

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 Community Affairs Committee

BILL: CS/CS/CS/SB 1698

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

SUBJECT: Onsite Sewage Treatment and Disposal Systems

DATE: April 6, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. O'Callaghan	Stovall	HR	Fav/CS
2. Uchino	Yeatman	EP	Fav/CS
3. Wolfgang	Yeatman	CA	Fav/CS
4. _____	_____	BC	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS) for SB 1698 repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the Department of Health's (DOH) attendant rulemaking authority to implement the program.

This CS requires counties or municipalities to develop and adopt by local ordinance a local onsite sewage treatment and disposal system evaluation and assessment program (evaluation program), unless the county or municipality opts out and chooses not to participate in an evaluation program by resolution, which must be adopted before January 1, 2012, and filed with the Secretary of State. Existing programs are allowed to continue. Counties that have first magnitude springs or a set total maximum daily load of nutrients are prohibited from opting out.

If an evaluation program is adopted by a county or municipality by ordinance, this CS requires:

- A pump out and evaluation of a septic tank to be performed every five years, unless an exception applies.
- Certain persons to perform the pump out and evaluation.

- Notice to be given to septic tank owners at least 60 days before the septic tank is due for an evaluation.
- Penalties for qualified contractors and septic tank 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 tank.
- A county or municipality to develop a database and establish a computerized tracking system based on evaluation reports submitted. The system, 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.
- The Department of Environmental Protection (DEP), within existing resources, to notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and assist such local governments to model and establish low-interest loan programs.

The CS provides that a local ordinance may authorize the assessment of a fee to cover the costs of administering the evaluation program.

The CS repeals a grant program for the repair of onsite sewage treatment disposal systems.

The CS also:

- Defines “bedroom.”
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if, when the title is transferred, new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not “abandoned.”
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system under certain circumstances.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal 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.

This CS substantially amends the following sections of the Florida Statutes: 381.0065 and 381.0066.

The CS repeals section 381.00656 of the Florida Statutes.

This CS 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 an onsite sewage treatment and disposal function.¹

An "onsite sewage treatment and disposal system" is a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solid or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. The term does not include package sewage treatment facilities and other treatment works regulated under ch. 403, F.S.²

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

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide 5-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.⁵ This resulted in 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.

¹ See s. 381.006, F.S.

² Section 381.0065(2)(j), F.S.

³ Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, <http://www.myfloridaeh.com/ostds/index.html> (last visited Apr. 1, 2011).

⁴ Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (last visited Apr. 1, 2011).

⁵ See ch. 2008-152, Laws of Fla.

⁶ Florida Dep't of Health, *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/pdffiles/forms/MSIP.pdf> (last visited Mar. 24, 2011).

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 by today’s standards may be under-designed. The DOH’s statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic tank in Florida.⁷ Because repairs of onsite systems were not regulated until 1987, many systems may have been unlawfully modified. Furthermore, 1.3 million onsite systems were installed prior to 1983 and a significant fraction of the pre-1983 systems may have been installed with a 6-inch separation from the bottom of the drainfield to the estimated seasonal high water table. The current water table separation requirement is 24 inches and is based on research findings compiled by the DOH in 1989 that indicate for septic tank effluent, the presence of at least 2 feet (24 inches) of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for most wastewater constituents. Therefore, Florida’s pre-1983 systems may not provide the same level of protection expected from systems installed under current construction standards.⁸

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.⁹ Depending on the 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.¹⁰

Minimum required treatment capacities for systems serving any structure, building or group of buildings are based on estimated daily sewage flows as determined from the Table¹¹ below.

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

For each additional bedroom or each additional 750 square feet of building area, or fraction thereof, treatment capacity shall be increased by 100 gallons.

⁷ Dep’t of Health, *Onsite Sewage Treatment and Disposal Systems in Florida (2010)*, available at <http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf> (last visited Mar. 24, 2011). See also 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 Mar. 24, 2011).

⁸ *Id.*

⁹ Rule 64E-6.001, F.A.C.

¹⁰ *Id.*

¹¹ Table adapted from Rule 64E-6.012, F.A.C.

Minimum design flows for 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 per dwelling unit the estimated sewage flows are: for 1 bedroom with 750 square feet or less building area, 100 gallons; for 2 bedrooms with 751-1,200 square feet, 200 gallons; for 3 bedrooms with 1,201-2,250 square feet, 300 gallons; and for 4 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 are to be increased by 100 gallons per dwelling unit.¹²

Chapter 2010-205, Laws of Florida

In 2010, the Legislature enacted CS/CS/CS/SB 550, which became ch. 2010-205, Laws of Florida, and amended s. 381.0065, F.S. This newly enacted law provides for additional legislative intent on the importance of properly managing the State's septic tanks and creates a septic tank evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.¹³ The evaluation program is to:

- Require all septic tanks to be evaluated for functionality at least once every 5 years.
- Provide proper notice to septic owners that their evaluations are due.
- Ensure proper separations from the wettest season water table.
- Specify the professional qualifications necessary to carry out an evaluation.

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

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, but no more than \$5 of each evaluation fee may be used to fund the grant program. It also requires the State's Surgeon General, in consultation with the Revenue Estimating Conference, to determine a revenue neutral evaluation fee.

Springs in Florida

Florida has more than 700 recognized springs. First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Florida has 33 first magnitude springs in 18 counties that discharge more than 64 million gallons of water per day.¹⁴ 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.

¹² Rule 64E-6.008, F.A.C.

¹³ 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.

¹⁴ Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Apr. 1, 2011).

Total Maximum Daily Loads (TMDLs)

The Clean Water Act also requires that states identify impaired waters not meeting established Water Quality Standards (WQS). In such instances, a state establishes a total maximum daily load (TMDL), for those impaired waters. A TMDL is a value of the maximum amount of a pollutant that a body of water can receive and still meet WQS. The TMDL expresses the relationship between any necessary reduction of the pollutant of concern and the attainment of the numeric water quality target.

III. Effect of Proposed Changes:

The CS defines “bedroom” because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms. The term “bedroom” is defined as a room that can be used for sleeping which, for site-built dwellings, has a minimum 70 square feet of conditioned space, or, for manufactured homes constructed to HUD standards, has a minimum square footage of 50 square feet of floor area and is located along an exterior wall, has a closet and a door or an entrance where a door could be reasonably installed, and an emergency means of escape and rescue opening to the 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 and 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. For the purpose of determining system capacity, occupancy is calculated at a maximum of two persons per bedroom.

The CS provides that a permit issued and approved by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place. The CS also provides that a system is not considered “abandoned” if the properly functioning system is disconnected from a structure that was made unusable or destroyed following a disaster and the system was not adversely affected by the disaster. The onsite system may be reconnected to a rebuilt structure if:

- The reconnection of the system is to the same type and approximate size of the rebuilt structure that existed prior to the disaster;
- The system is not a sanitary nuisance; and
- The system has not been altered without prior authorization.

In addition, a system that serves a property that is foreclosed upon is not an abandoned system.

The CS 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 sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.

The CS provides that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.

The CS repeals the onsite sewage treatment and disposal system evaluation program, including program requirements, and the DOH's attendant rulemaking authority to implement the program.

Local governments must develop and adopt by ordinance a local onsite sewage treatment and disposal system evaluation and assessment program within all or part of its geographic area meeting the requirements of this section, if they:

- do not have onsite sewage treatment and disposal system evaluation and assessment programs, or
- do not opt out of this section.

A local government may opt out by majority vote of the local elected body before January 1, 2012, by adopting a separate resolution. 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 an onsite sewage treatment and disposal system evaluation and assessment program if the program meets the requirements of this section. The Secretary of State must be notified of whether or not the local government chose to adopt an ordinance or opted out.

Any county or municipality that has adopted such a program before July 1, 2011, may continue to enforce its provisions.

Any county identified as having a first magnitude spring within its boundaries is prohibited from opting out of this section. Any county in which a Total Maximum Daily Load for nutrients or bacteria has been established is prohibited from opting out of this section. Such counties may, however, adopt a local onsite sewage treatment and disposal system evaluation and assessment program that is more stringent than that required by this section.

For the purposes of the local ordinances, the term "system failure" is defined as a condition existing within an onsite sewage treatment and disposal system which results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water, or which results in a sanitary nuisance caused by the failure of building plumbing to discharge properly. A system is not a failure if the system does not have a minimum separation distance between the drainfield and the wet season water table, or if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield.

Local ordinances must provide for the following:

- An evaluation of any septic tank every 5 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 and may not require 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 chapter 471, F.S., or

- an environmental health professional certified under this chapter in the area of onsite sewage treatment and disposal system evaluation; all 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 system as a result of an evaluation unless the evaluation identifies a system failure. The local ordinance may not require more than the least costly remedial measure to resolve the system failure. The homeowner may choose the remedial measure to fix the system. There may be instances in which a pump out is sufficient to resolve a system failure. Remedial measures to resolve a system failure must meet the requirements in effect at the times specified in s. 381.0065(4)(g), F.S. (meaning that certain older septic systems can operate according to older remedial measures).

Any system that is required to obtain an operating permit or that is inspected by the department will be exempt from the ordinance.

The CS specifies procedures for conducting evaluations, including methods for:

- Tank evaluation;
- Drainfield evaluation;
- Special circumstances; and
- Procedure for assessment of the tank.

The county health department administers the evaluation program on behalf of a county, or a local government within the county, which has adopted an evaluation program. A local government, in consultation with the county health department, may develop a reasonable fee schedule to be used solely to pay for the costs of administering the evaluation program.

The county health department's administrative responsibilities include the following:

- Providing a notice to the septic tank owner at least 60 days before the septic tank is due for an evaluation.
- Providing uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance.
- Developing its own database and tracking systems to encompass evaluation programs adopted by the county or municipalities within its jurisdiction.

A county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program shall notify the DEP, DOH, and the county health department upon the adoption of an ordinance. DEP shall notify the county or municipality of the availability of program funds. Upon request by a county or municipality, DEP shall provide guidance or technical support to local government regarding applying for funds.

This CS requires the owner of an onsite sewage treatment and disposal system within a county's or municipality's jurisdiction that has implemented an evaluation program to have the system pumped out and evaluated at least once every five years to assess the fundamental operational condition of the system and to identify system failures. In addition to a pump out, the inspection procedures require the location of the system to be identified and the apparent structural

condition of water tightness of the tank to be assessed and the size of the tank to be estimated. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks, or other defects and baffles or tees must be checked to ensure that they are intact and secure.¹⁵ Furthermore, the evaluation must note the presence and condition of outlet devices, effluent filters, and compartment walls; any structural defect in the tank; and the condition and fit of the tank lid, including manholes. 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.

However, 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 system within the previous five years, the capacity is indicated on the documentation, and documentation shows the condition of the tank is structurally sound and watertight. Also, the local ordinance may not mandate an evaluation at the point of sale in a real estate transaction and may not require a soil examination.

This CS 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 an overall assessment of the drainfield and a determination of the approximate size and location of the drainfield, state the condition of the surface vegetation and whether there is any visible effluent, and identify the location of any downspout or drain that encroaches or drains into the drainfield area. If the 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 there are 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, and its operational condition; and
- Whether surface water can infiltrate into the tank and whether the tank was pumped out.

The assessment procedure provided for in the CS requires:

- 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;
- The local county health department to retain a copy of the evaluation report for a minimum of five years 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;

¹⁵ 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 Mar. 28, 2011).

- The report to identify tank defects, drainfield problems, and water flow problems or maintenance needed; and
- An overall assessment of the fundamental operational condition of the system.

This CS requires a county or municipality that adopts an evaluation program to develop a database and establish a computerized tracking system based on evaluation reports submitted. The data and information collected is to be recorded and updated as evaluations are conducted and reported. The system, which may be Internet-based, is required to notify homeowners when evaluations are due and the information tracked by the system must include:

- The addresses or locations of the onsite systems;
- The number of onsite systems within the local jurisdiction;
- The total number and types of system failures; and
- Any other trends deemed relevant by the county or municipality resulting from an assessment of the overall condition of the systems.

This CS requires a county or municipality that adopts an onsite sewage treatment and disposal system evaluation and assessment program to notify the Secretary of Environmental Protection upon the adoption of an ordinance establishing the program. The DEP must, upon request and within existing resources, notify the county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and provide guidance to the county or municipality in the application process to receive such funds. The DEP must also, upon request and within existing resources, provide advice and technical assistance to the county or municipality on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs.

The grant program for repair of onsite sewage treatment disposal systems administered by DOH is repealed.

The CS deletes the existing fees for the 5-year evaluation report.

This CS also reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee of not less than \$50 to a fee of not less than \$15 and from a fee of not more than \$150 to a fee of not more than \$30.

The CS provides that it will take effect upon becoming a law.

Other Potential Implications:

If the onsite sewage treatment and disposal system evaluation program is not repealed, the DOH is statutorily required to implement the program beginning on July 1, 2011.¹⁶

The CS prohibits local ordinances from requiring repairs, modifications or system replacements unless a system is found to be failing. System problems that do not rise to the level of a “system failure” cannot be required to be remedied under an ordinance. The septic tank owner will have the option to repair or modify a system with problems but not “failing” as defined by this CS.

¹⁶ See *supra* note 13.

Although seepages onto surface ground or surface water are explicitly included into “system failure,” seepage into groundwater is not explicitly included unless it could be construed as resulting in a “sanitary nuisance.”

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and it meets one of these exceptions:

- The Legislature appropriates funds or provides a funding source not available for such county or municipality on February 1, 1989;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or
- The law is required to comply with a federal requirement.

Subsection (d) provides an additional applicable exemption. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.88 million for FY 2010-2011), are exempt.

The Legislature has authorized a fee for this program that should satisfy the “funding source” requirement, and, therefore, this bill should not be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The CS allows a county or municipality by ordinance to assess a fee to cover the costs of administering the evaluation program.

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

B. Private Sector Impact:

Owners of onsite sewage treatment and disposal systems subject to the evaluation program will have to pay to have their systems evaluated every five years. The owners will also be responsible for the cost of required repairs, modifications or replacements of the system if it is found to be “failing.”

System owners would pay for an evaluation and pump out every five years. Current costs for pump outs range from \$150 to \$300 depending on the size of the tank and disposal options. Evaluation costs would be set by private contractors. System owners would pay for any repairs, including a permit fee. Repair costs can range from \$2,500 to \$7,500 depending on the work required. Requiring inspections will increase demand for services which may increase price and profitability at the expense of system owners.

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 an evaluation program is indeterminate as it depends on program requirements adopted by each county or municipality. Counties with first magnitude springs or TMDLs will be required to expend funds to implement the provisions of this CS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Counties with first magnitude springs or TMDLs within their boundaries are prohibited from opting out of the provisions of this CS. The counties with first magnitude springs are Alachua, Bay, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Madison, Marion, Suwannee, Taylor, Volusia and Wakulla. However, municipalities having first magnitude springs within their boundaries may opt out. Additionally, leakage of septic tank waste into groundwater is not defined as septic tank “system failure,” which may cause problems for local governments (especially those with first magnitude springs) that want to require replacement of tanks that are leaking into groundwater.

In addition, spring recharge areas for first magnitude springs can and do exist in multiple jurisdictions. Therefore, some counties will be required to implement and administer an evaluation program while their neighboring counties, which also impact their springs, can opt out.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on April 11, 2011:**

- Requires that the onsite evaluation program adopted by a local government be administered by a county health department.
 - The administrative functions are outlined and limited.
 - The law would allow for a local government in consultation with the county health department to establish a reasonable fee to be used solely for administration of the program.
 - Fees must be based upon the cost of the program and shall be identified in the local ordinance.
 - The fee would be charged to a septic tank owner in connection with the evaluation once every 5 years, would be identified separately on the invoice for the evaluation, and remitted to the county health department no later than 30 days following the evaluation by the qualified contractor.
- Makes remediation of “failing systems” consistent with current law.
- Repeals the grant program.
- Removes certain fees.
- Deletes the notification requirement.
- Allows forms to be “written or electronically signed” by a qualified contractor.
- Remedial measures to resolve a system failure may meet earlier requirements.
- Revises language relating to drainfield evaluation.
- Clarifies that a qualified contractor has no more than 30 days to submit evaluation report to the county health department.
- Requires the assessment report to contain the name and license number of the company providing the report.
- Allows ordinances to be grandfathered in.
- Prohibits local governments with assigned TMDLs from opting out.

CS by Environmental Preservation and Conservation on March 30, 2011:

The CS makes the following changes:

- Reinstates the ban on the land spreading of septage after January 1, 2016;
- Requires repairs, modifications and system replacements to meet current codes;
- Exempts systems that require operation permits or annual inspections from the evaluation program provisions;
- Prohibits counties with first magnitude springs within their boundaries from opting out of the evaluation program provisions;
- Changes the DEP’s role in aiding the local government application process for funding from providing “direct technical assistance” to “guidance”; and
- Removes a provision that required the DEP to provide advice and technical assistance to local governments on how to provide low-interest loans for repairs to residents with failing systems.

CS by Health Regulation on March 29, 2011:

The CS differs from the bill in that it:

- Replaces the pilot program for the periodic evaluation of onsite sewage treatment and disposal systems with local onsite sewage treatment and disposal system evaluation and assessment programs that are to be adopted by a county or municipality by ordinance, unless the county or municipality opts out of the program by a certain date by adopting a resolution.
- Provides certain requirements of an evaluation program to be implemented by a county or municipality.
- Defines “bedroom” for clarification purposes because septage flow is determined, and the construction of septage system units, are based, in part, on the number of bedrooms.
- Provides that a permit issued by the DOH for the installation, modification, or repair of an onsite sewage treatment system transfers with title to the property and a title is not encumbered if when the title is transferred new permit requirements are in place.
- Provides for the future use of unused, but properly functioning onsite sewage treatment systems, and clarifies that such systems are not “abandoned.”
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the sewage treatment and disposal system if fundamental site conditions have not changed between the time of construction approval and final approval.
- Clarifies that a modification, replacement, or upgrade of an onsite sewage treatment and disposal system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit for waterless, incinerating, or organic waste composting toilets fee from a fee not less than \$50 to a fee of not less than \$15 and from a fee not more than \$150 to a fee of not more than \$30.

B. Amendments:

None.