

1                   A bill to be entitled  
2     An act relating to onsite sewage treatment and  
3     disposal systems; amending s. 381.0065, F.S.; deleting  
4     legislative intent; defining the term "bedroom";  
5     conforming cross-references; providing for any permit  
6     issued and approved by the Department of Health for  
7     the installation, modification, or repair of an onsite  
8     sewage treatment and disposal system to transfer with  
9     the title of the property; providing conditions under  
10    which governmental entities are prohibited from  
11    requiring certain inspections and systems; providing  
12    applicability; providing an exception; providing  
13    circumstances in which an onsite sewage treatment and  
14    disposal system is not considered abandoned; providing  
15    for the validity of an onsite sewage treatment and  
16    disposal system permit if rules change before final  
17    approval of the constructed system, under certain  
18    conditions; providing that a system modification,  
19    replacement, or upgrade is not required unless a  
20    bedroom is added to a single-family home; deleting  
21    provisions requiring the department to administer an  
22    evaluation and assessment program of onsite sewage  
23    treatment and disposal systems and requiring property  
24    owners to have such systems evaluated at least once  
25    every 5 years; deleting obsolete provisions; creating  
26    s. 381.00651, F.S.; requiring a county or municipality  
27    containing a first magnitude spring to adopt by  
28    ordinance, under certain circumstances, the program

29 | for the periodic evaluation and assessment of onsite  
30 | sewage treatment and disposal systems; requiring the  
31 | county or municipality to notify the Secretary of  
32 | State of the ordinance; authorizing a county or  
33 | municipality, in specified circumstances, to opt out  
34 | by a majority plus one vote of certain requirements by  
35 | a specified date; authorizing a county or municipality  
36 | to adopt or repeal, after a specified date, an  
37 | ordinance creating an evaluation and assessment  
38 | program, subject to notification of the Secretary of  
39 | State; providing criteria for evaluations, qualified  
40 | contractors, and repair of systems; providing for  
41 | certain procedures and exemptions in special  
42 | circumstances; defining the term "system failure";  
43 | requiring that certain procedures be used for  
44 | conducting tank and drainfield evaluations; providing  
45 | for certain procedures in special circumstances;  
46 | providing for contractor immunity from liability under  
47 | certain conditions; providing for assessment  
48 | procedures; providing requirements for county health  
49 | departments; requiring the Department of Health to  
50 | allow county health departments and qualified  
51 | contractors to access the state database to track data  
52 | and evaluation reports; requiring counties and  
53 | municipalities to notify the Secretary of  
54 | Environmental Protection and the Department of Health  
55 | when an evaluation program ordinance is adopted;  
56 | requiring the Department of Environmental Protection

57 to notify those counties or municipalities of the use  
 58 of, and access to, certain state and federal program  
 59 funds and to provide certain guidance and technical  
 60 assistance upon request; prohibiting the adoption of  
 61 certain rules by the Department of Health; providing  
 62 for applicability; repealing s. 381.00656, F.S.,  
 63 relating to a grant program for the repair of onsite  
 64 sewage treatment and disposal systems; amending s.  
 65 381.0066, F.S.; lowering the fees imposed by the  
 66 department for certain permits; conforming cross-  
 67 references; providing an effective date.

68

69 Be It Enacted by the Legislature of the State of Florida:

70

71 Section 1. Subsections (1), (5), (6), and (7) of section  
 72 381.0065, Florida Statutes, are amended, paragraphs (b) through  
 73 (p) of subsection (2) of that section are redesignated as  
 74 paragraphs (c) through (q), respectively, a new paragraph (b) is  
 75 added to that subsection, paragraph (j) of subsection (3) and  
 76 paragraph (n) of subsection (4) of that section are amended, and  
 77 paragraphs (w) through (z) are added to subsection (4) of that  
 78 section, to read:

79 381.0065 Onsite sewage treatment and disposal systems;  
 80 regulation.—

81 (1) LEGISLATIVE INTENT.—

82 ~~(a)~~ It is the intent of the Legislature that proper  
 83 management of onsite sewage treatment and disposal systems is  
 84 paramount to the health, safety, and welfare of the public. ~~††~~

85 ~~is further the intent of the Legislature that the department~~  
 86 ~~shall administer an evaluation program to ensure the operational~~  
 87 ~~condition of the system and identify any failure with the~~  
 88 ~~system.~~

89 (b) It is the intent of the Legislature that where a  
 90 publicly owned or investor-owned sewerage system is not  
 91 available, the department shall issue permits for the  
 92 construction, installation, modification, abandonment, or repair  
 93 of onsite sewage treatment and disposal systems under conditions  
 94 as described in this section and rules adopted under this  
 95 section. It is further the intent of the Legislature that the  
 96 installation and use of onsite sewage treatment and disposal  
 97 systems not adversely affect the public health or significantly  
 98 degrade the groundwater or surface water.

99 (2) DEFINITIONS.—As used in ss. 381.0065–381.0067, the  
 100 term:

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

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

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

108 c. Is located along an exterior wall;

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

111 e. Has an emergency means of escape and rescue opening to  
 112 the outside.

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

115        3. "Bedroom" does not include a hallway, bathroom,  
116 kitchen, living room, family room, dining room, den, breakfast  
117 nook, pantry, laundry room, sunroom, recreation room,  
118 media/video room, or exercise room.

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

121        (j) Supervise research on, demonstration of, and training  
122 on the performance, environmental impact, and public health  
123 impact of onsite sewage treatment and disposal systems within  
124 this state. Research fees collected under s. 381.0066(2)(k)  
125 ~~381.0066(2)(1)~~ must be used to develop and fund hands-on  
126 training centers designed to provide practical information about  
127 onsite sewage treatment and disposal systems to septic tank  
128 contractors, master septic tank contractors, contractors,  
129 inspectors, engineers, and the public and must also be used to  
130 fund research projects which focus on improvements of onsite  
131 sewage treatment and disposal systems, including use of  
132 performance-based standards and reduction of environmental  
133 impact. Research projects shall be initially approved by the  
134 technical review and advisory panel and shall be applicable to  
135 and reflect the soil conditions specific to Florida. Such  
136 projects shall be awarded through competitive negotiation, using  
137 the procedures provided in s. 287.055, to public or private  
138 entities that have experience in onsite sewage treatment and  
139 disposal systems in Florida and that are principally located in  
140 Florida. Research projects shall not be awarded to firms or

141 entities that employ or are associated with persons who serve on  
142 either the technical review and advisory panel or the research  
143 review and advisory committee.

144 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may  
145 not construct, repair, modify, abandon, or operate an onsite  
146 sewage treatment and disposal system without first obtaining a  
147 permit approved by the department. The department may issue  
148 permits to carry out this section, but shall not make the  
149 issuance of such permits contingent upon prior approval by the  
150 Department of Environmental Protection, except that the issuance  
151 of a permit for work seaward of the coastal construction control  
152 line established under s. 161.053 shall be contingent upon  
153 receipt of any required coastal construction control line permit  
154 from the Department of Environmental Protection. A construction  
155 permit is valid for 18 months from the issuance date and may be  
156 extended by the department for one 90-day period under rules  
157 adopted by the department. A repair permit is valid for 90 days  
158 from the date of issuance. An operating permit must be obtained  
159 prior to the use of any aerobic treatment unit or if the  
160 establishment generates commercial waste. Buildings or  
161 establishments that use an aerobic treatment unit or generate  
162 commercial waste shall be inspected by the department at least  
163 annually to assure compliance with the terms of the operating  
164 permit. The operating permit for a commercial wastewater system  
165 is valid for 1 year from the date of issuance and must be  
166 renewed annually. The operating permit for an aerobic treatment  
167 unit is valid for 2 years from the date of issuance and must be  
168 renewed every 2 years. If all information pertaining to the

169 siting, location, and installation conditions or repair of an  
170 onsite sewage treatment and disposal system remains the same, a  
171 construction or repair permit for the onsite sewage treatment  
172 and disposal system may be transferred to another person, if the  
173 transferee files, within 60 days after the transfer of  
174 ownership, an amended application providing all corrected  
175 information and proof of ownership of the property. There is no  
176 fee associated with the processing of this supplemental  
177 information. A person may not contract to construct, modify,  
178 alter, repair, service, abandon, or maintain any portion of an  
179 onsite sewage treatment and disposal system without being  
180 registered under part III of chapter 489. A property owner who  
181 personally performs construction, maintenance, or repairs to a  
182 system serving his or her own owner-occupied single-family  
183 residence is exempt from registration requirements for  
184 performing such construction, maintenance, or repairs on that  
185 residence, but is subject to all permitting requirements. A  
186 municipality or political subdivision of the state may not issue  
187 a building or plumbing permit for any building that requires the  
188 use of an onsite sewage treatment and disposal system unless the  
189 owner or builder has received a construction permit for such  
190 system from the department. A building or structure may not be  
191 occupied and a municipality, political subdivision, or any state  
192 or federal agency may not authorize occupancy until the  
193 department approves the final installation of the onsite sewage  
194 treatment and disposal system. A municipality or political  
195 subdivision of the state may not approve any change in occupancy  
196 or tenancy of a building that uses an onsite sewage treatment

197 and disposal system until the department has reviewed the use of  
198 the system with the proposed change, approved the change, and  
199 amended the operating permit.

200 (n) Evaluations for determining the seasonal high-water  
201 table elevations or the suitability of soils for the use of a  
202 new onsite sewage treatment and disposal system shall be  
203 performed by department personnel, professional engineers  
204 registered in the state, or such other persons with expertise,  
205 as defined by rule, in making such evaluations. Evaluations for  
206 determining mean annual flood lines shall be performed by those  
207 persons identified in paragraph (2) (j) ~~(2) (i)~~. The department  
208 shall accept evaluations submitted by professional engineers and  
209 such other persons as meet the expertise established by this  
210 section or by rule unless the department has a reasonable  
211 scientific basis for questioning the accuracy or completeness of  
212 the evaluation.

213 (w) Any permit issued and approved by the department for  
214 the installation, modification, or repair of an onsite sewage  
215 treatment and disposal system shall transfer with the title to  
216 the property in a real estate transaction. A title may not be  
217 encumbered at the time of transfer by new permit requirements by  
218 a governmental entity for an onsite sewage treatment and  
219 disposal system which differ from the permitting requirements in  
220 effect at the time the system was permitted, modified, or  
221 repaired. No inspection of a system shall be mandated by any  
222 governmental entity at the point of sale in a real estate  
223 transaction.

224 (x) No governmental entity, including a municipality,



225 county, or statutorily created commission, may require an  
226 engineer-designed performance-based treatment system, excluding  
227 a passive engineer-designed performance-based treatment system,  
228 before the completion of the Florida Onsite Sewage Nitrogen  
229 Reduction Strategies Project. This paragraph does not apply to a  
230 governmental entity, including a municipality, county, or  
231 statutorily created commission, that adopted a local law,  
232 ordinance, or regulation on or before January 31, 2012.  
233 Notwithstanding this paragraph, an engineer-designed  
234 performance-based treatment system may be used to meet the  
235 requirements of the Variance Review and Advisory Committee  
236 recommendations.

237 (y)1. An onsite sewage treatment and disposal system is  
238 not considered abandoned if the system is disconnected from a  
239 structure that was made unusable or destroyed following a  
240 disaster and was properly functioning at the time of  
241 disconnection and not adversely affected by the disaster. The  
242 onsite sewage treatment and disposal system may be reconnected  
243 to a rebuilt structure if:

244 a. The reconnection of the system is to the same type of  
245 structure which contains the same number of bedrooms or less,  
246 provided the square footage of the structure is less than or  
247 equal to 110 percent of the original square footage of the  
248 structure that existed prior to the disaster;

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

250 c. The system has not been altered without prior  
251 authorization.

252 2. An onsite sewage treatment and disposal system that

253 serves a property that is foreclosed upon is not considered  
 254 abandoned.

255 (z) If an onsite sewage treatment and disposal system  
 256 permittee receives, relies upon, and undertakes construction of  
 257 a system based upon a validly issued construction permit under  
 258 rules applicable at the time of construction but a change to a  
 259 rule occurs within 5 years after the approval of the system for  
 260 construction but before the final approval of the system, the  
 261 rules applicable and in effect at the time of construction  
 262 approval apply at the time of final approval if fundamental site  
 263 conditions have not changed between the time of construction  
 264 approval and final approval.

265 (aa) A modification, replacement, or upgrade of an onsite  
 266 sewage treatment and disposal system is not required for a  
 267 remodeling addition to a single-family home if a bedroom is not  
 268 added.

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

270 ~~(a) Beginning July 1, 2011, the department shall~~  
 271 ~~administer an onsite sewage treatment and disposal system~~  
 272 ~~evaluation program for the purpose of assessing the fundamental~~  
 273 ~~operational condition of systems and identifying any failures~~  
 274 ~~within the systems. The department shall adopt rules~~  
 275 ~~implementing the program standards, procedures, and~~  
 276 ~~requirements, including, but not limited to, a schedule for a 5-~~  
 277 ~~year evaluation cycle, requirements for the pump-out of a system~~  
 278 ~~or repair of a failing system, enforcement procedures for~~  
 279 ~~failure of a system owner to obtain an evaluation of the system,~~  
 280 ~~and failure of a contractor to timely submit evaluation results~~

281 ~~to the department and the system owner. The department shall~~  
282 ~~ensure statewide implementation of the evaluation and assessment~~  
283 ~~program by January 1, 2016.~~

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

289 ~~(c) All evaluation procedures must be documented and~~  
290 ~~nothing in this subsection limits the amount of detail an~~  
291 ~~evaluator may provide at his or her professional discretion. The~~  
292 ~~evaluation must include a tank and drainfield evaluation, a~~  
293 ~~written assessment of the condition of the system, and, if~~  
294 ~~necessary, a disclosure statement pursuant to the department's~~  
295 ~~procedure.~~

296 ~~(d)1. Systems being evaluated that were installed prior to~~  
297 ~~January 1, 1983, shall meet a minimum 6-inch separation from the~~  
298 ~~bottom of the drainfield to the wettest season water table~~  
299 ~~elevation as defined by department rule. All drainfield repairs,~~  
300 ~~replacements or modifications to systems installed prior to~~  
301 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~  
302 ~~the bottom of the drainfield to the wettest season water table~~  
303 ~~elevation as defined by department rule.~~

304 ~~2. Systems being evaluated that were installed on or after~~  
305 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~  
306 ~~the bottom of the drainfield to the wettest season water table~~  
307 ~~elevation as defined by department rule. All drainfield repairs,~~  
308 ~~replacements or modification to systems developed on or after~~

309 ~~January 1, 1983, shall meet a minimum 24-inch separation from~~  
310 ~~the bottom of the drainfield to the wettest season water table~~  
311 ~~elevation.~~

312 ~~(e) If documentation of a tank pump-out or a permitted new~~  
313 ~~installation, repair, or modification of the system within the~~  
314 ~~previous 5 years is provided, and states the capacity of the~~  
315 ~~tank and indicates that the condition of the tank is not a~~  
316 ~~sanitary or public health nuisance pursuant to department rule,~~  
317 ~~a pump-out of the system is not required.~~

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

322 ~~(g) Each evaluation or pump-out required under this~~  
323 ~~subsection must be performed by a septic tank contractor or~~  
324 ~~master septic tank contractor registered under part III of~~  
325 ~~chapter 489, a professional engineer with wastewater treatment~~  
326 ~~system experience licensed pursuant to chapter 471, or an~~  
327 ~~environmental health professional certified under chapter 381 in~~  
328 ~~the area of onsite sewage treatment and disposal system~~  
329 ~~evaluation.~~

330 ~~(h) The evaluation report fee collected pursuant to s.~~  
331 ~~381.0066(2)(b) shall be remitted to the department by the~~  
332 ~~evaluator at the time the report is submitted.~~

333 ~~(i) Prior to any evaluation deadline, the department must~~  
334 ~~provide a minimum of 60 days' notice to owners that their~~  
335 ~~systems must be evaluated by that deadline. The department may~~  
336 ~~include a copy of any homeowner educational materials developed~~

337 ~~pursuant to this section which provides information on the~~  
 338 ~~proper maintenance of onsite sewage treatment and disposal~~  
 339 ~~systems.~~

340 (5) ~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.-

341 (a) Department personnel who have reason to believe  
 342 noncompliance exists, may at any reasonable time, enter the  
 343 premises permitted under ss. 381.0065-381.0066, or the business  
 344 premises of any septic tank contractor or master septic tank  
 345 contractor registered under part III of chapter 489, or any  
 346 premises that the department has reason to believe is being  
 347 operated or maintained not in compliance, to determine  
 348 compliance with the provisions of this section, part I of  
 349 chapter 386, or part III of chapter 489 or rules or standards  
 350 adopted under ss. 381.0065-381.0067, part I of chapter 386, or  
 351 part III of chapter 489. As used in this paragraph, the term  
 352 "premises" does not include a residence or private building. To  
 353 gain entry to a residence or private building, the department  
 354 must obtain permission from the owner or occupant or secure an  
 355 inspection warrant from a court of competent jurisdiction.

356 (b)1. The department may issue citations that may contain  
 357 an order of correction or an order to pay a fine, or both, for  
 358 violations of ss. 381.0065-381.0067, part I of chapter 386, or  
 359 part III of chapter 489 or the rules adopted by the department,  
 360 when a violation of these sections or rules is enforceable by an  
 361 administrative or civil remedy, or when a violation of these  
 362 sections or rules is a misdemeanor of the second degree. A  
 363 citation issued under ss. 381.0065-381.0067, part I of chapter  
 364 386, or part III of chapter 489 constitutes a notice of proposed

365 agency action.

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

369 3. The fines imposed by a citation issued by the  
370 department may not exceed \$500 for each violation. Each day the  
371 violation exists constitutes a separate violation for which a  
372 citation may be issued.

373 4. The department shall inform the recipient, by written  
374 notice pursuant to ss. 120.569 and 120.57, of the right to an  
375 administrative hearing to contest the citation within 21 days  
376 after the date the citation is received. The citation must  
377 contain a conspicuous statement that if the recipient fails to  
378 pay the fine within the time allowed, or fails to appear to  
379 contest the citation after having requested a hearing, the  
380 recipient has waived the recipient's right to contest the  
381 citation and must pay an amount up to the maximum fine.

382 5. The department may reduce or waive the fine imposed by  
383 the citation. In determining whether to reduce or waive the  
384 fine, the department must consider the gravity of the violation,  
385 the person's attempts at correcting the violation, and the  
386 person's history of previous violations including violations for  
387 which enforcement actions were taken under ss. 381.0065-  
388 381.0067, part I of chapter 386, part III of chapter 489, or  
389 other provisions of law or rule.

390 6. Any person who willfully refuses to sign and accept a  
391 citation issued by the department commits a misdemeanor of the  
392 second degree, punishable as provided in s. 775.082 or s.

393 775.083.

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

398 8. This section provides an alternative means of enforcing  
 399 ss. 381.0065-381.0067, part I of chapter 386, and part III of  
 400 chapter 489. This section does not prohibit the department from  
 401 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part  
 402 III of chapter 489, or its rules, by any other means. However,  
 403 the department must elect to use only a single method of  
 404 enforcement for each violation.

405 (6)~~(7)~~ LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective  
 406 January 1, 2016, the land application of septage from onsite  
 407 sewage treatment and disposal systems is prohibited. ~~By February~~  
 408 ~~1, 2011, the department, in consultation with the Department of~~  
 409 ~~Environmental Protection, shall provide a report to the~~  
 410 ~~Governor, the President of the Senate, and the Speaker of the~~  
 411 ~~House of Representatives, recommending alternative methods to~~  
 412 ~~establish enhanced treatment levels for the land application of~~  
 413 ~~septage from onsite sewage and disposal systems. The report~~  
 414 ~~shall include, but is not limited to, a schedule for the~~  
 415 ~~reduction in land application, appropriate treatment levels,~~  
 416 ~~alternative methods for treatment and disposal, enhanced~~  
 417 ~~application site permitting requirements including any~~  
 418 ~~requirements for nutrient management plans, and the range of~~  
 419 ~~costs to local governments, affected businesses, and individuals~~  
 420 ~~for alternative treatment and disposal methods. The report shall~~

421 ~~also include any recommendations for legislation or rule~~  
422 ~~authority needed to reduce land application of septage.~~

423 Section 2. Section 381.00651, Florida Statutes, is created  
424 to read:

425 381.00651 Periodic evaluation and assessment of onsite  
426 sewage treatment and disposal systems.-

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

432 (2) A county or municipality that contains a first  
433 magnitude spring shall, by no later than January 1, 2013,  
434 develop and adopt by local ordinance an onsite sewage treatment  
435 and disposal system evaluation and assessment program that meets  
436 the requirements of this section. The ordinance may apply within  
437 all or part of its geographic area. Those counties or  
438 municipalities containing a first magnitude spring which have  
439 already adopted an onsite sewage treatment and disposal system  
440 evaluation and assessment program and which meet the  
441 grandfathering requirements contained in this section, or have  
442 chosen to opt out of this section in the manner provided herein,  
443 are exempt from the requirement to adopt an ordinance  
444 implementing an evaluation and assessment program. The governing  
445 body of a local government that chooses to opt out of this  
446 section, by a majority plus one vote of the members of the  
447 governing board, shall do so by adopting a resolution that  
448 indicates an intent on the part of such local government not to



449 adopt an onsite sewage treatment and disposal system evaluation  
450 and assessment program. Such resolution shall be addressed and  
451 transmitted to the Secretary of State. Absent an interlocal  
452 agreement or county charter provision to the contrary, a  
453 municipality may elect to opt out of the requirements of this  
454 section, by a majority plus one vote of the members of the  
455 governing board, notwithstanding a contrary decision of the  
456 governing body of a county. Any local government that has  
457 properly opted out of this section but subsequently chooses to  
458 adopt an evaluation and assessment program may do so only  
459 pursuant to the requirements of this section and may not deviate  
460 from such requirements.

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

466 (4) Notwithstanding any other provision in this section, a  
467 county or municipality that has adopted a program before July 1,  
468 2011, may continue to enforce its current program without having  
469 to meet the requirements of this section, provided such program  
470 does not require an evaluation at the point of sale in a real  
471 estate transaction.

472 (5) Any county or municipality may repeal an ordinance  
473 adopted pursuant to this section only if the county or  
474 municipality notifies the Secretary of State by letter of the  
475 repeal. No county or municipality may adopt an onsite sewage  
476 treatment and disposal system evaluation and assessment program

477 except pursuant to this section.

478 (6) The requirements for an onsite sewage treatment and  
479 disposal system evaluation and assessment program are as  
480 follows:

481 (a) Evaluations.—An evaluation of each onsite sewage  
482 treatment and disposal system within all or part of the county's  
483 or municipality's jurisdiction must take place once every 5  
484 years to assess the fundamental operational condition of the  
485 system and to identify system failures. The ordinance may not  
486 mandate an evaluation at the point of sale in a real estate  
487 transaction and may not require a soil examination. The location  
488 of the system shall be identified. A tank and drainfield  
489 evaluation and a written assessment of the overall condition of  
490 the system pursuant to the assessment procedure prescribed in  
491 subsection (7) are required.

492 (b) Qualified contractors.—Each evaluation required under  
493 this subsection must be performed by a qualified contractor, who  
494 may be a septic tank contractor or master septic tank contractor  
495 registered under part III of chapter 489, a professional  
496 engineer having wastewater treatment system experience and  
497 licensed under chapter 471, or an environmental health  
498 professional certified under this chapter in the area of onsite  
499 sewage treatment and disposal system evaluation. Evaluations and  
500 pump-outs may also be performed by an authorized employee  
501 working under the supervision of an individual listed in this  
502 paragraph; however, all evaluation forms must be signed by a  
503 qualified contractor in writing or by electronic signature.

504 (c) Repair of systems.—The local ordinance may not require

505 a repair, modification, or replacement of a system as a result  
506 of an evaluation unless the evaluation identifies a system  
507 failure. For purposes of this subsection, the term "system  
508 failure" means a condition existing within an onsite sewage  
509 treatment and disposal system which results in the discharge of  
510 untreated or partially treated wastewater onto the ground  
511 surface or into surface water or that results in the failure of  
512 building plumbing to discharge properly and presents a sanitary  
513 nuisance. A system is not in failure if the system does not have  
514 a minimum separation distance between the drainfield and the  
515 wettest season water table or if an obstruction in a sanitary  
516 line or an effluent screen or filter prevents effluent from  
517 flowing into a drainfield. If a system failure is identified and  
518 several allowable remedial measures are available to resolve the  
519 failure, the system owner may choose the least costly allowable  
520 remedial measure to fix the system. There may be instances in  
521 which a pump-out is sufficient to resolve a system failure.  
522 Allowable remedial measures to resolve a system failure are  
523 limited to what is necessary to resolve the failure and must  
524 meet, to the maximum extent practicable, the requirements of the  
525 repair code in effect when the repair is made, subject to the  
526 exceptions specified in s. 381.0065(4)(g). An engineer-designed  
527 performance-based treatment system to reduce nutrients may not  
528 be required as an alternative remediation measure to resolve the  
529 failure of a conventional system.

530 (d) Exemptions.-

531 1. The local ordinance shall exempt from the evaluation  
532 requirements any system that is required to obtain an operating

533 permit pursuant to state law or that is inspected by the  
534 department pursuant to the annual permit inspection requirements  
535 of chapter 513.

536 2. The local ordinance may provide for an exemption or an  
537 extension of time to obtain an evaluation and assessment if  
538 connection to a sewer system is available, connection to the  
539 sewer system is imminent, and written arrangements for payment  
540 of any utility assessments or connection fees have been made by  
541 the system owner.

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

547 (7) The following procedures shall be used for conducting  
548 evaluations:

549 (a) Tank evaluation.—The tank evaluation shall assess the  
550 apparent structural condition and watertightness of the tank and  
551 shall estimate the size of the tank. The evaluation must include  
552 a pump-out. However, an ordinance may not require a pump-out if  
553 there is documentation indicating that a tank pump-out or a  
554 permitted new installation, repair, or modification of the  
555 system has occurred within the previous 5 years, identifying the  
556 capacity of the tank, and indicating that the condition of the  
557 tank is structurally sound and watertight. Visual inspection of  
558 the tank must be made when the tank is empty to detect cracks,  
559 leaks, or other defects. Baffles or tees must be checked to  
560 ensure that they are intact and secure. The evaluation shall

561 note the presence and condition of outlet devices, effluent  
562 filters, and compartment walls; any structural defect in the  
563 tank; the condition and fit of the tank lid, including manholes;  
564 whether surface water can infiltrate the tank; and whether the  
565 tank was pumped out. If the tank, in the opinion of the  
566 qualified contractor, is in danger of being damaged by leaving  
567 the tank empty after inspection, the tank shall be refilled  
568 before concluding the inspection. Broken or damaged lids or  
569 manholes shall be replaced without obtaining a repair permit.

570 (b) Drainfield evaluation.—The drainfield evaluation must  
571 include a determination of the approximate size and location of  
572 the drainfield. The evaluation shall state whether there is any  
573 sewage or effluent visible on the ground or discharging to a  
574 ditch or other water body and the location of any downspout or  
575 other source of water near or in the vicinity of the drainfield.

576 (c) Special circumstances.—If the system contains pumps,  
577 siphons, or alarms, the following information may be provided at  
578 the request of the homeowner:

579 1. An assessment of dosing tank integrity, including the  
580 approximate volume and the type of material used in the tank's  
581 construction;

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

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

586 4. Whether the system has a high-water alarm, and if so  
587 whether the alarm is audio or visual or both, the location and  
588 operational condition of the alarm, and whether the electrical

589 connections to the alarm appear satisfactory.

590  
591 If the homeowner does not request this information, the  
592 qualified contractor and its employee are not liable for any  
593 damages directly relating from a failure of the system's pumps,  
594 siphons, or alarms. This exclusion of liability must be stated  
595 on the front cover of the report required under paragraph (d).

596 (d) Assessment procedure.—All evaluation procedures used  
597 by a qualified contractor shall be documented in the  
598 environmental health database of the Department of Health. The  
599 qualified contractor shall provide a copy of a written, signed  
600 evaluation report to the property owner upon completion of the  
601 evaluation and to the county health department within 30 days  
602 after the evaluation. The report shall contain the name and  
603 license number of the company providing the report. A copy of  
604 the evaluation report shall be retained by the local county  
605 health department for a minimum of 5 years and until a  
606 subsequent inspection report is filed. The front cover of the  
607 report must identify any system failure and include a clear and  
608 conspicuous notice to the owner that the owner has a right to  
609 have any remediation of the failure performed by a qualified  
610 contractor other than the contractor performing the evaluation.  
611 The report must further identify any crack, leak, improper fit,  
612 or other defect in the tank, manhole, or lid, and any other  
613 damaged or missing component; any sewage or effluent visible on  
614 the ground or discharging to a ditch or other surface water  
615 body; any downspout, stormwater, or other source of water  
616 directed onto or toward the system; and any other maintenance

617 need or condition of the system at the time of the evaluation  
618 which, in the opinion of the qualified contractor, would  
619 possibly interfere with or restrict any future repair or  
620 modification to the existing system. The report shall conclude  
621 with an overall assessment of the fundamental operational  
622 condition of the system.

623 (8) The county health department shall administer any  
624 evaluation program on behalf of a county, or a municipality  
625 within the county, that has adopted an evaluation program  
626 pursuant to this section. In order to administer the evaluation  
627 program, the county or municipality, in consultation with the  
628 county health department, may develop a reasonable fee schedule  
629 to be used solely to pay for the costs of administering the  
630 evaluation program. Such a fee schedule shall be identified in  
631 the ordinance that adopts the evaluation program. When arriving  
632 at a reasonable fee schedule, the estimated annual revenues to  
633 be derived from fees may not exceed reasonable estimated annual  
634 costs of the program. Fees shall be assessed to the system owner  
635 during an inspection and separately identified on the invoice of  
636 the qualified contractor. Fees shall be remitted by the  
637 qualified contractor to the county health department. The county  
638 health department's administrative responsibilities include the  
639 following:

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

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

645 providing uniform disciplinary procedures and penalties for  
646 qualified contractors who do not comply with the requirements of  
647 the adopted ordinance, including, but not limited to, failure to  
648 provide the evaluation report as required in this subsection to  
649 the system owner and the county health department. Only the  
650 county health department may assess penalties against system  
651 owners for failure to comply with the adopted ordinance,  
652 consistent with existing requirements of law.

653 (9) (a) A county or municipality that adopts an onsite  
654 sewage treatment and disposal system evaluation and assessment  
655 program pursuant to this section shall notify the Secretary of  
656 Environmental Protection, the Department of Health, and the  
657 applicable county health department upon the adoption of its  
658 ordinance establishing the program.

659 (b) Upon receipt of the notice under paragraph (a), the  
660 Department of Environmental Protection shall, within existing  
661 resources, notify the county or municipality of the potential  
662 use of, and access to, program funds under the Clean Water State  
663 Revolving Fund or s. 319 of the Clean Water Act, provide  
664 guidance in the application process to receive such moneys, and  
665 provide advice and technical assistance to the county or  
666 municipality on how to establish a low-interest revolving loan  
667 program or how to model a revolving loan program after the low-  
668 interest loan program of the Clean Water State Revolving Fund.  
669 This paragraph does not obligate the Department of Environmental  
670 Protection to provide any county or municipality with money to  
671 fund such programs.

672 (c) The Department of Health may not adopt any rule that



673 alters the provisions of this section.

674 (d) The Department of Health must allow county health  
675 departments and qualified contractors access to the  
676 environmental health database to track relevant information and  
677 assimilate data from assessment and evaluation reports of the  
678 overall condition of onsite sewage treatment and disposal  
679 systems. The environmental health database must be used by  
680 contractors to report each service and evaluation event and by a  
681 county health department to notify owners of onsite sewage  
682 treatment and disposal systems when evaluations are due. Data  
683 and information must be recorded and updated as service and  
684 evaluations are conducted and reported.

685 (10) This section does not:

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

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

691 (c) Prohibit a county or municipality from:

692 1. Enforcing existing ordinances or adopting new  
693 ordinances relating to onsite sewage treatment facilities to  
694 address public health and safety if such ordinances do not  
695 repeal, suspend, or alter the requirements or limitations of  
696 this section.

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

701           3. Exercising its independent and existing authority to  
 702 meet the requirements of s. 381.0065.

703           Section 3. Section 381.00656, Florida Statutes, is  
 704 repealed.

705           Section 4. Subsection (2) of section 381.0066, Florida  
 706 Statutes, is amended to read:

707           381.0066 Onsite sewage treatment and disposal systems;  
 708 fees.—

709           (2) The minimum fees in the following fee schedule apply  
 710 until changed by rule by the department within the following  
 711 limits:

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

716           ~~(b) A 5-year evaluation report submitted pursuant to s.~~  
 717 ~~381.0065(5): a fee not less than \$15, or more than \$30. At least~~  
 718 ~~\$1 and no more than \$5 collected pursuant to this paragraph~~  
 719 ~~shall be used to fund a grant program established under s.~~  
 720 ~~381.00656.~~

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

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

727           (d)(e) Annual operating permit for systems located in  
 728 areas zoned for industrial manufacturing or equivalent uses or

729 | where the system is expected to receive wastewater which is not  
 730 | domestic in nature: a fee of not less than \$150, or more than  
 731 | \$300.

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

733 |       (f)~~(g)~~ Septage disposal service, septage stabilization  
 734 | facility, portable or temporary toilet service, tank  
 735 | manufacturer inspection: a fee of not less than \$25, or more  
 736 | than \$200, per year.

737 |       (g)~~(h)~~ Application for variance: a fee of not less than  
 738 | \$150, or more than \$300.

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

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

745 |       (j)~~(k)~~ Reinspection fee per visit for site inspection  
 746 | after system construction approval or for noncompliant system  
 747 | installation per site visit: a fee of not less than \$25, or more  
 748 | than \$100.

749 |       (k)~~(l)~~ Research: An additional \$5 fee shall be added to  
 750 | each new system construction permit issued to be used to fund  
 751 | onsite sewage treatment and disposal system research,  
 752 | demonstration, and training projects. Five dollars from any  
 753 | repair permit fee collected under this section shall be used for  
 754 | funding the hands-on training centers described in s.  
 755 | 381.0065(3)(j).

756 |       (l)~~(m)~~ Annual operating permit, including annual

757 inspection and any required sampling and laboratory analysis of  
758 effluent, for an engineer-designed performance-based system: a  
759 fee of not less than \$150, or more than \$300.

760

761 ~~On or before January 1, 2011, the Surgeon General, after~~  
762 ~~consultation with the Revenue Estimating Conference, shall~~  
763 ~~determine a revenue neutral fee schedule for services provided~~  
764 ~~pursuant to s. 381.0065(5) within the parameters set in~~  
765 ~~paragraph (b). Such determination is not subject to the~~  
766 ~~provisions of chapter 120.~~ The funds collected pursuant to this  
767 subsection must be deposited in a trust fund administered by the  
768 department, to be used for the purposes stated in this section  
769 and ss. 381.0065 and 381.00655.

770 Section 5. This act shall take effect upon becoming a law.