

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; defining the term "bedroom";
5 conforming cross-references; providing for any permit
6 issued and approved by the Department of Health for
7 the installation, modification, or repair of an onsite
8 sewage treatment and disposal system to transfer with
9 the title of the property; providing circumstances in
10 which an onsite sewage treatment and disposal system
11 is not considered abandoned; providing for the
12 validity of an onsite sewage treatment and disposal
13 system permit if rules change before final approval of
14 the constructed system, under certain conditions;
15 providing that a system modification, replacement, or
16 upgrade is not required unless a bedroom is added to a
17 single-family home; prohibiting governmental entities
18 from requiring certain systems after a specified date;
19 deleting provisions requiring the department to
20 administer an evaluation and assessment program of
21 onsite sewage treatment and disposal systems and
22 requiring property owners to have such systems
23 evaluated at least once every 5 years; deleting
24 obsolete provisions; creating s. 381.00651, F.S.;
25 requiring a county or municipality containing a first
26 magnitude spring to adopt by ordinance, under certain
27 circumstances, the program for the periodic evaluation
28 and assessment of onsite sewage treatment and disposal

29 | systems; requiring the county or municipality to
30 | notify the Secretary of State of the ordinance;
31 | authorizing a county or municipality, in specified
32 | circumstances, to opt out by a majority plus one vote
33 | of certain requirements by a specified date;
34 | authorizing a county or municipality to adopt or
35 | repeal, after a specified date, an ordinance creating
36 | an evaluation and assessment program, subject to
37 | notification of the Secretary of State; providing
38 | criteria for evaluations, qualified contractors, and
39 | repair of systems; providing for certain procedures
40 | and exemptions in special circumstances; defining the
41 | term "system failure"; requiring that certain
42 | procedures be used for conducting tank and drainfield
43 | evaluations; providing for certain procedures in
44 | special circumstances; providing for contractor
45 | immunity from liability under certain conditions;
46 | providing for assessment procedures; providing
47 | requirements for county health departments; requiring
48 | the Department of Health to allow county health
49 | departments and qualified contractors to access the
50 | state database to track data and evaluation reports;
51 | requiring counties and municipalities to notify the
52 | Secretary of Environmental Protection and the
53 | Department of Health when an evaluation program
54 | ordinance is adopted; requiring the Department of
55 | Environmental Protection to notify those counties or
56 | municipalities of the use of, and access to, certain

57 state and federal program funds and to provide certain
 58 guidance and technical assistance upon request;
 59 prohibiting the adoption of certain rules by the
 60 Department of Health; providing for applicability;
 61 repealing s. 381.00656, F.S., relating to a grant
 62 program for the repair of onsite sewage treatment and
 63 disposal systems; amending s. 381.0066, F.S.; lowering
 64 the fees imposed by the department for certain
 65 permits; conforming cross-references; providing an
 66 effective date.

67

68 Be It Enacted by the Legislature of the State of Florida:

69

70 Section 1. Subsections (1), (5), (6), and (7) of section
 71 381.0065, Florida Statutes, are amended, paragraphs (b) through
 72 (p) of subsection (2) of that section are redesignated as
 73 paragraphs (c) through (q), respectively, a new paragraph (b) is
 74 added to that subsection, paragraph (j) of subsection (3) and
 75 paragraph (n) of subsection (4) of that section are amended, and
 76 paragraphs (w) through (z) are added to subsection (4) of that
 77 section, to read:

78 381.0065 Onsite sewage treatment and disposal systems;
 79 regulation.—

80 (1) LEGISLATIVE INTENT.—

81 ~~(a)~~ It is the intent of the Legislature that proper
 82 management of onsite sewage treatment and disposal systems is
 83 paramount to the health, safety, and welfare of the public. ~~It~~
 84 ~~is further the intent of the Legislature that the department~~

85 ~~shall administer an evaluation program to ensure the operational~~
86 ~~condition of the system and identify any failure with the~~
87 ~~system.~~

88 ~~(b)~~ It is the intent of the Legislature that where a
89 publicly owned or investor-owned sewerage system is not
90 available, the department shall issue permits for the
91 construction, installation, modification, abandonment, or repair
92 of onsite sewage treatment and disposal systems under conditions
93 as described in this section and rules adopted under this
94 section. It is further the intent of the Legislature that the
95 installation and use of onsite sewage treatment and disposal
96 systems not adversely affect the public health or significantly
97 degrade the groundwater or surface water.

98 (2) DEFINITIONS.—As used in ss. 381.0065–381.0067, the
99 term:

100 (b)1. "Bedroom" means a room that can be used for sleeping
101 and that:

102 a. For site-built dwellings, has a minimum of 70 square
103 feet of conditioned space;

104 b. For manufactured homes, is constructed according to
105 standards of the United States Department of Housing and Urban
106 Development and has a minimum of 50 square feet of floor area;

107 c. Is located along an exterior wall;

108 d. Has a closet and a door or an entrance where a door
109 could be reasonably installed; and

110 e. Has an emergency means of escape and rescue opening to
111 the outside.

112 2. A room may not be considered a bedroom if it is used to

113 access another room except a bathroom or closet.

114 3. "Bedroom" does not include a hallway, bathroom,
115 kitchen, living room, family room, dining room, den, breakfast
116 nook, pantry, laundry room, sunroom, recreation room,
117 media/video room, or exercise room.

118 (3) DUTIES AND POWERS OF THE DEPARTMENT OF HEALTH.—The
119 department shall:

120 (j) Supervise research on, demonstration of, and training
121 on the performance, environmental impact, and public health
122 impact of onsite sewage treatment and disposal systems within
123 this state. Research fees collected under s. 381.0066(2)(k)
124 ~~381.0066(2)(l)~~ must be used to develop and fund hands-on
125 training centers designed to provide practical information about
126 onsite sewage treatment and disposal systems to septic tank
127 contractors, master septic tank contractors, contractors,
128 inspectors, engineers, and the public and must also be used to
129 fund research projects which focus on improvements of onsite
130 sewage treatment and disposal systems, including use of
131 performance-based standards and reduction of environmental
132 impact. Research projects shall be initially approved by the
133 technical review and advisory panel and shall be applicable to
134 and reflect the soil conditions specific to Florida. Such
135 projects shall be awarded through competitive negotiation, using
136 the procedures provided in s. 287.055, to public or private
137 entities that have experience in onsite sewage treatment and
138 disposal systems in Florida and that are principally located in
139 Florida. Research projects shall not be awarded to firms or
140 entities that employ or are associated with persons who serve on

141 either the technical review and advisory panel or the research
142 review and advisory committee.

143 (4) PERMITS; INSTALLATION; AND CONDITIONS.—A person may
144 not construct, repair, modify, abandon, or operate an onsite
145 sewage treatment and disposal system without first obtaining a
146 permit approved by the department. The department may issue
147 permits to carry out this section, but shall not make the
148 issuance of such permits contingent upon prior approval by the
149 Department of Environmental Protection, except that the issuance
150 of a permit for work seaward of the coastal construction control
151 line established under s. 161.053 shall be contingent upon
152 receipt of any required coastal construction control line permit
153 from the Department of Environmental Protection. A construction
154 permit is valid for 18 months from the issuance date and may be
155 extended by the department for one 90-day period under rules
156 adopted by the department. A repair permit is valid for 90 days
157 from the date of issuance. An operating permit must be obtained
158 prior to the use of any aerobic treatment unit or if the
159 establishment generates commercial waste. Buildings or
160 establishments that use an aerobic treatment unit or generate
161 commercial waste shall be inspected by the department at least
162 annually to assure compliance with the terms of the operating
163 permit. The operating permit for a commercial wastewater system
164 is valid for 1 year from the date of issuance and must be
165 renewed annually. The operating permit for an aerobic treatment
166 unit is valid for 2 years from the date of issuance and must be
167 renewed every 2 years. If all information pertaining to the
168 siting, location, and installation conditions or repair of an

169 onsite sewage treatment and disposal system remains the same, a
170 construction or repair permit for the onsite sewage treatment
171 and disposal system may be transferred to another person, if the
172 transferee files, within 60 days after the transfer of
173 ownership, an amended application providing all corrected
174 information and proof of ownership of the property. There is no
175 fee associated with the processing of this supplemental
176 information. A person may not contract to construct, modify,
177 alter, repair, service, abandon, or maintain any portion of an
178 onsite sewage treatment and disposal system without being
179 registered under part III of chapter 489. A property owner who
180 personally performs construction, maintenance, or repairs to a
181 system serving his or her own owner-occupied single-family
182 residence is exempt from registration requirements for
183 performing such construction, maintenance, or repairs on that
184 residence, but is subject to all permitting requirements. A
185 municipality or political subdivision of the state may not issue
186 a building or plumbing permit for any building that requires the
187 use of an onsite sewage treatment and disposal system unless the
188 owner or builder has received a construction permit for such
189 system from the department. A building or structure may not be
190 occupied and a municipality, political subdivision, or any state
191 or federal agency may not authorize occupancy until the
192 department approves the final installation of the onsite sewage
193 treatment and disposal system. A municipality or political
194 subdivision of the state may not approve any change in occupancy
195 or tenancy of a building that uses an onsite sewage treatment
196 and disposal system until the department has reviewed the use of

197 the system with the proposed change, approved the change, and
 198 amended the operating permit.

199 (n) Evaluations for determining the seasonal high-water
 200 table elevations or the suitability of soils for the use of a
 201 new onsite sewage treatment and disposal system shall be
 202 performed by department personnel, professional engineers
 203 registered in the state, or such other persons with expertise,
 204 as defined by rule, in making such evaluations. Evaluations for
 205 determining mean annual flood lines shall be performed by those
 206 persons identified in paragraph (2) (j) ~~(2) (i)~~. The department
 207 shall accept evaluations submitted by professional engineers and
 208 such other persons as meet the expertise established by this
 209 section or by rule unless the department has a reasonable
 210 scientific basis for questioning the accuracy or completeness of
 211 the evaluation.

212 (w) Any permit issued and approved by the department for
 213 the installation, modification, or repair of an onsite sewage
 214 treatment and disposal system shall transfer with the title to
 215 the property in a real estate transaction. A title may not be
 216 encumbered at the time of transfer by new permit requirements by
 217 a governmental entity for an onsite sewage treatment and
 218 disposal system which differ from the permitting requirements in
 219 effect at the time the system was permitted, modified, or
 220 repaired. No inspection of a system shall be mandated by any
 221 governmental entity at the point of sale in a real estate
 222 transaction. A governmental entity may not require an engineer-
 223 designed performance-based system after January 31, 2012.

224 (x)1. An onsite sewage treatment and disposal system is

225 not considered abandoned if the system is disconnected from a
226 structure that was made unusable or destroyed following a
227 disaster and was properly functioning at the time of
228 disconnection and not adversely affected by the disaster. The
229 onsite sewage treatment and disposal system may be reconnected
230 to a rebuilt structure if:

231 a. The reconnection of the system is to the same type of
232 structure which contains the same number of bedrooms or less,
233 provided the square footage of the structure is less than or
234 equal to 110 percent of the original square footage of the
235 structure that existed prior to the disaster;

236 b. The system is not a sanitary nuisance; and

237 c. The system has not been altered without prior
238 authorization.

239 2. An onsite sewage treatment and disposal system that
240 serves a property that is foreclosed upon is not considered
241 abandoned.

242 (y) If an onsite sewage treatment and disposal system
243 permittee receives, relies upon, and undertakes construction of
244 a system based upon a validly issued construction permit under
245 rules applicable at the time of construction but a change to a
246 rule occurs within 5 years after the approval of the system for
247 construction but before the final approval of the system, the
248 rules applicable and in effect at the time of construction
249 approval apply at the time of final approval if fundamental site
250 conditions have not changed between the time of construction
251 approval and final approval.

252 (z) A modification, replacement, or upgrade of an onsite

253 sewage treatment and disposal system is not required for a
254 remodeling addition to a single-family home if a bedroom is not
255 added.

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

257 ~~(a) Beginning July 1, 2011, the department shall~~
258 ~~administer an onsite sewage treatment and disposal system~~
259 ~~evaluation program for the purpose of assessing the fundamental~~
260 ~~operational condition of systems and identifying any failures~~
261 ~~within the systems. The department shall adopt rules~~
262 ~~implementing the program standards, procedures, and~~
263 ~~requirements, including, but not limited to, a schedule for a 5-~~
264 ~~year evaluation cycle, requirements for the pump out of a system~~
265 ~~or repair of a failing system, enforcement procedures for~~
266 ~~failure of a system owner to obtain an evaluation of the system,~~
267 ~~and failure of a contractor to timely submit evaluation results~~
268 ~~to the department and the system owner. The department shall~~
269 ~~ensure statewide implementation of the evaluation and assessment~~
270 ~~program by January 1, 2016.~~

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

276 ~~(c) All evaluation procedures must be documented and~~
277 ~~nothing in this subsection limits the amount of detail an~~
278 ~~evaluator may provide at his or her professional discretion. The~~
279 ~~evaluation must include a tank and drainfield evaluation, a~~
280 ~~written assessment of the condition of the system, and, if~~

281 ~~necessary, a disclosure statement pursuant to the department's~~
 282 ~~procedure.~~

283 ~~(d)1. Systems being evaluated that were installed prior to~~
 284 ~~January 1, 1983, shall meet a minimum 6-inch separation from the~~
 285 ~~bottom of the drainfield to the wettest season water table~~
 286 ~~elevation as defined by department rule. All drainfield repairs,~~
 287 ~~replacements or modifications to systems installed prior to~~
 288 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
 289 ~~the bottom of the drainfield to the wettest season water table~~
 290 ~~elevation as defined by department rule.~~

291 ~~2. Systems being evaluated that were installed on or after~~
 292 ~~January 1, 1983, shall meet a minimum 12-inch separation from~~
 293 ~~the bottom of the drainfield to the wettest season water table~~
 294 ~~elevation as defined by department rule. All drainfield repairs,~~
 295 ~~replacements or modification to systems developed on or after~~
 296 ~~January 1, 1983, shall meet a minimum 24-inch separation from~~
 297 ~~the bottom of the drainfield to the wettest season water table~~
 298 ~~elevation.~~

299 ~~(e) If documentation of a tank pump-out or a permitted new~~
 300 ~~installation, repair, or modification of the system within the~~
 301 ~~previous 5 years is provided, and states the capacity of the~~
 302 ~~tank and indicates that the condition of the tank is not a~~
 303 ~~sanitary or public health nuisance pursuant to department rule,~~
 304 ~~a pump-out of the system is not required.~~

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

309 ~~(g) Each evaluation or pump out required under this~~
 310 ~~subsection must be performed by a septic tank contractor or~~
 311 ~~master septic tank contractor registered under part III of~~
 312 ~~chapter 489, a professional engineer with wastewater treatment~~
 313 ~~system experience licensed pursuant to chapter 471, or an~~
 314 ~~environmental health professional certified under chapter 381 in~~
 315 ~~the area of onsite sewage treatment and disposal system~~
 316 ~~evaluation.~~

317 ~~(h) The evaluation report fee collected pursuant to s.~~
 318 ~~381.0066(2) (b) shall be remitted to the department by the~~
 319 ~~evaluator at the time the report is submitted.~~

320 ~~(i) Prior to any evaluation deadline, the department must~~
 321 ~~provide a minimum of 60 days' notice to owners that their~~
 322 ~~systems must be evaluated by that deadline. The department may~~
 323 ~~include a copy of any homeowner educational materials developed~~
 324 ~~pursuant to this section which provides information on the~~
 325 ~~proper maintenance of onsite sewage treatment and disposal~~
 326 ~~systems.~~

327 (5)~~(6)~~ ENFORCEMENT; RIGHT OF ENTRY; CITATIONS.-

328 (a) Department personnel who have reason to believe
 329 noncompliance exists, may at any reasonable time, enter the
 330 premises permitted under ss. 381.0065-381.0066, or the business
 331 premises of any septic tank contractor or master septic tank
 332 contractor registered under part III of chapter 489, or any
 333 premises that the department has reason to believe is being
 334 operated or maintained not in compliance, to determine
 335 compliance with the provisions of this section, part I of
 336 chapter 386, or part III of chapter 489 or rules or standards

337 adopted under ss. 381.0065-381.0067, part I of chapter 386, or
338 part III of chapter 489. As used in this paragraph, the term
339 "premises" does not include a residence or private building. To
340 gain entry to a residence or private building, the department
341 must obtain permission from the owner or occupant or secure an
342 inspection warrant from a court of competent jurisdiction.

343 (b)1. The department may issue citations that may contain
344 an order of correction or an order to pay a fine, or both, for
345 violations of ss. 381.0065-381.0067, part I of chapter 386, or
346 part III of chapter 489 or the rules adopted by the department,
347 when a violation of these sections or rules is enforceable by an
348 administrative or civil remedy, or when a violation of these
349 sections or rules is a misdemeanor of the second degree. A
350 citation issued under ss. 381.0065-381.0067, part I of chapter
351 386, or part III of chapter 489 constitutes a notice of proposed
352 agency action.

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

356 3. The fines imposed by a citation issued by the
357 department may not exceed \$500 for each violation. Each day the
358 violation exists constitutes a separate violation for which a
359 citation may be issued.

360 4. The department shall inform the recipient, by written
361 notice pursuant to ss. 120.569 and 120.57, of the right to an
362 administrative hearing to contest the citation within 21 days
363 after the date the citation is received. The citation must
364 contain a conspicuous statement that if the recipient fails to

365 pay the fine within the time allowed, or fails to appear to
 366 contest the citation after having requested a hearing, the
 367 recipient has waived the recipient's right to contest the
 368 citation and must pay an amount up to the maximum fine.

369 5. The department may reduce or waive the fine imposed by
 370 the citation. In determining whether to reduce or waive the
 371 fine, the department must consider the gravity of the violation,
 372 the person's attempts at correcting the violation, and the
 373 person's history of previous violations including violations for
 374 which enforcement actions were taken under ss. 381.0065-
 375 381.0067, part I of chapter 386, part III of chapter 489, or
 376 other provisions of law or rule.

377 6. Any person who willfully refuses to sign and accept a
 378 citation issued by the department commits a misdemeanor of the
 379 second degree, punishable as provided in s. 775.082 or s.
 380 775.083.

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

385 8. This section provides an alternative means of enforcing
 386 ss. 381.0065-381.0067, part I of chapter 386, and part III of
 387 chapter 489. This section does not prohibit the department from
 388 enforcing ss. 381.0065-381.0067, part I of chapter 386, or part
 389 III of chapter 489, or its rules, by any other means. However,
 390 the department must elect to use only a single method of
 391 enforcement for each violation.

392 (6)~~(7)~~ LAND APPLICATION OF SEPTAGE PROHIBITED.—Effective

393 January 1, 2016, the land application of septage from onsite
 394 sewage treatment and disposal systems is prohibited. ~~By February~~
 395 ~~1, 2011, the department, in consultation with the Department of~~
 396 ~~Environmental Protection, shall provide a report to the~~
 397 ~~Governor, the President of the Senate, and the Speaker of the~~
 398 ~~House of Representatives, recommending alternative methods to~~
 399 ~~establish enhanced treatment levels for the land application of~~
 400 ~~septage from onsite sewage and disposal systems. The report~~
 401 ~~shall include, but is not limited to, a schedule for the~~
 402 ~~reduction in land application, appropriate treatment levels,~~
 403 ~~alternative methods for treatment and disposal, enhanced~~
 404 ~~application site permitting requirements including any~~
 405 ~~requirements for nutrient management plans, and the range of~~
 406 ~~costs to local governments, affected businesses, and individuals~~
 407 ~~for alternative treatment and disposal methods. The report shall~~
 408 ~~also include any recommendations for legislation or rule~~
 409 ~~authority needed to reduce land application of septage.~~

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

412 381.00651 Periodic evaluation and assessment of onsite
 413 sewage treatment and disposal systems.-

414 (1) For the purposes of this section, the term "first
 415 magnitude spring" means a spring that has a median water
 416 discharge of greater than or equal to 100 cubic feet per second
 417 for the period of record, as determined by the Department of
 418 Environmental Protection.

419 (2) A county or municipality that contains a first
 420 magnitude spring shall, by no later than January 1, 2013,

421 develop and adopt by local ordinance an onsite sewage treatment
422 and disposal system evaluation and assessment program that meets
423 the requirements of this section. The ordinance may apply within
424 all or part of its geographic area. Those counties or
425 municipalities containing a first magnitude spring which have
426 already adopted an onsite sewage treatment and disposal system
427 evaluation and assessment program and which meet the
428 grandfathering requirements contained in this section, or have
429 chosen to opt out of this section in the manner provided herein,
430 are exempt from the requirement to adopt an ordinance
431 implementing an evaluation and assessment program. The governing
432 body of a local government that chooses to opt out of this
433 section, by a majority plus one vote of the members of the
434 governing board, shall do so by adopting a resolution that
435 indicates an intent on the part of such local government not to
436 adopt an onsite sewage treatment and disposal system evaluation
437 and assessment program. Such resolution shall be addressed and
438 transmitted to the Secretary of State. Absent an interlocal
439 agreement or county charter provision to the contrary, a
440 municipality may elect to opt out of the requirements of this
441 section, by a majority plus one vote of the members of the
442 governing board, notwithstanding a contrary decision of the
443 governing body of a county. Any local government that has
444 properly opted out of this section but subsequently chooses to
445 adopt an evaluation and assessment program may do so only
446 pursuant to the requirements of this section and may not deviate
447 from such requirements.

448 (3) Any county or municipality that does not contain a

449 first magnitude spring may at any time develop and adopt by
 450 local ordinance an onsite sewage treatment and disposal system
 451 evaluation and assessment program, provided such program meets
 452 and does not deviate from the requirements of this section.

453 (4) Notwithstanding any other provision in this section, a
 454 county or municipality that has adopted a program before July 1,
 455 2011, may continue to enforce its current program without having
 456 to meet the requirements of this section, provided such program
 457 does not require an evaluation at the point of sale in a real
 458 estate transaction.

459 (5) Any county or municipality may repeal an ordinance
 460 adopted pursuant to this section only if the county or
 461 municipality notifies the Secretary of State by letter of the
 462 repeal. No county or municipality may adopt an onsite sewage
 463 treatment and disposal system evaluation and assessment program
 464 except pursuant to this section.

465 (6) The requirements for an onsite sewage treatment and
 466 disposal system evaluation and assessment program are as
 467 follows:

468 (a) Evaluations.—An evaluation of each onsite sewage
 469 treatment and disposal system within all or part of the county's
 470 or municipality's jurisdiction must take place once every 5
 471 years to assess the fundamental operational condition of the
 472 system and to identify system failures. The ordinance may not
 473 mandate an evaluation at the point of sale in a real estate
 474 transaction and may not require a soil examination. The location
 475 of the system shall be identified. A tank and drainfield
 476 evaluation and a written assessment of the overall condition of

477 the system pursuant to the assessment procedure prescribed in
478 subsection (7) are required.

479 (b) Qualified contractors.—Each evaluation required under
480 this subsection must be performed by a qualified contractor, who
481 may be a septic tank contractor or master septic tank contractor
482 registered under part III of chapter 489, a professional
483 engineer having wastewater treatment system experience and
484 licensed under chapter 471, or an environmental health
485 professional certified under this chapter in the area of onsite
486 sewage treatment and disposal system evaluation. Evaluations and
487 pump-outs may also be performed by an authorized employee
488 working under the supervision of an individual listed in this
489 paragraph; however, all evaluation forms must be signed by a
490 qualified contractor in writing or by electronic signature.

491 (c) Repair of systems.—The local ordinance may not require
492 a repair, modification, or replacement of a system as a result
493 of an evaluation unless the evaluation identifies a system
494 failure. For purposes of this subsection, the term "system
495 failure" means a condition existing within an onsite sewage
496 treatment and disposal system which results in the discharge of
497 untreated or partially treated wastewater onto the ground
498 surface or into surface water or that results in the failure of
499 building plumbing to discharge properly and presents a sanitary
500 nuisance. A system is not in failure if the system does not have
501 a minimum separation distance between the drainfield and the
502 wettest season water table or if an obstruction in a sanitary
503 line or an effluent screen or filter prevents effluent from
504 flowing into a drainfield. If a system failure is identified and

505 several allowable remedial measures are available to resolve the
506 failure, the system owner may choose the least costly allowable
507 remedial measure to fix the system. There may be instances in
508 which a pump-out is sufficient to resolve a system failure.
509 Allowable remedial measures to resolve a system failure are
510 limited to what is necessary to resolve the failure and must
511 meet, to the maximum extent practicable, the requirements of the
512 repair code in effect when the repair is made, subject to the
513 exceptions specified in s. 381.0065(4)(g). An engineer-designed
514 performance-based treatment system to reduce nutrients may not
515 be required as an alternative remediation measure to resolve the
516 failure of a conventional system.

517 (d) Exemptions.-

518 1. The local ordinance shall exempt from the evaluation
519 requirements any system that is required to obtain an operating
520 permit pursuant to state law or that is inspected by the
521 department pursuant to the annual permit inspection requirements
522 of chapter 513.

523 2. The local ordinance may provide for an exemption or an
524 extension of time to obtain an evaluation and assessment if
525 connection to a sewer system is available, connection to the
526 sewer system is imminent, and written arrangements for payment
527 of any utility assessments or connection fees have been made by
528 the system owner.

529 3. An onsite sewage treatment and disposal system serving
530 a residential dwelling unit on a lot with a ratio of one bedroom
531 per acre or greater is exempt from the requirements of this
532 section and may not be included in any onsite sewage treatment

533 and disposal system inspection program.

534 (7) The following procedures shall be used for conducting
535 evaluations:

536 (a) Tank evaluation.—The tank evaluation shall assess the
537 apparent structural condition and watertightness of the tank and
538 shall estimate the size of the tank. The evaluation must include
539 a pump-out. However, an ordinance may not require a pump-out if
540 there is documentation indicating that a tank pump-out or a
541 permitted new installation, repair, or modification of the
542 system has occurred within the previous 5 years, identifying the
543 capacity of the tank, and indicating that the condition of the
544 tank is structurally sound and watertight. Visual inspection of
545 the tank must be made when the tank is empty to detect cracks,
546 leaks, or other defects. Baffles or tees must be checked to
547 ensure that they are intact and secure. The evaluation shall
548 note the presence and condition of outlet devices, effluent
549 filters, and compartment walls; any structural defect in the
550 tank; the condition and fit of the tank lid, including manholes;
551 whether surface water can infiltrate the tank; and whether the
552 tank was pumped out. If the tank, in the opinion of the
553 qualified contractor, is in danger of being damaged by leaving
554 the tank empty after inspection, the tank shall be refilled
555 before concluding the inspection. Broken or damaged lids or
556 manholes shall be replaced without obtaining a repair permit.

557 (b) Drainfield evaluation.—The drainfield evaluation must
558 include a determination of the approximate size and location of
559 the drainfield. The evaluation shall state whether there is any
560 sewage or effluent visible on the ground or discharging to a

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561 ditch or other water body and the location of any downspout or
562 other source of water near or in the vicinity of the drainfield.

563 (c) Special circumstances.—If the system contains pumps,
564 siphons, or alarms, the following information may be provided at
565 the request of the homeowner:

566 1. An assessment of dosing tank integrity, including the
567 approximate volume and the type of material used in the tank's
568 construction;

569 2. Whether the pump is elevated off the bottom of the
570 chamber and its operational status;

571 3. Whether the system has a check valve and purge hole;
572 and

573 4. Whether the system has a high-water alarm, and if so
574 whether the alarm is audio or visual or both, the location and
575 operational condition of the alarm, and whether the electrical
576 connections to the alarm appear satisfactory.

577
578 If the homeowner does not request this information, the
579 qualified contractor and its employee are not liable for any
580 damages directly relating from a failure of the system's pumps,
581 siphons, or alarms. This exclusion of liability must be stated
582 on the front cover of the report required under paragraph (d).

583 (d) Assessment procedure.—All evaluation procedures used
584 by a qualified contractor shall be documented in the
585 environmental health database of the Department of Health. The
586 qualified contractor shall provide a copy of a written, signed
587 evaluation report to the property owner upon completion of the
588 evaluation and to the county health department within 30 days

589 after the evaluation. The report shall contain the name and
590 license number of the company providing the report. A copy of
591 the evaluation report shall be retained by the local county
592 health department for a minimum of 5 years and until a
593 subsequent inspection report is filed. The front cover of the
594 report must identify any system failure and include a clear and
595 conspicuous notice to the owner that the owner has a right to
596 have any remediation of the failure performed by a qualified
597 contractor other than the contractor performing the evaluation.
598 The report must further identify any crack, leak, improper fit,
599 or other defect in the tank, manhole, or lid, and any other
600 damaged or missing component; any sewage or effluent visible on
601 the ground or discharging to a ditch or other surface water
602 body; any downspout, stormwater, or other source of water
603 directed onto or toward the system; and any other maintenance
604 need or condition of the system at the time of the evaluation
605 which, in the opinion of the qualified contractor, would
606 possibly interfere with or restrict any future repair or
607 modification to the existing system. The report shall conclude
608 with an overall assessment of the fundamental operational
609 condition of the system.

610 (8) The county health department shall administer any
611 evaluation program on behalf of a county, or a municipality
612 within the county, that has adopted an evaluation program
613 pursuant to this section. In order to administer the evaluation
614 program, the county or municipality, in consultation with the
615 county health department, may develop a reasonable fee schedule
616 to be used solely to pay for the costs of administering the

617 evaluation program. Such a fee schedule shall be identified in
618 the ordinance that adopts the evaluation program. When arriving
619 at a reasonable fee schedule, the estimated annual revenues to
620 be derived from fees may not exceed reasonable estimated annual
621 costs of the program. Fees shall be assessed to the system owner
622 during an inspection and separately identified on the invoice of
623 the qualified contractor. Fees shall be remitted by the
624 qualified contractor to the county health department. The county
625 health department's administrative responsibilities include the
626 following:

627 (a) Providing a notice to the system owner at least 60
628 days before the system is due for an evaluation. The notice may
629 include information on the proper maintenance of onsite sewage
630 treatment and disposal systems.

631 (b) In consultation with the Department of Health,
632 providing uniform disciplinary procedures and penalties for
633 qualified contractors who do not comply with the requirements of
634 the adopted ordinance, including, but not limited to, failure to
635 provide the evaluation report as required in this subsection to
636 the system owner and the county health department. Only the
637 county health department may assess penalties against system
638 owners for failure to comply with the adopted ordinance,
639 consistent with existing requirements of law.

640 (9) (a) A county or municipality that adopts an onsite
641 sewage treatment and disposal system evaluation and assessment
642 program pursuant to this section shall notify the Secretary of
643 Environmental Protection, the Department of Health, and the
644 applicable county health department upon the adoption of its

645 ordinance establishing the program.

646 (b) Upon receipt of the notice under paragraph (a), the
647 Department of Environmental Protection shall, within existing
648 resources, notify the county or municipality of the potential
649 use of, and access to, program funds under the Clean Water State
650 Revolving Fund or s. 319 of the Clean Water Act, provide
651 guidance in the application process to receive such moneys, and
652 provide advice and technical assistance to the county or
653 municipality on how to establish a low-interest revolving loan
654 program or how to model a revolving loan program after the low-
655 interest loan program of the Clean Water State Revolving Fund.
656 This paragraph does not obligate the Department of Environmental
657 Protection to provide any county or municipality with money to
658 fund such programs.

659 (c) The Department of Health may not adopt any rule that
660 alters the provisions of this section.

661 (d) The Department of Health must allow county health
662 departments and qualified contractors access to the
663 environmental health database to track relevant information and
664 assimilate data from assessment and evaluation reports of the
665 overall condition of onsite sewage treatment and disposal
666 systems. The environmental health database must be used by
667 contractors to report each service and evaluation event and by a
668 county health department to notify owners of onsite sewage
669 treatment and disposal systems when evaluations are due. Data
670 and information must be recorded and updated as service and
671 evaluations are conducted and reported.

672 (10) This section does not:

673 (a) Limit county and municipal home rule authority to act
674 outside the scope of the evaluation and assessment program set
675 forth in this section;

676 (b) Repeal or affect any other law relating to the subject
677 matter of onsite sewage treatment and disposal systems; or

678 (c) Prohibit a county or municipality from:

679 1. Enforcing existing ordinances or adopting new
680 ordinances relating to onsite sewage treatment facilities to
681 address public health and safety if such ordinances do not
682 repeal, suspend, or alter the requirements or limitations of
683 this section.

684 2. Adopting local environmental and pollution abatement
685 ordinances for water quality improvement as provided for by law
686 if such ordinances do not repeal, suspend, or alter the
687 requirements or limitations of this section.

688 3. Exercising its independent and existing authority to
689 meet the requirements of s. 381.0065.

690 Section 3. Section 381.00656, Florida Statutes, is
691 repealed.

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

694 381.0066 Onsite sewage treatment and disposal systems;
695 fees.—

696 (2) The minimum fees in the following fee schedule apply
697 until changed by rule by the department within the following
698 limits:

699 (a) Application review, permit issuance, or system
700 inspection, including repair of a subsurface, mound, filled, or

701 other alternative system or permitting of an abandoned system: a
 702 fee of not less than \$25, or more than \$125.

703 ~~(b) A 5-year evaluation report submitted pursuant to s.~~
 704 ~~381.0065(5): a fee not less than \$15, or more than \$30. At least~~
 705 ~~\$1 and no more than \$5 collected pursuant to this paragraph~~
 706 ~~shall be used to fund a grant program established under s.~~
 707 ~~381.00656.~~

708 (b)~~(e)~~ Site evaluation, site reevaluation, evaluation of a
 709 system previously in use, or a per annum septage disposal site
 710 evaluation: a fee of not less than \$40, or more than \$115.

711 (c)~~(d)~~ Biennial Operating permit for aerobic treatment
 712 units or performance-based treatment systems: a fee of not more
 713 than \$100.

714 (d)~~(e)~~ Annual operating permit for systems located in
 715 areas zoned for industrial manufacturing or equivalent uses or
 716 where the system is expected to receive wastewater which is not
 717 domestic in nature: a fee of not less than \$150, or more than
 718 \$300.

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

720 (f)~~(g)~~ Septage disposal service, septage stabilization
 721 facility, portable or temporary toilet service, tank
 722 manufacturer inspection: a fee of not less than \$25, or more
 723 than \$200, per year.

724 (g)~~(h)~~ Application for variance: a fee of not less than
 725 \$150, or more than \$300.

726 (h)~~(i)~~ Annual operating permit for waterless,
 727 incinerating, or organic waste composting toilets: a fee of not
 728 less than \$15 ~~\$50~~, or more than \$30 ~~\$150~~.

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729 (i)~~(j)~~ Aerobic treatment unit or performance-based
730 treatment system maintenance entity permit: a fee of not less
731 than \$25, or more than \$150, per year.

732 (j)~~(k)~~ Reinspection fee per visit for site inspection
733 after system construction approval or for noncompliant system
734 installation per site visit: a fee of not less than \$25, or more
735 than \$100.

736 (k)~~(l)~~ Research: An additional \$5 fee shall be added to
737 each new system construction permit issued to be used to fund
738 onsite sewage treatment and disposal system research,
739 demonstration, and training projects. Five dollars from any
740 repair permit fee collected under this section shall be used for
741 funding the hands-on training centers described in s.
742 381.0065(3)(j).

743 (l)~~(m)~~ Annual operating permit, including annual
744 inspection and any required sampling and laboratory analysis of
745 effluent, for an engineer-designed performance-based system: a
746 fee of not less than \$150, or more than \$300.

747
748 ~~On or before January 1, 2011, the Surgeon General, after~~
749 ~~consultation with the Revenue Estimating Conference, shall~~
750 ~~determine a revenue neutral fee schedule for services provided~~
751 ~~pursuant to s. 381.0065(5) within the parameters set in~~
752 ~~paragraph (b). Such determination is not subject to the~~
753 ~~provisions of chapter 120.~~ The funds collected pursuant to this
754 subsection must be deposited in a trust fund administered by the
755 department, to be used for the purposes stated in this section
756 and ss. 381.0065 and 381.00655.

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