

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: SB 168

INTRODUCER: Senators Evers and Gaetz

SUBJECT: Onsite Sewage Treatment

DATE: February 22, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Favorable
2.	_____	_____	EP	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the Department of Health's (DOH) attendant rulemaking authority to implement the program. The bill also repeals a grant program, which was enacted to assist low-income owners of onsite sewage treatment and disposal systems with the costs associated with the inspection, pumping, repairing, or replacing of such systems. Additionally, the fees to be assessed by DOH to support the onsite sewage treatment and disposal evaluation program and the grant program are repealed in the bill.

This bill substantially amends the following sections of the Florida Statutes: 381.0065 and 381.0066.

This bill repeals section 381.00656, of the Florida Statutes.

II. Present Situation:

Nutrient Management in Florida's Water Bodies

With over 50,000 miles of rivers and streams, 7,800 lakes, and 4,000 square miles of estuaries, Florida has an abundance of surface waters that are used for a variety of purposes by the people who live and work in the state, by those who are visiting, and by the fish and wildlife that depend on these waters.¹

¹ Florida Department of Environmental Protection, *Surface Water Quality Standards*, last updated on February 9, 2011, available at <http://www.dep.state.fl.us/water/wqssp/surface.htm> (Last visited on February 18, 2011).

The Federal Clean Water Act² is the basis for state water quality standards programs. The federal regulatory requirements governing these programs are published in 40 CFR 131, the Water Quality Standards Regulation. States are responsible for reviewing, establishing, and revising water quality standards. Florida's surface water quality standards system is published in Chapter 62-302 and Rule 62-302.530 of the Florida Administrative Code (F.A.C.). The components of this system include: classifications; criteria, including site specific criteria; an anti-degradation policy; and special protection of certain waters.³

The Florida Department of Environmental Protection (DEP) has initiated rulemaking to adopt quantitative nutrient water quality standards to facilitate the assessment of designated use attainment for its waters and to provide a better means to protect state waters from the adverse effects of nutrient pollution. The addition of excess nutrients, often associated with human alterations to watersheds, including leaking septic tanks,⁴ can negatively impact water body health and interfere with designated uses of waters. Impacts include noxious tastes and odors in drinking water, algal blooms and excessive aquatic weeds in swimming and boating waters, and altering the natural community of flora and fauna.⁵

The DEP plans to develop numeric criteria for phosphorus and nitrogen and possibly for their response variables, recognizing the differences in Florida's hydrology and geology, the nutrient levels of the state's waters, and the variability in ecosystem response to nutrient concentrations. The DEP's preferred approach is to develop cause and affect relationships between nutrients and valued ecological attributes and to establish nutrient criteria that ensure that the designated uses of Florida's waters are maintained.⁶

Florida's law contains a narrative nutrient standard, which guides the management and protection of its waters. Rule 62-302.530, F.A.C., states, "In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of flora or fauna." The narrative criteria also states that, for all waters of the state, "the discharge of nutrients shall continue to be limited as needed to prevent violations of other standards contained in this chapter [Chapter 62-302, F.A.C.]. Man-induced nutrient enrichment (total nitrogen or total phosphorus) shall be considered degradation in relation to the provisions of Rules 62-302.300, 62-302.700, and 62-4.242, F.A.C."

The DEP has relied on this narrative for many years because nutrients are unlike any other "pollutant" regulated by the Federal Clean Water Act. Most water quality criteria are based on a

² 33 U.S.C. 1251 *et seq.*

³ *Supra* fn. 1.

⁴ Septic systems are designed to treat wastewater by separating solids from liquids and then draining the liquid into the ground. Sewage flows into the tank where settling and bacterial decomposition of larger particles takes place, while treated liquid filters into the soil. When system failures occur, untreated wastewater and sewage can be introduced into groundwater or nearby streams and water bodies. Source: *Pollution Prevention Fact Sheet: Septic System Controls*, available at http://www.stormwatercenter.net/Pollution_Prevention_Factsheets/SepticSystemControls.htm (Last visited on February 18, 2010).

⁵ Florida Department of Environmental Protection, *Development of Numeric Nutrient Criteria for Florida's Waters*, last updated on November 15, 2010, available at <http://www.dep.state.fl.us/water/wqssp/nutrients/> (Last visited on February 18, 2011).

⁶ *Id.*

toxicity threshold, evidenced by a dose-response relationship, where higher concentrations can be demonstrated to be harmful, and acceptable concentrations can be established at a level below which adverse responses are seen. In contrast, nutrients are not only naturally present in aquatic systems, they are necessary for the proper functioning of life.⁷

The DEP actively worked with the U.S. Environmental Protection Agency (EPA) on the development of numeric nutrient criteria. The DEP submitted its initial Draft Numeric Nutrient Criteria Development Plan to the EPA in May 2002, and received mutual agreement on the Numeric Nutrient Criteria Development Plan from EPA in July 2004. The DEP revised its plan in September 2007 to more accurately reflect its evolved strategy and technical approach, and received mutual agreement on the 2007 revisions from the EPA.⁸

The Florida Wildlife Federation filed a lawsuit in 2008 seeking to require the EPA to promulgate numeric nutrient water quality standards for Florida waters. The EPA settled the lawsuit and entered into a consent decree with the Florida Wildlife Federation. After EPA's analyses of the facts in Florida, and discussions with the DEP on January 14, 2009, the EPA made a determination that numeric nutrient criteria in Florida were necessary to meet the requirements of the Federal Clean Water Act. The EPA determined that Florida's existing narrative criteria on nutrients in water was insufficient to ensure protection of the State's water bodies. The determination recognized that, despite Florida's intensive efforts to diagnose and control nutrient pollution, substantial water quality degradation from nutrient pollution remains a significant challenge in Florida and is likely to worsen with continued population growth and land-use changes. The January 14, 2009, EPA determination stated the EPA's intent to propose numeric nutrient standards for lakes and flowing waters in Florida within 12 months of the determination, and for estuaries and coastal waters, within 24 months of the determination.⁹

On November 14, 2010, EPA Administrator Lisa P. Jackson signed Final "Water Quality Standards for the State of Florida's Lakes and Flowing Waters." The final standards set numeric limits, or criteria, on the amount of nutrient pollution allowed in Florida's lakes, rivers, streams and springs. The final action seeks to improve water quality, protect public health, aquatic life and the long term recreational uses of Florida's waters, which are a critical part of Florida's economy. The rule will take effect on March 6, 2012 except for the site-specific alternative criteria (SSAC) provision, which is effective February 4, 2011. The EPA extended the effective date for the rule for 15 months to allow cities, towns, businesses and other stakeholders as well as the State of Florida a full opportunity to review the standards and develop flexible strategies for implementation.¹⁰ The State of Florida is currently challenging the EPA standards in a lawsuit asking for declaratory and injunctive relief.¹¹

⁷ *Id.*

⁸ *Id.*

⁹ U.S. Environmental Protection Agency, *Water Quality Standards for the State of Florida's Lakes and Flowing Waters*, January 2010, available at http://water.epa.gov/lawsregs/rulesregs/florida_factsheet.cfm (Last visited on February 18, 2011).

¹⁰ *Id.*

¹¹ *State v. U.S. Environmental Protection Agency*, Case No. 3:10-cv-00503-RV-MD, U.S. District Court, Northern District of Florida, available at [http://myfloridalegal.com/webfiles.nsf/WF/CRUE-8BWPPD/\\$file/epacompliant.pdf](http://myfloridalegal.com/webfiles.nsf/WF/CRUE-8BWPPD/$file/epacompliant.pdf) (Last visited on February 18, 2011).

There are several entities in Florida that research Florida's water quality or provide funding for such research. The Florida Water Pollution Control Financing Corporation (Corporation) is a nonprofit public-benefit corporation that was created in 2001, to finance or refinance water pollution control activities.¹² The corporation's purpose is to issue bonds that increase the capacity of the State Revolving Fund to provide low-interest loans to local governments. Additionally, the University of Florida Water Institute (Institute) brings together talent from throughout the University of Florida to address complex water issues through innovative interdisciplinary research, education, and public outreach programs.¹³ The Institute's vision is to create interdisciplinary teams, comprised of leading water researchers, educators, and students to develop scientific breakthroughs; engineer creative solutions for water problems; recommend policy and legal solutions for complex issues; and pioneer educational programs that are renowned for addressing state, national, and global water resource problems.¹⁴

Florida Senate Select Committee on Florida's Inland Waters

On October 7, 2009, Senate President Jeff Atwater created the Florida Senate Select Committee on Florida's Inland Waters. The task set before the committee was to travel the state and listen and learn from constituents. To that end, six meetings were scheduled around the state.¹⁵

In conjunction with the public hearings, the members of the committee and staff were invited on several site visits. Each site visited exemplified a unique challenge for Florida's water resources, from agricultural best-management practices to saltwater intrusion.¹⁶

At the end of the hearings, the select committee unanimously adopted a final report containing 13 recommendations, including the recommendation that the Legislature should consider the creation of regional management entities to effectuate a septic tank inspection and maintenance program and that counties and municipalities should have authority over the regional management entities.¹⁷

The Department of Health's Regulation of Septic Tanks

The 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 an onsite sewage treatment and disposal function.¹⁸

¹² Chapter 2000-271, L.O.F.

¹³ University of Florida Water Institute, *About*, last updated on December 15, 2010, available at <http://waterinstitute.ufl.edu/about/index.html> (Last visited on February 18, 2011).

¹⁴ *Id.*

¹⁵ Florida Senate Select Committee on Florida's Inland Waters, *Report on the Florida Senate Select Committee on Florida's Inland Waters*, Meeting Packet, March 11, 2010, available at <http://waterinstitute.ufl.edu/symposium2010/downloads/FloridaSelectCommitteeonInlandWaterssummary.pdf> (Last visited on February 18, 2011).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 381.006, F.S. (2010).

An “onsite sewage treatment and disposal system” is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.¹⁹

The DOH estimates there are approximately 2.6 million septic tanks in use statewide.²⁰ The DOH’s Bureau of Onsite Sewage develops statewide rules and provides training and standardization for County Health Department employees responsible for permitting the installation and repair of onsite sewage treatment and disposal systems (septic tanks) within the state. The bureau also licenses septic tank 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 systems contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic tank designs.²¹

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the DOH’s procedure for voluntary inspection, including use of fees to offset costs.²² This resulted in the “Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program” (Report).²³ According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of \$83.93 to \$215 per inspection.

The Report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the Report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and by today’s standards and may be under-designed. The DOH’s statistics indicate that approximately 2 million septic tanks are 20 years or older, which is the average lifespan of a septic tank in Florida.²⁴ Because repairs of onsite systems were not regulated until 1987, many

¹⁹ Section 381.0065(2)(j), F.S. (2010).

²⁰ Florida Department of Health, *Onsite Sewage Treatment and Disposal Systems Installed in Florida*, available at <http://www.myfloridaeh.com/ostds/statistics/newInstallations.pdf> (Last visited on February 18, 2011).

²¹ Department of Health Bureau of Onsite Sewage, *Description*, available at <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (Last visited on February 18, 2011).

²² Chapter 2008-152, L.O.F.

²³ Florida Department of Health, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at <http://www.doh.state.fl.us/environment/ostds/pdf/files/forms/MSIP.pdf> (Last visited on February 18, 2011).

²⁴ Department of Health, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at <http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf> (Last visited on February 18, 2011). See also Department of Health, Bureau of Onsite Sewage, *What’s New?*, available at

systems may have been unlawfully modified. Furthermore, 1.3 million onsite systems were installed prior to 1983 and a significant fraction of the pre-1983 systems may have been installed with a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The current water table separation requirement is 24 inches and is based on research findings compiled by the DOH in 1989 that indicate for septic tank effluent, the presence of at least 2 feet (24 inches) of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for most wastewater constituents. Therefore, Florida's pre-1983 systems may not provide the same level of protection expected from systems installed under current construction standards.²⁵

Chapter 2010-205, Laws of Florida

In 2010, the Legislature enacted CS/CS/CS/SB 550, which became ch. 2010-205, Laws of Florida, and amended s. 381.0065, F.S. This newly enacted law provides for additional legislative intent on the importance of properly managing the State's septic tanks and creates a septic tank evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.²⁶ The evaluation program is to:

- Require all septic tanks to be evaluated for functionality at least once every 5 years.
- Provide proper notice to septic owners that their evaluations are due.
- Ensure proper separations from the wettest season water table.
- Specify the professional qualifications necessary to carry out an evaluation.

This law also establishes a grant program under s. 381.00656, F.S., for owners of septic tanks earning less than or equal to 133 percent of the federal poverty level. The grant program is to provide funding for inspections, pump-outs, repairs, or system replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grant funds.

Finally, ch. 2010-205, Laws of Florida, amends s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH may collect, but no more than \$5 of each evaluation fee may be used to fund the grant program. It also requires the State's Surgeon General, in consultation with the Revenue Estimating Conference, to determine a revenue neutral evaluation fee.

III. Effect of Proposed Changes:

SB 168 effectively repeals the sections of ch. 2010-205, Laws of Florida, relating to the onsite sewage treatment and disposal system (septic tank) evaluation program.

Section 1 amends s. 381.0056, F.S., by repealing legislative intent that proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public and legislative intent to have the DOH administer an evaluation program to ensure proper operational condition of the State's onsite sewage treatment and disposal system and identify any failures of that system.

<http://www.doh.state.fl.us/environment/ostds/New.htm> (Last visited on February 18, 2011).

²⁵ *Id.*

²⁶ However, implementation was delayed until July 1, 2011, by the Legislature's enactment of SB 2-A (2010). *See also* ch. 2010-283, L.O.F.

This section also repeals the state-wide onsite sewage treatment and disposal system evaluation program, including the DOH's authority to administer, implement, and enforce the requirements of the program. Repealed provisions of the program also include the following program requirements:

- Owners of an onsite sewage treatment and disposal system, except those required to obtain an operating permit, must have the system evaluated at least once every 5 years to assess the functionality of the system or any failure within the system. However, those owners with documentation of a new installation, repair, or modification of their system within the last 5 years are exempt from the pump-out requirement, if such systems are determined not to be a public health nuisance.
- Evaluation procedures must be documented and include a tank and drainfield evaluation, a written assessment of the system's condition, and a disclosure statement if required by the DOH.
- Minimum separation standards from the bottom of the drainfield to the wettest season water table elevation for systems installed prior to January 1, 1983, and for systems installed on or after January 1, 1983.
- Owners are responsible for paying the cost of any system pump-out, repair, or replacement.
- Septic tank contractor professional requirements that must be met for an evaluation to be performed under the program.
- The payment of evaluation report fees to the DOH at the time the evaluation report is submitted.
- The DOH must provide a minimum 60 days' notice to owners that their systems must be evaluated.

Section 2 amends s. 381.0066, F.S., to repeal a fee of not less than \$15 or more than \$30 to be used to fund the onsite sewage treatment and disposal system evaluation program, including a fee up to \$5 to be used toward the grant program under s. 381.00656, F.S.

This section also repeals the requirement that the State's Surgeon General, after consultation with the Revenue Estimating Conference, determine a revenue neutral fee for the services provided under the onsite sewage treatment and disposal system evaluation program.

Section 3 repeals s. 381.00656, F.S., which in effect abolishes the grant program for low-income owners of onsite sewage treatment and disposal systems, which need inspecting, pumping, repairing or replacing. Included in this repeal, are provisions that authorized the DOH to prioritize applications according to certain criteria and adopt rules establishing the grant application and award process.

Section 4 provides that the bill will take effect upon becoming a law.

Other Potential Implications:

If the onsite sewage treatment and disposal system evaluation program is not repealed, the DOH is statutorily required to implement the program beginning on July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners of onsite sewage treatment and disposal systems will no longer have to pay to have their systems evaluated every 5 years, which would include the \$30 inspection fee and any cost for pump-outs, repairs, or replacements of the system.

C. Government Sector Impact:

The DOH estimates that elimination of the evaluation program and attendant fee will cost the DOH a projected \$3.12 million in revenue the first year. Projected revenue would have offset projected costs to the DOH to administer the program.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

²⁷ Department of Health, *Bill Analysis, Economic Statement, and Fiscal Note for SB 130 (2011)*, December 10, 2010. A copy of this analysis is on file with the Florida Senate Health Regulation Committee.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
