

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.)

BILL: CS/SB 2288

SPONSOR: Natural Resources Committee and Senator Laurent

SUBJECT: Onsite Sewage Treatment and Disposal Systems

DATE: April 5, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill defines the terms “mean annual flood line”, “permanent nontidal surface water body”, and “tidally influenced surface water body.” Provides that the department may not make the issuance of permits contingent upon prior approval of the Department of Environmental Protection. Revises the setback provisions for onsite sewage treatment and disposal systems. Provides that certain repair permit fees be used for funding a hands-on training center. Provides for a scientific research project on the appropriate setback of an onsite sewage treatment and disposal system to a seasonally inundated area.

This bill substantially amends ss. 381.0065 and 381.0066, F.S.

II. Present Situation:

Pursuant to s. 381.0065, F.S., a person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit from the Department of Health. Subsection (4) of s. 381.0065, F.S., provides certain setback requirements for onsite sewage treatment and disposal systems. An onsite sewage treatment and disposal system must not be placed closer than:

- 75 feet from a private potable well;
- 200 feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons/day;
- 100 feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons/day;
- 75 feet from surface waters;

- 50 feet from any nonpotable well;
- 10 feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet; and
- 15 feet from the design high water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

Currently, there is some disagreement concerning the siting of septic systems in relation to surface waters. As provided in s. 381.0065(4), F.S., an onsite sewage treatment disposal system must be set back 75 feet from surface waters. A dispute has arisen concerning the definition of “surface water” for such siting purposes. As presently defined, “surface water means a recognizable body of water, including swamp or marsh areas, bayheads, cypress ponds and sloughs, and natural or constructed ponds contained within a recognizable boundary. This does not include retention or detention areas designed to contain standing or flowing water for less than 72 hours after a rainfall.”

It has been alleged that the Department of Health and some county health units are inconsistently applying this definition and setback requirements, often to apply the setback to seasonably inundated areas and isolated wetland areas using a variety of vegetative indices and wetlands indicators. The Department of Health has consistently interpreted that language to mean that areas that do contain standing or flowing water for more than 72 hours after a rainfall event must be treated as surface water and are subject to the 75-foot setback. By rule the department has established the mean high water line (tidal) and the ordinary high water line (nontidal) as the boundary line for this setback.

In July, 1998, the Florida Homebuilders Association filed a rule challenge regarding the department’s interpretation and determination of the surface water boundary line, alleging that the department’s rule was vague and arbitrary. The department’s rule provides for the county health department staff to establish this boundary line using soil and vegetative indicators. Often, this determination can be the critical factor in approving or denying a septic system permit application.

The department coordinates its permitting program with other federal, state, and local agencies. For example, if the permit applicant’s property is determined by the Department of Environmental Protection or an affected water management district to be a jurisdictional wetland, permit approval of the overall project may be subject to mitigation to offset the impacts of disturbing that wetland. The permit issue for the septic system is then subordinate to the mitigation issues.

Upon agreement by both the Department of Health and the Florida Homebuilders Association, the administrative law judge has placed the case in abeyance until May, pending legislation which could resolve the issue and clarify what is meant by “surface water.”

III. Effect of Proposed Changes:

This bill amends s. 381.0065, F.S, to define the following:

- “Mean annual flood line” means the elevation determined by calculating the arithmetic mean of the elevations of the highest yearly flood stage or discharge for the period of record, to include at least the most recent 10-year period. If at least 10 years of data is not available, the mean annual flood line shall be as determined based upon the data available and field verification conducted by a certified professional surveyor and mapper with experience in the determination of flood water elevation lines or, at the option of the applicant, by department personnel. Field verification of the mean annual flood line shall be performed using a combination of the specified indicators that are present on the site, that reflect flooding that recurs on an annual basis. In those situations where any one or more of these indicators reflect a rare or aberrant event, such indicator or indicators shall not be used in determining the mean annual flood line.
- “Permanent nontidal surface water body” means a perennial stream, a perennial river, an intermittent stream, a perennial lake, a submerged marsh or swamp, a submerged wooded marsh or swamp, a spring or a seep, as identified on the most recent quadrangle map, 7.5 minute series (topographic), produced by the United State Geological Survey. “Permanent nontidal surface water body” shall also mean an artificial surface water body that does not have an impermeable bottom and side and that is designed to hold, or does hold, visible standing water for at least 180 days of the year. However, a nontidal surface water body that is drained, either naturally or artificially, where the intent or the result is that such drainage be temporary, shall be considered a permanent nontidal surface water body. A nontidal surface water body that is drained of all visible surface water, where the lawful intent or the result of such drainage is that such drainage will be permanent, shall not be considered a permanent nontidal surface water body. The boundary of permanent nontidal surface water body shall be the mean annual flood line.
- “Surface water” is redefined as “tidally influenced surface water body.” As defined, the term means a body of water that is subject to the ebb and flow of the tides and has as its boundary a mean high-water line as defined by s. 177.27(15).

The bill provides that the department may not make the issuance of permits contingent upon prior approval of the Department of Environmental Protection.

The requirement that an onsite sewage treatment and disposal system may not be within 75 feet of a surface water is deleted. However, the bill provides the following additional setback requirements:

- 75 feet from the mean high-water line of a tidally influenced surface water body.
- 75 feet from the mean annual flood line of a permanent nontidal surface water body.

Except as provided in paragraphs (e) and (t) of this section, a limitation may not be imposed by rule, relating to the distance between an onsite sewage disposal system and any area that either permanently or temporarily has visible surface water.

Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(i).

Section 381.0066, F.S., currently allows an additional \$5 fee to be added to each new system construction permit issued during fiscal years 1996-2002 to be used for onsite sewage treatment and disposal system research, demonstration, and training projects. This bill provides that \$5 from any repair permits collected under this section must be used for funding the hands-on training center described in s. 381.0065(3)(i), F.S.

By February 1, 2000, the Department of Health is to report to the Legislature its findings from a scientific research project, applicable to Florida Soils, on the appropriate setback of an onsite sewage treatment and disposal system to a seasonally inundated area so as to assure the system does not adversely affect public health or significantly degrade the groundwater or surface waters of the state. For purposes of the study, the term "seasonally inundated area" shall mean specific soil mapping units, of at least 0.025 acre, that are classified in the Soil Legend of the applicable USDA Natural Resource Conservation Service (NRCS) Florida county soil survey as frequently flooded, ponded, depressional or slough, that are described in the Detailed Soil Map Units of the applicable NRCS Florida County soil survey as very poorly drained; or that are classified in the Soil Legend of the NRCS county soil survey for Taylor County as commonly flooded. The accuracy of any soil mapping unit designated for a specific site may be field-verified using NRCS soil survey methodologies by a soil scientist or soil classifier certified by the American Registry of Certified Professional in Agronomy, Crops, and Soils, a soil scientist employed by the NRCS, a licensed professional engineer experienced in utilizing NRCS soil survey methodologies, or at the applicant's option, department personnel. Where the department can authorize construction of an onsite sewage treatment and disposal system taking into account the seasonally inundated area, field verification is not a precondition to permit issuance. An area shall not be considered a seasonally inundated area if it has been physically altered, or will be physically altered before an onsite sewage treatment and disposal system is operated, in a manner that prevents future seasonal inundation, provided that such physical alteration is not unlawful.

If the department chooses to retain an outside consultant, the requirement for contracting the project pursuant to s. 381.0065(3)(j), shall be met. Any research finding made as a result of the project will be reviewed by the research review and advisory committee and the technical review advisory panel. Any comments made by either group will be submitted along with the report to the Legislature.

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:**

The bill provides that \$5 from any repair permits collected must be used for funding a hands-on training center.

B. Private Sector Impact:

This bill is intended to clear up any vagueness and inconsistency regarding the permitting of septic systems near water bodies. This may make it easier for homebuilders and others to obtain septic system permits. In addition, it is anticipated that this bill will negate the rule challenge that was filed by the Florida Homebuilders Association and will save the association and the department time and money by avoiding this legal proceeding.

C. Government Sector Impact:

The Department of Health currently averages 20,000 repair permits each year that would generate \$100,000 a year to fund a training center. This represents a loss of revenue to the department.

The bill requires the Department of Health to conduct a scientific research project on the appropriate setback of an onsite sewage treatment and disposal system to a seasonally inundated area so as to assure the system does not adversely affect public health or significantly degrade the groundwater or surface waters of the state. The department may contract with an outside consultant for this study. The bill does not provide an appropriation to fund this study. The department presumably would have to fund such a study using its current staff and financial resources. It is not known at this time what the financial impact will be to the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.