

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 285 Onsite Sewage Treatment and Disposal System Inspections
SPONSOR(S): Agriculture & Property Rights Subcommittee; Fine and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1748

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	9 Y, 5 N, As CS	Thompson	Smith
2) Natural Resources & Public Lands Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In Florida, one of the systems utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS), commonly referred to as a septic tank. Oversight of OSTDSs is handled by the Florida Department of Health (DOH) in each county. The OSTDS duties of DOH include application reviews, site evaluations, permitting, complaint investigations, and inspections. Current law provides for voluntary inspections; however, the law prohibits a governmental entity from mandating an evaluation or inspection of an OSTDS at the point of sale in a real estate transaction.

The bill requires an inspection of an OSTDS system before the sale of any property within an impaired waterway as designated by the Department of Environmental Protection under s. 403.067, F.S., and its designated watershed area. The bill requires the inspection to be completed by:

- A septic tank contractor or master septic tank contractor registered under part III of chapter 489, F.S.;
- A professional engineer having wastewater treatment system experience and licensed under chapter 471, F.S.; or
- An environmental health professional certified under chapter 381, F.S., in the area of onsite sewage treatment and disposal system evaluation.

The bill requires the inspection to be completed within one year before the sale.

In addition, the bill removes a provision in the onsite sewage treatment and disposal system evaluation and assessment program which prohibits local ordinances from mandating an OSDTS evaluation at the point of sale in a real estate transaction and from requiring a soil examination.

The fiscal impact on state government and the private sector is indeterminate. See the FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for discussion.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Each person in the state generates approximately 100 gallons of domestic wastewater¹ per day.² This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.³ In Florida, one of the systems utilized to treat domestic wastewater is an onsite sewage treatment and disposal system⁴ (OSTDS), commonly referred to as a septic tank.⁵ Oversight of OSTDSs is handled by the Environmental Health Section of the Florida Department of Health (DOH) in each county.⁶ As a result, DOH regulates approximately 30 percent of the state's domestic wastewater from an estimated 2.6 million OSTDSs.⁷

The OSTDS duties of DOH include application reviews, site evaluations, permitting, complaint investigations, and inspections.⁸ Before covering with earth and placing a system into service, a person installing or constructing any portion of an OSTDS is required to notify the county health department of the completion of the construction activities and have the system inspected by DOH for compliance.⁹ In addition, DOH is authorized to adopt rules to administer recommended standards, including disclosure requirements, for voluntary system inspections.¹⁰ However, current law prohibits a governmental entity from mandating an inspection of a system at the point of sale in a real estate transaction.¹¹

In addition, current law provides for an onsite sewage treatment and disposal system evaluation and assessment program in which counties and municipalities can participate.¹² The program is voluntary for counties and municipalities that do not contain a first magnitude spring,¹³ and a requirement for counties and municipalities that do contain a first magnitude spring unless they opt out of the program.¹⁴ The law specifies requirements that participating counties and municipalities must provide by ordinance, including, but not limited to, an evaluation of each onsite sewage treatment and disposal

¹ "Domestic wastewater" is defined in s. 367.021(5), F.S., as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants. "Domestic wastewater" is defined in ch. 62-600.200(25), F.A.C., as the wastewater derived principally from dwellings, business buildings, institutions, and the like; sanitary wastewater; sewage.

² DEP's Domestic Wastewater Program, available at <http://www.dep.state.fl.us/water/wastewater/dom/index.htm> (last visited Feb. 13, 2017).

³ ss. 381.0065(1) and 403.021, F.S.

⁴ ss. 381.0065(2)(k), F.S., defines an "OSTDS" 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 pump 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 or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

⁵ ss. 381.0065(2)(k) and (3), F.S.; chs. 62-600, and 62-701, F.A.C.

⁶ ss. 381.006(7) and 381.0065, F.S.; rule 62-600.120, F.A.C.; DEP's *Wastewater - Septic Systems*, available at <http://www.dep.state.fl.us/water/wastewater/dom/septic.htm> (last visited Feb. 13, 2017).

⁷ DOH's *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last viewed Feb. 14, 2017).

⁸ s. 381.0065(3)(b), F.S.

⁹ ch. 64E-6.003, F.A.C.

¹⁰ Standards for septic tank systems and other onsite sewage treatment and disposal systems are found in s. 381.0065, F.S., and ch. 64E-6, F.A.C.

¹¹ s. 381.0065(4)(w), F.S.

¹² s. 381.00651, F.S.

¹³ s. 381.00651(3), F.S.

¹⁴ s. 381.00651(2), F.S., provides that the governing body of a local government that chooses to opt out of this section, by a 60 percent vote of the voting members of the governing board, shall do so by adopting a resolution that indicates an intent on the part of such local government not to adopt an onsite sewage treatment and disposal system evaluation and assessment program.

system within all or part of the county's or municipality's jurisdiction once every five years to assess the fundamental operational condition of the system and to identify system failures.¹⁵ Similarly, the law prohibits such an ordinance from mandating an evaluation at the point of sale in a real estate transaction, and prohibits such an ordinance from requiring a soil examination.¹⁶

According to DOH, all counties and municipalities that contained a first magnitude spring that were required to adopt the evaluation program, or following a specified process to opt out, opted out.¹⁷ There are no counties or municipalities that have opted into the program.¹⁸

Effect of Proposed Changes

The bill requires an inspection of an OSTDS before the sale of any property within an impaired¹⁹ waterway as designated²⁰ by the Department of Environmental Protection (DEP) under s. 403.067, F.S., and its designated watershed area. The inspection of a system must be completed by:

- A septic tank contractor or master septic tank contractor registered under part III of chapter 489, F.S.;
- A professional engineer having wastewater treatment system experience and licensed under chapter 471, F.S.; or
- An environmental health professional certified under chapter 381, F.S., in the area of onsite sewage treatment and disposal system evaluation.

The inspection must be completed within one year before the sale.

In addition, the bill removes the provision in the onsite sewage treatment and disposal system evaluation and assessment program that prohibits local ordinances from mandating an OSDTS evaluation at the point of sale in a real estate transaction and from requiring a soil examination.

B. SECTION DIRECTORY:

Section 1 amends s. 381.0065, F.S., related to onsite sewage treatment and disposal systems; regulation.

Section 2 amends s. 381.00651, F.S., related to periodic evaluation and assessment of onsite sewage treatment and disposal systems.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fiscal impact to state government revenues is indeterminate. A number of OSTDS systems inspected during a point-of-sale transaction will likely be found to be in non-compliance and will

¹⁵ s. 381.00651(6)(a), F.S.

¹⁶ Id.

¹⁷ Email from Thomas, Joos, Office of Legislative Planning, Florida Department of Health, (Mar. 10, 2017).

¹⁸ Id.

¹⁹ s. 403.067(3)(b), F.S., provides that DEP shall adopt by rule a methodology for determining those waters which are impaired.

²⁰ DEP uses water quality data from a wide variety of sources, including its own monitoring programs, to regularly assess Florida's rivers, lakes, springs and estuaries to determine whether they meet publicly adopted water quality standards. Using the data from these assessments, the Department has verified many waterbodies, or segments of those waterbodies, as impaired (not meeting standards). Others have been "delisted" because a previously identified impairment cannot be verified or a Total Maximum Daily Load (TMDL) has been adopted. Additional information regarding DEP's impaired water responsibilities can be found on its website available at:

<http://www.dep.state.fl.us/water/watersheds/assessment/a-lists.htm> (last visited Mar. 15, 2017).

need a repair permit through DOH.²¹ According to DOH, a repair and inspection permit fee is \$300.²² DEP has verified many waterbodies, or segments of those waterbodies, as impaired (not meeting standards).²³ However, it is unknown how many real estate sales in these areas will occur.

2. Expenditures:

The fiscal impact to state government expenditures is indeterminate.

DOH provides that if the Bureau of Environmental Health's Environmental Health Database needs to be upgraded in response to any mandatory inspection programs adopted by counties and municipalities, a potential one-time cost of upgrading will be incurred and ongoing support and maintenance of the system will include ongoing costs.²⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on the private sector is indeterminate. According to DOH, the cost of an OSTDS inspection is estimated to be between \$100 and \$500.²⁵ DEP has verified many waterbodies, or segments of those waterbodies, as impaired (not meeting standards).²⁶ However, it is unknown how many real estate sales in these areas will occur.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

²¹ Florida Department of Health, Agency Analysis of 2017 HB 285, p. 4 (Mar. 2, 2017).

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id.

B. RULE-MAKING AUTHORITY:

The bill does not expressly provide rule-making authority. However, according to DOH the absence of a specific inspection protocol could necessitate the development of rules to clarify the requirements of the inspection program.²⁷

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2017, the Agriculture & Property Rights Subcommittee adopted one amendment to HB 285. The amendment requires system inspections before the sale of any property within designated impaired waterways and watershed areas, and provides the inspections are valid for one year. The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

²⁷ Florida Department of Health, Agency Analysis of 2017 HB 285, p. 2 (Mar. 2, 2017).