

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 85 Onsite Sewage Treatment and Disposal Systems
SPONSOR(S): Agriculture & Natural Resources Subcommittee, Robinson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 214

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Melkun	Shugar
2) Health Care Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

A person generates approximately 100 gallons of domestic wastewater per day. This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways. One of the systems utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS), commonly referred to as a septic system. OSTDSs must be permitted and inspected by the Department of Health (DOH) before they are placed into operation and must be located and installed so that, along with proper maintenance, the systems function in a sanitary manner, do not create sanitary nuisances or health hazards, and do not endanger the safety of any domestic water supply, groundwater, or surface water. DOH maintains a database of OSTDSs in each county in the state, but the database is incomplete.

The bill requires DOH to implement a periodic inspection program and requires owners of OSTDSs to have the systems inspected every five years beginning July 1, 2022, unless exempted.

The bill defines the terms "qualified contractor", "repair", and "system failure".

The bill requires the inspection to be performed by a qualified contractor. The bill requires certain procedures to be used for conducting inspections, including a tank and drainfield inspection. The bill further requires an inspection to include a pump-out, unless there is specified documentation.

The bill requires that all inspection procedures used by a qualified contractor be documented in the environmental health database of DOH and that the qualified contractor provide a copy of the written, signed inspection report to the OSTDS owner upon completion and to the county health department within 30 days after the inspection. The bill further requires the county health department to retain the report for a minimum of five years and until a subsequent report is filed.

The bill allows DOH to develop a reasonable fee schedule to be used solely to pay for the costs of administering the inspection program and specifies the administrative responsibilities of DOH include providing notice to the OSTDS owner at least 60 days before the OSTDS is due for an inspection and providing uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted rules.

The bill specifies that owners are responsible for the inspection costs and any associated required pump-out costs and requires DOH to provide a 60-day minimum notice of inspection deadline.

The bill may have an indeterminate negative fiscal impact on DOH. The bill may have an indeterminate fiscal impact on owners of OSTDSs that are required to have periodic inspections.

This bill appears to implicate Art. VII, s. 19 of the Florida Constitution. See Section III.A.2. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A person generates approximately 100 gallons of domestic wastewater¹ per day.² This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife, and the aesthetic appeal of the state's waterways.³ One of the methods utilized to treat domestic wastewater is an onsite sewage treatment and disposal system (OSTDS)⁴, commonly referred to as a septic system.⁵ Approximately, 30 percent of the population in Florida uses an OSTDS.

An OSTDS consists of two main parts: a septic tank and a drainfield. The septic tank is a watertight box with an inlet and outlet pipe. Wastewater flows from the home to the septic tank through the sewer pipe. The septic tank treats the wastewater naturally by holding it in the tank long enough for solids and liquids to separate. Solids heavier than water settle at the bottom of the tank forming a layer of sludge and leave a layer of partially clarified wastewater. The layers of sludge remain in the septic tank where bacteria found naturally in the wastewater work to break down the solids. The sludge that cannot be broken down is retained in the tank until the tank is pumped. The layer of clarified liquid flows from the septic tank to the drainfield, which is typically a series of trenches lined with gravel or coarse sand and buried one to three feet below the ground surface. The drainfield treats the wastewater by allowing it to slowly trickle from the pipes out into the gravel and down through the soil, which act as biological filters to remove pathogens and excess nutrients.⁶

OSTDSs must be permitted and inspected by the Department of Health (DOH) before they are placed into operation and must be located and installed so that, along with proper maintenance, the systems function in a sanitary manner, do not create sanitary nuisances or health hazards, and do not endanger the safety of any domestic water supply, groundwater, or surface water.⁷ Sewage waste and effluent from OSTDSs may not be discharged onto the ground surface or directly or indirectly discharged into ditches, drainage structures, ground waters, surface waters, or aquifers.⁸ The permitting and inspection of OSTDSs is handled by DOH within the Bureau of Onsite Sewage and the county health departments.⁹ DOH regulates an estimated 2.6 million OSTDSs.¹⁰

¹ "Domestic wastewater" is defined in s. 367.021(5), F.S., as wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants. "Domestic wastewater" is defined in rule 62-600.200(21), F.A.C., as the wastewater derived principally from dwellings, business buildings, institutions, and the like, commonly referred to as sanitary wastewater or sewage.

² Department of Environmental Protection (DEP), *Domestic Wastewater Program*, available at <https://floridadep.gov/water/domestic-wastewater> (last visited Feb. 20, 2019).

³ Sections 381.0065(1) and 403.021, F.S.

⁴ Section 381.0065(2)(k), F.S., defines an "OSTDS" as 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 solids 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. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403, F.S.

⁵ Sections 381.0065(2)(k) and 381.0065(3), F.S.; chs. 62-600 and 62-701, F.A.C.

⁶ National Environmental Services Center, *What is a septic system? How do I maintain one?*, available at http://www.nesc.wvu.edu/subpages/septic_defined.cfm (last visited Mar. 3, 2019).

⁷ Section 381.0065(4), F.S.; rr. 64E-6.003 and 64E-6.004, F.A.C.

⁸ Rule 64E-6.005, F.A.C.

⁹ Sections 381.006(7) and 381.0065, F.S.; r. 62-600.120, F.A.C.; see DEP, *Domestic Wastewater - Septic Systems*, available at <https://floridadep.gov/water/domestic-wastewater/content/septic-systems> (last visited Feb. 20, 2019); DOH is an integrated agency

Voluntary OSTDS Inspections

DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* must be applied in a voluntary OSTDS inspection, with limited exceptions, including an increase in sewage flow or change in sewage characteristics, failure of the system, for aerobic treatment units and performance-based treatment systems.¹¹ The inspection is designed to assess the condition of a system at a particular moment in time and identify substandard systems (e.g., systems without drainfields). The inspection is not designed to determine precise code compliance or provide information to demonstrate that the system adequately serves the existing or subsequent owner. However, an inspector may provide as much information about the system in the report at their professional discretion.

DOH employees are prohibited from performing these inspections. The inspection must be conducted by a master septic tank contractor, registered septic tank contractor, state-licensed plumber, or a certified environmental health professional.¹² The inspector must provide the person requesting the inspection a copy of DOH's *Procedure for Voluntary Inspection and Assessment of Existing Systems* and written notice of their right to request an inspection.¹³ Unless the person requesting the inspection specifies in writing that parts of a system be omitted, the inspection will include the evaluation of the tank, the drainfield, all pumps, siphons and alarms, if part of the system, and a written assessment of the overall condition of the system.¹⁴

Effect of Proposed Changes

The bill repeals s. 381.00651, F.S., to remove language about the voluntary inspection program.

The bill creates s. 381.00653, F.S., to require DOH to implement a periodic inspection program and require owners of OSTDSs to have the systems inspected every five years beginning July 1, 2022, unless exempted.

The bill requires DOH to create a schedule for a five-year inspection cycle and a county-by-county implementation plan phased in over a 10-year period with first priority given to those areas within a basin management action plan identified by the Department of Environmental Protection.

The bill requires the inspection to be performed by a qualified contractor. The bill specifies that a qualified contractor is a septic tank contractor or master septic contractor who is registered under part III of ch. 489, F.S.; a professional engineer who has wastewater treatment system experience and is licensed under ch. 471, F.S.; or an environmental health professional who is certified under ch. 381, F.S., in the area of onsite sewage treatment and disposal inspection. The bill further specifies that inspections and pump-outs may also be performed by an authorized employee working under the supervision of a qualified contractor.

The bill defines "repair" to mean any replacement of or modification or addition to a failing system which is necessary to allow the system to function in accordance with its design or is necessary to eliminate a

that is comprised of the main state office in Tallahassee and 67 county health departments. OSTDS functions are performed by both the state office and the county health departments, with permitting and inspections the responsibility of the counties.

¹⁰ DOH, *Onsite Sewage*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Jan. 10, 2019).

¹¹ Rule 64E-6.001(5), F.A.C.; DOH, *Procedure for Voluntary Inspection and Assessment of Existing Systems* (May 2000), available at http://indianriver.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/_documents/voluntary-inspection-form-ocrd.pdf (last visited Jan. 10, 2019).

¹² Rule 64E-6.001(5), F.A.C.; *see* s. 381.0101(d), F.S., for the definition of environmental health professional.

¹³ Rule 64E-6.001(5), F.A.C.

¹⁴ DOH, *Procedure for Voluntary Inspection and Assessment of Existing Systems* (May 2000), available at http://indianriver.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/_documents/voluntary-inspection-form-ocrd.pdf (last visited Jan. 10, 2019).

public health or pollution hazard, including the use of any treatment method that is intended to improve the functioning of any part of the system or to prolong or sustain the length of time the system functions, excluding:

- The service or replacement of mechanical or electrical parts of an approved OSTDS with like kind and quality parts;
- Any minor structural corrections to a tank or distribution box;
- The use of an authorized additive in indoor building plumbing by the system owner;
- The removal of the contents of any tank or the installation of an approved outlet filter device without disturbing the drainfield;
- The replacement of any broken tank lid; and
- The splicing of a drip emitter line, provided the emitter is not eliminated.

The bill defines “system failure” to mean a condition existing within an OSTDS which results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water or that results in the failure of building plumbing to discharge properly and presents a sanitary nuisance. The bill clarifies that a system is not in failure if the system does not have a minimum separation distance between the drainfield and the wettest season water table or if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield.

The bill specifies that if a system failure is identified and several allowable remedial measures are available to resolve the failure, the system owner may choose the least costly allowable remedial measure to repair the system. The bill further specifies that allowable remedial measures to resolve a system failure are limited to what is necessary to resolve the failure and must meet, to the maximum extent practicable, the requirements of the repair code in effect when the repair is made, subject to the exceptions specified in s. 381.0065(4)(g).

The bill provides exemptions for any system that is required to obtain an operating permit pursuant to state law or that is inspected by the department pursuant to the annual permit inspection requirements of ch. 513, F.S.; when a connection to a sewer system is available, connection is imminent, and written arrangements for payment of any utility assessments or connection fees have been made by the system owner; when the system is in an area with a water quality restoration plan that identifies the OSTDS for inclusion in a septic to sewer project or conversion of the system to an advanced nutrient removal system within five years; and for an OSTDS serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater.

The bill requires certain procedures to be used for conducting inspections, including a tank and drainfield inspection. The bill further requires an inspection to include a pump-out unless there is documentation that: indicates a tank pump-out or a permitted new tank installation, repair, or modification of the OSTDS has occurred within the previous three years; identifies the capacity of the tank; and indicates the condition of the tank is structurally sound and watertight.

The bill provides that the qualified contractor is not liable for any damages directly relating from a failure of the system’s pumps, siphons, or alarms unless the homeowner specifically requests this information during the inspection.

The bill requires that all inspection procedures used by a qualified contractor be documented in the environmental health database of DOH and that the qualified contractor provide a copy of the written, signed inspection report to the system owner upon completion and to the county health department within 30 days after the inspection. The bill further requires the county health department to retain the report for a minimum of five years and until a subsequent report is filed.

The bill allows DOH to develop a reasonable fee schedule to be used solely to pay for the costs of administering the inspection program.

The bill specifies the administrative responsibilities of DOH include providing notice to the system owner at least 60 days before the OSTDS is due for an inspection and providing uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted rules.

The bill specifies that owners are responsible for the inspection costs and any associated required pump-out costs; and requires DOH to provide a 60-day minimum notice of inspection deadline.

B. SECTION DIRECTORY:

Section 1 repeals s. 381.00651, F.S.

Section 2 creates s. 381.00653, F.S., to establish a periodic inspection program.

Section 3 provides an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact to DOH associated with rulemaking that can be absorbed within existing resources. Further, the bill may have an indeterminate negative fiscal impact associated with providing notifications for periodic inspections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on county health departments that coordinate permitting and inspections of OSTDSs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on owners of OSTDSs that will be required to cover the costs of periodic inspections and the associated pump-out. Based on the DOH's 2008 report "Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program," costs to OSTDS owners for a system inspection and pump-out conducted by a registered septic tank or master septic tank contractor, or a state licensed plumber, are estimated at average of \$500. If the OSTDS is in failure, a typical repair cost is estimated to range from approximately \$2,000 to \$4,000 with an average cost of \$3,000 for a standard gravity system.¹⁵

The bill may have an indeterminate positive fiscal impact on business that perform OSTDS inspections and repair or replace OSTDSs.

D. FISCAL COMMENTS:

¹⁵ DOH, Agency Analysis of 2019 Senate Bill 214, p. 7 (Feb. 8, 2019).
STORAGE NAME: h0085a.ANRS
DATE: 3/29/2019

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, the bill appears to implicate Art. VII, s. 19 of the Florida Constitution because the bill authorizes DOH to develop a fee schedule to be used to pay for the costs of administering the inspection program.

B. RULE-MAKING AUTHORITY:

The bill requires DOH to adopt rules to administer the periodic inspection program, including standards for functioning systems, enforcement procedures, and inspection cycles. While the bill does not expressly grant rulemaking authority to DOH, DOH possesses sufficient rulemaking authority to comply with these statutory changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2019, the Agriculture & Natural Resources Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment removed the requirement that the seller of a property with an OSTDS provide a disclosure summary to a prospective buyer and the requirement that DOH create a database of all OSTDSs in the state. The amendment created the periodic inspection program in a new section and required: OSTDSs to be inspected at least once every five years by a qualified contractor; a procedure for the inspection; a signed inspection report to be provided to DOH; notice to be provided to the OSTDS owner at least 60 days before the OSTDS is due for inspection; and owners to be responsible for paying the cost of the inspection and any required pump-out.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.