

By Senator Dean

3-01386-11

20111698

1 A bill to be entitled
2 An act relating to onsite sewage treatment and
3 disposal systems; amending s. 381.0065, F.S.; deleting
4 legislative intent; deleting provisions requiring the
5 Department of Health to administer an evaluation and
6 assessment program of onsite sewage treatment and
7 disposal systems and requiring property owners to have
8 such systems evaluated at least once every 5 years;
9 deleting provisions prohibiting the land application
10 of septage and requiring the Department of
11 Environmental Protection to recommend to the Governor
12 and Legislature alternative methods for land
13 application of septage; creating s. 381.00651, F.S.;
14 requiring the Department of Health to implement and
15 administer a pilot program for the periodic evaluation
16 of onsite sewage treatment and disposal systems
17 beginning from a certain date; providing criteria for
18 selecting counties within which to implement the pilot
19 program; authorizing the Department of Health to adopt
20 rules; providing for enforcement; allowing other
21 counties to participate in the evaluation program and
22 providing criteria; providing that certain counties in
23 certain circumstances are not required to participate
24 in the pilot program; requiring that owners of an
25 onsite sewage treatment and disposal system, excluding
26 a system for which an operating permit is required,
27 have the system pumped out and evaluated every 5
28 years; defining the term "system failure"; requiring
29 the department to adopt an evaluation form and

3-01386-11

20111698

30 providing criteria; requiring the department to create
31 a uniform statewide comprehensive evaluation,
32 tracking, and reporting system accessible through a
33 secure Internet connection; providing exceptions to
34 the pump-out requirement; authorizing the department
35 to require repairs, modifications, or replacement at
36 the owner's expense if a system failure is identified;
37 requiring the department to select the least costly
38 remedial measure; requiring the evaluation or pump out
39 to be performed by certain registered contractors,
40 licensed engineers, or certified environmental health
41 professionals; providing for an evaluation fee;
42 requiring the department to give to owners of systems
43 at least 60 days' notice before an evaluation
44 deadline; requiring the department and the Department
45 of Environmental Protection to collaborate on
46 providing notice to counties of certain available
47 funds and creating a revolving loan program that
48 provides low-interest loans to residents for the
49 repair of failing systems; requiring the department to
50 contract for the development of a uniform statewide
51 comprehensive computerized evaluation, tracking, and
52 reporting system and providing criteria; amending s.
53 381.00656, F.S.; extending the date by which the
54 Department of Health is required to begin
55 administering the grant program for the repair of
56 onsite sewage treatment disposal systems; adding a
57 cross-reference; amending s. 381.0066, F.S.;

58 conforming a cross-reference; lowering the fees

3-01386-11

20111698

59 imposed by the department for evaluation reports;
60 providing an effective date.

61
62 Be It Enacted by the Legislature of the State of Florida:

63
64 Section 1. Subsections (1), (5), (6), and (7) of section
65 381.0065, Florida Statutes, as amended by chapter 2010-283, Laws
66 of Florida, are amended to read:

67 381.0065 Onsite sewage treatment and disposal systems;
68 regulation.—

69 (1) LEGISLATIVE INTENT.—

70 ~~(a) It is the intent of the Legislature that proper~~
71 ~~management of onsite sewage treatment and disposal systems is~~
72 ~~paramount to the health, safety, and welfare of the public. It~~
73 ~~is further the intent of the Legislature that the department~~
74 ~~shall administer an evaluation program to ensure the operational~~
75 ~~condition of the system and identify any failure with the~~
76 ~~system.~~

77 ~~(b)~~ It is the intent of the Legislature that where a
78 publicly owned or investor-owned sewerage system is not
79 available, the department shall issue permits for the
80 construction, installation, modification, abandonment, or repair
81 of onsite sewage treatment and disposal systems under conditions
82 as described in this section and rules adopted under this
83 section. It is further the intent of the Legislature that the
84 installation and use of onsite sewage treatment and disposal
85 systems not adversely affect the public health or significantly
86 degrade the groundwater or surface water.

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

3-01386-11

20111698__

88 ~~(a) Beginning July 1, 2011, the department shall administer~~
89 ~~an onsite sewage treatment and disposal system evaluation~~
90 ~~program for the purpose of assessing the fundamental operational~~
91 ~~condition of systems and identifying any failures within the~~
92 ~~systems. The department shall adopt rules implementing the~~
93 ~~program standards, procedures, and requirements, including, but~~
94 ~~not limited to, a schedule for a 5-year evaluation cycle,~~
95 ~~requirements for the pump-out of a system or repair of a failing~~
96 ~~system, enforcement procedures for failure of a system owner to~~
97 ~~obtain an evaluation of the system, and failure of a contractor~~
98 ~~to timely submit evaluation results to the department and the~~
99 ~~system owner. The department shall ensure statewide~~
100 ~~implementation of the evaluation and assessment program by~~
101 ~~January 1, 2016.~~

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

107 ~~(c) All evaluation procedures must be documented and~~
108 ~~nothing in this subsection limits the amount of detail an~~
109 ~~evaluator may provide at his or her professional discretion. The~~
110 ~~evaluation must include a tank and drainfield evaluation, a~~
111 ~~written assessment of the condition of the system, and, if~~
112 ~~necessary, a disclosure statement pursuant to the department's~~
113 ~~procedure.~~

114 ~~(d)1. Systems being evaluated that were installed prior to~~
115 ~~January 1, 1983, shall meet a minimum 6-inch separation from the~~
116 ~~bottom of the drainfield to the wettest season water table~~

3-01386-11

20111698

117 ~~elevation as defined by department rule. All drainfield repairs,~~
118 ~~replacements or modifications to systems installed prior to~~
119 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
120 ~~the bottom of the drainfield to the wettest season water table~~
121 ~~elevation as defined by department rule.~~

122 ~~2. Systems being evaluated that were installed on or after~~
123 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
124 ~~the bottom of the drainfield to the wettest season water table~~
125 ~~elevation as defined by department rule. All drainfield repairs,~~
126 ~~replacements or modification to systems developed on or after~~
127 ~~January 1, 1983, shall meet a minimum 24-inch separation from~~
128 ~~the bottom of the drainfield to the wettest season water table~~
129 ~~elevation.~~

130 ~~(c) If documentation of a tank pump-out or a permitted new~~
131 ~~installation, repair, or modification of the system within the~~
132 ~~previous 5 years is provided, and states the capacity of the~~
133 ~~tank and indicates that the condition of the tank is not a~~
134 ~~sanitary or public health nuisance pursuant to department rule,~~
135 ~~a pump-out of the system is not required.~~

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

140 ~~(g) Each evaluation or pump-out required under this~~
141 ~~subsection must be performed by a septic tank contractor or~~
142 ~~master septic tank contractor registered under part III of~~
143 ~~chapter 489, a professional engineer with wastewater treatment~~
144 ~~system experience licensed pursuant to chapter 471, or an~~
145 ~~environmental health professional certified under chapter 381 in~~

3-01386-11

20111698

146 ~~the area of onsite sewage treatment and disposal system~~
147 ~~evaluation.~~

148 ~~(h) The evaluation report fee collected pursuant to s.~~
149 ~~381.0066(2)(b) shall be remitted to the department by the~~
150 ~~evaluator at the time the report is submitted.~~

151 ~~(i) Prior to any evaluation deadline, the department must~~
152 ~~provide a minimum of 60 days' notice to owners that their~~
153 ~~systems must be evaluated by that deadline. The department may~~
154 ~~include a copy of any homeowner educational materials developed~~
155 ~~pursuant to this section which provides information on the~~
156 ~~proper maintenance of onsite sewage treatment and disposal~~
157 ~~systems.~~

158 (5)~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.—

159 (a) Department personnel who have reason to believe
160 noncompliance exists, may at any reasonable time, enter the
161 premises permitted under ss. 381.0065-381.0066, or the business
162 premises of any septic tank contractor or master septic tank
163 contractor registered under part III of chapter 489, or any
164 premises that the department has reason to believe is being
165 operated or maintained not in compliance, to determine
166 compliance with the provisions of this section, part I of
167 chapter 386, or part III of chapter 489 or rules or standards
168 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
169 part III of chapter 489. As used in this paragraph, the term
170 "premises" does not include a residence or private building. To
171 gain entry to a residence or private building, the department
172 must obtain permission from the owner or occupant or secure an
173 inspection warrant from a court of competent jurisdiction.

174 (b)1. The department may issue citations that may contain

3-01386-11

20111698

175 an order of correction or an order to pay a fine, or both, for
176 violations of ss. 381.0065-381.0067, part I of chapter 386, or
177 part III of chapter 489 or the rules adopted by the department,
178 when a violation of these sections or rules is enforceable by an
179 administrative or civil remedy, or when a violation of these
180 sections or rules is a misdemeanor of the second degree. A
181 citation issued under ss. 381.0065-381.0067, part I of chapter
182 386, or part III of chapter 489 constitutes a notice of proposed
183 agency action.

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

187 3. The fines imposed by a citation issued by the department
188 may not exceed \$500 for each violation. Each day the violation
189 exists constitutes a separate violation for which a citation may
190 be issued.

191 4. The department shall inform the recipient, by written
192 notice pursuant to ss. 120.569 and 120.57, of the right to an
193 administrative hearing to contest the citation within 21 days
194 after the date the citation is received. The citation must
195 contain a conspicuous statement that if the recipient fails to
196 pay the fine within the time allowed, or fails to appear to
197 contest the citation after having requested a hearing, the
198 recipient has waived the recipient's right to contest the
199 citation and must pay an amount up to the maximum fine.

200 5. The department may reduce or waive the fine imposed by
201 the citation. In determining whether to reduce or waive the
202 fine, the department must consider the gravity of the violation,
203 the person's attempts at correcting the violation, and the

3-01386-11

20111698

204 person's history of previous violations including violations for
205 which enforcement actions were taken under ss. 381.0065-
206 381.0067, part I of chapter 386, part III of chapter 489, or
207 other provisions of law or rule.

208 6. Any person who willfully refuses to sign and accept a
209 citation issued by the department commits a misdemeanor of the
210 second degree, punishable as provided in s. 775.082 or s.
211 775.083.

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

216 8. This section provides an alternative means of enforcing
217 ss. 381.0065-381.0067, part I of chapter 386, and part III of
218 chapter 489. This section does not prohibit the department from
219 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
220 III of chapter 489, or its rules, by any other means. However,
221 the department must elect to use only a single method of
222 enforcement for each violation.

223 ~~(7) LAND APPLICATION OF SEPTAGE PROHIBITED. Effective~~
224 ~~January 1, 2016, the land application of septage from onsite~~
225 ~~sewage treatment and disposal systems is prohibited. By February~~
226 ~~1, 2011, the department, in consultation with the Department of~~
227 ~~Environmental Protection, shall provide a report to the~~
228 ~~Governor, the President of the Senate, and the Speaker of the~~
229 ~~House of Representatives, recommending alternative methods to~~
230 ~~establish enhanced treatment levels for the land application of~~
231 ~~septage from onsite sewage and disposal systems. The report~~
232 ~~shall include, but is not limited to, a schedule for the~~

3-01386-11

20111698

~~reduction in land application, appropriate treatment levels,
alternative methods for treatment and disposal, enhanced
application site permitting requirements including any
requirements for nutrient management plans, and the range of
costs to local governments, affected businesses, and individuals
for alternative treatment and disposal methods. The report shall
also include any recommendations for legislation or rule
authority needed to reduce land application of septage.~~

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

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

(1) Beginning January 1, 2012, the Department of Health
shall begin implementing and administering an evaluation pilot
program for onsite sewage treatment and disposal systems in
order to assess the fundamental operational condition of the
systems and identify any system failures. The pilot program may
be implemented only within those counties identified by the
Department of Environmental Protection which contain a first
magnitude spring or an impaired watershed basin. The
department's rulemaking authority is limited to adopting only
those rules that are necessary to establish:

(a) Enforcement procedures for a system owner whose system
does not comply with the evaluation program requirements or for
a contractor who fails to timely submit evaluation results to
the department and the system owner.

(b) Procedures necessary to ensure a uniform, orderly, and
consistent implementation of the program by the department in
affected counties, including those additional counties that

3-01386-11

20111698

262 voluntarily choose to participate in the pilot program, in whole
263 or in part.

264 (c) Inspection and tracking procedures and an evaluation
265 form pursuant to subsection (3).

266
267 In administering this program, the department has all of the
268 enforcement powers granted under s. 381.0065(5). Counties
269 outside the pilot program area may participate in the pilot
270 program pursuant to this section by adopting an ordinance and
271 providing written notice to the department. Such counties may
272 also partially participate in the program by having the program
273 apply only to certain areas of the county. Counties that have
274 established their own onsite sewage treatment and disposal
275 inspection program by ordinance, which ordinance has been in
276 effect for at least 1 year before the effective date of this
277 act, are not required to participate in the pilot program if the
278 county provides written notice to the department.

279 (2) The owner of an onsite sewage treatment and disposal
280 system, excluding a system for which an operating permit is
281 required, shall have the system pumped out and evaluated at
282 least once every 5 years to assess the fundamental operational
283 condition of the system and to identify system failures. For
284 purposes of this section, the term "system failure" means a
285 condition existing within an onsite sewage treatment and
286 disposal system which results in the discharge of untreated or
287 partially treated wastewater onto the ground surface or into
288 surface water, or which results in the failure of building
289 plumbing to discharge properly. No system failure exists solely
290 because the system does not have the minimum separation distance

3-01386-11

20111698

291 between the drainfield and the wet season water table.

292 (3) The department shall adopt by rule an evaluation form
293 that is developed by the department's technical review and
294 advisory panel. All evaluation procedures must be documented by
295 a contractor using the standardized form. At a minimum, the form
296 for the evaluation must include a basic tank and drainfield
297 evaluation and a written assessment of the condition of the
298 system. The department shall, as part of the uniform statewide
299 comprehensive evaluation, tracking, and reporting system to be
300 developed pursuant to subsection (10), allow the contractor to
301 submit via a secure Internet connection the information required
302 in the standardized form. The department shall provide that the
303 information is directly entered into the tracking and reporting
304 system.

305 (4) A pump out of the system is not required if the owner
306 of an onsite sewage treatment and disposal system provides
307 documentation that:

308 (a) Within the previous 5 years, the tank has been pumped
309 out or is a permitted new installation, repair, or modification
310 of the system;

311 (b) States the capacity of the tank; and

312 (c) States that the condition of the tank is structurally
313 sound and watertight.

314 (5) The department shall require that a system be repaired,
315 modified, or replaced if the evaluation identifies a system
316 failure. The department shall select the least costly remedial
317 measure to repair or to resolve the system failure. An
318 obstruction in a sanitary line, an effluent screen, or a filter
319 which prevents effluent from flowing into a drainfield is not a

3-01386-11

20111698

320 failure. The owner is responsible for paying the cost of any
321 required repair, modification, or replacement, and may not
322 request partial evaluation or the omission of portions of the
323 evaluation. Remedial measures to resolve a system failure must
324 bring the system into compliance with the code in place at the
325 time the system was originally permitted and installed.

326 (6) Each evaluation or pump out required under this section
327 must be performed by a septic tank contractor or master septic
328 tank contractor registered under part III of chapter 489, a
329 professional engineer licensed pursuant to chapter 471 who has
330 experience with wastewater treatment systems, or an
331 environmental health professional certified under chapter 381 in
332 the area of onsite sewage treatment and disposal system
333 evaluation. Evaluations and pump outs may also be performed by
334 authorized employees working under the supervision of the
335 individuals listed in this subsection.

336 (7) The evaluator shall remit the evaluation report fee
337 collected pursuant to s. 381.0066(2)(b) concurrently with the
338 report.

339 (8) The department shall provide notice to owners at least
340 60 days before an evaluation deadline that their systems must be
341 evaluated by the deadline. The department may include a copy of
342 any homeowner educational materials developed pursuant to this
343 section which provides information on the proper maintenance of
344 onsite sewage treatment and disposal systems.

345 (9) The department and the Department of Environmental
346 Protection shall collaborate to notify counties of program funds
347 available under s. 319 of the Clean Water Act, 33 U.S.C. s. 1251
348 et seq., as amended. The departments shall collaborate to create

3-01386-11

20111698

349 a revolving loan program modeled after the low-interest loan
350 program of the state revolving fund which provides low-interest
351 loans to residents for the repair of failing systems. Counties
352 are encouraged to sponsor remediation of areawide system
353 failures. The department shall provide direct assistance in the
354 application process to those counties that participate in and
355 establish low-interest loan programs for homeowners having
356 failing systems.

357 (10) The department shall contract with a qualified private
358 entity to develop a uniform statewide comprehensive computerized
359 evaluation, tracking, and reporting system for each county that
360 adopts a system evaluation program pursuant to this section. The
361 tracking system shall identify within each applicable county the
362 address, location, and total number of onsite systems; document
363 and categorize the number and types of failures; and assess the
364 overall condition of systems using the information as reported
365 and contained in the inspection form adopted pursuant to this
366 section. The data collected for the system evaluation and septic
367 tank inspection program shall be continuously updated and used
368 for the identification and categorization of onsite systems. The
369 tracking system shall be used to identify systems due for
370 inspection and to notify the department when the inspections are
371 to take place.

372 Section 3. Section 381.00656, Florida Statutes, is amended
373 to read:

374 381.00656 Grant program for repair of onsite sewage
375 treatment disposal systems.—Effective January 1, 2013 ~~2012~~, the
376 department shall administer a grant program to assist owners of
377 onsite sewage treatment and disposal systems identified pursuant

3-01386-11

20111698

378 to s. 381.0065, s. 381.00651, or the rules adopted thereunder. A
 379 grant under the program may be awarded to an owner only for the
 380 purpose of inspecting, pumping, repairing, or replacing a system
 381 serving a single-family residence occupied by an owner with a
 382 family income of less than or equal to 133 percent of the
 383 federal poverty level at the time of application. The department
 384 may prioritize applications for an award of grant funds based
 385 upon the severity of a system's failure, its relative
 386 environmental impact, the income of the family, or any
 387 combination thereof. The department shall adopt rules
 388 establishing the grant application and award process, including
 389 an application form. The department shall seek to make grants in
 390 each fiscal year equal to the total amount of grant funds
 391 available, with any excess funds used for grant awards in
 392 subsequent fiscal years.

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

395 381.0066 Onsite sewage treatment and disposal systems;
 396 fees.—

397 (2) The minimum fees in the following fee schedule apply
 398 until changed by rule by the department within the following
 399 limits:

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

404 (b) A 5-year evaluation report submitted pursuant to s.
 405 381.00651 ~~381.0065(5)~~: a fee not less than \$10 ~~\$15~~, or more than
 406 \$15 ~~\$30~~. At least ~~\$1~~ and no more than \$5 collected pursuant to

3-01386-11

20111698

407 this paragraph shall be used to fund a grant program established
408 under s. 381.00656.

409 (c) Site evaluation, site reevaluation, evaluation of a
410 system previously in use, or a per annum septage disposal site
411 evaluation: a fee of not less than \$40, or more than \$115.

412 (d) Biennial Operating permit for aerobic treatment units
413 or performance-based treatment systems: a fee of not more than
414 \$100.

415 (e) Annual operating permit for systems located in areas
416 zoned for industrial manufacturing or equivalent uses or where
417 the system is expected to receive wastewater which is not
418 domestic in nature: a fee of not less than \$150, or more than
419 \$300.

420 (f) Innovative technology: a fee not to exceed \$25,000.

421 (g) Septage disposal service, septage stabilization
422 facility, portable or temporary toilet service, tank
423 manufacturer inspection: a fee of not less than \$25, or more
424 than \$200, per year.

425 (h) Application for variance: a fee of not less than \$150,
426 or more than \$300.

427 (i) Annual operating permit for waterless, incinerating, or
428 organic waste composting toilets: a fee of not less than \$50, or
429 more than \$150.

430 (j) Aerobic treatment unit or performance-based treatment
431 system maintenance entity permit: a fee of not less than \$25, or
432 more than \$150, per year.

433 (k) Reinspection fee per visit for site inspection after
434 system construction approval or for noncompliant system
435 installation per site visit: a fee of not less than \$25, or more

3-01386-11

20111698

436 than \$100.

437 (l) Research: An additional \$5 fee shall be added to each
438 new system construction permit issued to be used to fund onsite
439 sewage treatment and disposal system research, demonstration,
440 and training projects. Five dollars from any repair permit fee
441 collected under this section shall be used for funding the
442 hands-on training centers described in s. 381.0065(3)(j).

443 (m) Annual operating permit, including annual inspection
444 and any required sampling and laboratory analysis of effluent,
445 for an engineer-designed performance-based system: a fee of not
446 less than \$150, or more than \$300.

447

448 On or before January 1, 2011, the Surgeon General, after
449 consultation with the Revenue Estimating Conference, shall
450 determine a revenue neutral fee schedule for services provided
451 pursuant to s. 381.00651 ~~381.0065(5)~~ within the parameters set
452 in paragraph (b). Such determination is not subject to the
453 provisions of chapter 120. The funds collected pursuant to this
454 subsection must be deposited in a trust fund administered by the
455 department, to be used for the purposes stated in this section
456 and ss. 381.0065 and 381.00655.

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