

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 999 Onsite Sewage Treatment and Disposal Systems

**SPONSOR(S):** State Affairs Committee, Appropriations Committee, Economic Affairs Committee, Dorworth and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/CS/SB 820

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Affairs Committee	14 Y, 1 N, As CS	Rojas	Tinker
2) Appropriations Committee	19 Y, 0 N, As CS	Clark	Leznoff
3) State Affairs Committee	14 Y, 2 N, As CS	Deslatte	Hamby

### SUMMARY ANALYSIS

The bill repeals the onsite sewage treatment and disposal system evaluation program, including legislative intent, program requirements, and the Department of Health's (DOH) rulemaking authority to implement the program.

The bill also:

- Creates a definition of bedroom for purposes of establishing thresholds for required treatment capacity.
- Provides that a permit issued by the DOH for the installation, modification, or repair of a septic system transfers with title to the property. Title is not encumbered when the title is transferred if new permit requirements are in place at the time of transfer.
- Provides that a governmental entity cannot require an engineered-designed performance-based treatment system prior to the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project or December 31, 2014, whichever comes first, unless a governmental entity adopted such a requirement before January 31, 2012.
- Provides for the reconnection of properly functioning septic systems, and clarifies that such systems are not considered abandoned.
- Clarifies that the rules applicable and in effect at the time of approval for construction apply at the time of final approval of the system under certain circumstances.
- Clarifies that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.
- Reduces the annual operating permit fee for waterless, incinerating, or organic waste composting toilets to a range of \$15-\$30 from a range of \$30-\$150.
- Repeals the grant program for low-income residents to repair and replace septic systems.
- Requires counties and municipalities with a first magnitude spring to develop and adopt by ordinance a local evaluation and assessment program, unless the county or municipality opts out.
- Authorizes all other counties and municipalities to establish local evaluation and assessment programs.

If an evaluation program is adopted by a county or municipality by ordinance, the bill sets the framework and allowable criteria, which includes:

- a pump out and evaluation of a septic system to be performed every five years;
- only persons authorized in the bill may perform the pump out and evaluation;
- notice to be given to septic system owners at least 60 days before the septic system is due for an evaluation;
- that a local ordinance may authorize the assessment of a reasonable fee to cover the costs of administering the evaluation program;
- penalties for qualified contractors and septic system owners who do not comply with the requirements of the evaluation program;
- a county or municipality must notify the Secretary of Environmental Protection, DOH and the local health department upon the adoption of the ordinance establishing the program; and
- the Department of Environmental Protection (DEP), within existing resources, must notify a county or municipality of potential funding under the Clean Water Act or Clean Water State Revolving Fund and assist such counties or municipalities to model and establish low-interest loan programs.

The bill has an unknown but likely insignificant fiscal impact that can be absorbed within the DOH's existing resources.

The bill is effective upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0999f.SAC

**DATE:** 2/23/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **The Department of Health's Regulation of Septic Tanks**

The DOH oversees an environmental health program as part of fulfilling the state's public health mission. The purpose of this program is to detect and prevent disease caused by natural and manmade factors in the environment. One component of the program is administration of septic systems.<sup>1</sup>

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.<sup>2</sup>

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

In 2008, the Legislature directed the DOH to submit a report to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by no later than October 1, 2008, which identifies the range of costs to implement a mandatory statewide five-year septic tank inspection program to be phased in over 10 years pursuant to the DOH's procedure for voluntary inspection, including use of fees to offset costs.<sup>5</sup> This resulted in the "Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program" (report).<sup>6</sup> According to the report, three Florida counties, Charlotte, Escambia and Santa Rosa, have implemented mandatory septic tank inspections at a cost of \$83 to \$215 per inspection.

The report stated that 99 percent of septic tanks in Florida are not under any management or maintenance requirements. Also, the report found that while these systems were designed and installed in accordance with the regulations at the time of construction and installation, many are aging and may be under-designed by today's standards. The DOH's statistics indicate that approximately 2 million septic systems are 20 years or older, which is the average lifespan of a septic system in

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<sup>1</sup> See s. 381.006, F.S.

<sup>2</sup> Section 381.0065(2)(j), F.S.

<sup>3</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Home*, <http://www.myfloridaeh.com/ostds/index.html> (last visited Jan. 13, 2012).

<sup>4</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *OSTDS Description*, <http://www.myfloridaeh.com/ostds/OSTDSdescription.html> (last visited Jan. 13, 2012).

<sup>5</sup> See ch. 2008-152, Laws of Fla.

<sup>6</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, October 1, 2008, available at <http://www.doh.state.fl.us/environment/ostds/pdfs/forms/MSIP.pdf> (last visited Jan. 13, 2012).

Florida.<sup>7</sup> Because repairs of septic systems were not regulated or permitted by the DOH until March 1992, some septic systems may have been unlawfully repaired, modified or replaced. Furthermore, 1.3 million septic systems were installed prior to 1983. Pre-1983 septic systems were required to have a six inch separation from the bottom of the drainfield to the estimated seasonal high water table. The standard since 1983 for drainfield separation is 24 inches and is based on the 1982 Water Quality Assurance Act and on research findings compiled by the DOH that indicate for septic tank effluent, the presence of at least 24 inches of unsaturated fine sandy soil is needed to provide a relatively high degree of treatment for pathogens and most other septic system effluent constituents.<sup>8</sup> Therefore, Florida's pre-1983 septic systems and any illegally repaired, modified or installed septic systems may not provide the same level of protection expected from systems permitted and installed under current construction standards.<sup>9</sup>

## 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.<sup>10</sup> Depending on the estimated sewage flow, the septic system may or may not be approved by the DOH. For example, a current three bedroom, 1,300 square foot home is able to add building area to have a total of 2,250 square feet of building area with no change in their approved system, provided no additional bedrooms are added.<sup>11</sup>

Minimum design flows for septic systems serving any structure, building or group of buildings are based on the estimated daily sewage flow. For residences, the flows are based on the number of bedrooms and square footage of building area. For a single or multiple family dwelling unit, the estimated sewage flows are: for one bedroom with 750 square feet or less building area, 100 gallons; for two bedrooms with 751-1,200 square feet, 200 gallons; for three bedrooms with 1,201-2,250 square feet, 300 gallons; and for four bedrooms with 2,251-3,300 square feet, 400 gallons. For each additional bedroom or each additional 750 square feet of building area or fraction thereof in a dwelling unit, system sizing is to be increased by 100 gallons.<sup>12</sup>

## Current Status of Evaluation Program

In 2010, SB 550 was signed into law, which became ch. 2010-205, L.O.F. This law provides for additional legislative intent on the importance of properly managing septic tanks and creates a septic system evaluation program. The DOH was to implement the evaluation program beginning January 1, 2011, with full implementation by January 1, 2016.<sup>13</sup> The evaluation program:

- requires all septic tanks to be evaluated for functionality at least once every five years;
- directs the DOH to provide proper notice to septic owners that their evaluations are due;
- ensures proper separations from the wettest-season water table; and
- specifies the professional qualifications necessary to carry out an evaluation.

The law also establishes a grant program under s. 381.00656, F.S., for owners of septic systems earning less than or equal to 133 percent of the federal poverty level. The grant program is to provide funding for inspections, pump-outs, repairs, or replacements. The DOH is authorized under the law to adopt rules to establish the application and award process for grants.

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<sup>7</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Onsite Sewage Treatment and Disposal Systems in Florida* (2010), available at <http://www.doh.state.fl.us/Environment/ostds/statistics/newInstallations.pdf> (last visited Dec. 22, 2011). See also Florida Dep't of Health, Bureau of Onsite Sewage, *What's New?*, available at <http://www.doh.state.fl.us/environment/ostds/New.htm> (last visited on Dec. 22, 2011).

<sup>8</sup> Florida Dep't of Health, Bureau of Onsite Sewage, *Bureau of Onsite Sewage Programs Introduction*, available at <http://www.doh.state.fl.us/Environment/learning/hses-intro-transcript.htm> (last visited Jan. 15, 2012).

<sup>9</sup> *Id.*

<sup>10</sup> Rule 64E-6.001, F.A.C.

<sup>11</sup> *Id.*

<sup>12</sup> Rule 64E-6.008, F.A.C.

<sup>13</sup> 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.

Finally, ch. 2010-205, L.O.F., amended s. 381.0066, F.S., establishing a minimum and maximum evaluation fee that the DOH can collect. No more than \$5 of each evaluation fee may be used to fund the grant program. The State's Surgeon General, in consultation with the Revenue Estimating Conference, must determine a revenue neutral evaluation fee.

Several bills were introduced during the 2011 Regular Session aimed at either eliminating the inspection program or scaling it back. Although none passed, language was inserted into a budget implementing bill that prohibited the DOH from expending funds to implement the inspection program until it submitted a plan to the Legislative Budget Commission (LBC).<sup>14</sup> If approved, the DOH would then be able to expend funds to begin implementation. Currently, the DOH has not submitted a plan to the LBC for approval.

## **Springs in Florida**

Florida has more than 700 recognized springs. It also has 33 historical first magnitude springs in 19 counties that discharge more than 64 million gallons of water per day.<sup>15</sup> First magnitude springs are those that discharge 100 cubic feet of water per second or greater. Spring discharges, primarily from the Floridian Aquifer, are used to determine ground water quality and the degree of human impact on the spring's recharge area. Rainfall, surface conditions, soil type, mineralogy, the composition and porous nature of the aquifer system, flow, and length of time in the aquifer all contribute to ground water chemistry. Springs are historically low nitrogen systems. The DEP recently submitted numeric nutrient standards to the Legislature for ratification that include a nitrate-nitrite (variants of nitrogen) limit of 0.35 milligrams per liter for springs. For comparison, the U.S. Environmental Protection Agency's drinking water standard for nitrite is 1.0 milligrams per liter; for nitrate, 10 milligrams per liter.<sup>16</sup>

## **Local Government Powers and Legislative Preemption**

The Florida Constitution grants counties or municipalities broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>17</sup> Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.<sup>18</sup> Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.<sup>19</sup> Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law.

Under its broad home rule powers, a municipality or a charter county may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State.<sup>20</sup> Express preemption of a municipality's power to legislate requires a specific statement; preemption cannot be made by implication or by inference.<sup>21</sup> A county or municipality cannot forbid what the Legislature has expressly licensed, authorized or required, nor may it authorize what the Legislature has expressly forbidden.<sup>22</sup> The Legislature can preempt a county's broad authority to enact ordinances and may do so either expressly or by implication.<sup>23</sup>

<sup>14</sup> See ch. 2011-047, s. 13, Laws of Fla.

<sup>15</sup> Florida Geological Survey, Bulletin No. 66, *Springs of Florida*, available at <http://www.dep.state.fl.us/geology/geologictopics/springs/bulletin66.htm> (last visited Dec. 19, 2011).

<sup>16</sup> U.S. Environmental Protection Agency, *National Primary Drinking Water Regulations*, available at <http://water.epa.gov/drink/contaminants/upload/mcl-2.pdf> (last visited Jan. 22, 2012).

<sup>17</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>18</sup> FLA. CONST. art. VIII, s. 1(g).

<sup>19</sup> FLA. CONST. art. VIII, s. 2(b); see also s. 166.021, F.S.

<sup>20</sup> See, e.g., *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>21</sup> *Id.*

<sup>22</sup> *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d

## Effect of the Bill

The bill repeals the state wide septic system evaluation program, including program requirements, and the DOH's rulemaking authority to implement the program. It repeals legislative intent regarding the DOH's administration of a state wide septic system evaluation program and an obsolete reporting requirement regarding the land application of septage.

The bill also repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.

The bill defines "bedroom" as a room that can be used for sleeping that, for site-built dwellings, has a minimum 70 square feet of conditioned space; or for manufactured homes, constructed to HUD standards having a minimum of 50 square feet of floor area. The room must be located along an exterior wall, have a closet and a door or an entrance where a door could be reasonably installed. It also must have an emergency means of escape and rescue opening to the outside. A room may not be considered a bedroom if it is used to access another room, unless the room that is accessed is a bathroom or closet. The term does not include a hallway, bathroom, kitchen, living room, family room, dining room, den, breakfast nook, pantry, laundry room, sunroom, recreation room, media/video room, or exercise room. The bill also corrects two cross references. One is related to research fees collected to fund hands-on training centers for septic systems. The other relates to determining the mean annual flood line.

The bill provides that a permit issued and approved by the DOH for the installation, modification, or repair of a septic system transfers with the title to the property in a real estate transaction. A title is not encumbered at the time of transfer by new permit requirements that differ from the original permit requirements in effect when the septic system was permitted, modified or repaired. It also prohibits a government entity from requiring a septic system inspection at the point of sale in a real estate transaction.

The bill prohibits any governmental entity, including municipality, county, or statutorily created commission from requiring an engineered-designed performance-based treatment system, except for passive engineer-designed performance-based treatment systems, before the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project or December 31, 2014, whichever comes first. The prohibition does not apply to the above entities that adopted a local law, ordinance, or regulation on or before January 31, 2012. Notwithstanding the prohibition, an engineer-designed performance-based treatment system may be used to meet the requirements of the Variance Review and Advisory Committee recommendations.

The bill specifies a septic system serving a foreclosed property is not considered abandoned. It also specifies a septic system is not considered abandoned if it was properly functioning when disconnected from a structure made unusable or destroyed following a disaster, and the septic system was not adversely affected by the disaster. The septic system may be reconnected to a rebuilt structure if:

- reconnection of the septic system is to the same type of structure, which contains the same number of bedrooms or less, provided the square footage is less than or equal to 110 percent of the original square footage, that existed prior to the disaster;
- the septic system is not a sanitary nuisance; and
- the septic system has not been altered without prior authorization.

The bill provides that the rules applicable and in effect at the time of approval for construction apply at the time of the final approval of the septic system if fundamental site conditions have not changed between the time of construction approval and final approval. The bill also provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a single-family home if a bedroom is not added.

A county or municipality containing a first magnitude spring within its boundary must develop and adopt by ordinance a local septic system evaluation and assessment program meeting the requirements of this bill within all or part of its geographic area by January 1, 2013, unless it opts out. All other counties and municipalities may opt in but otherwise are not required to take any affirmative action. Evaluation programs adopted before July 1, 2011, and that do not contain a mandatory septic system inspection at the point of sale in a real estate transaction are not affected. Existing evaluation programs that require point of sale inspections are preempted regardless of when the program was adopted.

A county or municipality may opt out by a majority plus one vote of the local elected body before January 1, 2013, by adopting a separate resolution. The resolution must be filed with the Secretary of State. Absent an interlocal agreement or county charter provision to the contrary, a municipality may elect to opt out of the requirements of this section notwithstanding the decision of the county in which it is located. A county or municipality may subsequently adopt an ordinance imposing a septic system evaluation and assessment program if the program meets the requirements of this bill. The bill preempts counties' and municipalities' authority to adopt more stringent requirements for a septic system evaluation program than those contained in the bill.

Local ordinances must provide for the following:

- An evaluation of a septic system, including drainfield, every five years to assess the fundamental operational condition of the system and to identify system failures.
- The ordinance may not mandate an evaluation or a soil examination at the point of sale in a real estate transaction.
- Each evaluation must be performed by:
  - a septic tank contractor or master septic tank contractor registered under part III of ch. 489, F.S.;
  - a professional engineer having wastewater treatment system experience and licensed pursuant to ch. 471, F.S.;
  - an environmental health professional certified under ch. 381, F.S., in the area of septic system evaluation; or
  - an authorized employee working under the supervision of any of the above four listed individuals. Soil samples may only be conducted by certified individuals.

Evaluation forms must be written or electronically signed by a qualified contractor.

The local ordinance may not require a repair, modification or replacement of a septic system as a result of an evaluation unless the evaluation identifies a failure. The term "system failure" is defined as:

- a condition existing within a septic system that results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water; or
- results in a sanitary nuisance caused by the failure of building plumbing to discharge properly.

A system is not a failure if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. The bill specifies that a drainfield not achieving the minimum separation distance from the bottom of the drainfield to the wettest season water table contained in current law is not 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, to the extent possible, the requirements in effect at the time the repair is made, subject to the exceptions specified in s. 381.0065(4)(g), F.S. This allows certain older septic systems to be repaired instead of replaced if they cannot be repaired to operate to current code. An ordinance may not require an engineer-designed performance-based system as an alternative septic system to remediate a failure of a conventional septic system.

The bill specifies that a septic system that is required to obtain an operating permit or that is inspected by the department on an annual basis pursuant to ch. 513, F.S., related to mobile home and recreational vehicle parks is exempt from inclusion in a local septic system evaluation program. The bill also exempts a septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater.

The bill requires the owner of a septic system subject to an evaluation program to have it pumped out and evaluated at least once every five years. A pump out is not required if the owner can provide documentation to show a pump out has been performed or there has been a permitted new installation, repair or modification of the septic system within the previous five years. The documentation must show both the capacity and that the condition of the tank is structurally sound and watertight.

If a tank, in the opinion of the qualified contractor, is in danger of being damaged by leaving the tank empty after inspection, the tank must be refilled before concluding the inspection. Replacing broken or damaged lids or manholes does not require a repair permit.

In addition to a pump out, the evaluation procedures require an assessment of the apparent structural condition and watertightness of the tank and an estimation of its size. A visual inspection of a tank is required when the tank is empty to detect cracks, leaks or other defects. The baffles or tees must be checked to ensure that they are intact and secure. The evaluation must note the presence and condition of:

- outlet devices;
- effluent filters;
- compartment walls;
- any structural defect in the tank; and
- the condition and fit of the tank lid, including manholes.

The bill also requires a drainfield evaluation and requires certain assessments to be performed when a system contains pumps, siphons or alarms. The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation must contain a statement noting whether there is any visible effluent on the ground or discharging to a ditch or water body and identifying the location of any downspout or other source of water near the drainfield.

If the septic system contains pumps, siphons or alarms, the following information must be provided:

- an assessment of dosing tank integrity, including the approximate volume and the type of material used in construction;
- whether the pump is elevated off of the bottom of the chamber and its operational status;
- whether the septic system has a check valve and purge hole; and
- whether there is a high-water alarm, including whether the type of alarm is audio, visual or both, the location of the alarm, its operational condition and whether the electrical connections appears satisfactory.

The reporting procedures provided for in the bill require:

- the qualified contractor to document all the evaluation procedures used;
- the qualified contractor to provide a copy of a written, signed evaluation report to the property owner and the county health department within 30 days after the evaluation;
- the name and license number of the company providing the report;
- the local county health department to retain a copy of the evaluation report for a minimum of five years and until a subsequent report is filed;
- the front cover of the report to identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation performed by a contractor other than the contractor performing the evaluation;
- the report to identify tank defects, improper fit or other defects in the tank, manhole or lid, and any other missing component of the septic system;
- noting if any sewage or effluent is present on the ground or discharging to a ditch or surface water body;



- stating if any downspout, stormwater or other source of water is directed onto or towards the septic system;
- identification of any maintenance need or condition that has the potential to interfere with or restrict any future repair or modification to the existing septic system; and
- conclude with an overall assessment of the fundamental operational condition of the septic system.

The county health department will be responsible for administering the program on behalf of a county or municipality. A county or municipality may develop a reasonable fee schedule in consultation with a county health department. The fee must only be used to pay for the costs of administering the program and must be revenue neutral. The fee schedule must be included in the adopted ordinance for a septic system evaluation program. The fee shall be assessed to the septic system owner, collected by the qualified contractor and remitted to the county health department.

The county health department in a jurisdiction where a septic system evaluation program is adopted must:

- provide a notice to a septic system owner at least 60 days before the septic system is due for an evaluation;
- in consultation with the DOH, provide for uniform disciplinary procedures and penalties for qualified contractors who do not comply with the requirements of the adopted ordinance;
- be the sole entity to assess penalties against a septic tank owner who fails to comply with the requirements of an adopted ordinance;

The bill requires DOH to provide access to the Environmental Health Database to county health departments and qualified contractors for use in the assimilation of data to track relevant information resulting from an assessment and evaluation. The Environmental Health Database will be used by contractors to report all service and evaluation events and by the county health department to notify owners of onsite sewage treatment and disposal systems when evaluations are due. Data and information will be recorded and updated as service and evaluations are conducted and reported.

The bill requires a county or municipality that adopts a septic system evaluation and assessment program to notify the Secretary of the DEP, the DOH and the requisite county health department. Once the DEP receives notice a county or municipality has adopted an evaluation program, it must, within existing resources, notify the county or municipality of the potential availability of Clean Water Act or Clean Water State Revolving Fund grants. If a county or municipality requests, the DEP must, within existing resources, provide guidance in the application process to access the above mentioned funding sources and provide advice and technical assistance on how to establish a low-interest revolving loan program or how to model a revolving loan program after the low-interest loan program of the Clean Water State Revolving Fund. The DEP is not required to provide any money to fund such programs. The bill specifically prohibits the DOH from adopting any rule that alters the provisions contained within the bill.

The bill specifies that it does not derogate or limit county and municipal home rule authority to act outside the scope of the evaluation program created in this bill. The bill clarifies it does not repeal or affect any other law relating to the subject matter of this section. It does not prohibit a county or municipality that has adopted an evaluation program pursuant to this section from:

- enforcing existing ordinances or adopting new ordinances if such ordinances do not repeal, suspend or alter the requirements or limitations of this section; or
- exercising its independent and existing authority to use and meet the requirements of s. 381.00655, F.S. (relating to connection to central sewer systems).

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 381.0065, F.S., to repeal the onsite sewage treatment and disposal system evaluation program, including legislative intent, program requirements, and the DOH rulemaking authority to implement the program.



- Section 2:** Creates s. 381.00651, F.S., requiring evaluation programs to be adopted by a county or municipality with a first magnitude spring and authorizing evaluation programs to be adopted by any other county or municipality by ordinance and sets the framework and allowable criteria.
- Section 3:** Repeals s. 381.00656, F.S., related to a low-income grant program to assist residents with costs associated from a septic system evaluation program and any necessary repairs or replacements.
- Section 4:** Amends s. 381.0066, F.S., related to septic system fees. Deletes the existing fees for the five-year evaluation report and reduces the annual operating permit fee for waterless, incinerating or organic waste composting.
- Section 5:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The projected revenues would have been \$3.12 million for Fiscal Year 2011-2012, based on a July 1, 2011, implementation date for the onsite sewage treatment and disposal system evaluation program. These projected revenues would have offset the costs to the DOH to administer the evaluation program, including providing assistance to low income families for septic systems needing repair. However, this bill eliminates the requirement to implement the statewide septic tank evaluation and grant programs, and therefore results in no fiscal impact to the DOH.

The bill also decreases the amount of revenue the department will receive as a result of the reduction of the annual operating permit fees for waterless, incinerating, or organic waste composting toilets from a range of \$50 to \$150 to a range of \$15 to \$30. The amount is unknown, but expected to be insignificant.

#### **2. Expenditures:**

The department identifies potential expenditures related to the Environmental Health Database that the individual counties or municipalities will use to track onsite systems in Florida. It is unknown if any counties or how many counties will adopt an onsite sewage evaluation program that would require county use of the department's centralized database. The department notes potential costs associated with IT infrastructure and staff needs, however, these costs are insignificant and can be absorbed within existing department resources.

The bill also requires the Department of Environmental Protection, upon being notified that a county or municipality has adopted a septic system evaluation and assessment program, to notify the county or municipality of the potential availability of Clean Water Act or Clean Water State Revolving Fund grants. The DEP must provide this service within existing resources. If a county or municipality requests, the DEP must provide guidance in the application process and provide technical assistance on how to establish a low-interest revolving loan program. The fiscal impact to DEP is estimated to be minimal and could be handled with existing staff and resources.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill allows a county or municipality to assess a reasonable fee to cover the costs of administering the evaluation program. The fee will likely vary from jurisdiction to jurisdiction.

2. Expenditures:

The cost to counties or municipalities adopting evaluation programs is indeterminate as it depends on how large an area is covered by the evaluation program and how many septic systems are included.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of septic systems subject to the evaluation program will have to pay for septic system evaluations, including pump outs, every five years.

The DOH estimates a cost savings to the public of \$2,500 to \$7,500 per system through preventive maintenance, thus eliminating the need for costly repairs associated with neglected, failing or improperly functioning systems.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill specifically prohibits the DOH from adopting any rule that alters the provisions contained within the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2012, the State Affairs Committee amended and adopted CS/CS/HB 999 as a committee substitute (CS). The CS prohibits any governmental entity, including municipality, county, or statutorily created commission from requiring an engineered-designed performance-based treatment system, except for passive engineer-designed performance-based treatment systems, before the completion of the Florida Onsite Sewage Nitrogen Reduction Strategies Project or December 31, 2014, whichever comes first. The prohibition does not apply to the above entities that adopted a local law, ordinance, or regulation on or before January 31, 2012. Notwithstanding the prohibition, an engineer-designed performance-based treatment system may be used to meet the requirements of the Variance Review and Advisory Committee recommendations.

The analysis is drawn to CS/CS/CS/HB 999.

On February 15, 2012, the Appropriations Committee adopted a strike-all amendment. The strike-all amendment differs from the bill as follows:

- Prohibits a governmental entity from requiring an engineer-designed performance-based system after January 31, 2012.
- Makes the opt out requirement for a county or municipality containing a first magnitude spring a majority plus one vote of the local governing board.

The bill was reported favorably as a committee substitute to the committee substitute. The analysis has been updated to reflect the adopted strike-all amendment.

On January 19, 2012, the Economic Affairs Committee adopted a strike-all amendment. The strike-all differs from the bill as follows:

- Requires counties and municipalities with a first magnitude spring to develop and adopt by ordinance a local evaluation and assessment program, unless the county or municipality opts out.
- Exempts a septic system serving a residential dwelling unit on a lot with a ratio of one bedroom per acre or greater.
- Deletes the requirement for local governments who establish evaluation and assessment programs to develop monitoring databases and replaces it with the requirement for DOH to provide access to the Environmental Health Database to county Health Departments and qualified contractors for use in the assimilation of data to track relevant information resulting from an assessment and evaluation.

The bill was reported favorably as a committee substitute and the analysis has been updated to reflect the adopted strike-all amendment.