



538152

LEGISLATIVE ACTION

Senate

House

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Floor: 1c/RE/2R

03/09/2012 12:29 PM

Senator Garcia moved the following:

1 **Senate Amendment to Amendment (371972) (with title**
2 **amendment)**

3
4 Delete lines 952 - 1607

5 and insert:

6 Section 33. Subsections (1), (5), (6), and (7) of section
7 381.0065, Florida Statutes, are amended, paragraphs (b) through
8 (p) of subsection (2) of that section are redesignated as
9 paragraphs (c) through (q), respectively, a new paragraph (b) is
10 added to that subsection, paragraphs (c) and (j) of subsection
11 (3) and paragraphs (h), (n), and (o) of subsection (4) of that
12 section are amended, and paragraphs (w) through (aa) are added
13 to subsection (4) of that section, to read:



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14 381.0065 Onsite sewage treatment and disposal systems;
15 regulation.—

16 (1) LEGISLATIVE INTENT.—

17 (a) It is the intent of the Legislature that proper
18 management of onsite sewage treatment and disposal systems is
19 paramount to the health, safety, and welfare of the public. ~~It~~
20 ~~is further the intent of the Legislature that the department~~
21 ~~shall administer an evaluation program to ensure the operational~~
22 ~~condition of the system and identify any failure with the~~
23 ~~system.~~

24 (b) It is the intent of the Legislature that where a
25 publicly owned or investor-owned sewerage system is not
26 available, the department shall issue permits for the
27 construction, installation, modification, abandonment, or repair
28 of onsite sewage treatment and disposal systems under conditions
29 as described in this section and rules adopted under this
30 section. It is further the intent of the Legislature that the
31 installation and use of onsite sewage treatment and disposal
32 systems not adversely affect the public health or significantly
33 degrade the groundwater or surface water.

34 (2) DEFINITIONS.—As used in ss. 381.0065-381.0067, the
35 term:

36 (b)1. "Bedroom" means a room that can be used for sleeping
37 and that:

38 a. For site-built dwellings, has a minimum of 70 square
39 feet of conditioned space;

40 b. For manufactured homes, is constructed according to
41 standards of the United States Department of Housing and Urban
42 Development and has a minimum of 50 square feet of floor area;



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43 c. Is located along an exterior wall;

44 d. Has a closet and a door or an entrance where a door
45 could be reasonably installed; and

46 e. Has an emergency means of escape and rescue opening to
47 the outside.

48 2. A room may not be considered a bedroom if it is used to
49 access another room except a bathroom or closet.

50 3. "Bedroom" does not include a hallway, bathroom, kitchen,
51 living room, family room, dining room, den, breakfast nook,
52 pantry, laundry room, sunroom, recreation room, media/video
53 room, or exercise room.

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

56 (c) Develop a comprehensive program to ensure that onsite
57 sewage treatment and disposal systems regulated by the
58 department are sized, designed, constructed, installed,
59 repaired, modified, abandoned, used, operated, and maintained in
60 compliance with this section and rules adopted under this
61 section to prevent groundwater contamination and surface water
62 contamination and to preserve the public health. The department
63 is the final administrative interpretive authority regarding
64 rule interpretation. In the event of a conflict regarding rule
65 interpretation, the State Surgeon General ~~Division Director for~~
66 ~~Environmental Health of the department~~, or his or her designee,
67 shall timely assign a staff person to resolve the dispute.

68 (j) Supervise research on, demonstration of, and training
69 on the performance, environmental impact, and public health
70 impact of onsite sewage treatment and disposal systems within
71 this state. Research fees collected under s. 381.0066(2)(k)



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72 ~~381.0066(2)(1)~~ must be used to develop and fund hands-on
73 training centers designed to provide practical information about
74 onsite sewage treatment and disposal systems to septic tank
75 contractors, master septic tank contractors, contractors,
76 inspectors, engineers, and the public and must also be used to
77 fund research projects which focus on improvements of onsite
78 sewage treatment and disposal systems, including use of
79 performance-based standards and reduction of environmental
80 impact. Research projects shall be initially approved by the
81 technical review and advisory panel and shall be applicable to
82 and reflect the soil conditions specific to Florida. Such
83 projects shall be awarded through competitive negotiation, using
84 the procedures provided in s. 287.055, to public or private
85 entities that have experience in onsite sewage treatment and
86 disposal systems in Florida and that are principally located in
87 Florida. Research projects shall not be awarded to firms or
88 entities that employ or are associated with persons who serve on
89 either the technical review and advisory panel or the research
90 review and advisory committee.

91 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may not
92 construct, repair, modify, abandon, or operate an onsite sewage
93 treatment and disposal system without first obtaining a permit
94 approved by the department. The department may issue permits to
95 carry out this section, but shall not make the issuance of such
96 permits contingent upon prior approval by the Department of
97 Environmental Protection, except that the issuance of a permit
98 for work seaward of the coastal construction control line
99 established under s. 161.053 shall be contingent upon receipt of
100 any required coastal construction control line permit from the



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101 Department of Environmental Protection. A construction permit is
102 valid for 18 months from the issuance date and may be extended
103 by the department for one 90-day period under rules adopted by
104 the department. A repair permit is valid for 90 days from the
105 date of issuance. An operating permit must be obtained prior to
106 the use of any aerobic treatment unit or if the establishment
107 generates commercial waste. Buildings or establishments that use
108 an aerobic treatment unit or generate commercial waste shall be
109 inspected by the department at least annually to assure
110 compliance with the terms of the operating permit. The operating
111 permit for a commercial wastewater system is valid for 1 year
112 from the date of issuance and must be renewed annually. The
113 operating permit for an aerobic treatment unit is valid for 2
114 years from the date of issuance and must be renewed every 2
115 years. If all information pertaining to the siting, location,
116 and installation conditions or repair of an onsite sewage
117 treatment and disposal system remains the same, a construction
118 or repair permit for the onsite sewage treatment and disposal
119 system may be transferred to another person, if the transferee
120 files, within 60 days after the transfer of ownership, an
121 amended application providing all corrected information and
122 proof of ownership of the property. There is no fee associated
123 with the processing of this supplemental information. A person
124 may not contract to construct, modify, alter, repair, service,
125 abandon, or maintain any portion of an onsite sewage treatment
126 and disposal system without being registered under part III of
127 chapter 489. A property owner who personally performs
128 construction, maintenance, or repairs to a system serving his or
129 her own owner-occupied single-family residence is exempt from



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130 registration requirements for performing such construction,
131 maintenance, or repairs on that residence, but is subject to all
132 permitting requirements. A municipality or political subdivision
133 of the state may not issue a building or plumbing permit for any
134 building that requires the use of an onsite sewage treatment and
135 disposal system unless the owner or builder has received a
136 construction permit for such system from the department. A
137 building or structure may not be occupied and a municipality,
138 political subdivision, or any state or federal agency may not
139 authorize occupancy until the department approves the final
140 installation of the onsite sewage treatment and disposal system.
141 A municipality or political subdivision of the state may not
142 approve any change in occupancy or tenancy of a building that
143 uses an onsite sewage treatment and disposal system until the
144 department has reviewed the use of the system with the proposed
145 change, approved the change, and amended the operating permit.

146 (h) 1. The department may grant variances in hardship cases
147 which may be less restrictive than the provisions specified in
148 this section. If a variance is granted and the onsite sewage
149 treatment and disposal system construction permit has been
150 issued, the variance may be transferred with the system
151 construction permit, if the transferee files, within 60 days
152 after the transfer of ownership, an amended construction permit
153 application providing all corrected information and proof of
154 ownership of the property and if the same variance would have
155 been required for the new owner of the property as was
156 originally granted to the original applicant for the variance.
157 There is no fee associated with the processing of this
158 supplemental information. A variance may not be granted under



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159 this section until the department is satisfied that:

160 a. The hardship was not caused intentionally by the action
161 of the applicant;

162 b. No reasonable alternative, taking into consideration
163 factors such as cost, exists for the treatment of the sewage;
164 and

165 c. The discharge from the onsite sewage treatment and
166 disposal system will not adversely affect the health of the
167 applicant or the public or significantly degrade the groundwater
168 or surface waters.

169
170 Where soil conditions, water table elevation, and setback
171 provisions are determined by the department to be satisfactory,
172 special consideration must be given to those lots platted before
173 1972.

174 2. The department shall appoint and staff a variance review
175 and advisory committee, which shall meet monthly to recommend
176 agency action on variance requests. The committee shall make its
177 recommendations on variance requests at the meeting in which the
178 application is scheduled for consideration, except for an
179 extraordinary change in circumstances, the receipt of new
180 information that raises new issues, or when the applicant
181 requests an extension. The committee shall consider the criteria
182 in subparagraph 1. in its recommended agency action on variance
183 requests and shall also strive to allow property owners the full
184 use of their land where possible. The committee consists of the
185 following:

186 a. The State Surgeon General, ~~Division Director for~~
187 ~~Environmental Health of the department~~ or his or her designee.



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188 b. A representative from the county health departments.

189 c. A representative from the home building industry
190 recommended by the Florida Home Builders Association.

191 d. A representative from the septic tank industry
192 recommended by the Florida Onsite Wastewater Association.

193 e. A representative from the Department of Environmental
194 Protection.

195 f. A representative from the real estate industry who is
196 also a developer in this state who develops lots using onsite
197 sewage treatment and disposal systems, recommended by the
198 Florida Association of Realtors.

199 g. A representative from the engineering profession
200 recommended by the Florida Engineering Society.

201
202 Members shall be appointed for a term of 3 years, with such
203 appointments being staggered so that the terms of no more than
204 two members expire in any one year. Members shall serve without
205 remuneration, but if requested, shall be reimbursed for per diem
206 and travel expenses as provided in s. 112.061.

207 (n) Evaluations for determining the seasonal high-water
208 table elevations or the suitability of soils for the use of a
209 new onsite sewage treatment and disposal system shall be
210 performed by department personnel, professional engineers
211 registered in the state, or such other persons with expertise,
212 as defined by rule, in making such evaluations. Evaluations for
213 determining mean annual flood lines shall be performed by those
214 persons identified in paragraph (2)(j) ~~(2)(i)~~. The department
215 shall accept evaluations submitted by professional engineers and
216 such other persons as meet the expertise established by this



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217 section or by rule unless the department has a reasonable
218 scientific basis for questioning the accuracy or completeness of
219 the evaluation.

220 (o) The department shall appoint a research review and
221 advisory committee, which shall meet at least semiannually. The
222 committee shall advise the department on directions for new
223 research, review and rank proposals for research contracts, and
224 review draft research reports and make comments. The committee
225 is comprised of:

226 1. A representative of the State Surgeon General, or his or
227 her designee ~~Division of Environmental Health of the Department~~
228 ~~of Health.~~

229 2. A representative from the septic tank industry.

230 3. A representative from the home building industry.

231 4. A representative from an environmental interest group.

232 5. A representative from the State University System, from
233 a department knowledgeable about onsite sewage treatment and
234 disposal systems.

235 6. A professional engineer registered in this state who has
236 work experience in onsite sewage treatment and disposal systems.

237 7. A representative from local government who is
238 knowledgeable about domestic wastewater treatment.

239 8. A representative from the real estate profession.

240 9. A representative from the restaurant industry.

241 10. A consumer.

242

243 Members shall be appointed for a term of 3 years, with the
244 appointments being staggered so that the terms of no more than
245 four members expire in any one year. Members shall serve without



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246 remuneration, but are entitled to reimbursement for per diem and
247 travel expenses as provided in s. 112.061.

248 (w) Any permit issued and approved by the department for
249 the installation, modification, or repair of an onsite sewage
250 treatment and disposal system shall transfer with the title to
251 the property in a real estate transaction. A title may not be
252 encumbered at the time of transfer by new permit requirements by
253 a governmental entity for an onsite sewage treatment and
254 disposal system which differ from the permitting requirements in
255 effect at the time the system was permitted, modified, or
256 repaired. An inspection of a system may not be mandated by a
257 governmental entity at the point of sale in a real estate
258 transaction. This paragraph does not affect a septic tank phase-
259 out deferral program implemented by a consolidated government as
260 defined in s. 9, Art. VIII of the State Constitution.

261 (x) A governmental entity, including a municipality,
262 county, or statutorily created commission, may not require an
263 engineer-designed performance-based treatment system, excluding
264 a passive engineer-designed performance-based treatment system,
265 before the completion of the Florida Onsite Sewage Nitrogen
266 Reduction Strategies Project. This paragraph does not apply to a
267 governmental entity, including a municipality, county, or
268 statutorily created commission, which adopted a local law,
269 ordinance, or regulation on or before January 31, 2012.
270 Notwithstanding this paragraph, an engineer-designed
271 performance-based treatment system may be used to meet the
272 requirements of the variance review and advisory committee
273 recommendations.

274 (y)1. An onsite sewage treatment and disposal system is not



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275 considered abandoned if the system is disconnected from a
276 structure that was made unusable or destroyed following a
277 disaster and if the system was properly functioning at the time
278 of disconnection and not adversely affected by the disaster. The
279 onsite sewage treatment and disposal system may be reconnected
280 to a rebuilt structure if:

281 a. The reconnection of the system is to the same type of
282 structure which contains the same number of bedrooms or fewer,
283 if the square footage of the structure is less than or equal to
284 110 percent of the original square footage of the structure that
285 existed before the disaster;

286 b. The system is not a sanitary nuisance; and

287 c. The system has not been altered without prior
288 authorization.

289 2. An onsite sewage treatment and disposal system that
290 serves a property that is foreclosed upon is not considered
291 abandoned.

292 (z) If an onsite sewage treatment and disposal system
293 permittee receives, relies upon, and undertakes construction of
294 a system based upon a validly issued construction permit under
295 rules applicable at the time of construction but a change to a
296 rule occurs within 5 years after the approval of the system for
297 construction but before the final approval of the system, the
298 rules applicable and in effect at the time of construction
299 approval apply at the time of final approval if fundamental site
300 conditions have not changed between the time of construction
301 approval and final approval.

302 (aa) A modification, replacement, or upgrade of an onsite
303 sewage treatment and disposal system is not required for a



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304 remodeling addition to a single-family home if a bedroom is not
305 added.

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

307 ~~(a) Beginning July 1, 2011, the department shall administer~~
308 ~~an onsite sewage treatment and disposal system evaluation~~
309 ~~program for the purpose of assessing the fundamental operational~~
310 ~~condition of systems and identifying any failures within the~~
311 ~~systems. The department shall adopt rules implementing the~~
312 ~~program standards, procedures, and requirements, including, but~~
313 ~~not limited to, a schedule for a 5-year evaluation cycle,~~
314 ~~requirements for the pump-out of a system or repair of a failing~~
315 ~~system, enforcement procedures for failure of a system owner to~~
316 ~~obtain an evaluation of the system, and failure of a contractor~~
317 ~~to timely submit evaluation results to the department and the~~
318 ~~system owner. The department shall ensure statewide~~
319 ~~implementation of the evaluation and assessment program by~~
320 ~~January 1, 2016.~~

321 ~~(b) Owners of an onsite sewage treatment and disposal~~
322 ~~system, excluding a system that is required to obtain an~~
323 ~~operating permit, shall have the system evaluated at least once~~
324 ~~every 5 years to assess the fundamental operational condition of~~
325 ~~the system, and identify any failure within the system.~~

326 ~~(c) All evaluation procedures must be documented and~~
327 ~~nothing in this subsection limits the amount of detail an~~
328 ~~evaluator may provide at his or her professional discretion. The~~
329 ~~evaluation must include a tank and drainfield evaluation, a~~
330 ~~written assessment of the condition of the system, and, if~~
331 ~~necessary, a disclosure statement pursuant to the department's~~
332 ~~procedure.~~



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333 ~~(d)1. Systems being evaluated that were installed prior to~~
334 ~~January 1, 1983, shall meet a minimum 6-inch separation from the~~
335 ~~bottom of the drainfield to the wettest season water table~~
336 ~~elevation as defined by department rule. All drainfield repairs,~~
337 ~~replacements or modifications to systems installed prior to~~
338 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
339 ~~the bottom of the drainfield to the wettest season water table~~
340 ~~elevation as defined by department rule.~~

341 ~~2. Systems being evaluated that were installed on or after~~
342 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
343 ~~the bottom of the drainfield to the wettest season water table~~
344 ~~elevation as defined by department rule. All drainfield repairs,~~
345 ~~replacements or modification to systems developed on or after~~
346 ~~January 1, 1983, shall meet a minimum 24-inch separation from~~
347 ~~the bottom of the drainfield to the wettest season water table~~
348 ~~elevation.~~

349 ~~(c) If documentation of a tank pump-out or a permitted new~~
350 ~~installation, repair, or modification of the system within the~~
351 ~~previous 5 years is provided, and states the capacity of the~~
352 ~~tank and indicates that the condition of the tank is not a~~
353 ~~sanitary or public health nuisance pursuant to department rule,~~
354 ~~a pump-out of the system is not required.~~

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

359 ~~(g) Each evaluation or pump-out required under this~~
360 ~~subsection must be performed by a septic tank contractor or~~
361 ~~master septic tank contractor registered under part III of~~



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362 ~~chapter 489, a professional engineer with wastewater treatment~~
363 ~~system experience licensed pursuant to chapter 471, or an~~
364 ~~environmental health professional certified under chapter 381 in~~
365 ~~the area of onsite sewage treatment and disposal system~~
366 ~~evaluation.~~

367 ~~(h) The evaluation report fee collected pursuant to s.~~
368 ~~381.0066(2) (b) shall be remitted to the department by the~~
369 ~~evaluator at the time the report is submitted.~~

370 ~~(i) Prior to any evaluation deadline, the department must~~
371 ~~provide a minimum of 60 days' notice to owners that their~~
372 ~~systems must be evaluated by that deadline. The department may~~
373 ~~include a copy of any homeowner educational materials developed~~
374 ~~pursuant to this section which provides information on the~~
375 ~~proper maintenance of onsite sewage treatment and disposal~~
376 ~~systems.~~

377 ~~(5)(6) ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.-~~

378 (a) Department personnel who have reason to believe
379 noncompliance exists, may at any reasonable time, enter the
380 premises permitted under ss. 381.0065-381.0066, or the business
381 premises of any septic tank contractor or master septic tank
382 contractor registered under part III of chapter 489, or any
383 premises that the department has reason to believe is being
384 operated or maintained not in compliance, to determine
385 compliance with the provisions of this section, part I of
386 chapter 386, or part III of chapter 489 or rules or standards
387 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
388 part III of chapter 489. As used in this paragraph, the term
389 "premises" does not include a residence or private building. To
390 gain entry to a residence or private building, the department



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391 must obtain permission from the owner or occupant or secure an
392 inspection warrant from a court of competent jurisdiction.

393 (b)1. The department may issue citations that may contain
394 an order of correction or an order to pay a fine, or both, for
395 violations of ss. 381.0065-381.0067, part I of chapter 386, or
396 part III of chapter 489 or the rules adopted by the department,
397 when a violation of these sections or rules is enforceable by an
398 administrative or civil remedy, or when a violation of these
399 sections or rules is a misdemeanor of the second degree. A
400 citation issued under ss. 381.0065-381.0067, part I of chapter
401 386, or part III of chapter 489 constitutes a notice of proposed
402 agency action.

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

406 3. The fines imposed by a citation issued by the department
407 may not exceed \$500 for each violation. Each day the violation
408 exists constitutes a separate violation for which a citation may
409 be issued.

410 4. The department shall inform the recipient, by written
411 notice pursuant to ss. 120.569 and 120.57, of the right to an
412 administrative hearing to contest the citation within 21 days
413 after the date the citation is received. The citation must
414 contain a conspicuous statement that if the recipient fails to
415 pay the fine within the time allowed, or fails to appear to
416 contest the citation after having requested a hearing, the
417 recipient has waived the recipient's right to contest the
418 citation and must pay an amount up to the maximum fine.

419 5. The department may reduce or waive the fine imposed by



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420 the citation. In determining whether to reduce or waive the
421 fine, the department must consider the gravity of the violation,
422 the person's attempts at correcting the violation, and the
423 person's history of previous violations including violations for
424 which enforcement actions were taken under ss. 381.0065-
425 381.0067, part I of chapter 386, part III of chapter 489, or
426 other provisions of law or rule.

427 6. Any person who willfully refuses to sign and accept a
428 citation issued by the department commits a misdemeanor of the
429 second degree, punishable as provided in s. 775.082 or s.
430 775.083.

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

435 8. This section provides an alternative means of enforcing
436 ss. 381.0065-381.0067, part I of chapter 386, and part III of
437 chapter 489. This section does not prohibit the department from
438 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
439 III of chapter 489, or its rules, by any other means. However,
440 the department must elect to use only a single method of
441 enforcement for each violation.

442 ~~(6)(7) LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective~~
443 ~~January 1, 2016, the land application of septage from onsite~~
444 ~~sewage treatment and disposal systems is prohibited. By February~~
445 ~~1, 2011, the department, in consultation with the Department of~~
446 ~~Environmental Protection, shall provide a report to the~~
447 ~~Governor, the President of the Senate, and the Speaker of the~~
448 ~~House of Representatives, recommending alternative methods to~~



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449 ~~establish enhanced treatment levels for the land application of~~
450 ~~septage from onsite sewage and disposal systems. The report~~
451 ~~shall include, but is not limited to, a schedule for the~~
452 ~~reduction in land application, appropriate treatment levels,~~
453 ~~alternative methods for treatment and disposal, enhanced~~
454 ~~application site permitting requirements including any~~
455 ~~requirements for nutrient management plans, and the range of~~
456 ~~costs to local governments, affected businesses, and individuals~~
457 ~~for alternative treatment and disposal methods. The report shall~~
458 ~~also include any recommendations for legislation or rule~~
459 ~~authority needed to reduce land application of septage.~~

460 Section 34. Section 381.00651, Florida Statutes, is created
461 to read:

462 381.00651 Periodic evaluation and assessment of onsite
463 sewage treatment and disposal systems.—

464 (1) For the purposes of this section, the term "first
465 magnitude spring" means a spring that has a median water
466 discharge of greater than or equal to 100 cubic feet per second
467 for the period of record, as determined by the Department of
468 Environmental Protection.

469 (2) A county or municipality that contains a first
470 magnitude spring shall, by no later than January 1, 2013,
471 develop and adopt by local ordinance an onsite sewage treatment
472 and disposal system evaluation and assessment program that meets
473 the requirements of this section. The ordinance may apply within
474 all or part of its geographic area. Those counties or
475 municipalities containing a first magnitude spring which have
476 already adopted an onsite sewage treatment and disposal system
477 evaluation and assessment program and which meet the



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478 grandfathering requirements contained in this section, or have
479 chosen to opt out of this section in the manner provided herein,
480 are exempt from the requirement to adopt an ordinance
481 implementing an evaluation and assessment program. The governing
482 body of a local government that chooses to opt out of this
483 section, by a 60 percent vote of the voting members of the
484 governing board, shall do so by adopting a resolution that
485 indicates an intent on the part of such local government not to
486 adopt an onsite sewage treatment and disposal system evaluation
487 and assessment program. Such resolution shall be addressed and
488 transmitted to the Secretary of State. Absent an interlocal
489 agreement or county charter provision to the contrary, a
490 municipality may elect to opt out of the requirements of this
491 section, by a 60 percent vote of the voting members of the
492 governing board, notwithstanding a contrary decision of the
493 governing body of a county. Any local government that has
494 properly opted out of this section but subsequently chooses to
495 adopt an evaluation and assessment program may do so only
496 pursuant to the requirements of this section and may not deviate
497 from such requirements.

498 (3) Any county or municipality that does not contain a
499 first magnitude spring may at any time develop and adopt by
500 local ordinance an onsite sewage treatment and disposal system
501 evaluation and assessment program, provided such program meets
502 and does not deviate from the requirements of this section.

503 (4) Notwithstanding any other provision in this section, a
504 county or municipality that has adopted a program before July 1,
505 2011, may continue to enforce its current program without having
506 to meet the requirements of this section, provided such program



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507 does not require an evaluation at the point of sale in a real
508 estate transaction.

509 (5) Any county or municipality may repeal an ordinance
510 adopted pursuant to this section only if the county or
511 municipality notifies the Secretary of State by letter of the
512 repeal. No county or municipality may adopt an onsite sewage
513 treatment and disposal system evaluation and assessment program
514 except pursuant to this section.

515 (6) The requirements for an onsite sewage treatment and
516 disposal system evaluation and assessment program are as
517 follows:

518 (a) *Evaluations.*—An evaluation of each onsite sewage
519 treatment and disposal system within all or part of the county's
520 or municipality's jurisdiction must take place once every 5
521 years to assess the fundamental operational condition of the
522 system and to identify system failures. The ordinance may not
523 mandate an evaluation at the point of sale in a real estate
524 transaction and may not require a soil examination. The location
525 of the system shall be identified. A tank and drainfield
526 evaluation and a written assessment of the overall condition of
527 the system pursuant to the assessment procedure prescribed in
528 subsection (7) are required.

529 (b) *Qualified contractors.*—Each evaluation required under
530 this subsection must be performed by a qualified contractor, who
531 may be a septic tank contractor or master septic tank contractor
532 registered under part III of chapter 489, a professional
533 engineer having wastewater treatment system experience and
534 licensed under chapter 471, or an environmental health
535 professional certified under this chapter in the area of onsite



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536 sewage treatment and disposal system evaluation. Evaluations and
537 pump-outs may also be performed by an authorized employee
538 working under the supervision of an individual listed in this
539 paragraph; however, all evaluation forms must be signed by a
540 qualified contractor in writing or by electronic signature.

541 (c) *Repair of systems.*—The local ordinance may not require
542 a repair, modification, or replacement of a system as a result
543 of an evaluation unless the evaluation identifies a system
544 failure. For purposes of this subsection, the term “system
545 failure” means a condition existing within an onsite sewage
546 treatment and disposal system which results in the discharge of
547 untreated or partially treated wastewater onto the ground
548 surface or into surface water or that results in the failure of
549 building plumbing to discharge properly and presents a sanitary
550 nuisance. A system is not in failure if the system does not have
551 a minimum separation distance between the drainfield and the
552 wettest season water table or if an obstruction in a sanitary
553 line or an effluent screen or filter prevents effluent from
554 flowing into a drainfield. If a system failure is identified and
555 several allowable remedial measures are available to resolve the
556 failure, the system owner may choose the least costly allowable
557 remedial measure to fix the system. There may be instances in
558 which a pump-out is sufficient to resolve a system failure.
559 Allowable remedial measures to resolve a system failure are
560 limited to what is necessary to resolve the failure and must
561 meet, to the maximum extent practicable, the requirements of the
562 repair code in effect when the repair is made, subject to the
563 exceptions specified in s. 381.0065(4)(g). An engineer-designed
564 performance-based treatment system to reduce nutrients may not



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565 be required as an alternative remediation measure to resolve the
566 failure of a conventional system.

567 (d) Exemptions.—

568 1. The local ordinance shall exempt from the evaluation
569 requirements any system that is required to obtain an operating
570 permit pursuant to state law or that is inspected by the
571 department pursuant to the annual permit inspection requirements
572 of chapter 513.

573 2. The local ordinance may provide for an exemption or an
574 extension of time to obtain an evaluation and assessment if
575 connection to a sewer system is available, connection to the
576 sewer system is imminent, and written arrangements for payment
577 of any utility assessments or connection fees have been made by
578 the system owner.

579 3. An onsite sewage treatment and disposal system serving a
580 residential dwelling unit on a lot with a ratio of one bedroom
581 per acre or greater is exempt from the requirements of this
582 section and may not be included in any onsite sewage treatment
583 and disposal system inspection program.

584 (7) The following procedures shall be used for conducting
585 evaluations:

586 (a) Tank evaluation.—The tank evaluation shall assess the
587 apparent structural condition and watertightness of the tank and
588 shall estimate the size of the tank. The evaluation must include
589 a pump-out. However, an ordinance may not require a pump-out if
590 there is documentation indicating that a tank pump-out or a
591 permitted new installation, repair, or modification of the
592 system has occurred within the previous 5 years, identifying the
593 capacity of the tank, and indicating that the condition of the



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594 tank is structurally sound and watertight. Visual inspection of
595 the tank must be made when the tank is empty to detect cracks,
596 leaks, or other defects. Baffles or tees must be checked to
597 ensure that they are intact and secure. The evaluation shall
598 note the presence and condition of outlet devices, effluent
599 filters, and compartment walls; any structural defect in the
600 tank; the condition and fit of the tank lid, including manholes;
601 whether surface water can infiltrate the tank; and whether the
602 tank was pumped out. If the tank, in the opinion of the
603 qualified contractor, is in danger of being damaged by leaving
604 the tank empty after inspection, the tank shall be refilled
605 before concluding the inspection. Broken or damaged lids or
606 manholes shall be replaced without obtaining a repair permit.

607 (b) *Drainfield evaluation.*—The drainfield evaluation must
608 include a determination of the approximate size and location of
609 the drainfield. The evaluation shall state whether there is any
610 sewage or effluent visible on the ground or discharging to a
611 ditch or other water body and the location of any downspout or
612 other source of water near or in the vicinity of the drainfield.

613 (c) *Special circumstances.*—If the system contains pumps,
614 siphons, or alarms, the following information may be provided at
615 the request of the homeowner:

616 1. An assessment of dosing tank integrity, including the
617 approximate volume and the type of material used in the tank's
618 construction;

619 2. Whether the pump is elevated off the bottom of the
620 chamber and its operational status;

621 3. Whether the system has a check valve and purge hole; and

622 4. Whether the system has a high-water alarm, and if so



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623 whether the alarm is audio or visual or both, the location and
624 operational condition of the alarm, and whether the electrical
625 connections to the alarm appear satisfactory.

626
627 If the homeowner does not request this information, the
628 qualified contractor and its employee are not liable for any
629 damages directly relating from a failure of the system's pumps,
630 siphons, or alarms. This exclusion of liability must be stated
631 on the front cover of the report required under paragraph (d).

632 (d) Assessment procedure.—All evaluation procedures used by
633 a qualified contractor shall be documented in the environmental
634 health database of the Department of Health. The qualified
635 contractor shall provide a copy of a written, signed evaluation
636 report to the property owner upon completion of the evaluation
637 and to the county health department within 30 days after the
638 evaluation. The report shall contain the name and license number
639 of the company providing the report. A copy of the evaluation
640 report shall be retained by the local county health department
641 for a minimum of 5 years and until a subsequent inspection
642 report is filed. The front cover of the report must identify any
643 system failure and include a clear and conspicuous notice to the
644 owner that the owner has a right to have any remediation of the
645 failure performed by a qualified contractor other than the
646 contractor performing the evaluation. The report must further
647 identify any crack, leak, improper fit, or other defect in the
648 tank, manhole, or lid, and any other damaged or missing
649 component; any sewage or effluent visible on the ground or
650 discharging to a ditch or other surface water body; any
651 downspout, stormwater, or other source of water directed onto or



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652 toward the system; and any other maintenance need or condition
653 of the system at the time of the evaluation which, in the
654 opinion of the qualified contractor, would possibly interfere
655 with or restrict any future repair or modification to the
656 existing system. The report shall conclude with an overall
657 assessment of the fundamental operational condition of the
658 system.

659 (8) The county health department shall administer any
660 evaluation program on behalf of a county, or a municipality
661 within the county, that has adopted an evaluation program
662 pursuant to this section. In order to administer the evaluation
663 program, the county or municipality, in consultation with the
664 county health department, may develop a reasonable fee schedule
665 to be used solely to pay for the costs of administering the
666 evaluation program. Such a fee schedule shall be identified in
667 the ordinance that adopts the evaluation program. When arriving
668 at a reasonable fee schedule, the estimated annual revenues to
669 be derived from fees may not exceed reasonable estimated annual
670 costs of the program. Fees shall be assessed to the system owner
671 during an inspection and separately identified on the invoice of
672 the qualified contractor. Fees shall be remitted by the
673 qualified contractor to the county health department. The county
674 health department's administrative responsibilities include the
675 following:

676 (a) Providing a notice to the system owner at least 60 days
677 before the system is due for an evaluation. The notice may
678 include information on the proper maintenance of onsite sewage
679 treatment and disposal systems.

680 (b) In consultation with the Department of Health,



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681 providing uniform disciplinary procedures and penalties for
682 qualified contractors who do not comply with the requirements of
683 the adopted ordinance, including, but not limited to, failure to
684 provide the evaluation report as required in this subsection to
685 the system owner and the county health department. Only the
686 county health department may assess penalties against system
687 owners for failure to comply with the adopted ordinance,
688 consistent with existing requirements of law.

689 (9) (a) A county or municipality that adopts an onsite
690 sewage treatment and disposal system evaluation and assessment
691 program pursuant to this section shall notify the Secretary of
692 Environmental Protection, the Department of Health, and the
693 applicable county health department upon the adoption of its
694 ordinance establishing the program.

695 (b) Upon receipt of the notice under paragraph (a), the
696 Department of Environmental Protection shall, within existing
697 resources, notify the county or municipality of the potential
698 use of, and access to, program funds under the Clean Water State
699 Revolving Fund or s. 319 of the Clean Water Act, provide
700 guidance in the application process to receive such moneys, and
701 provide advice and technical assistance to the county or
702 municipality on how to establish a low-interest revolving loan
703 program or how to model a revolving loan program after the low-
704 interest loan program of the Clean Water State Revolving Fund.
705 This paragraph does not obligate the Department of Environmental
706 Protection to provide any county or municipality with money to
707 fund such programs.

708 (c) The Department of Health may not adopt any rule that
709 alters the provisions of this section.



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710 (d) The Department of Health must allow county health
711 departments and qualified contractors access to the
712 environmental health database to track relevant information and
713 assimilate data from assessment and evaluation reports of the
714 overall condition of onsite sewage treatment and disposal
715 systems. The environmental health database must be used by
716 contractors to report each service and evaluation event and by a
717 county health department to notify owners of onsite sewage
718 treatment and disposal systems when evaluations are due. Data
719 and information must be recorded and updated as service and
720 evaluations are conducted and reported.

721 (10) This section does not:

722 (a) Limit county and municipal home rule authority to act
723 outside the scope of the evaluation and assessment program set
724 forth in this section;

725 (b) Repeal or affect any other law relating to the subject
726 matter of onsite sewage treatment and disposal systems; or

727 (c) Prohibit a county or municipality from:

728 1. Enforcing existing ordinances or adopting new ordinances
729 relating to onsite sewage treatment facilities to address public
730 health and safety if such ordinances do not repeal, suspend, or
731 alter the requirements or limitations of this section.

732 2. Adopting local environmental and pollution abatement
733 ordinances for water quality improvement as provided for by law
734 if such ordinances do not repeal, suspend, or alter the
735 requirements or limitations of this section.

736 3. Exercising its independent and existing authority to
737 meet the requirements of s. 381.0065.

738 Section 35. Section 381.00656, Florida Statutes, is



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739 repealed.

740 Section 36. Subsection (2) of section 381.0066, Florida
741 Statutes, is amended to read:

742 381.0066 Onsite sewage treatment and disposal systems;
743 fees.—

744 (2) The minimum fees in the following fee schedule apply
745 until changed by rule by the department within the following
746 limits:

747 (a) Application review, permit issuance, or system
748 inspection, including repair of a subsurface, mound, filled, or
749 other alternative system or permitting of an abandoned system: a
750 fee of not less than \$25, or more than \$125.

751 ~~(b) A 5-year evaluation report submitted pursuant to s.~~
752 ~~381.0065(5): a fee not less than \$15, or more than \$30. At least~~
753 ~~\$1 and no more than \$5 collected pursuant to this paragraph~~
754 ~~shall be used to fund a grant program established under s.~~
755 ~~381.00656.~~

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

759 (c)(d) Biennial Operating permit for aerobic treatment
760 units or performance-based treatment systems: a fee of not more
761 than \$100.

762 (d)(e) Annual operating permit for systems located in areas
763 zoned for industrial manufacturing or equivalent uses or where
764 the system is expected to receive wastewater which is not
765 domestic in nature: a fee of not less than \$150, or more than
766 \$300.

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



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

772 (g)~~(h)~~ Application for variance: a fee of not less than
773 \$150, or more than \$300.

774 (h)~~(i)~~ Annual operating permit for waterless, incinerating,
775 or organic waste composting toilets: a fee of not less than \$15
776 ~~\$50~~, or more than \$30 ~~\$150~~.

777 (i)~~(j)~~ Aerobic treatment unit or performance-based
778 treatment system maintenance entity permit: a fee of not less
779 than \$25, or more than \$150, per year.

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

784 (k)~~(l)~~ Research: An additional \$5 fee shall be added to
785 each new system construction permit issued to be used to fund
786 onsite sewage treatment and disposal system research,
787 demonstration, and training projects. Five dollars from any
788 repair permit fee collected under this section shall be used for
789 funding the hands-on training centers described in s.
790 381.0065(3)(j).

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

795
796 ~~On or before January 1, 2011, the Surgeon General, after~~



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797 ~~consultation with the Revenue Estimating Conference, shall~~
798 ~~determine a revenue neutral fee schedule for services provided~~
799 ~~pursuant to s. 381.0065(5) within the parameters set in~~
800 ~~paragraph (b). Such determination is not subject to the~~
801 ~~provisions of chapter 120.~~ The funds collected pursuant to this
802 subsection must be deposited in a trust fund administered by the
803 department, to be used for the purposes stated in this section
804 and ss. 381.0065 and 381.00655.

805
806

807 ===== T I T L E A M E N D M E N T =====

808 And the title is amended as follows:

809 Delete lines 3930 - 3932

810 and insert:

811 treatment and disposal systems; deleting legislative
812 intent; defining the term "bedroom"; conforming cross-
813 references; conforming provisions to changes made by
814 the act; providing for any permit issued and approved
815 by the Department of Health for the installation,
816 modification, or repair of an onsite sewage treatment
817 and disposal system to transfer with the title of the
818 property; providing conditions under which
819 governmental entities are prohibited from requiring
820 certain inspections and systems; providing
821 applicability; providing an exception; providing
822 circumstances in which an onsite sewage treatment and
823 disposal system is not considered abandoned; providing
824 for the validity of an onsite sewage treatment and
825 disposal system permit if rules change before final



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826 approval of the constructed system, under certain
827 conditions; providing that a system modification,
828 replacement, or upgrade is not required unless a
829 bedroom is added to a single-family home; deleting
830 provisions requiring the department to administer an
831 evaluation and assessment program of onsite sewage
832 treatment and disposal systems and requiring property
833 owners to have such systems evaluated at least once
834 every 5 years; deleting obsolete provisions; creating
835 s. 381.00651, F.S.; requiring a county or municipality
836 containing a first magnitude spring to adopt by
837 ordinance, under certain circumstances, the program
838 for the periodic evaluation and assessment of onsite
839 sewage treatment and disposal systems; requiring the
840 county or municipality to notify the Secretary of
841 State of the ordinance; authorizing a county or
842 municipality, in specified circumstances, to opt out
843 by a vote of 60 percent of the governing board;
844 authorizing a county or municipality to adopt or
845 repeal, after a specified date, an ordinance creating
846 an evaluation and assessment program, subject to
847 notification of the Secretary of State; providing
848 criteria for evaluations, qualified contractors, and
849 repair of systems; providing for certain procedures
850 and exemptions in special circumstances; defining the
851 term "system failure"; requiring that certain
852 procedures be used for conducting tank and drainfield
853 evaluations; providing for certain procedures in
854 special circumstances; providing for contractor



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855 immunity from liability under certain conditions;
856 providing for assessment procedures; providing
857 requirements for county health departments; requiring
858 the Department of Health to allow county health
859 departments and qualified contractors to access the
860 state database to track data and evaluation reports;
861 requiring counties and municipalities to notify the
862 Secretary of Environmental Protection and the
863 Department of Health when an evaluation program
864 ordinance is adopted; requiring the Department of
865 Environmental Protection to notify those counties or
866 municipalities of the use of, and access to, certain
867 state and federal program funds and to provide certain
868 guidance and technical assistance upon request;
869 prohibiting the adoption of certain rules by the
870 Department of Health; providing for applicability;
871 repealing s. 381.00656, F.S., relating to a grant
872 program for the repair of onsite sewage treatment and
873 disposal systems; amending s. 381.0066, F.S.; lowering
874 the fees imposed by the department for certain
875 permits; conforming cross-references; amending s.
876 381.0068, F.S.; deleting a date by