

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 Committee on Appropriations

BILL: CS/CS/SB 856

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Environment and Natural Resources Committee; and Senators Brodeur and Rodrigues

SUBJECT: Private Provider Inspections of Onsite Sewage Treatment and Disposal Systems

DATE: February 25, 2022 **REVISED:** _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Collazo	Rogers	EN	Fav/CS
2. Reagan	Betta	AEG	Recommend: Fav/CS
3. Reagan	Sadberry	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 856 authorizes the owner (or an authorized contractor) of an onsite sewage treatment and disposal system (OSTDS) to hire a private provider to inspect the OSTDS.

The bill provides that an inspection of an OSTDS may not be conducted by private provider or the authorized representative of the private provider that installed the OSTDS.

The bill provides that OSTDS inspections may only be performed by a private provider (or an authorized representative) and identifies the qualifications to be a private provider.

The bill requires an owner or an authorized contractor using a private provider for an OSTDS inspection to provide notice to the DEP within certain timeframes before the first scheduled inspection by the DEP. It also prescribes what information the notice must include, including information regarding the private provider and an owner acknowledgment in a form specified in the bill.

The bill authorizes the DEP to audit up to 25 percent of private providers each year to ensure the accurate performance of OSTDS inspections by a private provider, this provision does not, however, prevent the DEP from investigating complaints. Work on a building, a structure, or an OSTDS may proceed after inspection and approval by a private provider if the owner or authorized contractor has given notice of the inspection as described in the bill and, subsequent

to such inspection and approval, such work may not be delayed for completion of an inspection audit by the DEP unless deficiencies are found in the audit.

The bill requires the DEP to submit a report to the President of the Senate and the Speaker of the House of Representatives reviewing the use of private providers to perform OSTDS inspections by October 1, 2023.

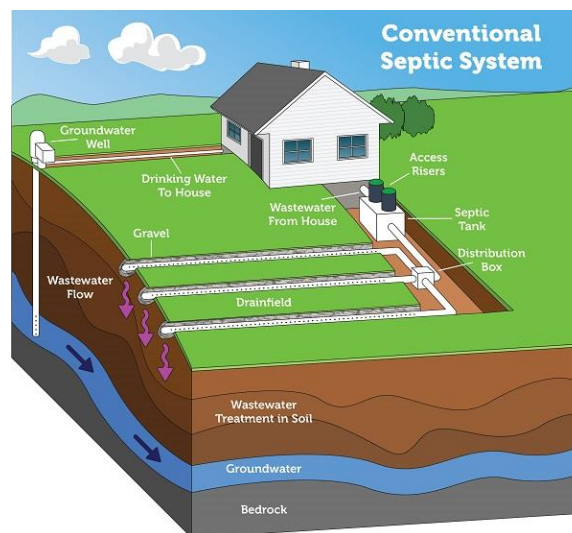
The bill requires the DEP to adopt rules to implement the bill and to initiate the rulemaking process by August 31, 2022.

The bill may result in reduced revenues to the DEP due to reduced inspection fees that would now be collected by private providers.

II. Present Situation:

Onsite Sewage Treatment and Disposal Systems

OSTDSs, commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.¹ Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.²



¹ Department of Health (DOH), *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Nov. 18, 2021); Environmental Protection Agency, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Nov. 18, 2021) (showing the graphic provided in the analysis).

² *Id.*

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state's population.³ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.⁴ For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.⁵ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.⁶

The Clean Waterways Act transferred the Onsite Sewage Program from the Department of Health (DOH) to the DEP, effective July 1, 2021.⁷ Accordingly, as of July 1, 2021, the DEP has assumed responsibility for conducting inspections associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of OSTDSs for residences and certain other establishments.⁸

DEP Inspections for Construction, Alteration, and Abandonment of OSTDSs

Regarding the installation or construction of OSTDSs, the DEP's Onsite Sewage Program regulations provide that, before covering an OSTDS with earth and before placing an OSTDS into service, a person installing or constructing any portion of an OSTDS must notify the DEP of the completion of construction activities and must have the system inspected by the DEP for compliance with applicable regulatory requirements, except for repair installations, which may be inspected by either the DEP or a master septic tank contractor under certain conditions.⁹

If an owner or an owner's authorized representative is proposing alterations to an existing and prior-approved OSTDS that will modify its sewage characteristics or increase sewage flow, the owner or authorized representative is required to apply for and receive reapproval of the OSTDS by the DEP prior to any alteration of the OSTDS. The owner or authorized representative must first have all system tanks pumped by a permitted septage disposal service, then have either a registered septic tank contractor, state-licensed plumber, person certified under s. 381.0101, F.S., or a master tank contractor determine the tank volume and perform a visual tank inspection to detect any observable defects or leaks in the tank. The person performing the inspection must submit the results of the inspection to the DEP.¹⁰

³ DOH, *Onsite Sewage*, <http://www.floridahealth.gov/environmental-health/onsite-sewage/index.html> (last visited Nov. 18, 2021).

⁴ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, § 1.0 (Oct. 1, 2008), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rrac/2008-11-06.pdf> (last visited Nov. 18, 2021). The report begins on page 56 of the PDF.

⁵ *Id.*

⁶ *Id.*

⁷ Chapter 2020-150, s. 2, Laws of Fla.

⁸ Section 381.0065(3)(b), F.S. Although the Department of Environmental Protection (DEP) is now responsible for the Onsite Sewage Program, the DEP and the DOH have agreed that county health departments should continue to have a role in the inspection, permitting, and tracking of OSTDSs, under the direction of DEP. See DOH and DEP, *Interagency Agreement between Florida Department of Environmental Protection and Florida Department of Health in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf> (last visited Nov. 18, 2021).

⁹ Fla. Admin. Code R. 62-6.003(2), (3).

¹⁰ Fla. Admin. Code R. 62-6.001(4), (4)(b), (5).

Whenever an owner or the owner's authorized representative wishes to abandon an OSTDS, the owner or the representative must apply for a permit from the DEP to abandon the OSTDS and submit the required fee.¹¹ Upon receiving a permit, the tank must be pumped out by a permitted septage disposal company, unless the tank is already empty and dry, in which case a written statement to that effect must be provided to the DEP. The bottom of the tank must then be opened or ruptured, or the entire tank collapsed, so as to prevent the tank from retaining water. The tank must also be filled with clean sand or other suitable material and completely covered with soil. The DEP or the local utility or plumbing authority performing the system abandonment must then perform an inspection of the system abandonment.¹²

The DEP maintains a schedule of fees, including inspection fees, for the services it provides.¹³

Periodic Evaluation and Assessment of Onsite Sewage Treatment and Disposal Systems

A county or municipality that contains a first magnitude spring must, and any county or municipality that does not contain a first magnitude spring may, develop and adopt by local ordinance an OSTDS evaluation and assessment program meeting the requirements of state law.¹⁴ There are exceptions. If a county or municipality that contains a first magnitude spring has already adopted an OSTDS evaluation and assessment program, and it meets the grandfathering provisions of the statute, it is exempt from the requirement.¹⁵ The governing body of a local government can also choose to opt out of the requirement by adopting a resolution by a 60 percent vote that indicates an intent to not adopt an OSTDS evaluation and assessment program.¹⁶

If adopted, the OSTDS evaluation and assessment program requires that each OSTDS within all or part of the county's or municipality's jurisdiction be evaluated once every five years to assess the fundamental operational condition of the system and to identify system failures.¹⁷ Evaluations must be performed by a qualified contractor, who may be a septic tank contractor or master septic tank contractor registered under state law; a professional engineer having wastewater treatment system experience and licensed under state law; or an environmental health professional certified under state law in the area of OSTDS evaluation.¹⁸ Evaluations and pump-outs may also be performed by an authorized employee working under the supervision of one of these individuals.¹⁹

The county or municipality adopting the OSTDS evaluation and assessment program may develop a reasonable fee schedule in consultation with the county health department. Fees are

¹¹ Fla. Admin. Code R. 62-6.011(2)(a). However, permitting is not necessary if a local utility or local plumbing authority performs a system abandonment program that includes completion of the other steps identified in the rule. Fla. Admin. Code R. 62-6.011(3).

¹² Fla. Admin. Code R. 62-6.011(2).

¹³ Fla. Admin. Code R. 62-6.030.

¹⁴ Section 381.00651(2), F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 381.00651(6)(a), F.S.

¹⁸ Section 381.00651(6)(b), F.S.

¹⁹ *Id.*

assessed to the system owner during the inspection and separately identified on the invoice of the qualified contractor. Fees are then remitted by the qualified contractor to the county health department.²⁰

III. Effect of Proposed Changes:

Section 1 amends s. 381.0065, F.S., to authorize – notwithstanding any other law, ordinance, or policy – the owner of an OSTDS, or a contractor upon the owner’s written authorization, to hire a private provider to perform an inspection of the owner’s OSTDS.

The bill provides that an inspection of an OSTDS may not be conducted by the private provider or authorized representative of the private provider that installed the OSTDS.

The bill provides that OSTDS inspections may only be performed by a private provider, or an authorized representative of a private provider, who is:

- An environmental health professional certified in accordance with state law;
- A master septic tank contractor registered in accordance with state law;
- A professional engineer licensed in accordance with state law, who has passed all parts of the Onsite Sewage Treatment Disposal System Accelerated Certification Training; or
- A person who is working under the supervision of a licensed professional engineer and who has passed all parts of the Onsite Sewage Treatment Disposal System Accelerated Certification Training.

The bill requires an owner or an authorized contractor using a private provider for an OSTDS inspection to provide notice to the DEP at the time of the permit application or by 2 p.m. local time, two business days before the first scheduled inspection by the DEP. The notice must include all of the following information:

- For each private provider or authorized representative performing the inspection:
 - Name and firm name, address, telephone number, and e-mail address;
 - Professional license or certification number; and
 - Qualification statement or resume.
- An acknowledgment from the owner in substantially the following form:

“I have elected to use one or more private providers to perform an onsite sewage treatment and disposal system inspection that is the subject of the enclosed permit application. I understand that the department may not perform the required onsite sewage treatment and disposal system inspection to determine compliance with the applicable codes, except to the extent authorized by law. Instead, the inspection will be performed by the licensed or certified private provider identified in the application. By executing this form, I acknowledge that I have made inquiry regarding the competence of the licensed or certified private provider and am satisfied that my interests are adequately protected. I agree to indemnify, defend, and hold harmless the department from any claims arising from my

²⁰ Section 381.00651(8), F.S.

use of the licensed or certified private provider identified in the application to perform the onsite sewage treatment and disposal system inspection that is the subject of the enclosed permit application. Additionally, I understand that in the event the onsite sewage treatment and disposal system does not comply with applicable rules and law, I will be responsible for remediating the system in accordance with existing law.”

Moreover, if an owner or authorized contractor makes any changes to the listed private provider or the service to be performed by the private provider, the owner or the authorized contractor must update the notice to reflect the change within one business day after the change. The change of an authorized representative identified in the permit application does not require a revision of the permit and the DEP may not charge a fee for making such change.

The bill authorizes the DEP to audit up to 25 percent of private providers each year to ensure the accurate performance of OSTDS inspections. Work on an OSTDS may proceed after inspection and approval by a private provider if the owner or authorized contractor has given notice of the inspection as described in the bill and, subsequent to such inspection and approval, such work may not be delayed for completion of an inspection audit by the DEP unless deficiencies are found in the audit.

The bill provides that OSTDS private provider inspection regulations do not prevent the DEP from investigating complaints.

The bill provides, that by October 1, 2023, the DEP shall submit a report to the President of the Senate and the Speaker of the House of Representatives reviewing the use of private providers to perform OSTDS inspections. The report must include, at a minimum, the number of inspections performed by private providers.

The bill requires that the DEP adopt rules to implement the bill and that the rulemaking process shall be initiated by August 31, 2022.

Section 2 provides that the bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private sector businesses that can serve the functions provided for in the bill may see a positive fiscal impact from the bill.

C. Government Sector Impact:

The DEP, the DOH, and county health departments may experience a negative fiscal impact due to the recovery of fewer onsite sewage treatment and disposal system inspection fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.0065 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on February 24, 2022:

The committee substitute:

- Authorizes the owner (or an authorized contractor) of an onsite sewage treatment and disposal system (OSTDS) to hire a private provider to inspect the OSTDS.
- Provides that an inspection of an OSTDS may not be conducted by private provider or the authorized representative of the private provider that installed the OSTDS.

- Amends the acknowledgment form from the owner, such that the owner also acknowledges that in the event the onsite sewage treatment and disposal system (OSTDS) does not comply with applicable rules and law, the owner will be responsible for remediating the system in accordance with existing law.
- Provides that the department may audit up to 25 percent of private providers each year to ensure the accurate performance of OSTDSs.
- Provides that the bill may not be construed as preventing the department from investigating complaints.
- Provides that work may not be delayed for completion of an inspection audit by the department unless deficiencies are found in the audit.
- Requires the DEP to submit a report to the President of the Senate and the Speaker of the House of Representatives reviewing the use of private providers to perform OSTDS inspections by October 1, 2023.
- Provides that the department must adopt rules to implement the bill, and must initiate rulemaking by August 31, 2022.
- Revises the effective date to July 1, 2022.

CS by Environment and Natural Resources on November 30, 2021:

Revises an existing definition of qualified contractors in state law to incorporate the list of private providers in the bill by reference. The bill also clarifies that a certain statutory provision authorizing counties and municipalities to charge fees for required springs protection/voluntarily-adopted OSTDS inspection programs may not be construed as authorizing the DEP to charge an inspection fee for inspections performed by private providers.

B. Amendments:

None.