



335798

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/31/2012	.	
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The Committee on Health Regulation (Jones) recommended the following:

Senate Amendment

Delete lines 239 - 685
and insert:
rule occurs within 5 years after the approval of the system for construction but before the final approval of the system, the rules applicable and in effect at the time of construction approval apply at the time of final approval if fundamental site conditions have not changed between the time of construction approval and final approval.

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



335798

13 remodeling addition to a single-family home if a bedroom is not
14 added.

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

16 ~~(a) Beginning July 1, 2011, the department shall administer~~
17 ~~an onsite sewage treatment and disposal system evaluation~~
18 ~~program for the purpose of assessing the fundamental operational~~
19 ~~condition of systems and identifying any failures within the~~
20 ~~systems. The department shall adopt rules implementing the~~
21 ~~program standards, procedures, and requirements, including, but~~
22 ~~not limited to, a schedule for a 5-year evaluation cycle,~~
23 ~~requirements for the pump-out of a system or repair of a failing~~
24 ~~system, enforcement procedures for failure of a system owner to~~
25 ~~obtain an evaluation of the system, and failure of a contractor~~
26 ~~to timely submit evaluation results to the department and the~~
27 ~~system owner. The department shall ensure statewide~~
28 ~~implementation of the evaluation and assessment program by~~
29 ~~January 1, 2016.~~

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

35 ~~(c) All evaluation procedures must be documented and~~
36 ~~nothing in this subsection limits the amount of detail an~~
37 ~~evaluator may provide at his or her professional discretion. The~~
38 ~~evaluation must include a tank and drainfield evaluation, a~~
39 ~~written assessment of the condition of the system, and, if~~
40 ~~necessary, a disclosure statement pursuant to the department's~~
41 ~~procedure.~~



335798

42 ~~(d)1. Systems being evaluated that were installed prior to~~
43 ~~January 1, 1983, shall meet a minimum 6-inch separation from the~~
44 ~~bottom of the drainfield to the wettest season water table~~
45 ~~elevation as defined by department rule. All drainfield repairs,~~
46 ~~replacements or modifications to systems installed prior to~~
47 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
48 ~~the bottom of the drainfield to the wettest season water table~~
49 ~~elevation as defined by department rule.~~

50 ~~2. Systems being evaluated that were installed on or after~~
51 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
52 ~~the bottom of the drainfield to the wettest season water table~~
53 ~~elevation as defined by department rule. All drainfield repairs,~~
54 ~~replacements or modification to systems developed on or after~~
55 ~~January 1, 1983, shall meet a minimum 24-inch separation from~~
56 ~~the bottom of the drainfield to the wettest season water table~~
57 ~~elevation.~~

58 ~~(c) If documentation of a tank pump-out or a permitted new~~
59 ~~installation, repair, or modification of the system within the~~
60 ~~previous 5 years is provided, and states the capacity of the~~
61 ~~tank and indicates that the condition of the tank is not a~~
62 ~~sanitary or public health nuisance pursuant to department rule,~~
63 ~~a pump-out of the system is not required.~~

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

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



335798

71 ~~chapter 489, a professional engineer with wastewater treatment~~
72 ~~system experience licensed pursuant to chapter 471, or an~~
73 ~~environmental health professional certified under chapter 381 in~~
74 ~~the area of onsite sewage treatment and disposal system~~
75 ~~evaluation.~~

76 ~~(h) The evaluation report fee collected pursuant to s.~~
77 ~~381.0066(2) (b) shall be remitted to the department by the~~
78 ~~evaluator at the time the report is submitted.~~

79 ~~(i) Prior to any evaluation deadline, the department must~~
80 ~~provide a minimum of 60 days' notice to owners that their~~
81 ~~systems must be evaluated by that deadline. The department may~~
82 ~~include a copy of any homeowner educational materials developed~~
83 ~~pursuant to this section which provides information on the~~
84 ~~proper maintenance of onsite sewage treatment and disposal~~
85 ~~systems.~~

86 ~~(5)(6) ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.-~~

87 (a) Department personnel who have reason to believe
88 noncompliance exists, may at any reasonable time, enter the
89 premises permitted under ss. 381.0065-381.0066, or the business
90 premises of any septic tank contractor or master septic tank
91 contractor registered under part III of chapter 489, or any
92 premises that the department has reason to believe is being
93 operated or maintained not in compliance, to determine
94 compliance with the provisions of this section, part I of
95 chapter 386, or part III of chapter 489 or rules or standards
96 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
97 part III of chapter 489. As used in this paragraph, the term
98 "premises" does not include a residence or private building. To
99 gain entry to a residence or private building, the department



335798

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

102 (b)1. The department may issue citations that may contain
103 an order of correction or an order to pay a fine, or both, for
104 violations of ss. 381.0065-381.0067, part I of chapter 386, or
105 part III of chapter 489 or the rules adopted by the department,
106 when a violation of these sections or rules is enforceable by an
107 administrative or civil remedy, or when a violation of these
108 sections or rules is a misdemeanor of the second degree. A
109 citation issued under ss. 381.0065-381.0067, part I of chapter
110 386, or part III of chapter 489 constitutes a notice of proposed
111 agency action.

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

115 3. The fines imposed by a citation issued by the department
116 may not exceed \$500 for each violation. Each day the violation
117 exists constitutes a separate violation for which a citation may
118 be issued.

119 4. The department shall inform the recipient, by written
120 notice pursuant to ss. 120.569 and 120.57, of the right to an
121 administrative hearing to contest the citation within 21 days
122 after the date the citation is received. The citation must
123 contain a conspicuous statement that if the recipient fails to
124 pay the fine within the time allowed, or fails to appear to
125 contest the citation after having requested a hearing, the
126 recipient has waived the recipient's right to contest the
127 citation and must pay an amount up to the maximum fine.

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



335798

129 the citation. In determining whether to reduce or waive the
130 fine, the department must consider the gravity of the violation,
131 the person's attempts at correcting the violation, and the
132 person's history of previous violations including violations for
133 which enforcement actions were taken under ss. 381.0065-
134 381.0067, part I of chapter 386, part III of chapter 489, or
135 other provisions of law or rule.

136 6. Any person who willfully refuses to sign and accept a
137 citation issued by the department commits a misdemeanor of the
138 second degree, punishable as provided in s. 775.082 or s.
139 775.083.

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

144 8. This section provides an alternative means of enforcing
145 ss. 381.0065-381.0067, part I of chapter 386, and part III of
146 chapter 489. This section does not prohibit the department from
147 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
148 III of chapter 489, or its rules, by any other means. However,
149 the department must elect to use only a single method of
150 enforcement for each violation.

151 ~~(6)(7) LAND APPLICATION OF SEPTAGE PROHIBITED.-Effective~~
152 ~~January 1, 2016, the land application of septage from onsite~~
153 ~~sewage treatment and disposal systems is prohibited. By February~~
154 ~~1, 2011, the department, in consultation with the Department of~~
155 ~~Environmental Protection, shall provide a report to the~~
156 ~~Governor, the President of the Senate, and the Speaker of the~~
157 ~~House of Representatives, recommending alternative methods to~~



335798

158 ~~establish enhanced treatment levels for the land application of~~
159 ~~septage from onsite sewage and disposal systems. The report~~
160 ~~shall include, but is not limited to, a schedule for the~~
161 ~~reduction in land application, appropriate treatment levels,~~
162 ~~alternative methods for treatment and disposal, enhanced~~
163 ~~application site permitting requirements including any~~
164 ~~requirements for nutrient management plans, and the range of~~
165 ~~costs to local governments, affected businesses, and individuals~~
166 ~~for alternative treatment and disposal methods. The report shall~~
167 ~~also include any recommendations for legislation or rule~~
168 ~~authority needed to reduce land application of septage.~~

169 Section 2. Section 381.00651, Florida Statutes, is created
170 to read:

171 381.00651 Periodic evaluation and assessment of onsite
172 sewage treatment and disposal systems.—

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

178 (2) A county or municipality that contains a first
179 magnitude spring shall, by no later than January 1, 2013,
180 develop and adopt by local ordinance an onsite sewage treatment
181 and disposal system evaluation and assessment program that meets
182 the requirements of this section. The ordinance may apply within
183 all or part of its geographic area. Those counties or
184 municipalities containing a first magnitude spring which have
185 already adopted an onsite sewage treatment and disposal system
186 evaluation and assessment program and which meet the



335798

187 grandfathering requirements contained in this section, or have
188 chosen to opt out of this section in the manner provided herein,
189 are exempt from the requirement to adopt an ordinance
190 implementing an evaluation and assessment program. The governing
191 body of a local government that chooses to opt out of this
192 section, by a majority plus one vote of the members of the
193 governing board, shall do so by adopting a resolution that
194 indicates an intent on the part of such local government not to
195 adopt an onsite sewage treatment and disposal system evaluation
196 and assessment program. Such resolution shall be addressed and
197 transmitted to the Secretary of State. Absent an interlocal
198 agreement or county charter provision to the contrary, a
199 municipality may elect to opt out of the requirements of this
200 section, by a majority plus one vote of the members of the
201 governing board, notwithstanding a contrary decision of the
202 governing body of a county. Any local government that has
203 properly opted out of this section but subsequently chooses to
204 adopt an evaluation and assessment program may do so only
205 pursuant to the requirements of this section and may not deviate
206 from such requirements.

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

212 (4) Notwithstanding any other provision in this section, a
213 county or municipality that has adopted a program before July 1,
214 2011, may continue to enforce its current program without having
215 to meet the requirements of this section, provided such program



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

218 (5) Any county or municipality may repeal an ordinance
219 adopted pursuant to this section only if the county or
220 municipality notifies the Secretary of State by letter of the
221 repeal. No county or municipality may adopt an onsite sewage
222 treatment and disposal system evaluation and assessment program
223 except pursuant to this section.

224 (6) The requirements for an onsite sewage treatment and
225 disposal system evaluation and assessment program are as
226 follows:

227 (a) *Evaluations.*—An evaluation of each onsite sewage
228 treatment and disposal system within all or part of the county's
229 or municipality's jurisdiction must take place once every 5
230 years to assess the fundamental operational condition of the
231 system and to identify system failures. The ordinance may not
232 mandate an evaluation at the point of sale in a real estate
233 transaction and may not require a soil examination. The location
234 of the system shall be identified. A tank and drainfield
235 evaluation and a written assessment of the overall condition of
236 the system pursuant to the assessment procedure prescribed in
237 subsection (7) are required.

238 (b) *Qualified contractors.*—Each evaluation required under
239 this subsection must be performed by a qualified contractor, who
240 may be a septic tank contractor or master septic tank contractor
241 registered under part III of chapter 489, a professional
242 engineer having wastewater treatment system experience and
243 licensed under chapter 471, or an environmental health
244 professional certified under this chapter in the area of onsite



335798

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

250 (c) *Repair of systems.*—The local ordinance may not require
251 a repair, modification, or replacement of a system as a result
252 of an evaluation unless the evaluation identifies a system
253 failure. For purposes of this subsection, the term “system
254 failure” means a condition existing within an onsite sewage
255 treatment and disposal system which results in the discharge of
256 untreated or partially treated wastewater onto the ground
257 surface or into surface water or that results in the failure of
258 building plumbing to discharge properly and presents a sanitary
259 nuisance. A system is not in failure if the system does not have
260 a minimum separation distance between the drainfield and the
261 wettest season water table or if an obstruction in a sanitary
262 line or an effluent screen or filter prevents effluent from
263 flowing into a drainfield. If a system failure is identified and
264 several allowable remedial measures are available to resolve the
265 failure, the system owner may choose the least costly allowable
266 remedial measure to fix the system. There may be instances in
267 which a pump-out is sufficient to resolve a system failure.
268 Allowable remedial measures to resolve a system failure are
269 limited to what is necessary to resolve the failure and must
270 meet, to the maximum extent practicable, the requirements of the
271 repair code in effect when the repair is made, subject to the
272 exceptions specified in s. 381.0065(4)(g). An engineer-designed
273 performance-based treatment system to reduce nutrients may not



335798

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

276 (d) Exemptions.—

277 1. The local ordinance shall exempt from the evaluation
278 requirements any system that is required to obtain an operating
279 permit pursuant to state law or that is inspected by the
280 department pursuant to the annual permit inspection requirements
281 of chapter 513.

282 2. The local ordinance may provide for an exemption or an
283 extension of time to obtain an evaluation and assessment if
284 connection to a sewer system is available, connection to the
285 sewer system is imminent, and written arrangements for payment
286 of any utility assessments or connection fees have been made by
287 the system owner.

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

293 (7) The following procedures shall be used for conducting
294 evaluations:

295 (a) Tank evaluation.—The tank evaluation shall assess the
296 apparent structural condition and watertightness of the tank and
297 shall estimate the size of the tank. The evaluation must include
298 a pump-out. However, an ordinance may not require a pump-out if
299 there is documentation indicating that a tank pump-out or a
300 permitted new installation, repair, or modification of the
301 system has occurred within the previous 5 years, identifying the
302 capacity of the tank, and indicating that the condition of the



335798

303 tank is structurally sound and watertight. Visual inspection of
304 the tank must be made when the tank is empty to detect cracks,
305 leaks, or other defects. Baffles or tees must be checked to
306 ensure that they are intact and secure. The evaluation shall
307 note the presence and condition of outlet devices, effluent
308 filters, and compartment walls; any structural defect in the
309 tank; the condition and fit of the tank lid, including manholes;
310 whether surface water can infiltrate the tank; and whether the
311 tank was pumped out. If the tank, in the opinion of the
312 qualified contractor, is in danger of being damaged by leaving
313 the tank empty after inspection, the tank shall be refilled
314 before concluding the inspection. Broken or damaged lids or
315 manholes shall be replaced without obtaining a repair permit.

316 (b) *Drainfield evaluation.*—The drainfield evaluation must
317 include a determination of the approximate size and location of
318 the drainfield. The evaluation shall state whether there is any
319 sewage or effluent visible on the ground or discharging to a
320 ditch or other water body and the location of any downspout or
321 other source of water near or in the vicinity of the drainfield.

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

325 1. An assessment of dosing tank integrity, including the
326 approximate volume and the type of material used in the tank's
327 construction;

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

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

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



335798

332 whether the alarm is audio or visual or both, the location and
333 operational condition of the alarm, and whether the electrical
334 connections to the alarm appear satisfactory.

335
336 If the homeowner does not request this information, the
337 qualified contractor and its employee are not liable for any
338 damages directly relating from a failure of the system's pumps,
339 siphons, or alarms. This exclusion of liability must be stated
340 on the front cover of the report required under paragraph (d).

341 (d) Assessment procedure.—All evaluation procedures used by
342 a qualified contractor shall be documented in the environmental
343 health database of the Department of Health. The qualified
344 contractor shall provide a copy of a written, signed evaluation
345 report to the property owner upon completion of the evaluation
346 and to the county health department within 30 days after the
347 evaluation. The report shall contain the name and license number
348 of the company providing the report. A copy of the evaluation
349 report shall be retained by the local county health department
350 for a minimum of 5 years and until a subsequent inspection
351 report is filed. The front cover of the report must identify any
352 system failure and include a clear and conspicuous notice to the
353 owner that the owner has a right to have any remediation of the
354 failure performed by a qualified contractor other than the
355 contractor performing the evaluation. The report must further
356 identify any crack, leak, improper fit, or other defect in the
357 tank, manhole, or lid, and any other damaged or missing
358 component; any sewage or effluent visible on the ground or
359 discharging to a ditch or other surface water body; any
360 downspout, stormwater, or other source of water directed onto or



335798

361 toward the system; and any other maintenance need or condition
362 of the system at the time of the evaluation which, in the
363 opinion of the qualified contractor, would possibly interfere
364 with or restrict any future repair or modification to the
365 existing system. The report shall conclude with an overall
366 assessment of the fundamental operational condition of the
367 system.

368 (8) The county health department shall administer any
369 evaluation program on behalf of a county, or a municipality
370 within the county, that has adopted an evaluation program
371 pursuant to this section. In order to administer the evaluation
372 program, the county or municipality, in consultation with the
373 county health department, may develop a reasonable fee schedule
374 to be used solely to pay for the costs of administering the
375 evaluation program. Such a fee schedule shall be identified in
376 the ordinance that adopts the evaluation program. When arriving
377 at a reasonable fee schedule, the estimated annual revenues to
378 be derived from fees may not exceed reasonable estimated annual
379 costs of the program. Fees shall be assessed to the system owner
380 during an inspection and separately identified on the invoice of
381 the qualified contractor. Fees shall be remitted by the
382 qualified contractor to the county health department. The county
383 health department's administrative responsibilities include the
384 following:

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

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



335798

390 providing uniform disciplinary procedures and penalties for
391 qualified contractors who do not comply with the requirements of
392 the adopted ordinance, including, but not limited to, failure to
393 provide the evaluation report as required in this subsection to
394 the system owner and the county health department. Only the
395 county health department may assess penalties against system
396 owners for failure to comply with the adopted ordinance,
397 consistent with existing requirements of law.

398 (9) (a) A county or municipality that adopts an onsite
399 sewage treatment and disposal system evaluation and assessment
400 program pursuant to this section shall notify the Secretary of
401 Environmental Protection, the Department of Health, and the
402 applicable county health department upon the adoption of its
403 ordinance establishing the program.

404 (b) Upon receipt of the notice under paragraph (a), the
405 Department of Environmental Protection shall, within existing
406 resources, notify the county or municipality of the potential
407 use of, and access to, program funds under the Clean Water State
408 Revolving Fund or s. 319 of the Clean Water Act, provide
409 guidance in the application process to receive such moneys, and
410 provide advice and technical assistance to the county or
411 municipality on how to establish a low-interest revolving loan
412 program or how to model a revolving loan program after the low-
413 interest loan program of the Clean Water State Revolving Fund.
414 This paragraph does not obligate the Department of Environmental
415 Protection to provide any county or municipality with money to
416 fund such programs.

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



335798

419 (d) The Department of Health must allow county health
420 departments and qualified contractors access to the
421 environmental health database to track relevant information and
422 assimilate data from assessment and evaluation reports of the
423 overall condition of onsite sewage treatment and disposal
424 systems. The environmental health database must be used by
425 contractors to report each service and evaluation event and by a
426 county health department to notify owners of onsite sewage
427 treatment and disposal systems when evaluations are due. Data
428 and information must be recorded and updated as service and
429 evaluations are conducted and reported.

430 (10) This section does not:

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

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

436 (c) Prohibit a county or municipality from:

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

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

445 3. Exercising its independent and existing authority to
446 meet the requirements of s. 381.0065.