

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 973 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Payne
TIED BILLS: **IDEN./SIM. BILLS:** SB 1022

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Melkun	Shugar
2) Appropriations Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

A person generates approximately 100 gallons of domestic wastewater per day. This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways. One of the systems utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS), commonly referred to as a septic system. Approximately 30 percent of the population in Florida uses an OSTDS.

Nutrients, specifically nitrogen and phosphorous, are naturally present in the water and necessary for the healthy growth of plant and animal life. However, too much nitrogen or phosphorous can harm water quality. In some areas, the water leaving septic tanks has been identified as a major contributor to nitrogen pollution. To reduce water quality impacts, the Florida Springs and Aquifer Protection Act prohibited new homes or businesses with new OSTDSs on lots less than one acre from installing conventional non-nitrogen reducing OSTDSs if the installation is inconsistent with a basin management action plan. Instead, a resident applying for a new construction permit must either connect to available sewers or install a nitrogen-reducing OSTDS.

DOH operates and serves three advisory organizations authorized by the Legislature regarding OSTDSs: the Research Review and Advisory Committee, the Technical Review and Advisory Panel, and the Variance Review and Advisory Committee.

Section 20.06(2), F.S., defines a type two transfer as the merging of an existing department, program or activity into another department. Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held previous to the transfer.

The bill transfers the OSTDS program from DOH to DEP by type two transfer and amends a number of provisions to conform to this transfer. The bill also requires DEP to adopt rules to increase the availability of cost-effective, low maintenance, and reliable nutrient removing OSTDSs in the marketplace, allows the use of National Sanitation Foundation International/American National Standards Institute 245 systems approved by the Public Health and Safety Organization, and clarifies the parts of a lot that must be considered in calculating lot size.

The bill also repeals the Technical Review and Advisory Panel and the Research Review and Advisory Committee and creates an OSTDS Technical Advisory Committee (TAC). The TAC is required to assist in developing rules that increase the availability of nutrient removing OSTDSs and must consider and recommend regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of nutrient removing OSTDSs that have been reviewed by and approved by a national agency or organization. The bill specifies that the TAC and related provisions expire on July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Onsite Sewage Treatment and Disposal

A person 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 One of the methods utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS)⁴, commonly referred to as a septic system.⁵ Approximately, 30 percent of the population in Florida uses an OSTDS.

An OSTDS consists of two main parts: a septic tank and a drainfield. The septic tank is a watertight box with an inlet and outlet pipe. Wastewater flows from the home to the septic tank through the sewer pipe. The septic tank treats the wastewater naturally by holding it in the tank long enough for solids and liquids to separate. Solids heavier than water settle at the bottom of the tank forming a layer of sludge and leave a layer of partially clarified wastewater. The layers of sludge remain in the septic tank where bacteria found naturally in the wastewater work to break down the solids. The sludge that cannot be broken down is retained in the tank until the tank is pumped. The layer of clarified liquid flows from the septic tank to the drainfield, which helps to uniformly distribute the wastewater in the drainfield. A standard drainfield is a series of trenches lined with gravel or coarse sand and buried one to three feet below the ground surface. Perforated pipes run through the trenches to distribute the wastewater. The drainfield treats the wastewater by allowing it to slowly trickle from the pipes out into the gravel and down through the soil, which act as biological filters to remove pathogens and excess nutrients.⁶

An OSTDS must be permitted and inspected by the Department of Health (DOH) before it is placed into operation and must be located and installed so that, along with proper maintenance, the system functions in a sanitary manner, does not create a sanitary nuisance or health hazard, and does not endanger the safety of any domestic water supply, groundwater, or surface water.⁷ Sewage waste and effluent from an OSTDS may not be discharged onto the ground surface or directly or indirectly discharged into ditches, drainage structures, ground waters, surface waters, or aquifers.⁸ The

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 rule 62-600.200(21), F.A.C., as the wastewater derived principally from dwellings, business buildings, institutions, and the like, commonly referred to as sanitary wastewater or sewage.

² Department of Environmental Protection (DEP), *Domestic Wastewater Program*, available at <https://floridadep.gov/water/domestic-wastewater> (last visited Feb. 20, 2019).

³ Sections 381.0065(1) and 403.021, F.S.

⁴ Section 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, F.S.

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

⁶ National Environmental Services Center, *What is a septic system? How do I maintain one?*, available at http://www.nesc.wvu.edu/subpages/septic_defined.cfm (last visited Mar. 3, 2019).

⁷ Section 381.0065(4), F.S.; rs. 64E-6.003, F.A.C. and 64E-6.004, F.A.C.

⁸ Rule 64E-6.005, F.A.C.

permitting and inspection of OSTDSs is handled mainly by county health departments with support from the Bureau of Onsite Sewage.⁹ DOH regulates an estimated 2.6 million OSTDSs.¹⁰

Water Quality

Nutrients, specifically nitrogen and phosphorous, are naturally present in the water and necessary for the healthy growth of plant and animal life. However, too much nitrogen or phosphorous can harm water quality. In some areas, the wastewater leaving OSTDSs has been identified as a contributor to nitrogen pollution.¹¹

In 2016, the Legislature identified 30 Outstanding Florida Springs¹² that require additional protections to ensure the conservation and restoration of the springs.¹³ The Springs and Aquifer Protection Act (act) directed the Department of Environmental Protection (DEP) to assess the Outstanding Florida Springs for nutrient impairment and, in collaboration with other state agencies and local governments, develop restoration plans, known as Basin Management Action Plans (BMAPs), by July 1, 2016.¹⁴ Each BMAP is required to identify the sources of nitrogen pollution within the springshed, and include projects and strategies that will achieve the reductions needed to improve water quality in the region, including, as necessary, an OSTDS remediation plan to identify cost-effective and financially feasible projects to reduce nitrogen contributions from OSTDSs.¹⁵

The act also provided requirements regarding new OSTDSs located near impacted springs within targeted vulnerable areas, known as priority focus areas, which are locations where pollution sources pose the highest risk due to proximity to a spring and permeable soil conditions.¹⁶ To reduce water quality impacts, new homes or businesses with new OSTDSs on lots less than one acre are prohibited from installing conventional non-nitrogen reducing OSTDSs if the installation is inconsistent with a BMAP.¹⁷ Instead, new construction must either connect to available sewers, install a nitrogen-reducing OSTDS, such as “in-ground, passive nitrogen-reducing systems” that use additional soil and media layers to reduce nitrogen flowing into the aquifer, or install nitrogen-reducing Aerobic Treatment Units and Performance-Based Treatment Systems.¹⁸

⁹ Sections 381.006(7) and 381.0065, F.S.; r. 62-600.120, F.A.C.; see DEP, *Domestic Wastewater - Septic Systems*, available at <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Feb. 20, 2019); DOH is an integrated agency that is comprised of the main state office in Tallahassee and 67 county health departments. OSTDS functions are performed by both the state office and the county health departments, with permitting and inspections the responsibility of the counties.

¹⁰ DOH, *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Jan. 10, 2019).

¹¹ DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Mar. 1, 2019).

¹² Section 373.802(4), F.S., defines “Outstanding Florida Spring” as all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and the following additional springs, including their associated spring runs: De Leon Springs, Peacock Springs, Poe Springs, Rock Springs, Wekiwa Springs, and Gemini Springs. The term does not include submarine springs or river rises.

¹³ Chapter 2016-001, Laws of Fla.; also known as the Springs and Aquifer Protection Act.

¹⁴ DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Mar. 1, 2019).

¹⁵ Section 373.807, F.S.; DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Mar. 1, 2019).

¹⁶ Section 373.802(5), F.S., defines a “priority focus area” as the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring, as determined by DEP in consultation with the appropriate water management districts, and delineated in a basin management action plan.

¹⁷ DEP, *Meeting the Septic System Permitting Requirements: Springs and Aquifer Protection Act*, available at https://floridadep.gov/sites/default/files/Springs%20and%20Aquifer%20Protection%20Act_0.pdf (last visited Mar. 1, 2019).

¹⁸ DOH, *Onsite Sewage Treatment and Disposal System (OSTDS) Permitting in a County affected by the Florida Springs and Aquifer Protection Act* (May 14, 2018), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/letter-to-builders-springs.pdf (last visited Mar. 1, 2019).

Type Two Transfers

Section 20.06(2), F.S., defines a type two transfer as the merging of an existing department, program or activity into another department. Any program or activity transferred by a type two transfer retains all the statutory powers, duties, and functions it held previous to the transfer. The program or activity also retains its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, unless otherwise provided by law. The transfer of segregated funds must be made in such a manner that the relation between the program and the revenue source is retained.¹⁹

Effect of Proposed Changes

The bill transfers the OSTDS program from DOH to DEP by type two transfer as defined in s. 20.06(2), F.S.

The bill also amends the following to clarify the transfer of authority:

- Section 153.54, F.S., to clarify that DEP, not DOH, will provide available information on OSTDSs for preparing a study on the construction of a new proposed central sewerage system or extension of an existing central sewerage system that was not previously approved.
- Section 153.73, F.S., to clarify that DEP, not DOH, will provide available information on OSTDSs for preparing a study on the construction of a new proposed central sewerage system or extension of an existing central sewerage system that was not previously approved.
- Section 163.3180, F.S., to clarify that DEP, not DOH, is the agency that approves OSTDSs to serve new development.
- Section 180.03, F.S., to clarify that DEP, not DOH, will provide available information on OSTDSs for preparing a study on the construction of a new proposed central sewerage system or extension of an existing central sewerage system that was not previously approved.
- Section 373.807, F.S., to clarify the transfer of authority to DEP by removing a reference to DOH.
- Section 381.006, F.S., to clarify that DOH must retain the environmental health program with the exception of the OSTDS functions;
- Section 381.0061, F.S., to update a cross-reference;
- Section 381.0064, F.S., to clarify that DEP, not DOH, must establish a program for continuing education regarding the public health and environmental effects of OSTDSs;
- Section 381.00651, F.S., to clarify the transfer of authority to DEP and to require the county health departments to coordinate with DEP in the administration of any evaluation program.

The bill also amends ss. 381.0065, 381.0101, and 489.551, F.S., to define “department” as the Department of Environmental Protection.

The bill amends s. 381.0065, F.S., to require DEP to initiate rulemaking, no later than August 1, 2019, and adopt rules that must allow the use of National Sanitation Foundation International/American National Standards Institute 245 systems approved by the Public Health and Safety Organization²⁰ before a time certain and that DEP must, when determining the size of a lot and length of a setback, include portions of the lot subject to an easement or right of entry. The bill further requires DEP to initiate rulemaking, no later than January 1, 2020, and adopt rules considering the recommendations of the TAC to increase the availability of cost-effective, low maintenance, and reliable nutrient removing OSTDSs in the marketplace.

¹⁹ Section 20.06(2), F.S.

²⁰ National Sanitation Foundation/American National Standards Institute (NSF/ANSI) 245 is a certification applied to a OSTDS that defines total nitrogen reduction requirements. An NSF/ANSI 245 certified system covers residential wastewater treatment systems with rated capacities between 400 and 1,500 gallons per day. To achieve certification, treatment systems must produce an acceptable quality of effluent during a six-month (26-week) test; *see also*, The Public Health and Safety Organization, *NSF/ANSI 245: Nitrogen Reduction*, available at <http://www.nsf.org/services/by-industry/water-wastewater/onsite-wastewater/nitrogen-reduction> (last visited Mar. 6, 2019).

Finally, the bill amends s. 403.067, F.S., to require DEP to submit to the Office of Economic and Demographic Research (EDR) the cost estimates of the projects listed in each new or revised BMAP, including any septic-to-sewer conversion and septic tank remediation project costs.

Consolidated Annual Reports

Present Situation

By March 1 of each year, Florida's water management districts are required to submit a consolidated annual report to the Governor, the President of the Senate, the Speaker of the House, and DEP. The water management districts must also provide copies of the report to the chairs of the legislative committees having substantive or fiscal jurisdiction over water management districts and the governing boards of all county entities having jurisdiction or deriving any funds for operations of the district. The report must also be made available to the public in either a printed or electronic format.²¹

The consolidated annual report includes several legislatively mandated plans and reports regarding the status of water management district programs and water resources. The consolidated annual report includes the following documents: Strategic Water Management Plan Annual Work Plan Report; Minimum Flows and Minimum Water Levels Annual Priority List and Schedule; Annual Five-Year Capital Improvement Plan; Alternative Water Supplies Annual Report; Five-Year Water Resource Development Work Program; Florida Forever Water Management District Work Plan Annual Report; Mitigation Donation Annual Report; Water Projects in the Five-Year Water Resources Development Work Program; and Surface Water Improvement and Management Program Annual Report.²²

Effect of Proposed Changes

The bill amends s. 373.036, F.S., to require the consolidated water management district annual report to be submitted to EDR in addition to DEP, the Governor, and the Legislature and requires the report to include any septic-to-sewer conversion and septic tank remediation projects in the list of projects identified to implement BMAPs.

DOH Advisory Committees

Present Situation

DOH operates and serves three advisory organizations: the Research Review and Advisory Committee (RRAC),²³ the Technical Review and Advisory Panel (TRAP),²⁴ and the Variance Review and Advisory Committee.²⁵ DOH established the TRAP to assist in the adoption of rules for OSTDSs as well as review and comment on any legislation or existing policy related to OSTDSs. All rules proposed by DOH that relate to OSTDSs must be presented to the TRAP for review and comment prior to adoption.²⁶ DOH appointed the RRAC to advise on new research, review and rank proposals for research contracts, and review and provide comments on draft research reports regarding the OSTDS

²¹ Northwest Florida Water Management District, *Consolidated Annual Reports*, available at <https://www.nwfwater.com/Data-Publications/Reports-Plans/Consolidated-Annual-Reports> (last visited Mar. 2, 2019).

²² Section 373.036(7), F.S.

²³ The schedule of meetings and list of issues to be discussed in the RRAC is available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/rrac.html>.

²⁴ The schedule of meetings and list of issues to be discussed in the TRAP is available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/trap/index.html>.

²⁵ DOH, *Boards, Councils and Committees*, available at <http://www.floridahealth.gov/provider-and-partner-resources/advisory-councils-stakeholder-groups/index.html> (last visited Mar. 1, 2019); The schedule of meetings and list of issues to be discussed in the Variance Review and Advisory Committee is available at http://www.floridahealth.gov/environmental-health/onsite-sewage/variances/index.html#heading_2.

²⁶ Section 381.0068, F.S.

industry.²⁷ DOH also established the Variance Review and Advisory Committee, which recommends agency action on variance requests. A person who applies for an OSTDS construction permit but cannot meet the requirements of the rule or statute will not be issued a permit; however, a person may request a variance from the standards.²⁸ DOH, in hardship cases, may grant variances, which may be less restrictive than the OSTDS provisions required by statute and rule.²⁹

Effect of Proposed Changes

The bill amends s. 381.0065, F.S., and repeals s. 381.0068, F.S., to repeal the TRAP and the RRAC.

The bill further creates an OSTDS Technical Advisory Committee (TAC) and requires DEP to appoint members to assist in developing rules that increase the availability of nutrient removing OSTDSs. The bill also requires the TAC to consider and recommend regulatory options, such as fast-track approval, prequalification, or expedited permitting, to facilitate the introduction and use of nutrient removing OSTDSs that have been reviewed and approved by a national agency or organization.

Finally, the bill specifies that the TAC should consist of at least five, but no more than nine members, representing the home building industry, the real estate industry, the OSTDS industry, septic tank contractors, engineers, and local governments. The bill specifies that the provisions governing the TAC will expire on July 1, 2020.

B. SECTION DIRECTORY:

- Section 1. Transfers authority of OSTDSs from DOH to DEP via a type two transfer.
- Section 2. Clarifies that binding contracts and interagency agreements between DOH and other agencies will transfer to DEP.
- Section 3. Amends s. 153.54, F.S., to clarify that DEP will provide information on OSTDSs for a study on the construction of a new or extension of an existing central sewerage system.
- Section 4. Amends s. 153.73, F.S., to clarify that DEP will provide information on OSTDSs for a study on the construction of a new or extension of an existing central sewerage system.
- Section 5. Amends s. 163.3180, F.S., to clarify that DEP, not DOH, is the agency that approves OSTDSs to serve new development.
- Section 6. Amends s. 180.03, F.S., to clarify that DEP will provide information on OSTDSs for a study on the construction of a new or extension of an existing central sewerage system.
- Section 7. Amends s. 373.036, F.S., to require consolidated annual reports to be submitted to EDR.
- Section 8. Amends s. 373.807, F.S., to clarify the transfer of authority from DOH to DEP.
- Section 9. Amends s. 381.006, F.S., to clarify DOH must retain the environmental health program with the exception of the OSTDS program.
- Section 10. Amends s. 381.0061, F.S., to update a cross-reference.
- Section 11. Amends s. 381.0064, F.S., to require DEP to establish a program for continuing education regarding the public health and environmental effects of OSTDSs.

²⁷ Section 381.0065(4)(o), F.S.

²⁸ DOH, *Variances*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/variances/index.html> (last visited Mar. 1, 2019).

²⁹ Section 381.0065(4)(h), F.S.

- Section 12. Amends s. 381.0065, F.S., to create the TAC, define “department”, and require DEP to conduct rulemaking.
- Section 13. Amends s. 381.00651, F.S., to clarify the transfer of authority from DOH to DEP and require county health departments to work with DEP to administer evaluation programs.
- Section 14. Repeals s. 381.0068, F.S., to repeal the TRAP.
- Section 15. Amends s. 381.0101, F.S., to define “department” as DEP.
- Section 16. Amends s. 403.067, F.S., to require DEP to submit project cost estimates to EDR regarding septic-to-sewer conversion and septic remediation projects.
- Section 17. Amends s. 489.551, F.S., to define “department” as DEP.
- Section 18. Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate effect on state government. Some revenue could be realized from enforcement citations and fines, but this revenue stream would likely be minimal.

2. Expenditures:

The bill may have an indeterminate negative effect on state government expenditures. Under DOH, the OSTDS program is funded by permit fees and the State General Revenue Fund. In addition, the county health departments provide support to the program with other county employees. It is unclear how the transfer of authority to DEP will affect the county health departments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate impact on the private sector. It is unclear whether the transfer will result in changes to the program that could affect the private sector, such as changes in the cost of permit fees or the approval of using lower cost, nutrient reducing OSTDSs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure 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 and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules to increase the availability of cost-effective, low maintenance, and reliable nutrient removing OSTDSs in the marketplace. While the bill does not expressly grant rulemaking authority to DEP, existing rulemaking authority in s. 381.0065, F.S., will transfer to DEP and is sufficient to comply with the requirements of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2019, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment clarifies the transfer of any binding contracts or interagency agreements between DOH and any other agency must continue for the remainder of the term of the contract or agreement. The amendment also updated several statutes that provide for the regulation of OSTDSs to conform with the transfer of authority from DOH to DEP. Further, the amendment clarified that DEP must appoint a TAC whose purpose is to increase the availability of nutrient removing OSTDSs, rather than exclusively nitrogen removing OSTDSs. Finally, the amendment required DEP to initiate rulemaking for specified requirements by a time certain.

This amendment is drafted to the committee substitute as approved by the Agriculture and Natural Resources Subcommittee.