

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: CS/SB 1698

INTRODUCER: Health Regulation Committee and Senator Dean

SUBJECT: Onsite Sewage Treatment

DATE: March 29, 2011 **REVISED:** _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute (CS) for SB 1698 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 CS also repeals a prohibition against the land application of septage from onsite sewage and disposal systems along with a requirement that DOH provide a report to the Governor and Legislature recommending alternative methods of treatment and disposal and recommendations that would reduce the land application of septage.

This CS requires counties or municipalities to develop and adopt by local ordinance a local onsite sewage treatment and disposal system evaluation and assessment program (evaluation program), unless the county or municipality opts out and chooses not to participate in an evaluation program by resolution, which must be adopted before January 1, 2012, and filed with the Secretary of State.

If an evaluation program is adopted by a county or municipality by ordinance, this CS requires:

- A pump out and evaluation of a septic tank to be performed every 5 years, unless an exception applies.

- Certain persons to perform the pump out and evaluation.
- Notice to be given to septic tank owners at least 60 days before the septic tank is due for an evaluation.
- Qualified contractors and septic tank owners, who do not comply with the requirements of the evaluation program, to be penalized.
- Certain evaluation and assessment procedures to be followed during the inspection of a septic tank.
- A county or municipality to develop a database and establish a computerized tracking system based on evaluation reports submitted. The system, which may be Internet-based, is required to include certain information and notify homeowners when evaluations are due.
- A county or municipality to notify the Secretary of Environmental Protection upon the adoption of the ordinance establishing the program.
- The Department of Environmental Protection (DEP) to, within existing resources, notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and assist the county or municipality in the application process to receive such funds. The DEP must also work with the county or municipality to create a revolving loan program to provide low-interest loans to homeowners with failing systems.

The CS provides that a local ordinance may authorize the assessment of a fee not to exceed \$30 to cover the costs of administering the evaluation program.

This CS provides that a grant program will be available January 1, 2013, to assist low-income owners of onsite sewage treatment and disposal systems with the costs associated with any required inspection, pump out, repair, or system replacement. The CS also reduces the range of the fee amount that may be assessed by the DOH for an evaluation report.

The CS also:

- Defines “bedroom.”
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if, when the title is transferred, new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not “abandoned.”
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system under certain circumstances.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee of not less than \$50 to a fee of not less than \$15 and from a fee of not more than \$150 to a fee of not more than \$30.

This CS substantially amends the following sections of the Florida Statutes: 381.0065, 381.00656, and 381.0066.

This CS creates s. 381.00651, F.S.

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

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 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

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/index.htm> (Last visited on March 24, 2011).

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 March 24, 2011).

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 March 24, 2011).

⁶ *Id.*

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 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

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 March 24, 2011).

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

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

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 March 24, 2011).

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 March 24, 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 March 24, 2011).

¹⁶ *Id.*

¹⁷ *Id.*

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

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 solid 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.

¹⁸ Section 381.006, F.S. (2010).

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 March 24, 2011).

²¹ Department of Health Bureau of Onsite Sewage, *Description*, available at <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (Last visited on March 24, 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 March 24, 2011).

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 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

Flow and Septic System Design Determinations

For residences, domestic sewage flows are calculated using the number of bedrooms and the building area as criteria for consideration, including existing structures and any proposed additions.²⁶ Depending on the sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.²⁷

Minimum required treatment capacities for systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined from the Table²⁸ below.

TABLE OF AEROBIC SYSTEMS PLANT SIZING RESIDENTIAL		
Number of Bedrooms	Building Area in square feet	Minimum Required Treatment Capacity gallons per day
1 or 2	Up to 1200	400
3	1201-2250	500
4	2251-3300	600

For each additional bedroom or each additional 750 square feet of building area, or fraction thereof, treatment capacity shall be increased by 100 gallons.

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 March 24, 2011). See also Department of Health, Bureau of Onsite Sewage, *What’s New?*, available at <http://www.doh.state.fl.us/environment/ostds/New.htm> (Last visited on March 24, 2011).

²⁵ *Id.*

²⁶ Rule 64E-6.001, L.O.F.

²⁷ *Id.*

²⁸ Table adapted from Rule 64E-6.012, L.O.F.

Minimum design flows for systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single or multiple family per dwelling unit the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for 2 bedrooms with 751-1,200 square feet, 200 gallons; for 3 bedrooms with 1,201-2,250 square feet, 300 gallons; and for 4 bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing are to be increased by 100 gallons per dwelling unit.²⁹

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, 2016.³⁰ 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:

This CS for SB 1698 repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the DOH's attendant rulemaking authority to implement the program. The CS also repeals a prohibition against the land application of septage from onsite sewage and disposal systems along with a requirement that DOH provide a report to the Governor and Legislature recommending alternative methods of treatment and disposal and recommendations that would reduce the land application of septage.

This CS requires counties or municipalities to develop and adopt by local ordinance a local onsite sewage treatment and disposal system evaluation and assessment program within all or

²⁹ Rule 64E-6.008, L.O.F.

³⁰ 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.

part of its geographic area, unless the county or municipality opts out and chooses not to participate in an evaluation program.

If a county or municipality adopts an ordinance to implement an evaluation program, the county or municipality must notify the Secretary of State by letter of the adoption of the ordinance. If the county or municipality opts out of having an evaluation program, which must be done by adopting a resolution before January 1, 2012, the resolution opting out of having an evaluation program must be filed with the Secretary of State. However, a county or municipality that opts out of the program may, at a later date, adopt an ordinance imposing an evaluation program. A county or municipality may repeal an ordinance adopting an evaluation program if notification is provided to the Secretary of State by letter of repeal. A local ordinance may not deviate from or exceed the substantive requirements under s. 381.00651, F.S.

This CS requires the owner of an onsite sewage treatment and disposal system within a county's or municipality's jurisdiction that has implemented an evaluation program to have the system pumped out and evaluated at least once every 5 years to assess the fundamental operational condition of the system and to identify system failures. In addition to a pump out, the inspection procedures require the location of the system to be identified and the apparent structural condition of water tightness of the tank to be assessed and the size of the tank to be estimated. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks, or other defects and baffles or tees³¹ must be checked to ensure that they are intact and secure. Furthermore, the evaluation must note the presence and condition of outlet devices, effluent filters, and compartment walls; any structural defect in the tank; and the condition and fit of the tank lid, including manholes. If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection.

However, a pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair, or modification of the system within the previous 5 years, the capacity is indicated on the documentation, and documentation shows the condition of the tank is structurally sound and watertight. Also, the local ordinance may not mandate an evaluation at the point of sale in a real estate transaction and may not require a soil examination.

This CS also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons, or alarms. The drainfield evaluation must include an overall assessment of the drainfield and a determination of the approximate size and location of the drainfield, state the condition of the surface vegetation and whether there is any seepage visible or excessively lush vegetation, state whether there is ponding water within the drainfield, and identify the location of any downspout or drain that encroaches or drains into the drainfield

³¹ The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow into the inlet or outlet pipe. The device may be made of concrete, steel, plastic, or other materials, but in all cases the septic tank tee or baffle forms a barrier between the septic tank and the inlet or outlet pipes to or from the septic tank. InspectAPedia, *Encyclopedia of Building & Environmental Inspection, Testing, Diagnosis, Repair*, available at: <http://www.inspectapedia.com/septic/tanktees.htm> (Last visited on March 28, 2011).

area. If the system contains pumps, siphons, or alarms, the following information must be provided:

- An assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- Whether the pump is elevated off of the bottom of the chamber and its operational status;
- Whether there are a check valve and purge hole;
- Whether there is a high-water alarm, including whether the type of alarm is audio or visual or both, the location of the alarm, and its operational condition; and
- Whether surface water can infiltrate into the tank and whether the tank was pumped out.

This CS requires evaluations to be performed by a septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.; a professional engineer licensed pursuant to ch. 471, F.S., who has experience with wastewater treatment systems; an environmental health professional certified under ch. 381, F.S., in the area of onsite sewage treatment and disposal system evaluation; or an employee working under the supervision of these individuals. All evaluation forms must be signed by a qualified contractor.

This CS also provides that the local ordinance:

- May not require an owner to repair, modify, or replace a system as a result of an evaluation unless the evaluation identifies a system failure. A “system failure” is defined as a condition existing within a system which results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water, or which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly. A system failure is not based on whether a system has a minimum separation distance between the drainfield and wet season water table, or if an obstruction in a sanitary line or effluent screen or filter prevents effluent from flowing into a drain.
- May not require more than the least costly remedial measure to resolve a system failure and the homeowner may choose the remedial measure. Remedial measures must meet the requirements of the code in effect at the time the system was originally permitted and installed.
- May exempt systems that are required to obtain an operating permit or that is inspected by the DOH from the evaluation requirements.
- Must require notice be given to the septic tank owner at least 60 days before the septic tank is due for an evaluation and the notice may include information on the proper maintenance of onsite sewage treatment and disposal systems.
- May authorize the assessment of a fee not to exceed \$30 against the owner of the septic tank to cover the costs of administering the evaluation program.
- Must provide penalties for qualified contractors and septic tank owners who do not comply with the requirements of the program.

The assessment procedure provided for in the CS requires:

- The qualified contractor to document the evaluation procedures used;
- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner, the county or municipality, and the county health department;
- The local county health department to retain a copy of the evaluation report for a minimum of 5 years until a subsequent report is filed;

- The front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- The report to identify tank defects, drainfield problems, and water flow problems or maintenance needed; and
- An overall assessment of the fundamental operational condition of the system.

This CS requires a county or municipality that adopts an evaluation program to develop a database and establish a computerized tracking system based on evaluation reports submitted. The data and information collected is to be recorded and updated as evaluations are conducted and reported. The system, which may be Internet-based, is required notify homeowners when evaluations are due and the information tracked by the system must include:

- The addresses or locations of the onsite systems;
- The number of onsite systems within the local jurisdiction;
- The total number and types of system failures; and
- Any other trends deemed relevant by the county or municipality resulting from an assessment of the overall condition of the systems.

This CS requires a county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program to notify the Secretary of Environmental Protection upon the adoption of an ordinance establishing the program. The DEP must, upon request and within existing resources, notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and assist the county or municipality in the application process to receive such funds. The DEP must also, upon request and within existing resources, provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program, how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund, or how to provide low-interest loans to residents for the repair of failing systems. The DEP is not required to provide any money to fund such programs.

This CS requires the DOH to administer a grant program, effective January 1, 2013, to assist low-income owners³² of onsite sewage treatment and disposal systems with the cost of required inspections, pump outs, repairs, or system replacements.

This CS requires system owners to pay a fee of not less than \$10 or more than \$15 to be used to fund the evaluation program, including a fee up to \$5 to be used toward the grant program under s. 381.00656, F.S.

This CS also reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee of not less than \$50 to a fee of not less than \$15 and from a fee of not more than \$150 to a fee of not more than \$30.

The CS defines “bedroom” because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms. The term “bedroom” is defined as a

³² To be eligible for financial assistance, the owner must have a family income of less than or equal to 133 percent of the federal poverty level at the time of the application for assistance.

room that can be used for sleeping which, for site-built dwellings, has a minimum 70 square feet of conditioned space, or, for manufactured homes constructed to HUD standards, has a minimum square footage of 50 square feet of floor area and is located along an exterior wall, has a closet and a door or an entrance where a door could be reasonably installed, and an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet and does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. For the purpose of determining system capacity, occupancy is calculated at a maximum of two persons per bedroom.

The CS provides that a permit issued and approved by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place. The CS also provides that a system is not considered “abandoned” if the properly functioning system is disconnected from a structure that was made unusable or destroyed following a disaster and the system was not adversely affected by the disaster. The onsite system may be reconnected to a rebuilt structure if:

- The reconnection of the system is to the same type and approximate size of the rebuilt structure that existed prior to the disaster;
- The system is not a sanitary nuisance; and
- The system has not been altered without prior authorization.

In addition, a system that serves a property that is foreclosed upon is not an abandoned system.

The CS provides that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.

The CS provides that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.

The CS provides that it 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, 2011.³³

³³ *Supra* fn. 26.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The CS allows a county or municipality by ordinance to assess a fee up to \$30 to cover the costs of administering the evaluation program. The CS also requires an evaluation report fee of not less than \$10 or more than \$15.

The CS reduces the fees for annual operating permits for waterless, incinerating, or organic waste composting toilets from a fee of not less than \$50 to a fee of not less than \$15 and from a fee of not more than \$150 to a fee of not more than \$30.

B. Private Sector Impact:

Owners of onsite sewage treatment and disposal systems subject to the evaluation program will have to pay to have their systems evaluated every 5 years, which would include an evaluation report fee up to \$15 and a fee up to \$30 imposed by the county or municipality. The owners will also be responsible for the cost of any required pump-outs, repairs, or replacements of the system.

C. Government Sector Impact:

The cost to counties or municipalities adopting an evaluation program is indeterminate as it depends on program requirements adopted by each county or municipality. The DOH will also incur an indeterminate amount of costs associated with implementing the grant program.

VI. Technical Deficiencies:

The CS leaves intact the grant program and evaluation report fee to be implemented and assessed by the DOH. However, the remainder of the CS takes away the DOH's oversight and enforcement of an evaluation program. The CS also provides for a fee to be imposed by the

county or municipality to pay for the cost of implementing the evaluation program. Therefore, it may be more consistent to establish the grant program within individual counties and municipalities that adopt an evaluation program and it may be appropriate to delete the evaluation report fee, which is to be assessed by the DOH.

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.)

CS by the Health Regulation Committee on March 29, 2011:

The CS differs from the bill in that it:

- Replaces the pilot program for the periodic evaluation of onsite sewage treatment and disposal systems with local onsite sewage treatment and disposal system evaluation and assessment programs that are to be adopted by a county or municipality by ordinance, unless the county or municipality opts out of the program by a certain date by adopting a resolution.
- Provides certain requirements of an evaluation program to be implemented by a county or municipality.
- Defines “bedroom” for clarification purposes because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms.
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not “abandoned.”
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee not less than \$50 to a fee of not less than \$15 and from a fee not more than \$150 to a fee of not more than \$30.

B. Amendments:

None.