

STORAGE NAME: h1863z.hr.doc
DATE: July 5, 2001

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2001-234, Laws of Florida

HOUSE OF REPRESENTATIVES

HEALTH REGULATION FINAL ANALYSIS

BILL #: HB 1863 (PCB HR 01-04)
RELATING TO: Onsite Sewage Treatment & Disposal
SPONSOR(S): Committee on Health Regulation and Representative(s) Farkas and Argenziano
TIED BILL(S): None.

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

- (1) HEALTH REGULATION YEAS 10 NAYS 0
- (2) NATURAL RESOURCES & ENVIRONMENTAL PROTECTION YEAS 11 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 13 NAYS 0
- (4)
- (5)

I. SUMMARY:

Performance-based treatment systems and aerobic treatment units (ATUs) are mechanical devices that, 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.

HB 1863 provides:

- Minimum inspection and optional sampling criteria for performance-based treatment systems and aerobic treatment systems completed by the Department of Health.
- Reduces the operating permit fee for these systems from a current range of \$150 to \$300 to not more than \$50.
- Establishes a fee for a maintenance entity permit for performance-based treatment systems of not less than \$25 and not more than \$150.
- Removes the requirement that the owner obtain a system-operating permit, and places the requirement on the contractual maintenance entity, which is required to inspect the system twice annually.
- Rulemaking authority to the Department of Health to establish minimum qualifying criteria for maintenance entities.
- Reduces the renewal operating permit process for performance-based and ATU treatment systems, from one year to every two years.
- There is no cost to local government. There will be an annual \$100 savings in permitting fees to homeowners who have ATUs.

Provides for effective date of July 1, 2001.

On May 2, 2001, the House adopted an amendment, which directs the Technical Review and Advisory Panel to review the issue of licensing portable restroom operators and report to the Legislature by January 2, 2002.

On May 3, 2001, the house bill was substituted for SB 1648, which was approved by the Governor; and on June 13, 2001 codified as Chapter No. 2001-234, Laws of Florida.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. 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 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 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 that, 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 be 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 more than 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 is not less than \$150 or more than \$300). Section 381.0065, F.S., 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 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.

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.

C. EFFECT OF PROPOSED CHANGES:

HB 1863 provides for the regulation of maintenance entities for performance-based and aerobic treatment unit (ATUs) onsite sewage treatment systems. The bill requires owners of engineered-designed performance-based and ATU systems to maintain a current maintenance service agreement with a maintenance entity permitted by the Department of Health, and transfers the responsibility for obtaining the operating permit from the system owner to the maintenance entity. The DOH is required to inspect engineer-designed performance based systems at least annually or on such periodic basis as the fees collected permits.

HB 1863 provides minimum inspection and optional 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 of not less than \$25 and

not more than \$150 is established for a maintenance entity permit for performance-based treatment systems.

The department reports that it is not expected that any significant revenue will be generated from adding a permit fee to performance-based treatment system maintenance entities since the majority of these are already permitted as ATU maintenance entities.

D. 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 provides rulemaking authority for the Department of Health, and requires that the maintenance entity employ a licensed contractor or a state-licensed wastewater plant operator.

The bill stipulates that a permit for a commercial wastewater system is valid for 1 year while an operating permit for an aerobic treatment unit is valid for 2 years and must be renewed biennially; requires that an owner of an engineer-designed performance-based system or an aerobic treatment unit maintain a current maintenance agreement with a permitted maintenance entity. The bill requires that the maintenance entity obtain an operating permit for each system under contract and requires the inspection each system at least twice a year and report quarterly to the department the number of systems inspected.

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, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The department expects a minimal reduction in the collection of permitting fees by changing the process from an annual permit to a biennial permit. Furthermore, the department reports that it is not expected that any significant revenue will be generated from adding a permit fee to performance-based treatment system maintenance entities since the majority of these are already permitted as ATU maintenance entities.

2. Expenditures:

The department expects a minimal reduction in inspection frequency and therefore a minimal reduction in staffing expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 1863 will save property owners \$100 annually; however, according to the department, the savings may be offset by increased maintenance costs.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1863 does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1863 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:

HB 1863 does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

HB 1863 provides specific rulemaking authority for the Department of Health to develop minimum criteria for entities maintaining and operating performance-based treatment systems and aerobic treatment unit systems.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On May 2, 2001, the House adopted an amendment, which directs the Technical Review and Advisory Panel to review the issue of licensing portable restroom operators and report to the Legislature by January 2, 2002.

On May 3, 2001, the house bill was substituted for SB 1648, which was approved by the Governor; and on June 13, 2001 codified as Chapter No. 2001-234, Laws of Florida.

VII. SIGNATURES:

COMMITTEE ON HOUSE NATURAL RESOURCES & ENVIRONMENTAL PROTECTION:

Prepared by:

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