

HB 79

2012

1 A bill to be entitled
 2 An act relating to onsite sewage treatment and
 3 disposal systems; amending s. 381.0065, F.S.; revising
 4 legislative intent; conforming a cross-reference;
 5 eliminating provisions directing the Department of
 6 Health to create and administer a statewide septic
 7 tank evaluation program; eliminating procedures and
 8 criteria for the evaluation program; repealing s.
 9 381.00656, F.S., to terminate the grant program for
 10 repair of onsite sewage treatment disposal systems
 11 identified pursuant to the evaluation program, to
 12 conform; amending s. 381.0066, F.S.; eliminating
 13 provisions authorizing the department to collect an
 14 evaluation report fee; eliminating provisions relating
 15 to disposition of fee proceeds and a revenue-neutral
 16 fee schedule; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Subsection (1), paragraph (j) of subsection
 21 (3), and subsections (5), (6), and (7) of section 381.0065,
 22 Florida Statutes, are amended to read:

23 381.0065 Onsite sewage treatment and disposal systems;
 24 regulation.—

25 (1) LEGISLATIVE INTENT.—

26 (a) It is the intent of the Legislature that proper
 27 management of onsite sewage treatment and disposal systems is
 28 paramount to the health, safety, and welfare of the public. ~~††~~

29 ~~is further the intent of the Legislature that the department~~
 30 ~~shall administer an evaluation program to ensure the operational~~
 31 ~~condition of the system and identify any failure with the~~
 32 ~~system.~~

33 (b) It is the intent of the Legislature that where a
 34 publicly owned or investor-owned sewerage system is not
 35 available, the department shall issue permits for the
 36 construction, installation, modification, abandonment, or repair
 37 of onsite sewage treatment and disposal systems under conditions
 38 as described in this section and rules adopted under this
 39 section. It is further the intent of the Legislature that the
 40 installation and use of onsite sewage treatment and disposal
 41 systems not adversely affect the public health or significantly
 42 degrade the groundwater or surface water.

43 (3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.—The
 44 department shall:

45 (j) Supervise research on, demonstration of, and training
 46 on the performance, environmental impact, and public health
 47 impact of onsite sewage treatment and disposal systems within
 48 this state. Research fees collected under s. 381.0066(2)(k)
 49 ~~381.0066(2)(1)~~ must be used to develop and fund hands-on
 50 training centers designed to provide practical information about
 51 onsite sewage treatment and disposal systems to septic tank
 52 contractors, master septic tank contractors, contractors,
 53 inspectors, engineers, and the public and must also be used to
 54 fund research projects which focus on improvements of onsite
 55 sewage treatment and disposal systems, including use of
 56 performance-based standards and reduction of environmental

57 impact. Research projects shall be initially approved by the
58 technical review and advisory panel and shall be applicable to
59 and reflect the soil conditions specific to Florida. Such
60 projects shall be awarded through competitive negotiation, using
61 the procedures provided in s. 287.055, to public or private
62 entities that have experience in onsite sewage treatment and
63 disposal systems in Florida and that are principally located in
64 Florida. Research projects shall not be awarded to firms or
65 entities that employ or are associated with persons who serve on
66 either the technical review and advisory panel or the research
67 review and advisory committee.

68 ~~(5) EVALUATION AND ASSESSMENT.—~~

69 ~~(a) Beginning July 1, 2011, the department shall~~
70 ~~administer an onsite sewage treatment and disposal system~~
71 ~~evaluation program for the purpose of assessing the fundamental~~
72 ~~operational condition of systems and identifying any failures~~
73 ~~within the systems. The department shall adopt rules~~
74 ~~implementing the program standards, procedures, and~~
75 ~~requirements, including, but not limited to, a schedule for a 5-~~
76 ~~year evaluation cycle, requirements for the pump-out of a system~~
77 ~~or repair of a failing system, enforcement procedures for~~
78 ~~failure of a system owner to obtain an evaluation of the system,~~
79 ~~and failure of a contractor to timely submit evaluation results~~
80 ~~to the department and the system owner. The department shall~~
81 ~~ensure statewide implementation of the evaluation and assessment~~
82 ~~program by January 1, 2016.~~

83 ~~(b) Owners of an onsite sewage treatment and disposal~~
84 ~~system, excluding a system that is required to obtain an~~

85 ~~operating permit, shall have the system evaluated at least once~~
86 ~~every 5 years to assess the fundamental operational condition of~~
87 ~~the system, and identify any failure within the system.~~

88 ~~(c) All evaluation procedures must be documented and~~
89 ~~nothing in this subsection limits the amount of detail an~~
90 ~~evaluator may provide at his or her professional discretion. The~~
91 ~~evaluation must include a tank and drainfield evaluation, a~~
92 ~~written assessment of the condition of the system, and, if~~
93 ~~necessary, a disclosure statement pursuant to the department's~~
94 ~~procedure.~~

95 ~~(d)1. Systems being evaluated that were installed prior to~~
96 ~~January 1, 1983, shall meet a minimum 6-inch separation from the~~
97 ~~bottom of the drainfield to the wettest season water table~~
98 ~~elevation as defined by department rule. All drainfield repairs,~~
99 ~~replacements or modifications to systems installed prior to~~
100 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
101 ~~the bottom of the drainfield to the wettest season water table~~
102 ~~elevation as defined by department rule.~~

103 ~~2. Systems being evaluated that were installed on or after~~
104 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
105 ~~the bottom of the drainfield to the wettest season water table~~
106 ~~elevation as defined by department rule. All drainfield repairs,~~
107 ~~replacements or modification to systems developed on or after~~
108 ~~January 1, 1983, shall meet a minimum 24-inch separation from~~
109 ~~the bottom of the drainfield to the wettest season water table~~
110 ~~elevation.~~

111 ~~(e) If documentation of a tank pump-out or a permitted new~~
112 ~~installation, repair, or modification of the system within the~~

113 ~~previous 5 years is provided, and states the capacity of the~~
 114 ~~tank and indicates that the condition of the tank is not a~~
 115 ~~sanitary or public health nuisance pursuant to department rule,~~
 116 ~~a pump-out of the system is not required.~~

117 ~~(f) Owners are responsible for paying the cost of any~~
 118 ~~required pump-out, repair, or replacement pursuant to department~~
 119 ~~rule, and may not request partial evaluation or the omission of~~
 120 ~~portions of the evaluation.~~

121 ~~(g) Each evaluation or pump-out required under this~~
 122 ~~subsection must be performed by a septic tank contractor or~~
 123 ~~master septic tank contractor registered under part III of~~
 124 ~~chapter 489, a professional engineer with wastewater treatment~~
 125 ~~system experience licensed pursuant to chapter 471, or an~~
 126 ~~environmental health professional certified under chapter 381 in~~
 127 ~~the area of onsite sewage treatment and disposal system~~
 128 ~~evaluation.~~

129 ~~(h) The evaluation report fee collected pursuant to s.~~
 130 ~~381.0066(2)(b) shall be remitted to the department by the~~
 131 ~~evaluator at the time the report is submitted.~~

132 ~~(i) Prior to any evaluation deadline, the department must~~
 133 ~~provide a minimum of 60 days' notice to owners that their~~
 134 ~~systems must be evaluated by that deadline. The department may~~
 135 ~~include a copy of any homeowner educational materials developed~~
 136 ~~pursuant to this section which provides information on the~~
 137 ~~proper maintenance of onsite sewage treatment and disposal~~
 138 ~~systems.~~

139 (5) ~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—

140 (a) Department personnel who have reason to believe

141 noncompliance exists, may at any reasonable time, enter the
 142 premises permitted under ss. 381.0065-381.0066, or the business
 143 premises of any septic tank contractor or master septic tank
 144 contractor registered under part III of chapter 489, or any
 145 premises that the department has reason to believe is being
 146 operated or maintained not in compliance, to determine
 147 compliance with the provisions of this section, part I of
 148 chapter 386, or part III of chapter 489 or rules or standards
 149 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
 150 part III of chapter 489. As used in this paragraph, the term
 151 "premises" does not include a residence or private building. To
 152 gain entry to a residence or private building, the department
 153 must obtain permission from the owner or occupant or secure an
 154 inspection warrant from a court of competent jurisdiction.

155 (b)1. The department may issue citations that may contain
 156 an order of correction or an order to pay a fine, or both, for
 157 violations of ss. 381.0065-381.0067, part I of chapter 386, or
 158 part III of chapter 489 or the rules adopted by the department,
 159 when a violation of these sections or rules is enforceable by an
 160 administrative or civil remedy, or when a violation of these
 161 sections or rules is a misdemeanor of the second degree. A
 162 citation issued under ss. 381.0065-381.0067, part I of chapter
 163 386, or part III of chapter 489 constitutes a notice of proposed
 164 agency action.

165 2. A citation must be in writing and must describe the
 166 particular nature of the violation, including specific reference
 167 to the provisions of law or rule allegedly violated.

168 3. The fines imposed by a citation issued by the

169 department may not exceed \$500 for each violation. Each day the
170 violation exists constitutes a separate violation for which a
171 citation may be issued.

172 4. The department shall inform the recipient, by written
173 notice pursuant to ss. 120.569 and 120.57, of the right to an
174 administrative hearing to contest the citation within 21 days
175 after the date the citation is received. The citation must
176 contain a conspicuous statement that if the recipient fails to
177 pay the fine within the time allowed, or fails to appear to
178 contest the citation after having requested a hearing, the
179 recipient has waived the recipient's right to contest the
180 citation and must pay an amount up to the maximum fine.

181 5. The department may reduce or waive the fine imposed by
182 the citation. In determining whether to reduce or waive the
183 fine, the department must consider the gravity of the violation,
184 the person's attempts at correcting the violation, and the
185 person's history of previous violations including violations for
186 which enforcement actions were taken under ss. 381.0065-
187 381.0067, part I of chapter 386, part III of chapter 489, or
188 other provisions of law or rule.

189 6. Any person who willfully refuses to sign and accept a
190 citation issued by the department commits a misdemeanor of the
191 second degree, punishable as provided in s. 775.082 or s.
192 775.083.

193 7. The department, pursuant to ss. 381.0065-381.0067, part
194 I of chapter 386, or part III of chapter 489, shall deposit any
195 fines it collects in the county health department trust fund for
196 use in providing services specified in those sections.

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197 8. This section provides an alternative means of enforcing
198 ss. 381.0065-381.0067, part I of chapter 386, and part III of
199 chapter 489. This section does not prohibit the department from
200 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
201 III of chapter 489, or its rules, by any other means. However,
202 the department must elect to use only a single method of
203 enforcement for each violation.

204 (6)~~(7)~~ LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective
205 January 1, 2016, the land application of septage from onsite
206 sewage treatment and disposal systems is prohibited. By February
207 1, 2011, the department, in consultation with the Department of
208 Environmental Protection, shall provide a report to the
209 Governor, the President of the Senate, and the Speaker of the
210 House of Representatives, recommending alternative methods to
211 establish enhanced treatment levels for the land application of
212 septage from onsite sewage and disposal systems. The report
213 shall include, but is not limited to, a schedule for the
214 reduction in land application, appropriate treatment levels,
215 alternative methods for treatment and disposal, enhanced
216 application site permitting requirements including any
217 requirements for nutrient management plans, and the range of
218 costs to local governments, affected businesses, and individuals
219 for alternative treatment and disposal methods. The report shall
220 also include any recommendations for legislation or rule
221 authority needed to reduce land application of septage.

222 Section 2. Section 381.00656, Florida Statutes, is
223 repealed:

224 ~~381.00656 Grant program for repair of onsite sewage~~
 225 ~~treatment disposal systems. Effective January 1, 2012, the~~
 226 ~~department shall administer a grant program to assist owners of~~
 227 ~~onsite sewage treatment and disposal systems identified pursuant~~
 228 ~~to s. 381.0065 or the rules adopted thereunder. A grant under~~
 229 ~~the program may be awarded to an owner only for the purpose of~~
 230 ~~inspecting, pumping, repairing, or replacing a system serving a~~
 231 ~~single-family residence occupied by an owner with a family~~
 232 ~~income of less than or equal to 133 percent of the federal~~
 233 ~~poverty level at the time of application. The department may~~
 234 ~~prioritize applications for an award of grant funds based upon~~
 235 ~~the severity of a system's failure, its relative environmental~~
 236 ~~impact, the income of the family, or any combination thereof.~~
 237 ~~The department shall adopt rules establishing the grant~~
 238 ~~application and award process, including an application form.~~
 239 ~~The department shall seek to make grants in each fiscal year~~
 240 ~~equal to the total amount of grant funds available, with any~~
 241 ~~excess funds used for grant awards in subsequent fiscal years.~~

242 Section 3. Subsection (2) of section 381.0066, Florida
 243 Statutes, is amended to read:

244 381.0066 Onsite sewage treatment and disposal systems;
 245 fees.—

246 (2) The minimum fees in the following fee schedule apply
 247 until changed by rule by the department within the following
 248 limits:

249 (a) Application review, permit issuance, or system
 250 inspection, including repair of a subsurface, mound, filled, or
 251 other alternative system or permitting of an abandoned system: a

252 fee of not less than \$25, or more than \$125.

253 ~~(b) A 5-year evaluation report submitted pursuant to s.~~
 254 ~~381.0065(5): a fee not less than \$15, or more than \$30. At least~~
 255 ~~\$1 and no more than \$5 collected pursuant to this paragraph~~
 256 ~~shall be used to fund a grant program established under s.~~
 257 ~~381.00656.~~

258 (b)~~(e)~~ Site evaluation, site reevaluation, evaluation of a
 259 system previously in use, or a per annum septage disposal site
 260 evaluation: a fee of not less than \$40, or more than \$115.

261 (c)~~(d)~~ Biennial Operating permit for aerobic treatment
 262 units or performance-based treatment systems: a fee of not more
 263 than \$100.

264 (d)~~(e)~~ Annual operating permit for systems located in
 265 areas zoned for industrial manufacturing or equivalent uses or
 266 where the system is expected to receive wastewater which is not
 267 domestic in nature: a fee of not less than \$150, or more than
 268 \$300.

269 (e)~~(f)~~ Innovative technology: a fee not to exceed \$25,000.

270 (f)~~(g)~~ Septage disposal service, septage stabilization
 271 facility, portable or temporary toilet service, tank
 272 manufacturer inspection: a fee of not less than \$25, or more
 273 than \$200, per year.

274 (g)~~(h)~~ Application for variance: a fee of not less than
 275 \$150, or more than \$300.

276 (h)~~(i)~~ Annual operating permit for waterless,
 277 incinerating, or organic waste composting toilets: a fee of not
 278 less than \$50, or more than \$150.

279 (i)~~(j)~~ Aerobic treatment unit or performance-based

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280 treatment system maintenance entity permit: a fee of not less
 281 than \$25, or more than \$150, per year.

282 (j)~~(k)~~ Reinspection fee per visit for site inspection
 283 after system construction approval or for noncompliant system
 284 installation per site visit: a fee of not less than \$25, or more
 285 than \$100.

286 (k)~~(l)~~ Research: An additional \$5 fee shall be added to
 287 each new system construction permit issued to be used to fund
 288 onsite sewage treatment and disposal system research,
 289 demonstration, and training projects. Five dollars from any
 290 repair permit fee collected under this section shall be used for
 291 funding the hands-on training centers described in s.
 292 381.0065(3)(j).

293 (l)~~(m)~~ Annual operating permit, including annual
 294 inspection and any required sampling and laboratory analysis of
 295 effluent, for an engineer-designed performance-based system: a
 296 fee of not less than \$150, or more than \$300.

297
 298 ~~On or before January 1, 2011, the Surgeon General, after~~
 299 ~~consultation with the Revenue Estimating Conference, shall~~
 300 ~~determine a revenue neutral fee schedule for services provided~~
 301 ~~pursuant to s. 381.0065(5) within the parameters set in~~
 302 ~~paragraph (b). Such determination is not subject to the~~
 303 ~~provisions of chapter 120.~~ The funds collected pursuant to this
 304 subsection must be deposited in a trust fund administered by the
 305 department, to be used for the purposes stated in this section
 306 and ss. 381.0065 and 381.00655.

307 Section 4. This act shall take effect upon becoming a law.