

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 Budget Committee

BILL: CS/CS/CS/SB 820

INTRODUCER: Budget Committee, Health Regulation Committee, Environmental Preservation and Conservation Committee, and Senator Dean

SUBJECT: Onsite Sewage Treatment and Disposal Systems

DATE: March 2, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Uchino</u>	<u>Yeatman</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>O'Callaghan</u>	<u>Stovall</u>	<u>HR</u>	<u>Fav/CS</u>
3.	<u>Bradford</u>	<u>Rhodes</u>	<u>BC</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill repeals the state-wide onsite sewage treatment and disposal system (septic system) evaluation program, including program requirements, and the Department of Health's (DOH) rulemaking authority to implement the program.

The bill requires a county or municipality with a first magnitude spring to develop and adopt by local ordinance a septic system evaluation and assessment program, unless the county or municipality opts out. All other counties and municipalities may opt in. Existing septic system inspection programs are grandfathered in unless they contain a mandatory inspection at the point of sale in a real estate transaction.

If an evaluation program is adopted by a county or municipality by ordinance, the bill requires:

- A pump out and evaluation of a septic system to be performed every five years, unless an exception applies;
- Only authorized persons to perform the pump out and evaluation;

- Notice to be given to septic system owners at least 60 days before the septic system is due for an evaluation;
- Penalties for qualified contractors and septic system owners who do not comply with the requirements of the evaluation program;
- Certain evaluation and assessment procedures to be followed during the inspection of a septic system;
- The DOH to allow county health departments and qualified contractors access to the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The database is required to include certain information and allow for notification of 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; and
- The Department of Environmental Protection (DEP), within existing resources, to notify a county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and assist such counties or municipalities to model and establish low-interest loan programs.

The bill provides that a local ordinance may authorize the assessment of reasonable fees to cover the costs of administering the evaluation program. The DOH can handle the reprogramming of the environmental health database with existing resources.

The bill repeals the grant program for low-income residents to repair and replace septic systems.

The bill also:

- Defines “bedroom”;
- Provides that a permit issued by the DOH for the installation, modification, or repair of a septic system transfers with title to the property. A title is not encumbered when the title is transferred if new permit requirements are in place at the time of transfer;
- Prohibits governmental entities from requiring engineer-designed, performance-based treatment systems until completion of an ongoing nitrogen reduction study, unless such a requirement existed before January 31, 2012;
- Provides for the reconnection of properly functioning septic systems, and clarifies that such systems are not considered “abandoned”;
- Clarifies that if there is a rule change within five years after approval for construction, the rules in place at the time of initial approval apply at the time of final approval under certain circumstances;
- Clarifies that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added;
- Reduces the annual operating permit fee for waterless, incinerating, or organic waste composting toilets to \$15-30 from \$50-150;
- Repeals various obsolete provisions; and
- Fixes several cross-references and other technical errors.

The bill is effective upon becoming law.

The bill substantially amends sections 381.0065 and 381.0066, Florida Statutes.

The bill repeals section 381.00656, Florida Statutes.

The bill creates section 381.00651, Florida Statutes.

II. Present Situation:

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 administration of septic systems.¹

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.²

The DOH estimates there are approximately 2.67 million septic tanks in use statewide.³ The DOH's Bureau of Onsite Sewage (bureau) develops statewide rules and provides training and standardization for county health department employees responsible for permitting the installation and repair of septic systems within the state. The bureau also licenses septic system contractors, approves continuing education courses and courses provided for septic system contractors, funds a hands-on training center, and mediates septic system contracting complaints. The bureau manages a state-funded research program, prepares research grants, and reviews and approves innovative products and septic system designs.⁴

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.⁵ This resulted in

¹ See s. 381.006, F.S.

² Section 381.0065(2)(j), F.S.

³ Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, <http://www.myfloridaeh.com/ostds/index.html> (last visited Jan. 29, 2012).

⁴ Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (last visited Jan. 29, 2012).

⁵ See ch. 2008-152, Laws of Fla.

the “Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program” (report).⁶ According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of \$83.93 to \$215 per inspection.

The report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and may be under-designed by today’s standards. The DOH’s statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic system in Florida.⁷ Because repairs of septic systems were not regulated or permitted by the DOH until March 1992, some septic systems may have been unlawfully repaired, modified or replaced. Furthermore, 1.3 million septic systems were installed prior to 1983. Pre-1983 septic systems were required to have a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The standard since 1983 for drainfield separation is 24 inches and is based on the 1982 Water Quality Assurance Act and on research findings compiled by the DOH that indicate for septic tank effluent, the presence of at least 24 inches of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for pathogens and most other septic system effluent constituents.⁸ Therefore, Florida’s pre-1983 septic systems and any illegally repaired, modified or installed septic systems may not provide the same level of protection expected from systems permitted and installed under current construction standards.⁹

Florida Onsite Sewage Nitrogen Reduction Strategies Study

The relative impact of septic systems on total nitrogen levels varies from watershed to watershed with estimates ranging from below 5 to more than 25 percent. There is widespread interest in the management of septic systems and their nitrogen impacts. The ongoing study is evaluating and developing strategies to reduce nitrogen impacts from septic systems regulated by the DOH. The goal is to develop septic systems that complement the use of conventional (i.e. passive) systems and are affordable and ecologically protective with reduced engineering and installation costs. An alternative is an engineer-designed, performance-based treatment system that is designed to achieve specific treatment levels. This type of system is generally more expensive, requires more frequent maintenance and may require an annual operating permit. These systems use active in-tank sewage treatment methods before the effluent is discharged into the drainfield to complete treatment.¹⁰

⁶ Florida Dep’t of Health, Bureau of Onsite Sewage, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program* (2008), available at <http://www.doh.state.fl.us/environment/ostds/pdffiles/forms/MSIP.pdf> (last visited Jan. 29, 2012).

⁷ Florida Dep’t of Health, Bureau of Onsite Sewage, *Onsite Sewage Treatment and Disposal Systems in Florida* (2010), available at <http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf> (last visited Jan. 29, 2012). See also Florida Dep’t of Health, Bureau of Onsite Sewage, *What’s New?*, available at <http://www.doh.state.fl.us/environment/ostds/New.htm> (last visited on Jan. 29, 2012).

⁸ Florida Dep’t of Health, Bureau of Onsite Sewage, *Bureau of Onsite Sewage Programs Introduction*, available at <http://www.doh.state.fl.us/Environment/learning/hses-intro-transcript.htm> (last visited Jan. 29, 2012).

⁹ *Id.*

¹⁰ See Florida Dep’t of Health, Bureau of Onsite Sewage, *2012 Progress Report on Phase II and Phase III of the Florida Onsite Sewage Nitrogen Reduction Strategies Study* (2012), available at <http://www.myfloridaeh.com/ostds/research/Nitrogen/01-2012Update/ProgressReportFinal.pdf> (last visited Mar. 2, 2012).

The total estimated cost of the study is \$5.1 million. The Legislature has already appropriated \$2.9 million for Phases I and II. The Legislature initially provided \$900,000 in 2008 to begin Phase I and another \$2 million in 2010 to continue Phases I and II. Phase III will include actual field testing and monitoring of different types of septic system components to determine their effectiveness in removing nitrogen from discharges from septic systems. This phase will require an additional \$2.2 million to complete.¹¹ The Legislature is proposing to fund an additional \$1.5 million in fiscal year 2012-13 to continue Phase III.¹²

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.¹³ Depending on the estimated 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.¹⁴

Minimum required treatment capacities for septic systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined below.¹⁵

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

Minimum design flows for septic 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 dwelling unit, the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for two bedrooms with 751-1,200 square feet, 200 gallons; for three bedrooms with 1,201-2,250 square feet, 300 gallons; and for four 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 is to be increased by 100 gallons.¹⁶

¹¹ *Id.*

¹² Specific Appropriation 512, SB 2000 (2012 Reg. Session).

¹³ Rule 64E-6.001, F.A.C.

¹⁴ *Id.*

¹⁵ Table adapted from Rule 64E-6.012, F.A.C.

¹⁶ Rule 64E-6.008, F.A.C.

Current Status of Evaluation Program

In 2010, SB 550 was signed into law, which became ch. 2010-205, Laws of Florida. This law provides for additional legislative intent on the importance of properly managing septic tanks and creates a septic system evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.¹⁷ The evaluation program:

- Requires all septic tanks to be evaluated for functionality at least once every five years;
- Directs the DOH to provide proper notice to septic owners that their evaluations are due;
- Ensures proper separations from the wettest-season water table; and
- Specifies the professional qualifications necessary to carry out an evaluation.

The law also establishes a grant program under s. 381.00656, F.S., for owners of septic systems 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 replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grants.

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. No more than \$5 of each evaluation fee may be used to fund the grant program. The State Surgeon General, in consultation with the Revenue Estimating Conference, must determine a revenue neutral evaluation fee.

Several bills were introduced during the 2011 Regular Session aimed at either eliminating the inspection program or scaling it back. Although none passed, language was inserted into a budget implementing bill that prohibited the DOH from expending funds to implement the inspection program until it submitted a plan to the Legislative Budget Commission (LBC).¹⁸ If approved, the DOH would then be able to expend funds to begin implementation. Currently, the DOH has not submitted a plan to the LBC for approval.

Springs in Florida

Florida has more than 700 recognized springs. It also has 33 historical first magnitude springs in 19 counties that discharge more than 64 million gallons of water per day.¹⁹ First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Spring discharges, primarily from the Floridan Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry. Springs are historically low nitrogen systems. The DEP recently submitted numeric nutrient standards to the Legislature for ratification that include a nitrate-nitrite (variants of nitrogen) limit of 0.35 milligrams per liter for

¹⁷ 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.

¹⁸ *See* ch. 2011-047, s. 13, Laws of Fla.

¹⁹ Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Dec. 19, 2011).

springs. For comparison, the U.S. Environmental Protection Agency's drinking water standard for nitrite is 1.0 milligrams per liter; for nitrate, 10 milligrams per liter.²⁰

Local Government Powers and Legislative Preemption

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.²¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.²² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.²³ Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.²⁴ Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.²⁵ A county or municipality cannot forbid what legislature has expressly licensed, authorized or required, nor may it authorize what legislature has expressly forbidden.²⁶ The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 381.0065, F.S.

The bill repeals the state-wide septic system evaluation program, including program requirements, and the DOH's rulemaking authority to implement the program. It repeals legislative intent regarding the DOH's administration of a state-wide septic system evaluation program and an obsolete reporting requirement regarding the land application of septage.

The bill defines "bedroom" as a room that can be used for sleeping that, for site-built dwellings, has a minimum 70 square feet of conditioned space; or for manufactured homes, constructed to HUD standards having a minimum of 50 square feet of floor area. The room must be located along an exterior wall, have a closet and a door or an entrance where a door could be reasonably installed. It also must have an emergency means of escape and rescue opening to the outside. A

²⁰ U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations*, available at <http://water.epa.gov/drink/contaminants/upload/mcl-2.pdf> (last visited Jan. 29, 2012).

²¹ FLA. CONST. art. VIII, s. 1(f).

²² FLA. CONST. art. VIII, s. 1(g).

²³ FLA. CONST. art. VIII, s. 2(b); *see also* s. 166.021, F.S.

²⁴ *See, e.g., City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

²⁵ *Id.*

²⁶ *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

²⁷ *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

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. The term 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. It also fixes two cross-references. One is related to research fees collected to fund hands-on training centers for septic systems. The other relates to determining the mean annual flood line.

The bill provides that a permit issued and approved by the DOH for the installation, modification, or repair of a septic system transfers with the title to the property. A title is not encumbered when transferred by new permit requirements that differ from the original permit requirements in effect when the septic system was permitted, modified or repaired. It also prohibits a government entity from requiring a septic system inspection at the point of sale in a real estate transaction.

The bill prohibits a governmental entity, including a county, municipality or statutorily created commission, from requiring an engineer-designed, performance-based treatment system before completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project by the DOH. This prohibition does not apply to laws or ordinances passed or adopted before January 31, 2012, or passive systems. In addition, notwithstanding the above prohibition, the bill allows installation of engineer-designed, performance-based treatment systems to comply with recommendations of the variance review and advisory committee.

The bill specifies a septic system serving a foreclosed property is not considered abandoned. It also specifies a septic system is not considered “abandoned” if it was properly functioning when disconnected from a structure made unusable or destroyed following a disaster, and the septic system was not adversely affected by the disaster. The septic system may be reconnected to a rebuilt structure if:

- Reconnection of the septic system is to the same type of structure that existed prior to the disaster;
- Has the same number of bedrooms or less than the structure that existed prior to the disaster;
- Is within 110 percent of the size of the structure that existed prior to the disaster;
- The septic system is not a sanitary nuisance; and
- The septic system has not been altered without prior authorization.

The bill provides that if a rule change occurs within five years after approval for construction, the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system, but only if fundamental site conditions have not changed between the time of construction approval and final approval.

The bill provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.

Section 2 creates s. 381.00651, F.S.

A county or municipality containing a first magnitude spring within its boundary must develop and adopt by ordinance a local septic system evaluation and assessment program meeting the

requirements of this section within all or part of its geographic area by January 1, 2013, unless it opts out. All other counties and municipalities may opt in but otherwise are not required to take any affirmative action. Evaluation programs adopted before July 1, 2011, and that do not contain a mandatory septic system inspection at the point of sale in a real estate transaction are not affected by this bill. Existing evaluation programs that require point of sale inspections are preempted by the bill regardless of when the program was adopted.

A county or municipality may opt out by a 60 percent vote of the voting members of the local elected body before January 1, 2013, by adopting a separate resolution. The resolution must be filed with the Secretary of State. Absent an interlocal agreement or county charter provision to the contrary, a municipality may elect to opt out of the requirements of this section notwithstanding the decision of the county in which it is located. A county or municipality may subsequently adopt an ordinance imposing a septic system evaluation and assessment program if the program meets the requirements of this section. The bill preempts counties' and municipalities' authority to adopt more stringent requirements for a septic system evaluation program than those contained in the bill.

Local ordinances must provide for the following:

- An evaluation of a septic system, including drainfield, every five years to assess the fundamental operational condition of the system and to identify system failures. The ordinance may not mandate an evaluation at the point of sale in a real estate transaction or a soil examination. The location of the system shall be identified;
- May not require a septic system inspection at the point of sale in a real estate transaction;
- May not require a soil examination;
- Each evaluation must be performed by:
 - A septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.,
 - A professional engineer having wastewater treatment system experience and licensed pursuant to ch. 471, F.S.,
 - An environmental health professional certified under ch 381, F.S., in the area of septic system evaluation, or
 - An authorized employee working under the supervision of any of the above four listed individuals. Soil samples may only be conducted by certified individuals.

Evaluation forms must be written or electronically signed by a qualified contractor.

The local ordinance may not require a repair, modification or replacement of a septic system as a result of an evaluation unless the evaluation identifies a failure. The term "system failure" is defined as:

- A condition existing within a septic system that results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water; or
- Results in a sanitary nuisance caused by the failure of building plumbing to discharge properly.

A system is not a failure if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. The bill specifies that a drainfield not achieving the minimum separation distance from the bottom of the drainfield to the wettest season water table contained in current law is not a system failure.

The local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet, to the extent possible, the requirements in effect at the time the repair is made, subject to the exceptions specified in s. 381.0065(4)(g), F.S. This allows certain older septic systems to be repaired instead of replaced if they cannot be repaired to operate to current code. An ordinance may not require an engineer-designed, performance-based system as an alternative septic system to remediate a failure of a conventional septic system.

The bill specifies that the following systems are exempt from inclusion in a septic system evaluation program:

- A septic system that is required to obtain an operating permit or that is inspected by the department on an annual basis pursuant to ch. 513, F.S., related to mobile home and recreational vehicle parks;. and
- A septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater. For example, if a person has a four-bedroom house served by a septic system on a four-acre or larger lot, that septic system is exempt.

An ordinance may also exempt or grant an extension of time for a septic system serving a structure that will soon be connected to a sewer system if the connection is available, imminent and written arrangements have been made for payment of connection fees or assessments by the septic system owner.

The bill requires the owner of a septic system subject to an evaluation program to have it pumped out and evaluated at least once every five years. 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 septic system within the previous five years. The documentation must show both the capacity and that the condition of the tank is structurally sound and watertight.

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. Replacing broken or damaged lids or manholes does not require a repair permit.

In addition to a pump out, the evaluation procedures require an assessment of the apparent structural condition and watertightness of the tank and an estimation of its size. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks or other defects. The baffles or tees must be checked to ensure that they are intact and secure.²⁸ The evaluation must note the presence and condition of:

²⁸ The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow

- Outlet devices;
- Effluent filters;
- Compartment walls;
- Any structural defect in the tank; and
- The condition and fit of the tank lid, including manholes.

The bill 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 a determination of the approximate size and location of the drainfield. The evaluation must contain a statement noting whether there is any visible effluent on the ground or discharging to a ditch or water body and identifying the location of any downspout or other source of water near the drainfield.

If the septic system contains pumps, siphons or alarms, the following information may 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 the septic system has a check valve and purge hole; and
- Whether there is a high-water alarm, including whether the type of alarm is audio, visual or both, the location of the alarm, its operational condition and whether the electrical connections appears satisfactory.

The bill provides that if a homeowner does not request information about the system's pumps, siphons, or alarms, the qualified contractor and its employee are not liable for any damages directly relating from a failure of the system's pumps, siphons, or alarms. The evaluation report completed by the contractor must include a statement on the front cover that provides notice of the exclusion of such liability.

The reporting procedures provided for in the bill require:

- The qualified contractor to document all the evaluation procedures used;
- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner and the county health department within 30 days after the evaluation;
- The name and license number of the company providing the report;
- The local county health department to retain a copy of the evaluation report for a minimum of five years and until a subsequent report is filed;

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 Jan. 29, 2012).

- 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, improper fit or other defects in the tank, manhole or lid, and any other missing component of the septic system;
- Noting if any sewage or effluent is present on the ground or discharging to a ditch or surface water body;
- Stating if any downspout, stormwater or other source of water is directed onto or towards the septic system;
- Identification of any maintenance need or condition that has the potential to interfere with or restrict any future repair or modification to the existing septic system; and
- Conclude with an overall assessment of the fundamental operational condition of the septic system.

The county health department will be responsible for administering the program on behalf of a county or municipality. A county or municipality may develop a reasonable fee schedule in consultation with a county health department. The fee must only be used to pay for the costs of administering the program and must be revenue neutral. The fee schedule must be included in the adopted ordinance for a septic system evaluation program. The fee shall be assessed to the septic system owner, collected by the qualified contractor and remitted to the county health department.

The county health department in a jurisdiction where a septic system evaluation program is adopted must:

- Provide a notice to a septic system owner at least 60 days before the septic system is due for an evaluation;
- In consultation with the DOH, provide for uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance; and
- Be the sole entity to assess penalties against a septic tank owner who fails to comply with the requirements of an adopted ordinance.

The bill requires the DOH to allow county health departments and qualified contractors to access the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite sewage treatment and disposal systems. The database must be used by qualified contractors to report service evaluations and by county health departments to notify septic system owners that their evaluations are due.

The bill requires a county or municipality that adopts a septic system evaluation and assessment program to notify the Secretary of Environmental Protection, the DOH and the requisite county health department. Once the DEP receives notice a county or municipality has adopted an evaluation program, it must, within existing resources, notify the county or municipality of the potential availability of Clean Water Act or Clean Water State Revolving Fund funds. If a county or municipality requests, the DEP must, within existing resources, provide guidance in the application process to access the abovementioned funding sources and provide advice and technical assistance on how to establish a low-interest revolving loan program or how to model a

revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs. The bill specifically prohibits the DOH from adopting any rule that alters the provisions contained in the bill.

The bill specifies that it does not derogate or limit county and municipal home rule authority to act outside the scope of the evaluation program created in this bill. The bill clarifies it does not repeal or affect any other law relating to the subject matter of this section. It does not prohibit a county or municipality that has adopted an evaluation program pursuant to this section from:

- Enforcing existing ordinances or adopting new ordinances if such ordinances do not repeal, suspend or alter the requirements or limitations of this section; or
- Exercising its independent and existing authority to use and meet the requirements of s. 381.00655, F.S. (relating to connection to central sewer systems).

Section 3 repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.

Section 4 amends s. 381.0066, F.S., related to septic system fees. The bill deletes the existing fees for the 5-year evaluation report. The bill also reduces the annual operating permit fee for waterless, incinerating or organic waste composting toilets from not less than \$50 to not less than \$15 and from not more than \$150 to not more than \$30.

The bill repeals an obsolete provision related to setting a revenue neutral fee schedule for a state-wide septic system inspection program.

Section 5 is effective upon becoming law.

Other Potential Implications:

The bill prohibits local ordinances from requiring repairs, modifications or system replacements unless a septic system is found to be failing. Septic system problems that do not rise to the level of a system failure cannot be required to be remedied under an ordinance. The septic system owner will have the option to repair or modify a septic system found to have problems. A county or municipality is preempted from requiring more stringent repair guidelines in its ordinance.

The bill prohibits counties and municipalities from acting outside the requirements and limitations of the bill to address public health and safety or provide for pollution abatement measures for water quality improvements. This prohibition may directly conflict with existing laws to address these issues. In addition, a local county or municipality may be required to take future action to comply with a future determination that an area within its jurisdiction is contributing to violations of water quality standards but may be prohibited from doing so by the provisions in this bill.

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

The provisions of this bill 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 the bill 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 bill 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 bill allows a county or municipality to assess a reasonable fee to cover the costs of administering the evaluation program. The fee will likely vary from jurisdiction to jurisdiction.

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

B. Private Sector Impact:

Owners of septic systems subject to the evaluation program will have to pay for septic system evaluations, including pump outs, every five years. The owners will also be responsible for the cost of required repairs, modifications or replacements of the septic system if it is found to be “failing.” Although owners are responsible under current law for repairing failing septic systems, they may be unaware of the failing condition or unwilling or unable to pay for repairs or replacements.

A survey of septic contractors has not been completed to determine costs for inspections; however, anecdotal evidence has demonstrated a cost between \$75 and \$200, depending on the area of the state.

Current costs for pump outs range as low as \$75 to over \$300 depending on the size of the tank and local disposal options. Evaluation costs would be set by private contractors. Septic system owners would pay for any necessary remediation, including permit fees. Repair costs will vary from minor repairs to full system replacements and will only be available on a case-by-case basis. Whether or not demand for septic system contractor service increases is dependent on how many counties or municipalities implement

inspection programs. Therefore, the impact of supply and demand on pricing trends cannot be determined at this time.

Therefore, adding in all potential costs not including repairs or replacements required under current law or the local administrative fee, a septic system owner can expect to pay between \$150 and \$500 every five years. It should be noted that in June 2010, the DOH and the Revenue Estimating Conference settled on a \$50 fee per inspection report to cover programmatic costs of implementing a state-wide program.

The DOH estimates a cost savings to the public of \$2,500 to \$7,500 per system through preventive maintenance, thus eliminating the need for costly repairs associated with neglected, failing or improperly functioning systems.

C. Government Sector Impact:

The cost to counties or municipalities adopting evaluation programs is indeterminate as it depends on how large an area is covered by the evaluation program and how many septic systems are included.²⁹ Counties or municipalities with first magnitude springs will be required to expend funds to implement the provisions of this bill unless they opt out.

The DOH will incur an estimated \$190,000 in costs associated with reprogramming the environmental health database to support the information reported by contractors and to be used by county health departments to notify owners when system evaluations are due. These costs can be absorbed with existing resources.

The DEP is required to take certain actions if and when it is notified of an ordinance that implements a local septic system evaluation program but only within existing resources.

VI. Technical Deficiencies:

The bill references “system” and “conventional system” to be understood in context as an “onsite sewage treatment and disposal system;” however, these terms are not defined in the bill. The bill may need to be amended to define a “system” or a “conventional system” as an “onsite sewage treatment and disposal system” if a shortened variant is warranted. Otherwise those instances that refer to “system” or “conventional system” should be changed to “onsite sewage treatment and disposal system” to be consistent with the existing definition.

The bill explicitly provides that it does not affect certain home rule authority. The provisions may be construed to conflict with the preemptions contained in this bill for both existing and potentially future septic system evaluation programs. For example, lines 671-672 provide that the bill does not “repeal or affect” laws related to septic systems; however, the bill explicitly preempts existing septic system evaluation ordinances that require a point of sale inspection in a real estate transaction. These potential inconsistencies should be clarified.

²⁹ There are 19 counties with first magnitude springs: Alachua, Bay, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison, Marion, Suwannee, Volusia and Wakulla.

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/CS/CS by Budget on March 1, 2012:

- Prohibits a governmental entity, including a municipality, county or statutorily created commission, from requiring an engineer-designed, performance-based treatment systems until completion of a nitrogen reduction study, unless such a requirement was in existence before January 31, 2012;
- Notwithstanding the above prohibition, allows installation an engineer-designed, performance-based treatment system in order to meet the requirements of the variance review and advisory committee; and
- Replaces the “majority plus one” voting requirement with a “60 percent” voting requirement of voting members for governing bodies of counties and municipalities that wish to opt out of an inspection program.

CS/CS by Health Regulation on January 31, 2012:

Specifies that if a rule change occurs within five years after approval for construction, the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system.

- Exempts contractors from liability from damages relating to a failure of a sewage system’s pumps, siphons, or alarms, if a homeowner does not request specific information about such devices during an evaluation. The exclusion from liability must be stated on the front cover of the evaluation report.
- Deletes the requirement that county health departments develop their own databases to track evaluations and evaluation programs and instead allows the county health departments and qualified contractors to access the Department of Health’s environmental health database to track such information.

CS by Environmental Preservation and Conservation on January 9, 2012:

- Fixes cross-references;
- Prohibits a government entity from mandating point of sale inspections for septic systems in a real estate transaction;
- Clarifies the types and sizes of rebuilt structures that can be reconnected to an existing septic system after a disaster;
- Eliminates the requirement that exempted geographic areas from a septic system evaluation program not lead to additional or continued degradation of a first magnitude spring;
- Requires a majority plus one vote of a local governing body for counties or municipalities containing a first magnitude spring to opt out;
- Specifies existing evaluation programs are grandfathered in if they were in existence prior to July 1, 2011;

- Preempts any existing septic system evaluation program if it includes a point of sale inspection requirement;
- Removes impacts “groundwater” from the “system failure” definition;
- Removes the requirement that qualified contractors note the state of surface vegetation;
- Specifies a drainfield that does not achieve the required minimum separation distance between the bottom of the drainfield and the wettest season water table is not considered a system failure;
- Prohibits ordinances from requiring engineer-designed performance-based systems to remediate system failures for conventional septic systems;
- Allows development of a “reasonable” administrative fee for programmatic costs;
- Clarifies that only the county health department may assess penalties against a septic system owner;
- Expands the use of database and tracking system for recording information related to service evaluations;
- Prohibits the DOH from adopting rules that alter the provisions of the CS;
- Clarifies home rule authority as it relates to a local septic system evaluation program;
- Specifies the CS does not repeal or affect any existing law relating to septic systems;
- Limits a county or municipality from continuing to enforce existing ordinances or adopting new ones to address public health or safety if such ordinances affect the programmatic requirements contained in this CS;
- Limits a county or municipality from adopting pollution abatement measures for water quality improvements if such measures affect the programmatic requirements contained in this CS; and
- Allows a county or municipality to exercise its independent and existing authority to use and meet the requirements of s. 381.00655, F.S., related to connection to central sewer systems;
- Providing the bill is effective upon becoming law.

B. Amendments:

None.