

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 13 Onsite Sewage Treatment and Disposal Systems

**SPONSOR(S):** Coley and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 82, SB 130, SB 168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 1 N	Deslatte	Blalock
2) Health Care Appropriations Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

During the 2010 regular legislative session, the Legislature passed HB 550, which, in part, created an onsite sewage treatment and disposal system evaluation program (program) to be administered by the Department of Health (DOH) beginning January 1, 2011. During the 2010 November special session, the Legislature extended the beginning date for implementing the program from January 1, 2011 to July 1, 2011.

Under current law, all onsite sewage systems must undergo an inspection by the DOH once every five years, starting July 1, 2011. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement. A septic system owner must pay the cost of the evaluation as well as a 5-year evaluation report fee of not less than \$15, or more than \$30, which is collected by the person conducting the septic system evaluation and remitted to the DOH. A pump-out of a septic system is not required if documentation of a pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and the documentation states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance as defined by DOH rule. Each evaluation or pump-out must be performed by a registered septic tank contractor or master septic tank contractor, a licensed professional engineer with wastewater treatment system experience, or an environmental health professional certified in the area of onsite sewage treatment and disposal system evaluation. Owners of septic systems are responsible for paying the cost of any required pump-out, repair, or replacement, and cannot request partial evaluation or the omission of portions of the evaluation. Beginning January 1, 2012, the DOH must administer a grant program to assist owners of onsite systems. A grant may be awarded to an owner only for the purpose of inspecting, pumping, repairing, or replacing a system serving a single family residence occupied by an owner with a family income of less than or equal to 133 percent of the federal poverty level at the time of application. A portion of the report fee (at least \$1 and not more than \$5) must be used to fund a grant program.

The bill amends current law to remove language that directs the DOH to create and administer the statewide septic tank evaluation program and eliminates procedures and criteria for the evaluation program. The bill also repeals current law to terminate the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program, and eliminates provisions authorizing the DOH to collect an evaluation report fee. Finally, the bill eliminates provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule.

This bill will decrease the DOH's workload associated with implementation of the program, and will have no fiscal impact on local governments. The bill will eliminate the anticipated positive economic impact on private businesses performing inspections and repairs expected to result from implementation of the program, and will eliminate the costs to septic tank owners that would be required to incur program compliance costs. According to the DOH analysis<sup>1</sup>, the DOH will lose a projected \$3.2 million in revenue for fiscal year 2011-2012.

<sup>1</sup> On file with staff.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

The Department of Health (DOH) oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is oversight of sewage treatment and disposal systems, i.e., septic tanks.<sup>2</sup> The DOH estimates there are 2.6 million septic tanks in use statewide.

The Bureau of Onsite Sewage Programs develops statewide rules and provides training and standardization for County Health Department employees responsible for issuing permits for the installation and repair of onsite septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic tank contractors, funds a hands-on training center, and mediates onsite sewage treatment and disposal system contracting complaints. In addition, the bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.<sup>3</sup>

In 2008, the DOH submitted a report on the range of costs to implement a mandatory statewide 5-year septic tank inspection program.<sup>4</sup> Of the 2.6 million septic tanks statewide, the report stated that over half of the systems are over 30 years old and were installed under standards less stringent than current standards. The report further stated that less than one percent of these active systems has operating permits and receives annual inspections by the DOH and routine maintenance from private maintenance entities. Repairs of onsite systems were not regulated until 1987, so many of the older systems have been unlawfully modified.

According to the report, although there was no statewide septic tank inspection program, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of \$83.93 to \$215 per inspection. In 2008, approximately 0.5 percent of septic tanks were inspected and pumped out. The report concluded that "a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years, based on the DOH's existing procedure for voluntary inspection, would be a significant upgrade to Florida's onsite system management practices. The mandatory inspections would initially be phased in through inspection and inclusion of onsite systems that are already inspected by the DOH (i.e., county ordained mandatory inspection programs, systems applying for modifications or repairs and for systems subject to real estate transactions). A mandatory septic inspection program would result in greater environmental and public health protection by increasing system owner awareness, prolonging system life and delaying or eliminating costly system repairs."

During the 2010 legislative session, the Legislature passed HB 550, which, in part, created an onsite sewage treatment and disposal system evaluation program (program) to be administered by the DOH beginning January 1, 2011. The purpose of the program is to assess the fundamental operational condition of septic systems and identify failures within the systems. Section 381.0065(5), F.S., directs the DOH to adopt rules implementing the program standards, procedures, and requirements, including a schedule for a 5-year evaluation cycle, requirements for the pump-out of a system or repair of a

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<sup>2</sup> Section 381.006, F.S. (2009).

<sup>3</sup> Description of the Bureau of Onsite Sewage from the DOH website. Available at:

<http://www.doh.state.fl.us/environment/ostds/OSTDSdescription.html>.

<sup>4</sup> The report was submitted in compliance with HB 5001, General Appropriations Act, for Fiscal Year 2008-2009. The report was submitted to the Speaker of the House of Representatives, the President of the Senate, and the Executive Office of the Governor. The report can be found at: <http://www.myfloridaeh.com/ostds/pdf/files/forms/MSIP.pdf>

failing system, enforcement procedures for failure of a system owner to obtain an evaluation of the system, and failure of a contractor to timely submit evaluation results to the DOH and the system owner. The DOH must ensure statewide implementation of the program by January 1, 2016.

The program requires the owner of a septic system, excluding a system that is required to obtain an operating permit,<sup>5</sup> to have the system evaluated at least once every 5 years to assess the fundamental operational condition of the system, and identify any system failures. The evaluation must include a tank and drainfield evaluation, a written assessment of the condition of the system, and, if necessary, a disclosure statement. A septic system owner must pay the cost of the evaluation as well as a 5-year evaluation report fee of not less than \$15, or more than \$30, which is collected by the person conducting the septic system evaluation and remitted to the DOH. The actual cost of an evaluation, as well as the cost of any necessary remedial actions, is one of the issues currently under review by the DOH.

Owners of septic systems are responsible for paying the cost of any required pump-out, repair, or replacement, and cannot request partial evaluation or the omission of portions of the evaluation. Each evaluation or pump-out must be performed by a registered septic tank contractor of master septic tank contractor, a licensed professional engineer with wastewater treatment system experience, or an environmental health professional certified in the area of onsite sewage treatment and disposal system evaluation. Prior to any evaluation deadline, the DOH must provide a minimum 60 days notice to owners that their systems must be evaluated by that deadline.

Systems being evaluated that were installed prior to January 1, 1983, must meet a minimum 6-inch separation from the bottom of the drainfield to the wettest season water table elevation. All drainfield repairs, replacements, or modifications to systems installed prior to January 1, 1983, must meet a minimum 12-inch separation from the bottom of the drainfield to the wettest season water table elevation. Systems being evaluated that were installed after January 1, 1983, must meet a minimum 12-inch separation from bottom of drainfield to the wettest season water table elevation, and all drainfield repairs, replacements, or modifications to these systems must meet a minimum 24-inch separation from bottom of drainfield to the wettest season water table elevation.

A pump-out of a septic system is not required if documentation of a pump-out or a permitted new installation, repair, or modification of the system within the previous 5 years is provided, and the documentation states the capacity of the tank and indicates that the condition of the tank is not a sanitary or public health nuisance as defined by DOH rule.

Beginning on January 1, 2012, the DOH will administer a grant program to assist low-income owners of septic systems to defray some of the cost of complying with the requirements of the evaluation program. A grant can be awarded to an owner for the purpose of inspecting, pumping, repairing, or replacing a system serving a single-family residence occupied by an owner with a family income of less than or equal to 133% of the federal poverty level.<sup>6</sup> At least \$1, but no more than \$5, of the evaluation report fee described above must be used to fund the grant program.

The DOH has begun the rulemaking process to implement the evaluation program, but has encountered delays. Concerns have been expressed by the DOH, its Technical Review and Advisory Panel, and the public regarding the unknown costs associated with implementation of the program, including costs to property owners required to pay for the inspection and any remedial activities, as well as implementation costs to the state. Because of the short timeframe for developing the rule and implementing the program, it appears that there is insufficient time for the DOH to complete a cost estimate and adopt a final rule before the required January 1, 2011, implementation date.

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<sup>5</sup> Systems that require an operating permit are typically large scale complex commercial systems and anaerobic systems. Typical residential septic systems require a permit for installation, but not an annual operating permit.

<sup>6</sup> Depending on the size of a family, 133% of the federal poverty level equals a yearly income of between \$14,404 and \$49,223. [https://www.cms.gov/MedicaidEligibility/07\\_IncomeandResourceGuidelines.asp](https://www.cms.gov/MedicaidEligibility/07_IncomeandResourceGuidelines.asp).

During the 2010 November special session, SB 2A was passed to change the implementation date of the statewide septic tank evaluation program from January 1, 2011 to July 1, 2011.

### **Effect of Proposed Changes**

The bill eliminates provisions directing the DOH to create and administer a statewide septic tank evaluation program and eliminates procedures and criteria for the evaluation program. The bill also repeals s. 381.00656, F.S., to terminate the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program. In addition, the bill eliminates provisions authorizing the DOH to collect an evaluation report fee. Finally, the bill eliminates provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 381.0065, F.S., revising legislative intent; eliminating provisions directing the Department of Health to create and administer a statewide septic tank evaluation program; eliminating procedures and criteria for the evaluation program.

**Section 2.** Repeals s. 381.00656, F.S., terminating the grant program for repair of onsite sewage treatment disposal systems identified pursuant to the evaluation program, to conform.

**Section 3.** Amends s. 381.0066, F.S., eliminating provisions authorizing the department to collect an evaluation report fee; eliminating provisions relating to disposition of fee proceeds and a revenue-neutral fee schedule.

**Section 4.** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

According to the DOH analysis, the DOH will lose a projected \$3.2 million in revenue for fiscal year 2011-2012.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The septic system evaluation program, once implemented, will likely increase revenues of persons or businesses in the private sector who are authorized to perform the required evaluations and any pump-out, repairs, replacements, or modifications identified during the evaluation of a septic system. The bill will eliminate this increase in revenues. Conversely, property owners who use a septic system will bear the costs of an evaluation and any necessary remedial activities. The bill will eliminate those costs to septic tank owners.

D. FISCAL COMMENTS:

None.

**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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**