**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 Environmental Preservation and Conservation Committee

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| BILL: | SB 820 |
| INTRODUCER: | Senator Dean |
| SUBJECT: | Onsite Sewage Treatment and Disposal Systems |
| DATE: | January 4, 2012 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Uchino | Yeatman | EP | **Pre-meeting** |
| 2. | | | HR | |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:

The 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 not affected.

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;
- A county or municipality to develop a database based on evaluation reports submitted. The database, which may be Internet-based, is required to include certain information and notify 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 a maximum fee of $20 to cover the costs of administering the evaluation program.

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;
- Provides for the reconnection of properly functioning septic systems, and clarifies that such systems are not considered "abandoned";
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of final approval of the system 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 $30-150; and
- Repeals various obsolete provisions.

The bill substantially amends ss. 381.0065 and 381.0066 of the Florida Statutes.

The bill repeals section 381.00656 of the Florida Statutes.

The bill creates section 381.00651 of the 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

[1] *See* s. 381.006, F.S.

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 five-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 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

[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 Dec. 19, 2011).
[4] Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, http://www.myfloridaeh.com/ostds/OSTDSdescription.html (last visited Dec. 19, 2011).
[5] *See* ch. 2008-152, Laws of Fla.
[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*, October 1, 2008, available at http://www.doh.state.fl.us/environment/ostds/pdfiles/forms/MSIP.pdf (last visited Dec. 19, 2011).
[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 Dec. 22, 2011). *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 Dec. 22, 2011).

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]

**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.[10] 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.[11]

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.[12]

| 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.[13]

[8] Florida Dep't of Heath, 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. 3, 2012).
[9] *Id.*
[10] Rule 64E-6.001, F.A.C.
[11] *Id.*
[12] Table adapted from Rule 64E-6.012, F.A.C.
[13] 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.[14] 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's 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).[15] 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.[16] 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

[14] 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.
[15] *See* ch. 2011-047, s. 13, Laws of Fla.
[16] 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.[17]

**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.[18] 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.[19] 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.[20] 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.[21] Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.[22] A county or municipality cannot forbid what legislature has expressly licensed, authorized or required, nor may it authorize what legislature has expressly forbidden.[23] The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.[24]

## 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 square footage 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

[17] U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations*, available at http://water.epa.gov/drink/contaminants/upload/mcl-2.pdf (last visited Dec. 22, 2011).
[18] FLA. CONST. art. VIII, s. 1(f).
[19] FLA. CONST. art. VIII, s. 1(g).
[20] FLA. CONST. art. VIII, s. 2(b); s*ee also* s. 166.021, F.S.
[21] *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).
[22] *Id.*
[23] *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).
[24] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

outside. A 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. The bill specifies that system capacity is based on a maximum of two persons per bedroom.

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. 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:

- the reconnection of the septic system is to the same type and approximate size of the rebuilt 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 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 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 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, 2012, are not affected by this bill.

A county or municipality may opt out by majority vote 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.
- 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, into surface water, into groundwater;
- a sanitary nuisance caused by the failure of building plumbing to discharge properly; or
- a drainfield not achieving minimum separation from the wettest-season water table.

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. For purposes of drainfield separation, septic systems installed before January 1, 1983, must achieve a 6-inch separation, while septic systems installed January 1, 1983, or later must achieve a 12-inch separation.

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 the requirements in effect at the times 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. However, repairs to a drainfield of a septic system installed on January 1, 1983, or later must achieve a 24-inch separation from the bottom of the drainfield to the wettest-season water table.

Any 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, will be exempt from the ordinance. Also exempt from an evaluation program are septic systems serving residential dwelling units on lots 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 from the requirements of an evaluation program passed as a result of this bill.

A county or municipality may exempt certain geographic areas from a septic system evaluation program if those areas will not reasonably lead to additional or continued degradation of a first magnitude spring. A county or municipality may also exempt or grant extensions to individuals to get septic system inspections if connection to a central sewer system is available, imminent and written arrangements for assessment or connection fees between the owner of the septic system and the utility have been made.

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 the size of the tank. 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.[25] The evaluation must note the presence and condition of:

- 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 and the minimum separation from the bottom of the drainfield to the wettest-season water table. If the drainfield does not meet the separation requirement, two additional measurements must be taken to verify the failure. Only one measurement needs to meet the separation requirement contained in this bill for the drainfield to be in compliance. The evaluation must contain a statement noting:

- the condition of the surface vegetation,
- whether there is any visible effluent on the ground or discharging to a ditch or water body,

[25] The septic tank baffle or tee is a device on the inlet or outlet of a septic tank which prevents sewage back-flow 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. 4, 2012).

- the drainfield separation, and
- identify the location of any downspout or drain that encroaches or drains into the drainfield area.

If the septic system contains pumps, siphons or alarms, the following information must 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;
- Whether there is a high-water alarm, including whether the type of alarm is audio or visual or both, the location of the alarm, its operational condition and whether the electrical connections appears satisfactory; and
- Whether surface water can infiltrate into the tank if it is pumped out.

The reporting procedures provided for in the bill require:

- The qualified contractor to document the evaluation procedures used;
- The qualified contractor to provide a copy of a written, signed evaluation report to the property owner, the county or municipality, 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;
- 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, drainfield problems, improper fit or other defects in the tank, manhole or lid, and any other missing component of the septic system;
- Noting if any sewage is present on the ground or discharging to a ditch or water body;
- The qualified contractor to document a failure of drainfield separation;
- The location of any downspout, stormwater or other source of water 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. Its responsibilities include:

- Developing a reasonable fee schedule not to exceed $20 per inspection in consultation with the county or municipality;
- Providing 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, adopting uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance;

- Assessing penalties against a septic tank owner who fails to comply with the requirements of an adopted ordinance;
- Developing a database and data collection system to encompass evaluation programs adopted by the county or municipalities within its jurisdiction, including:
  - The addresses or locations of the septic systems;
  - The number of septic systems within the local jurisdiction;
  - The total number and types of septic system failures; and
  - Any other trends deemed relevant by the county or municipality resulting from an assessment of the overall condition of the septic systems.

The database and any associated data collection system may be Internet-based. It may be designed for use by contractors to report service and evaluation documentation. It may also be used by a county health department to notify homeowners their evaluations are due. The database shall be kept current as service and evaluations are conducted and reported.

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 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.

**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 five-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 provisionrelated to setting a revenue neutral fee schedule for a state-wide septic system inspection program.

**Section** 5 provides an effective date of July 1, 2012.

**Other Potential Implications**:
When a structure is rebuilt after a disaster, the bill allows a functioning septic system to be reconnected to that structure provided the septic system was not adversely affected. The bill allows structures of the "approximate size" of the original structure to be reconnected. If additional bedrooms are added, the septic system may be undersized but will not have to be modified. Additionally, "approximate size" is a generic term subject to interpretation and inconsistent application. It may also lead to litigation because it is not defined.

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.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill allows a county or municipality to assess a maximum fee of $20 to cover the costs of administering the evaluation program.

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.

A core sample will need to be taken to determine the separation between the bottom of the drainfield and the wettest-season water table. The DOH conducts site and soil evaluations for $115 for an initial evaluation and $50 for a re-evaluation. Only certified people may conduct soil tests which may limit the number of evaluations a septic company could conduct per day unless additional employees were certified or hired. The DOH estimates that private parties charge $100 to $300 per soil sample. This cost would be included in the total evaluation fee charged by the septic system contractor and paid by the septic system owner.

Therefore, adding in all potential costs not including repairs or replacements required under current law, a septic system owner can be expected to pay between $270 and $820 every five years.

The DOH estimates a cost savings to the public of $2500 to $7500 per system through preventive maintenance, 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.[26] Counties or municipalities with first magnitude springs will be required to expend funds to implement the provisions of this bill unless they opt out. It is unknown whether the maximum $20 fee will be sufficient to cover programmatic expenses for the county, municipality or county health department. 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. In addition, the DOH estimates initial hardware and software expenses for a database system will cost $32,000. The DOH will also need three additional systems program consultants at annual base salaries of $49,427 and $10,000 in annual maintenance expenses. The DOH will also incur expenses for implementing the program, training and staffing, permitting and inspecting repairs, and enforcement.

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," "septic tank," "septic tank system" and "onsite system" to be understood in context as an "onsite sewage treatment and disposal system"; however, these terms are not defined in the bill. A septic tank is part of a septic system, which may lead to additional

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

confusion. The bill may need to be amended to define an "onsite sewage treatment and disposal system" as either an "onsite system" or a "septic system" if a shortened variant is warranted.

On line 874, the bill prohibits an ordinance from requiring a soil examination; however, this is the only process available to definitively determine the separation between the bottom of the drainfield and the wettest-season water table. The bill requires drainfields to achieve a minimum separation if a county or municipality implement a septic system evaluation program.

Between lines 932 and 935, the bill exempts certain septic systems from the evaluation program. The intent was to exempt a septic system serving a residential dwelling unit on a lot with a ratio of one bedroom to one or more acres. The language may be read to exempt a septic system only if it serves two or more lots.

Between lines 1018 and 1020, the bill references reporting requirements for conditions that may affect septic system performance as examples of drainfield separation failures. The reporting of any downspout, stormwater or other sources of water directed toward the septic system is not associated with drainfield separation failures. The two are separate reporting requirements.

On line 1032, the bill requires a county health department to consult with itself to develop a reasonable evaluation fee. The intent is that the county health department is required to consult with the county or municipality that adopts an ordinance.

The bill specifies a county or municipality may opt out by majority vote but does not specify the vote required for a county or municipality to opt in. It is presumed to also be a majority vote.

## 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.)

None.

B. Amendments:

None.