

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB ANR 10-15 Florida Keys' Area
SPONSOR(S): Agriculture & Natural Resources Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Agriculture & Natural Resources Policy Committee		Deslatte	Reese
1)				
2)				
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4)				
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SUMMARY ANALYSIS

The bill clarifies the issuance of any state bonds to finance wastewater facilities within the Florida Keys Area of Critical State Concern. Bonds are not to exceed \$200 million and are limited to \$50 million per fiscal year.

The bill adds legislative intent to promote an appropriate land acquisition and protection strategy for environmental lands within the Florida Keys; to protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities; and to ensure that the population of the Florida Keys can be safely evacuated.

The bill makes removal of the Florida Keys Area of Critical State Concern designation contingent on the work program completion, specified in rules of the Florida Administration Commission (Commission).

The bill adds the detailed onsite sewage treatment system requirements in chapter 99-395, L.O.F. into statute. The bill requires after July 1, 2010, all new or modified systems must meet higher treatment standards by December 31, 2015.

Wastewater treatment facilities in operation as of July 1, 2010, which are located within areas to be served by Monroe County, municipalities in Monroe County, or those special districts, or are owned by other entities, do not comply with certain requirements until January 1, 2016. Permits in effect for those facilities as of June 30, 2010, are extended until December 31, 2015, or until the facility is connected to a local government central wastewater system.

Wastewater treatment facilities in operation after December 31, 2015, must comply with the treatment and disposal requirements and with Department of Environmental Protection (DEP) rules.

The DEP may adopt rules necessary to carry out the provisions of the newly created subsection relating to sewage disposal facilities. All sewage treatment facilities must monitor effluent for total nitrogen and total phosphorus concentration as required by DEP rule.

The bill repeals sections 4 of chapter 99-395, LOF, as amended by section 6 of chapter 2006-223, LOF, and sections 5 and 6 of chapter 99-395, LOF.

The bill does not appear to have a fiscal impact on state agencies or local governments. Many local governments have already met requirements under the Area of Critical State Concern Work Program, and others are in the process of meeting the requirements and have generated the majority of revenues. See Fiscal Comments Section.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Keys Area was designated as an area of critical state concern over 30 years ago for the purpose of providing state policies to guide decision making at the local level to protect natural resources and the environment, reverse the deterioration of water quality, and facilitate orderly, well-planned growth while protecting property rights. Current law provides that while any land development regulation or element of a local comprehensive plan in the Florida Keys may be enacted, amended or rescinded by the local government, the regulation or element is not effective until approved by the Department of Community Affairs (DCA), and that all local development regulations or comprehensive plans must be in compliance with statutory principles for guiding development.

Under current law (s. 380.0552, F.S.), the area of critical state concern designation for the Florida Keys was to be removed by October 1, 2009, unless the Florida Administration Commission found that substantial progress toward achieving specified goals – including wastewater treatment requirements -- has not been achieved. After removal of the designation as an area of critical state concern, DCA was required to review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable to the Florida Keys Area, for compliance with the following:

- Adoption of construction schedules for wastewater facilities improvements in the annually adopted capital improvements element and adoption of standards for the construction of wastewater treatment facilities which meet or exceed the criteria of chapter 99-395, Laws of Florida.
- Adoption of goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours.

In the 1990s, concerns were raised about nutrients from sewage entering the nearshore waters of the Florida Keys from both onsite sewage treatment and disposal systems (septic tanks and cesspits) and from central wastewater treatment facilities. In order to address these concerns, the 1999 Legislature established uniform sewage treatment and disposal standards in the Keys for both onsite sewage treatment and disposal systems (OSTDS), which are permitted by the Department of Health (DOH), and wastewater treatment plants, which are permitted by the DEP.

Ch. 99-395, L.O.F., required that each OSTDS either cease discharging or comply with the stringent

effluent water quality standards provided by law and the rules of the DEP or the DOH, as applicable, by 2010. For central wastewater treatment facilities, the treatment standards were strengthened by: eliminating all surface water discharges by the year 2006; requiring proper operation, maintenance and performance monitoring of all sewage treatment systems; and requiring the upgrading of all systems to meet the enhanced sewage treatment requirements specified in the bill by the year 2010.

In the Annual Assessment Report for the Florida Keys Area of Critical State Concern covering the time period of July 13, 2006, to July 12, 2007, the DCA recommended to the Administration Commission that it make a finding that Monroe County has not made substantial progress toward completion of Year 10 of the Work Program. The recommendation was based on the DEP's June 2007 report, "Report to the Department of Community Affairs – 10-Year Work Program for Monroe County Florida Keys Wastewater Improvements." The report concluded that:

While progress has been made in upgrading and building new wastewater infrastructure in the Keys, there is a long way to go and a tremendous amount of work to be done. There are indications, at least in some areas, that progress has slowed. It is clear from both on-site inspection and the information provided by local governments - both in terms of the progress to date and the uncertainty of many of the completion schedules - that not all facilities will meet the July 1, 2010 deadline.

During the 2007 Legislative Session, concerns were expressed regarding the lack of specific plans and estimated costs associated with meeting the wastewater requirements established in ch. 99-395, L.O.F. Due in part to these concerns, the Legislature did not appropriate funds to assist local governments in the Keys with the construction of wastewater systems necessary to meet the 2010 deadline. During the 2007 Legislative Interim, the House Environment & Natural Resources Council conducted an interim project to develop a plan to address the wastewater needs of the Florida Keys in the most cost effective and efficient manner. The goal of the project was to work with the DEP to facilitate the establishment, through interlocal agreements or other means, of a single local government entity responsible for coordinating with the state throughout the life of the project. This local government entity selected to serve this role was the Monroe County Board of County Commissioners. The coordinated entity was expected to provide the following items:

- A single comprehensive plan identifying existing and proposed projects, including a priority of sequencing projects, needed to meet the comprehensive wastewater needs in the Keys.
- The status of existing and proposed projects and whether they are expected to meet the 2010 deadline.
- A listing of the projected and actual project costs associated with completed and proposed projects.
- A listing of existing and proposed sources and amount of funds needed to complete the necessary projects.

In addition, policy options were developed and analyzed to provide assistance in funding the expedited implementation of the comprehensive wastewater plan contingent upon receipt of the information listed above.

After a series of meetings and ongoing conversations, Monroe County submitted a Keys Wastewater Plan on December 4, 2007, that, with subsequent addendums, addresses the above requirements.

The Keys Wastewater Plan provides a comprehensive summary of county-wide progress toward achieving compliance with the 2010 wastewater effluent standards. The plan includes background information for each local government and utility responsible for installation of wastewater treatment facilities. The plan also includes costs associated with completed and remaining projects, which is provided on a county-wide basis, as well as for each wastewater project. A summary of unfunded costs per year was compiled based on information submitted by each wastewater entity.

Pursuant to s. 215.619, F.S., the issuance of Everglades restoration bonds include costs associated with the Florida Keys Area of Critical State Concern Protection Program to restore and conserve natural systems through the implementation of water management projects, including wastewater management projects identified in the Key's Wastewater Plan dated November 2007. Bonds are not to exceed \$50 million per fiscal year, the duration of the bonds may not exceed 20 annual maturities, and the bonds must mature by December 31, 2040.

Effect of Proposed Changes

The bill amends s. 215.619, F.S., clarifying that the issuance of any state bonds to finance wastewater facilities within the Florida Keys Area of Critical State Concern. Bonds are not to exceed \$200 million and are limited to \$50 million per fiscal year. Proceeds from the bonds must be managed by DEP for the purpose of entering into financial assistance agreements with local governments located in the Florida Keys Area of Critical State Concern to finance or refinance the cost of constructing sewage collection, treatment, and disposal facilities.

The bill amends s. 380.0552, F.S., adding legislative intent to promote an appropriate land acquisition and protection strategy for environmentally sensitive lands within the Florida Keys; to protect and improve the nearshore water quality of the Florida Keys through the construction and operation of wastewater management facilities; and to ensure that the population of the Florida Keys can be safely evacuated.

The bill makes removal of the Florida Keys Area of Critical State Concern designation contingent on the work program completion, specified in rules of the Administration Commission (Commission). Starting on November 30, 2010, a written report must be submitted annually by the DCA to the Commission describing the progress of the Florida Keys toward completing the work program tasks. The Florida Keys Area will be removed as an area of critical state concern if the Commission determines that:

1. All of the work program tasks have been completed, including the construction of, operation of, and connection to central wastewater management facilities pursuant to s. 403.086(10), F.S., and upgrade of onsite sewage treatment and disposal systems pursuant to s. 381.0065(4)(1), F.S.
2. All local comprehensive plans and land development regulations and the administration of such plans and regulations are adequate to protect the Florida Keys Area, fulfill legislative intent, and are consistent with and further the principles of guiding development.
3. A local government has adopted a resolution at a public hearing recommending the removal of the designation.

Once the Commission receives the report, the Commission must determine if the requirements have been fulfilled and may remove the designation of the Florida Keys as an area of critical state concern. If the designation is removed, the Commission will initiate rulemaking to repeal any rules relating to the designation within 60 days. If the requirements have not been met for removal, the Commission will provide a written report to the local governments within 30 days detailing the tasks that must be completed by the local government. The Commission's determination may be reviewed pursuant to chapter 120, F.S. All proceedings must be conducted by the Division of Administrative Hearings and must be initiated within 30 days after the Commission issues its determination. The Commission may adopt rules or revise existing rules as necessary.

The bill provides that any amendments to local comprehensive plans in the Florida Keys Area must be reviewed for compliance with the following:

1. Construction schedules and detailed capital financing plans for wastewater management improvements in the annually adopted capital improvements element, and standards for the construction of wastewater treatment and disposal facilities or collection systems that meet or exceed the criteria in s. 403.086910, F.S., for wastewater treatment and disposal facilities or s. 381.0065(4)(1), F.S., for onsite sewage treatment and disposal systems.

2. Goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours, which will be in accordance with a methodology approved by the DCA.

The bill amends s. 381.0065, F.S., adding the detailed onsite sewage treatment system requirements in chapter 99-395, LOF, to the statute. The bill requires that after July 1, 2010, all new or modified systems must meet higher treatment standards by December 31, 2015. The onsite sewage treatment and disposal systems must produce an effluent that contains no more than the following concentrations:

- Biochemical Oxygen Demand of 10 mg/1.
- Suspended Solids of 10 mg/1.
- Total Nitrogen of 10 mg/1.
- Total Phosphorus of 1 mg/1.

In addition, onsite sewage treatment and disposal systems discharging to injection wells must provide basic disinfection as defined by DEP rule.

In areas scheduled to be served by central sewer by December 31, 2015, if the property owner has paid a connection fee or assessment for connection to the central sewer system, an onsite sewage treatment and disposal system may be repaired to certain minimum standards.

The DEP will enforce proper installation, operation, and maintenance of onsite sewage treatment and disposal systems pursuant to this chapter, including insuring that the appropriate level of treatment described above is met.

Monroe County, each municipality, and those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage may require connecting onsite sewage treatment and disposal systems to a central sewer system within 30 days after notice of availability of service.

The bill amends s. 403.086, F.S., providing legislative findings that the only practical and cost-effective way to fundamentally improve wastewater management in the Florida Keys is for local governments to complete the wastewater or sewage treatment and disposal facilities initiated under the work program of Commission rule 28-20, Florida Administrative Code (FAC), and the Monroe County Sanitary Master Wastewater Plan of 2000. These requirements apply to all domestic wastewater facilities in Monroe County, including privately owned facilities, unless otherwise provided.

The bill adds the detailed onsite sewage treatment system requirements in chapter 99-395, LOF to the statute. All new wastewater systems must be completed by December 31, 2015, including facilities located outside local government and special district service areas.

Wastewater treatment facilities that have design capacities greater than or equal to 100,000 gallons/day must produce an effluent that contains no more than the following concentrations:

- Biochemical Oxygen Demand of 5 mg/1.
- Suspended Solids of 5 mg/1.
- Total Nitrogen of 3 mg/1.
- Total Phosphorus of 1 mg/1.

Facilities that have design capacities of less than 100,000 gallons/day must produce an effluent that contains no more of the following:

- Biochemical Oxygen Demand of 10 mg/1.
- Suspended Solids of 10 mg/1.
- Total Nitrogen of 10 mg/1.
- Total Phosphorus of 1 mg/1.

Class V injection wells must also meet certain requirements. A backup well may only be used under certain conditions. However, disposal systems serving as backups to reuse systems must comply with the provisions of this section.

For wastewater treatment facilities in operation as of July 1, 2010, which are located within areas to be served by Monroe County, municipalities in Monroe County, or those special districts, or are owned by other entities, the above requirements do not apply until January 1, 2016. Permits in effect for those facilities as of June 30, 2010, are extended until December 31, 2015, or until the facility is connected to a local government central wastewater system.

Wastewater treatment facilities in operation after December 31, 2015, must comply with the treatment and disposal requirements of this section and DEP rules.

DEP may adopt rules necessary to carry out the section relating to sewage disposal facilities. All sewage treatment facilities must monitor effluent for total nitrogen and total phosphorus concentration as required by DEP rule. The county, each municipality, or special districts may require connecting wastewater treatment facilities owned by other entities to a central sewer system within 30 days after notice of availability of service.

The bill repeals sections 4 of chapter 99-395, LOF, as amended by section 6 of chapter 2006-223, LOF, and sections 5 and 6 of chapter 99-395, LOF.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.619, F.S., authorizing the issuance of bonds to be used to finance the cost of construction sewage facilities in the Florida Keys Area.

Section 2. Amends s. 380.0552, F.S., revising legislative intent relating to the designation of the Florida Keys as an area of critical state concern; revising the procedures for removing the designation; providing for administrative review of such removal rather than judicial review; authorizing the Administration Commission to adopt rules or revise existing rules; revising the principles guiding development; revising compliance requirements for reviewing comprehensive plan amendments.

Section 3. Amends s. 381.0065, F.S., providing additional requirements for onsite sewage treatment and disposal systems in Monroe County.

Section 4. Amends s. 403.086, F.S., providing legislative findings and discharge requirements for wastewater facilities in Monroe County.

Section 5. Repeals sections 4, 5, and 6 of chapter 99-395, Laws of Florida, as amended, relating to sewage treatment in the Florida Keys.

Section 6. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments section

2. Expenditures:

See Fiscal Comments section

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DEP offered the following comments:

Direct Private Sector Costs: Private sector costs (whether business owners or individual homeowners) would be experienced in one of two ways: paying for central sewer service through connection fees, impact fees and monthly sewer charges (or similar system charges); or paying for an upgraded onsite sewage treatment and disposal system. The cost of central sewer service depends on a wide range of factors, including: facility construction costs, which vary based on design as well as economic conditions; amount of wastewater flow contributed to the system, or amount of water used; composition of charges, as different utility systems include different elements in their charges; cost of financing, both to the local government and to the customer if the local government offers financing options for system charges; and receipt of external funding, whether state or federal grants or loans. The cost of upgraded onsite systems are more straightforward and may be \$10,000 - \$20,000 depending on circumstances.

There is no single master source of comparative water and sewer rates; even where rate completely; there are different minimum charges (base rates); and unit charges ("gallons per") vary significantly as well—all of which may reflect policies about water conservation, energy use and other factors. The Miami-Dade Water & Sewer Department periodically compiles limited comparative water and sewer rate information, most recently updated in September 2009 and posted on the agency's website at <http://www.miamidade.gov/wasd/rate-compare.asp>. It reflects rates ranging between \$25.24 per month (Chicago) and \$138.31 per month (Atlanta). Average monthly bills posted for Florida communities are Cape Coral (\$108.79), St. Petersburg (\$63.02), Jacksonville (\$58.62), Ft. Lauderdale (\$56.79), Tampa (\$45.64), Orlando (\$45.38), Palm Beach County (\$44.82), and Miami-Dade (\$40.03). Rates for Islamorada and unincorporated Monroe County would be expected to fall toward the higher end of these rates. As previously noted, the receipt of external funding, whether state or federal grants or loans, helps underwrite costs and reduce customer rates and other charges.

Direct Private Sector Benefits: Central sewer service typically raises property values. Construction and construction-related activities provide jobs and inject money into local economies in the short run (typically 2-4 years). Longer term jobs related to facility operation, administration, laboratory work, etc., often result. Improved local water quality would likely enhance tourism, including eco-tourism, fishing (sporting and commercial), and other marine recreation—all of which provide substantial economic benefits.

D. FISCAL COMMENTS:

DEP offered the following comments:

To the extent the construction of central wastewater facilities is already required under the Area of Critical State Concern Work Program, the legislation itself does not impose any new costs on local governments in the Florida Keys. Furthermore, Key West, Key Colony Beach and Layton have already met the requirements and Key Largo and Marathon have generated the majority of revenues to do so (including funds from DEP grants and loans).

The estimated cost of the remaining central systems to be completed in Islamorada and unincorporated Monroe County vary greatly and will continue to vary based on shifting designs as well as economic circumstances. In July 2009, these costs were estimated by Monroe County local governments to be just over \$357.3 million (\$132.8 million for Islamorada and \$224.5 for unincorporated Monroe County). The impact of these costs, aside from changes relating to shifting designs and economic circumstances, depend on financing rates (from whatever sources), the term over which costs are amortized, and whether or not supplementary grants or other state and federal financial assistance has been secured. The provision of wastewater service is a common local government responsibility, generally paid for through connection fees, impact fees, assessments, monthly user charges, or other system charges. These charges may be reduced by success in securing grants or low-interest loans from the state, as have other local governments in the Keys. The costs of building wastewater facilities in the Keys generally run higher than they do in the rest of Florida because of the geology. The income and wealth levels in these communities are generally substantially higher than the state average.

Long Run Effects Other Than Normal Growth: The completion of central wastewater systems would provide jobs and likely increase area property values, both of which enhance local economies. Improved local water quality would likely enhance tourism, including eco-tourism, fishing (sporting and commercial), and other marine recreation—all of which provide substantial economic benefits.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill grants DEP rulemaking authority to carry out discharge requirements for sewage treatment facilities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES