

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 21, 1998 Revised: _____

Subject: Public Health

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>HC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute (CS) for SB 2542 makes the following changes in the Department of Health's (department's) programs regulating onsite sewage treatment and disposal systems (OSTDS): clarifies the department's authority to require continuing education of certain professionals and authorizes the department to establish by rule criteria for those requirements; allows the variance review and advisory committee to consider the cost of alternatives when determining whether to grant a variance application for OSTDS; revises the membership of the variance review and advisory committee; provides standards for guttering of residences developed with OSTDS; provides requirements for the use of OSTDS within the floodways of the Suwannee and Aucilla Rivers; clarifies the authority of the department's technical review and advisory panel to review and comment on legislation, in addition to other existing and proposed state policies regarding OSTDS, and to assist the department in rulemaking; requires that the panel's position on proposed rules be made a part of the rulemaking record that is maintained by the department; expands the definition of "master septic tank contractor"; prohibits the use of the fictitious name or other identifiers of an entity whose certificate has been revoked; and requires the transfer of the first \$1.9 million deposited to the Solid Waste Management Trust Fund to the State Housing Trust Fund to pay for a number of specific local government sewer and water projects across the state, and provides the amount which may be allocated to each project.

The CS substantially amends the following sections of the Florida Statutes: 381.0064, 381.0065, 381.0068, 489.551, and 489.555.

II. Present Situation:

Section 381.0065(3)(a), F.S., authorizes the department to promulgate rules establishing minimum standards for the use of onsite sewage treatment and disposal systems (OSTDS). Local

governments may by local ordinance enact more restrictive OSTDS standards. This process allows for the enactment of standards more specific to local circumstances and concerns than would necessarily be addressed by a rule of statewide applicability. The department is also responsible for site evaluations, pursuant to s. 381.065(3)(b), F.S., to determine their suitability for OSTDS. Under the department's current rules, professional engineers, licensed septic tank contractors, and other certified persons are allowed to perform site evaluations.

Section 381.0065(4), F.S., requires a permit be obtained from the department for the construction, repair, modification, abandonment, or operation of an OSTDS. Under s. 381.0065(4)(g), F.S., the department may impose less restrictive OSTDS standards by granting variances. Such variances are subject to specific criteria, which include 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 the Department's Division Director for Environmental Health and representatives from the county health departments, the home building industry, the septic tank industry, and the Department of Environmental Protection. Based on information provided by the department, this committee has reviewed 2001 variance requests since 1990, and granted 1443 variances, or 72 percent of the total requested.

In 1993, a technical advisory panel was created by statute to assist the department with rule adoption. Section 381.0068, F.S., provides that the purpose of the panel is to enhance the department's decision making by drawing on the OSTDS expertise of several interested groups. As originally composed, the panel included a soil scientist, a registered professional engineer with OSTDS work experience, a hydrologist, a home-building industry representative, and a septic tank industry representative. In 1996, it was renamed the technical review and advisory panel and its membership was modified by deleting the hydrologist; adding a second representative of the home-building industry, and requiring that these two members be recommended by the Florida Home Builders Association; adding a representative from the county public health units; adding a real estate industry representative recommended by the Florida Association of Realtors; adding a second representative of the septic tank industry and requiring that these two members be recommended by the Florida Septic Tank Association; adding a consumer representative; and adding an environmental health professional recommended by the Florida Environmental Health Association. At the same time, the panel's responsibilities were expanded to include review of all OSTDS-related rules prior to adoption by the department.

Section 489.551, F.S., was amended in 1996 to create the new classification of "master septic tank contractor." This section establishes minimum registration and continuing education requirements applicable to a master septic tank contractor, requires that such a contractor have a minimum of 3 years of experience in Florida, requires that contractors meet the soil or site evaluation expertise criteria established by the department, and provides fee structures for applications and registration as a master septic tank contractor.

Prior to 1992, many residents along the Aucilla and Suwannee Rivers used mounded drainfields for their OSTDS, which eroded during flooding of these rivers. In response to the sanitary

nuisance created by such erosion, the department, in 1992, adopted Rule 64E-6.007, F.A.C., prohibiting the use of mounded systems in regulatory floodways such as the Aucilla and Suwannee Rivers. That rule allows the use of alternative OSTDS, such as aerobic treatment units and composting toilets with graywater systems, on property which is below the 10-year flood elevation, but at least 3 feet above the 2-year flood elevation. However, in 1996, the Legislature passed ch. 96-303, *Laws of Florida*, providing an exemption from the department's new rule requirements for lots platted and recorded, or otherwise approved, on or after January 1, 1972 through January 1, 1983. Those lots were required to, at a minimum, comply with the rules in effect on January 1, 1983. Lots platted after January 1, 1983, were required to comply with the rules in existence at the time the lots were created. According to the department, the result of ch. 96-303, L.O.F., was to eliminate compliance with Rule 64E-6.007, F.A.C., and authorize mounded drainfields in the lowest portions of regulated floodways.

The Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), formerly the Florida Housing Finance Agency (FHFA), is as an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental functions of financing and refinancing affordable housing and related facilities in Florida. The Department of Community Affairs (DCA) contracts with the FHFC on a multi-year basis to administer state affordable housing programs. Section 420.504, F.S., declares that the corporation constitutes an entrepreneurial public corporation organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in Florida. It is further declared to be the intent of and constitutional construction by the Legislature that the corporation is not a department of the executive branch of state government within the scope and meaning of section 6, Article IV of the State Constitution, but is functionally related to the department.

Section 420.0005, F.S., establishes the State Housing Trust Fund. Money deposited to the fund and appropriated by the Legislature must be transferred quarterly in advance, or as soon as received, into the fund. Subject to the provisions of ss. 420.5092(6)(a) and (b), F.S., the Comptroller is to transfer such funds to the corporation upon certification by the Department Secretary that the corporation is in compliance with the requirements of s. 420.0006, F.S.

The Solid Waste Management Trust Fund

The Solid Waste Management Trust Fund is established in s. 403.709, F.S., and was created as a part of the comprehensive 1988 Solid Waste Management Act. The Legislature chose to fund it from fees and other revenues from retail businesses because nearly all of what eventually becomes municipal solid waste is first purchased in retail stores. Imposing a fee at the point of purchase integrates disposal costs of goods and materials into their initial purchase. The following revenue sources were negotiated with the business community for deposit to the trust fund:

- ▶ A business registration fee on businesses which collect the sales tax;

- ▶ Two-tenths of 1 percent of the sales tax;
- ▶ A waste tire fee of 1 dollar per new tire sold in Florida;
- ▶ \$19 million diverted from the Oil Overcharge Settlement Fund; and
- ▶ The Advance Disposal Fee of 1 percent per container on all containers made of glass, plastic, plastic-coated paper, steel and aluminum, which were not being recycled at a sustained rate of 50 percent.

The Department of Environmental Protection administers the fund for the following purposes:

- ▶ Funding solid waste activities, such as technical assistance to local governments, performing solid waste regulatory and enforcement, and preparing solid waste documents;
- ▶ Making grants and awards to local governments for solid waste management recycling and education programs, pursuant to s. 403.7095, F.S.; and
- ▶ Funding research, demonstration and training for colleges, universities and other organizations that can reasonably demonstrate the capability to carry out such projects.

Most of the appropriations from the trust fund have been spent on three main programs: Solid Waste Recycling, Aquatic Plant Management, and Surface Water Improvement and Management. In 1997, the Legislature created the Solid Waste Management Trust Fund Review Commission to review the current uses of the trust fund and recommend alternative funding sources for these programs. The Commission held public meetings at various locations around the state to gather information and formulate its report to the Governor, Speaker of the House and President of the Senate.

In its final report, dated January, 1998, the Solid Waste Management Trust Fund Review Commission made the following recommendations applicable to all three programs:

- ▶ All three programs should be continued and funded at required levels. On this issue the commission found that funding for the recycling program has been adequate and consistent over the history of the program, with the exception of transfers made in FY 1997-98 from the trust fund. For that fiscal year only, SB 2402 transferred \$6 million to the Aquatic Plant Trust Fund and \$6 million to the Ecosystem Management and Restoration Trust Fund.
- ▶ There should be a strong nexus between revenue sources and uses.
- ▶ Local participation is essential.
- ▶ All programs should have measurable goals and performance criteria.

III. Effect of Proposed Changes:

Section 1 amends s. 381.0064, F.S., relating to continuing education courses for septic tank operators. The CS replaces detailed criteria for such courses with authorization for the department to establish by rule the criteria for approval of and requirements for such courses.

Section 2 amends s. 381.0065, F.S., regarding variances to department permits for OSTDS. The CS authorizes the department to consider factors such as the cost of alternatives when determining whether to grant a request for a variance and makes the following changes regarding the variance review and advisory committee: clarifies that the department must staff the committee, requires the committee to take action on requests for variance at the meeting for which they are noticed unless there is an extraordinary change in circumstance, the department receives new information which raises new issues, or when the applicant requests an extension; expands the membership of the committee to include a representative from the real estate industry recommended by the Florida Association of Realtors and a representative from the engineering profession recommended by the Florida Engineering Society; requires that the committee members representing the home building industry and septic tank industry be recommended by the Florida Home Builders Association and the Florida Septic Tank Association, respectively.

The CS also adds new paragraphs (r) and (s) to subsection (4) of s. 381.0065, F.S., relating to permits, installation and conditions thereof, for OSTDS. Paragraph (r) provides that gutters are not required for residences if the OSTDS is located more than 5 feet from the roof drip line of the house. The CS further provides that if guttering is used on residences with OSTDS, the downspouts must be directed away from the drainfields. Paragraph (s) provides requirements for locating OSTDS within the floodways of the Suwannee and Aucilla Rivers, thereby codifying the provisions of Rule 64E-6.007, F.A.C.

Section 3 amends s. 381.0068, F.S., to provide that the department must staff the technical review and advisory panel and to clarify the role of the panel in the department's rulemaking. The panel may review and comment on legislation or any existing or proposed state policy regarding OSTDS, and the panel's position on proposed rules must be made a part of the department's rulemaking record.

Section 4 amends s. 489.551, F.S., by expanding the definition of "master septic tank contractor" to include a certified plumbing contractor who has provided septic tank contracting services for at least 3 years.

Section 5 amends s. 489.554, F.S., to clarify that the department may promulgate rules establishing the method for approval of continuing education courses and to provide that the criteria in the statute constitute the minimum requirements for annual registration renewal.

Section 6 amends s. 498.555, F.S., to prohibit any person authorized by law to provide septic tank services from using the name, fictitious name, or any other identifiers for an entity whose certificate of authorization has been revoked.

Section 7 requires the transfer of the first \$1.9 million deposited to the Solid Waste Management Trust Fund each fiscal year through the 2028-29 fiscal year, to the State Housing Trust Fund administered by the Florida Housing Finance Corporation (the corporation). The corporation is directed to use these moneys to fund specified local sewer and wastewater treatment projects at the amounts indicated in the CS. The corporation is also authorized to use these moneys to pay for local government infrastructure primarily related and necessary to housing, or to pay the debt service on revenue bonds issued for such purposes by the corporation. The funds may be used by the corporation for the purposes of securing said bonds and to pay the administrative costs, not to exceed 3 percent, of the corporation in connection with such program.

Section 8 provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health estimates that \$16,800 will be required annually to reimburse members of the variance review and advisory board (\$4,800) and the technical review and advisory panel (\$12,000) for per diem and travel expenses. These figures were estimated at \$200 per member per meeting.

The transfers from the Solid Waste Management Trust Fund required by Section 7 of the bill may have a negative impact on the state's recycling, aquatic management or surface water improvement and management programs. The required transfers are contrary to the recommendations of the Solid Waste Management Trust Fund Review Commission.

VI. Technical Deficiencies:

The title of the CS does not accurately reflect all sections of the Florida Statutes which are being amended.

VII. Related Issues:

HB 3287, which was substituted for SB 1156 which passed out of the Community Affairs Committee, and which has passed the Legislature and been ordered enrolled, contains a provision expanding the powers of the corporation to include providing for the "development of infrastructure improvements and rehabilitation primarily in connection with residential housing."

VIII. Amendments:

None.