

1                   A bill to be entitled  
2           An act relating to onsite sewage treatment and disposal  
3           systems; amending s. 381.0061, F.S.; revising provisions  
4           for administrative actions by the Department of Health for  
5           violations relating to environmental health; increasing  
6           the amount of the administrative fine the department is  
7           authorized to impose for such violations; authorizing the  
8           department to issue citations for violations; providing  
9           requirements for such citations; providing that refusal to  
10          accept such citation constitutes a misdemeanor and is  
11          punishable under the law; requiring funds collected for  
12          violations to be deposited into the County Health  
13          Department Trust Fund; providing requirements for the use  
14          and distribution of such funds; providing alternative  
15          measures to the imposition of fines; providing for  
16          enforcement of noncompliance measures by the department;  
17          authorizing entrance to specified premises under specified  
18          conditions; providing freedom from liability for specified  
19          employees, agents, and consultants; amending s. 381.0065,  
20          F.S.; directing the department to implement a periodic  
21          inspections and pump-out program for onsite sewage  
22          treatment and disposal systems; providing program  
23          procedures and requirements; requiring system owners to  
24          pay a fee for inspections and pump-outs; increasing the  
25          amount of administrative fines the department is  
26          authorized to impose for violations relating to onsite  
27          sewage treatment and disposal systems; creating s.  
28          381.00656, F.S.; requiring the department to administer a

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29 grant program to assist owners in the repair of specified  
30 onsite sewage treatment and disposal systems; providing  
31 eligibility requirements; authorizing the department to  
32 prioritize applications; requiring the department to adopt  
33 rules; requiring the department to seek to award grants in  
34 each fiscal year to the extent of funds available and  
35 carry forward excess funds; amending s. 381.0066, F.S.;  
36 establishing fees for the filing of onsite sewage  
37 treatment and disposal system inspection reports;  
38 providing for deposit and use of the fees collected;  
39 amending s. 489.557, F.S.; revising the fees for septic  
40 tank contractor and master septic tank contractor  
41 registrations; providing for the distribution and use of  
42 fees collected; creating s. 489.561, F.S.; establishing  
43 the septic tank contractor advisory panel; providing for  
44 panel membership, duties, and reimbursement; reenacting  
45 ss. 381.0072(3)(a) and (5)(a), 381.0086(4), 381.0098(7),  
46 386.03(2)(d), and 513.10(2), F.S., relating to food  
47 service licenses, migrant farmworker and labor camp  
48 housing, standards for packaging, transport, storage,  
49 treatment, and disposal of biomedical waste, authority of  
50 the Department of Health and local health authorities to  
51 remove sanitary nuisances, and maintaining or operating a  
52 mobile home park, lodging park, recreational vehicle park,  
53 or recreational camp without a permit, respectively, to  
54 incorporate the amendment to s. 381.0061, F.S., in  
55 references thereto; providing an effective date.  
56

57 Be It Enacted by the Legislature of the State of Florida:

58

59 Section 1. Section 381.0061, Florida Statutes, is amended  
60 to read:

61 381.0061 Administrative fines.--

62 (1) In addition to any administrative action authorized by  
63 chapter 120 or by other law, the department may impose a fine,  
64 which shall not exceed \$5,000 ~~\$500~~ for each violation, for a  
65 violation of s. 381.006(16), s. 381.0065, s. 381.0066, s.  
66 381.0072, or part III of chapter 489, for a violation of any  
67 rule adopted under this chapter, or for a violation of any of  
68 the provisions of chapter 386. Notice of intent to impose such  
69 fine shall be given by the department to the alleged violator.  
70 Each day that a violation continues may constitute a separate  
71 violation. A violation found on subsequent inspections shall be  
72 presumed to have existed between inspections.

73 (2) (a) The department may issue citations that may contain  
74 an order of correction or an order to pay a fine, or both, for  
75 any violation for which the department may also impose an  
76 administrative fine; however, the department may only use a  
77 single method of enforcement for each violation.

78 (b) Citations must be in writing and must describe the  
79 particular nature of the violation, including specific reference  
80 to the provisions of law or rule allegedly violated.

81 (c) The citing official shall inform the recipient at the  
82 time the citation is issued, by written notice pursuant to ss.  
83 120.569 and 120.57, of the right to an administrative hearing to  
84 contest the citation. The citation must contain a conspicuous

85 statement that if the recipient fails to pay the fine within the  
 86 time allowed or fails to appear to contest the citation after  
 87 having requested a hearing, the recipient has waived the right  
 88 to contest the citation.

89 (d) The department may reduce or waive the fine imposed by  
 90 the citation after giving due consideration to such factors as  
 91 the gravity of the violation, the person's attempts at  
 92 correcting the violation, the recommendation of the septic tank  
 93 contractor ethics advisory panel, and the person's history of  
 94 previous violations, including violations for which enforcement  
 95 actions were taken under this section or other provisions of  
 96 state law.

97 (e) A citation issued under this subsection constitutes a  
 98 notice of proposed agency action. Any person who willfully  
 99 refuses to sign and accept a citation issued by the department  
 100 commits a misdemeanor of the second degree, punishable as  
 101 provided in s. 775.082 or s. 775.083 ~~In determining the amount~~  
 102 ~~of fine to be imposed, if any, for a violation, the following~~  
 103 ~~factors shall be considered:~~

104 ~~(a) The gravity of the violation, including the~~  
 105 ~~probability that death or serious physical or emotional harm to~~  
 106 ~~any person will result or has resulted, the severity of the~~  
 107 ~~actual or potential harm, and the extent to which the provisions~~  
 108 ~~of the applicable statutes or rules were violated.~~

109 ~~(b) Actions taken by the owner or operator to correct~~  
 110 ~~violations.~~

111 ~~(c) Any previous violations.~~

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112 (3) All amounts collected under this section shall be  
113 deposited into the County Health Department Trust Fund to be  
114 used to fund the septic tank contractors advisory panel pursuant  
115 to s. 381.0068. Any remaining funds shall be allocated to the  
116 environmental health program for which the fine was issued for  
117 the purposes of program improvement, training, and staffing as  
118 determined by an appropriate trust fund of the department.

119 (4) As an alternative to the imposition of a fine, the  
120 department may require attendance of training courses applicable  
121 to the violations committed and the use of best management  
122 practices currently used or recognized by the appropriate  
123 regulated industry or governmental agency.

124 (5) Department personnel who have reason to believe  
125 noncompliance with requirements specified in s. 381.006(16), s.  
126 381.0065, s. 381.0066, s. 381.0072, or part III of chapter 489,  
127 or any provisions under chapter 386 exists may, at any  
128 reasonable time, enter the premises permitted under those  
129 sections and chapters to determine compliance with the  
130 requirements specified in this subsection. As used in this  
131 subsection, the term "premises" does not include a residence or  
132 private building. To gain entry to a residence or private  
133 building, the department must obtain permission from the owner  
134 or occupant or secure an inspection warrant from a court of  
135 competent jurisdiction.

136 (6) In order to perform the requirements of this section,  
137 department employees may go on, over, and upon the lands of  
138 others when necessary and may carry with them any equipment,  
139 agents, consultants, and employees necessary for that purpose.

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140 Entry under the right granted by this subsection does not  
141 constitute trespass, and department employees, agents, and  
142 consultants so entering are not liable to arrest or to a civil  
143 action by reason of such entry. Due care shall be taken to not  
144 destroy, injure, or damage any physical improvements on the  
145 lands of others. Failure of any property owner to comply with  
146 this section shall be considered a violation of this chapter.

147 Section 2. Subsection (5) of section 381.0065, Florida  
148 Statutes, is redesignated as subsection (6) and reenacted,  
149 paragraph (b) of that subsection is amended, and a new  
150 subsection (5) is added to that section, to read:

151 381.0065 Onsite sewage treatment and disposal systems;  
152 regulation.--

153 (5) PERIODIC EVALUATIONS.---

154 (a) Effective August 1, 2009, the department shall  
155 implement, by rule, a program for periodic inspections and pump  
156 outs of onsite sewage treatment and disposal systems, excluding  
157 those systems that are required to obtain an operation permit.  
158 The program must include a schedule for a 5-year inspection  
159 cycle; a county by county implementation plan phased in over a  
160 10-year period with first priority given to those areas within  
161 an identified springshed protection area; an enforcement  
162 procedure for failure to inspect and failure to timely report  
163 inspection results to the department and the system owner; and a  
164 conflict of interest provision to prevent an inspector from  
165 conducting repairs associated with any deficiencies found during  
166 an inspection.

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167       (b) The department's Procedure for Voluntary Inspection  
168 and Assessment of Existing Systems shall be applied to  
169 inspections under this subsection, except as otherwise provided.  
170 All inspection procedures used by an inspector must be  
171 documented and nothing in this subsection limits the amount of  
172 detail an inspector may provide at their professional  
173 discretion. The inspection must include a tank inspection, a  
174 drainfield inspection, and a written assessment of the condition  
175 of the system, and, if necessary, a disclosure statement  
176 pursuant to the department's procedure.

177       (c) If documentation of a tank pumping or of a permitted  
178 new installation, repair, or modification of the system within  
179 the previous 3 years is provided, and such documentation states  
180 the capacity of the tank and indicates that the condition of the  
181 tank is not a sanitary or public health nuisance, the department  
182 and the inspector shall waive the pumping requirements.

183       (d) Owners are responsible for paying the cost of the  
184 inspection and pump out pursuant to department rule and may not  
185 request partial inspections or the omission of portions of the  
186 inspection.

187       (e) Persons allowed to perform work under this subsection  
188 are master septic tank contractors, registered septic tank  
189 contractors, state licensed plumbers, and persons certified  
190 under s. 381.0101.

191       (f) Prior to any inspection, the department must provide a  
192 minimum of 60 days' notice to owners that their system will be  
193 required to be inspected and pumped out. The notice must include  
194 a provision which states that the purpose of the inspection is

195 to assess the fundamental operational condition of the system  
 196 and identify any failure, and not to determine code compliance,  
 197 require a complete upgrade or overhaul of a system to meet  
 198 current code requirements, or require information demonstrating  
 199 that the system will adequately serve the use to be placed upon  
 200 it by the current or any subsequent owner. Included with the  
 201 notice, the department must provide the owner of the system a  
 202 copy of the Procedure for Voluntary Inspection and Assessment of  
 203 Existing Systems.

204 (g) As used in this subsection:

205 1. "Failure" means an existing condition within an onsite  
 206 sewage treatment and disposal system that prohibits the system  
 207 from functioning in a sanitary manner and results in the  
 208 discharge of untreated or partially treated wastewater onto  
 209 ground surface, into surface waters or groundwaters, or results  
 210 in the failure of building plumbing to discharge properly. For  
 211 purposes this subsection, a system shall not be deemed in  
 212 failure solely because the system does not have the minimum  
 213 separation distance between the drainfield and groundwater  
 214 table.

215 2. "Repair" means replacement of or modifications or  
 216 additions to a failing system which are necessary to allow the  
 217 system to function in accordance with its design or are  
 218 necessary to eliminate a public health or pollution hazard,  
 219 including the use of any treatment method that is intended to  
 220 improve the functioning of any part of the system or to prolong  
 221 or sustain the length of time the system functions, excluding  
 222 the:

- 223        a. Service or replacement with like kind and quality
- 224 mechanical or electrical parts of an approved onsite sewage
- 225 treatment and disposal system.
- 226        b. Minor structural corrections to a tank or distribution
- 227 box.
- 228        c. Use of an authorized additive in indoor building
- 229 plumbing by the system owner.
- 230        d. Removal of the contents of any tank or the installation
- 231 of an approved outlet filter device without disturbing the
- 232 drainfield.
- 233        e. Replacement of any broken tank lid.
- 234        f. Splicing of a drip emitter line where no emitter is
- 235 eliminated.

236        (6)~~(5)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.--

237        (b)1. The department may issue citations that may contain

238 an order of correction or an order to pay a fine, or both, for

239 violations of ss. 381.0065-381.0067, part I of chapter 386, or

240 part III of chapter 489 or the rules adopted by the department,

241 when a violation of these sections or rules is enforceable by an

242 administrative or civil remedy, or when a violation of these

243 sections or rules is a misdemeanor of the second degree. A

244 citation issued under ss. 381.0065-381.0067, part I of chapter

245 386, or part III of chapter 489 constitutes a notice of proposed

246 agency action.

247        2. A citation must be in writing and must describe the

248 particular nature of the violation, including specific reference

249 to the provisions of law or rule allegedly violated.

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250           3. The fines imposed by a citation issued by the  
251 department may not exceed \$5,000 ~~\$500~~ for each violation. Each  
252 day the violation exists constitutes a separate violation for  
253 which a citation may be issued.

254           4. The department shall inform the recipient, by written  
255 notice pursuant to ss. 120.569 and 120.57, of the right to an  
256 administrative hearing to contest the citation within 21 days  
257 after the date the citation is received. The citation must  
258 contain a conspicuous statement that if the recipient fails to  
259 pay the fine within the time allowed, or fails to appear to  
260 contest the citation after having requested a hearing, the  
261 recipient has waived the recipient's right to contest the  
262 citation and must pay an amount up to the maximum fine.

263           5. The department may reduce or waive the fine imposed by  
264 the citation. In determining whether to reduce or waive the  
265 fine, the department must consider the gravity of the violation,  
266 the person's attempts at correcting the violation, and the  
267 person's history of previous violations including violations for  
268 which enforcement actions were taken under ss. 381.0065-  
269 381.0067, part I of chapter 386, part III of chapter 489, or  
270 other provisions of law or rule.

271           6. Any person who willfully refuses to sign and accept a  
272 citation issued by the department commits a misdemeanor of the  
273 second degree, punishable as provided in s. 775.082 or s.  
274 775.083.

275           7. The department, pursuant to ss. 381.0065-381.0067, part  
276 I of chapter 386, or part III of chapter 489, shall deposit any

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277 fines it collects in the county health department trust fund for  
278 use in providing services specified in those sections.

279 8. This section provides an alternative means of enforcing  
280 ss. 381.0065-381.0067, part I of chapter 386, and part III of  
281 chapter 489. This section does not prohibit the department from  
282 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part  
283 III of chapter 489, or its rules, by any other means. However,  
284 the department must elect to use only a single method of  
285 enforcement for each violation.

286 Section 3. Section 381.00656, Florida Statutes, is created  
287 to read:

288 381.00656 Grant program for repair of onsite sewage  
289 treatment and disposal systems.--The department shall administer  
290 a grant program to assist owners of onsite sewage treatment and  
291 disposal systems that are found to be in violation of s.  
292 381.0065 or the rules adopted thereunder. Such grants may be  
293 awarded to an owner for the purpose of repairing and bringing  
294 into compliance a system serving a single-family residence  
295 occupied by the owner and where the family occupying the  
296 residence has an income of less than or equal to 200 percent of  
297 the federal poverty level at the time of application. The  
298 department may prioritize applications for an award of grant  
299 funds based upon the severity of a system's noncompliance, its  
300 relative environmental impact, the income of the family, or any  
301 combination thereof. The department shall adopt rules  
302 establishing the grant application and award process, including  
303 an application form. The department shall seek to make grants in  
304 each fiscal year equal to the total amount of grant funds

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305 available, with any excess funds used for grant awards in  
 306 subsequent fiscal years.

307 Section 4. Paragraph (m) is added to subsection (2) of  
 308 section 381.0066, Florida Statutes, to read:

309 381.0066 Onsite sewage treatment and disposal systems;  
 310 fees.--

311 (2) The minimum fees in the following fee schedule apply  
 312 until changed by rule by the department within the following  
 313 limits:

314 (m) Filing fee for inspection reports pursuant to s.  
 315 381.0065(5): a fee of not less than \$75, or more than \$150.

316  
 317 The funds collected pursuant to this subsection must be  
 318 deposited in a trust fund administered by the department, to be  
 319 used for the purposes stated in this section and ss. 381.0065  
 320 and 381.00655.

321 Section 5. Paragraphs (a) and (b) of subsection (1) of  
 322 section 489.557, Florida Statutes, is amended to read:

323 489.557 Fees, establishment.--

324 (1) The department shall, by rule, establish fees as  
 325 follows:

326 (a) For septic tank contractor registration:

327 1. Application and examination fee: not less than \$25 or  
 328 more than \$75.

329 2. Initial registration fee: not less than \$55 ~~\$50~~ or more  
 330 than \$105 ~~\$100~~. From this fee, \$5 shall be used to fund the  
 331 septic tank contractor advisory panel established pursuant to s.  
 332 489.561.

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333 3. Renewal of registration fee: not less than \$55 ~~\$50~~ or  
 334 more than \$105 ~~\$100~~. From this fee, \$5 shall be used to fund the  
 335 septic tank contractor advisory panel established pursuant to s.  
 336 489.561.

337 (b) For master septic tank contractor registration:

338 1. Application and examination fee: not less than \$25 or  
 339 more than \$75.

340 2. Initial registration fee: not less than \$55 ~~\$50~~ or more  
 341 than \$105 ~~\$100~~. From this fee, \$5 shall be used to fund the  
 342 septic tank contractor advisory panel established pursuant to s.  
 343 489.561.

344 3. Renewal of registration fee: not less than \$55 ~~\$50~~ or  
 345 more than \$105 ~~\$100~~. From this fee, \$5 shall be used to fund the  
 346 septic tank contractor advisory panel established pursuant to s.  
 347 489.561.

348 Section 6. Section 489.561, Florida Statutes, is created  
 349 to read:

350 489.561 Septic tank contractor advisory panel.--

351 (1) By July 1, 2010, the Department of Health shall  
 352 establish and staff an advisory panel to assist the department  
 353 in the development and adoption of rules for contractors  
 354 licensed under this part.

355 (2) (a) The panel shall be comprised of two representatives  
 356 of the septic tank industry recommended by the Florida Onsite  
 357 Wastewater Association; one representative who is a manufacturer  
 358 of onsite sewage treatment and disposal systems; one  
 359 representative who is a septic tank contractor licensed under  
 360 this part; and one representative who is a master septic tank

361 contractor licensed under this part.

362 (b) The panel shall select a chair, who shall serve for a  
 363 period of no more than 1 consecutive year and who shall direct,  
 364 coordinate, and execute the duties of the panel.

365 (c) The panel shall meet as often as necessary, but no  
 366 less than semiannually, to conduct duties as provided in this  
 367 section and as requested by the department. The department shall  
 368 keep minutes of all meetings of the panel.

369 (d) Members of the panel shall receive no compensation but  
 370 are entitled to reimbursement for per diem and travel expenses,  
 371 when requested, in accordance with s. 112.061.

372 (3) The panel shall hear allegations of ethical misconduct  
 373 of contractors licensed under this part and make recommendations  
 374 for disciplinary action to the department. The panel shall also  
 375 hear appeals for certificate of registration denial, revocation,  
 376 or suspension resulting from ethical misconduct and shall advise  
 377 the department as to the disposition of such appeals.

378 (4) Nothing in this section shall be construed to impair  
 379 the department's authority pursuant to s. 381.0065.

380 Section 7. For the purpose of incorporating the amendment  
 381 made by this act to section 381.0061, Florida Statutes, in  
 382 references thereto, paragraph (a) of subsection (3) and  
 383 paragraph (a) of subsection (5) of section 381.0072, Florida  
 384 Statutes, are reenacted to read:

385 381.0072 Food service protection.--It shall be the duty of  
 386 the Department of Health to adopt and enforce sanitation rules  
 387 consistent with law to ensure the protection of the public from  
 388 food-borne illness. These rules shall provide the standards and

389 requirements for the storage, preparation, serving, or display  
 390 of food in food service establishments as defined in this  
 391 section and which are not permitted or licensed under chapter  
 392 500 or chapter 509.

393 (3) LICENSES REQUIRED.--

394 (a) Licenses; annual renewals.--Each food service  
 395 establishment regulated under this section shall obtain a  
 396 license from the department annually. Food service establishment  
 397 licenses shall expire annually and are not transferable from one  
 398 place or individual to another. However, those facilities  
 399 licensed by the department's Office of Licensure and  
 400 Certification, the Child Care Services Program Office, or the  
 401 Agency for Persons with Disabilities are exempt from this  
 402 subsection. It shall be a misdemeanor of the second degree,  
 403 punishable as provided in s. 381.0061, s. 775.082, or s.  
 404 775.083, for such an establishment to operate without this  
 405 license. The department may refuse a license, or a renewal  
 406 thereof, to any establishment that is not constructed or  
 407 maintained in accordance with law and with the rules of the  
 408 department. Annual application for renewal is not required.

409 (5) FINES; SUSPENSION OR REVOCATION OF LICENSES;  
 410 PROCEDURE.--

411 (a) The department may impose fines against the  
 412 establishment or operator regulated under this section for  
 413 violations of sanitary standards, in accordance with s.  
 414 381.0061. All amounts collected shall be deposited to the credit  
 415 of the County Health Department Trust Fund administered by the  
 416 department.

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417 Section 8. For the purpose of incorporating the amendment  
 418 made by this act to section 381.0061, Florida Statutes, in a  
 419 reference thereto, subsection (4) of section 381.0086, Florida  
 420 Statutes, is reenacted to read:

421 381.0086 Rules; variances; penalties.--

422 (4) A person who violates any provision of ss. 381.008-  
 423 381.00895 or rules adopted under such sections is subject either  
 424 to the penalties provided in ss. 381.0012, 381.0025, and  
 425 381.0061 or to the penalties provided in s. 381.0087.

426 Section 9. For the purpose of incorporating the amendment  
 427 made by this act to section 381.0061, Florida Statutes, in a  
 428 reference thereto, subsection (7) of section 381.0098, Florida  
 429 Statutes, is reenacted to read:

430 381.0098 Biomedical waste.--

431 (7) ENFORCEMENT AND PENALTIES.--Any person or public body  
 432 in violation of this section or rules adopted under this section  
 433 is subject to penalties provided in ss. 381.0012, 381.0025, and  
 434 381.0061. However, an administrative fine not to exceed \$2,500  
 435 may be imposed for each day such person or public body is in  
 436 violation of this section. The department may deny, suspend, or  
 437 revoke any biomedical waste permit or registration if the  
 438 permittee violates this section, any rule adopted under this  
 439 section, or any lawful order of the department.

440 Section 10. For the purpose of incorporating the amendment  
 441 made by this act to section 381.0061, Florida Statutes, in a  
 442 reference thereto, paragraph (d) of subsection (2) of section  
 443 386.03, Florida Statutes, is reenacted to read:

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444           386.03 Notice to remove nuisances; authority of Department  
445 of Health and local health authorities.--

446           (2) If the sanitary nuisance condition is not removed by  
447 such person or persons within the time prescribed in said  
448 notice, the department, its agents or deputies or local health  
449 authorities, may within the county where the nuisance exists,  
450 remove, cause to remove, or prevent the continuing sanitary  
451 nuisance condition in the following manner:

452           (d) Institute administrative proceedings authorized by the  
453 department as set forth in s. 381.0061.

454           Section 11. For the purpose of incorporating the amendment  
455 made by this act to section 381.0061, Florida Statutes, in a  
456 reference thereto, subsection (2) of section 513.10, Florida  
457 Statutes, is reenacted to read:

458           513.10 Operating without permit; enforcement of chapter;  
459 penalties.--

460           (2) This chapter or rules adopted under this chapter may  
461 be enforced in the manner provided in s. 381.0012 and as  
462 provided in this chapter. Violations of this chapter and the  
463 rules adopted under this chapter are subject to the penalties  
464 provided in this chapter and in ss. 381.0025 and 381.0061.

465           Section 12. This act shall take effect July 1, 2009.