic tank systems, rather than be required to hook into potentially more expensive sewerage systems or utilize other wastewater treatment alternatives.

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

Indeterminate.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This 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:

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

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

This bill does not reduce state tax revenues shared with counties and municipalities.

V. COMMENTS:

The Florida Home Builders Association (FHBA) supports this bill. The FHBA believes that the bill is necessary in order to clarify the scope of DCA's review of local comp plan amendments related to the allowable land use of OSTDS. The clarification requires the DCA to apply health and groundwater or surface water standards which are not more stringent than those utilized by DOH regarding the location, installation, and use of OSTDS. The bill does not adversely impact the DCA's ability to analyze the comp plan amendment for urban sprawl, concurrency, or other land use planning criteria.

DCA opposes this bill. This bill precludes the use of existing soil suitability data in the DCA planning process and the determination of cumulative impact of the proposed use of OSTDS. The DCA believes that it currently has the authority to review environmental impact, as it is required to transmit proposed plan amendments to various governmental agencies, including the Department of Environmental Protection. This bill removes DCA's authority to review the impact of OSTDS on a scale larger than DOH's review on a lot-by-lot basis.

The American Planning Association, Florida Chapter, (APA) opposes this bill. The APA believes that DOH's review is narrowly focused on public health considerations relevant to individual lots for which septic tank approval is requested. DOH does not look at soil suitability in the context of area development and environmental resources. Although one or two septic tanks might not cause any environmental or public health dilemma, several hundred may. The APA believes that the DCA needs to be able to consider the "big picture," and that this bill will prevent such a review.

The 1000 Friends of Florida opposes this bill. The organization believes that DCA should not be prevented from considering available data and analysis on the suitability of soils for septic tanks use when planning for future growth and development. By restricting the planning process to DOH's permitting standards, DCA will be unable to consider the entire region's ability to provide sewer services in order to coordinate development with capital facilities planning.

In addition to the above four organizations, there are other organizations/groups which either support this bill or oppose it. However, the above four organizations are the only organizations to provide the Committee with a letter stating their concerns.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A meeting was held on March 26, 1999, between interested parties on this issue. No compromise was reached at the meeting.

The Committee on Community Affairs at its meeting on March 30, 1999, adopted the following amendments sponsored by Representative Putnam:

Amendment #1 -- Provides language regarding soil surveys being provided to DCA. This language is currently in section 163.3177(6)(c), Florida Statutes, but was removed by the bill.

Amendment #2 -- Removes the explicit prohibition that the DCA may not require the use of publicly owned or investor-owned sewerage systems or other sewerage treatment processes as an

alternative to the proposed use of OSTDS where such systems are permissible under section 381.0065, Florida Statutes, when it reviews the compliance of a comprehensive plan amendment.

Four additional amendments were offered by Chairman Gay at the March 30, 1999 meeting. The following amendments were not passed by the Committee:

Amendment #3 -- Amends section 163.3184(3)(a), to provide that local governing bodies must send the proposed comp plan or plan amendment to the Department of Health.

Amendment #4 -- Amends section 163.3184(4), to provide intergovernmental review and comments by the Department of Health regarding comp plan or comp plan amendments.

Amendment #5 -- Amends section 163.3184(6), to provide that DCA shall take no action inconsistent with any comment by DOH or DEP with respect to the suitability of soils for septic tanks.

Amendment #6 -- Title amendment to conform title to the above three amendments.

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Joyce Pugh

Staff Director:

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AS REVISED BY THE COMMITTEE ON Community Affairs:

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