

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 309 Private Provider Inspections of Onsite Sewage Treatment and Disposal Systems

SPONSOR(S): Environment, Agriculture & Flooding Subcommittee, Fetterhoff and Giallombardo

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 856

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	14 Y, 1 N, As CS	Gawin	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield. Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers. The Department of Environmental Protection (DEP) is responsible for conducting inspections associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of OSTDSs for residences and certain other establishments.

The bill authorizes the owner of an OSTDS or a contractor upon the owner’s written authorization to hire a private provider to perform an inspection of the OSTDS and pay the private provider directly if the inspection is the subject of a written contract between the private provider or the private provider’s firm and the owner or the authorized contractor. The bill prohibits DEP from charging an inspection fee for an OSTDS inspection performed by a private provider under written contract with an owner or authorized contractor.

The bill specifies that OSTDS inspections may only be performed by certain qualified private providers or an authorized representative of a private provider and prohibits the private provider or authorized representative from inspecting an OSTDS that the private provider or authorized representative installed.

The bill authorizes DEP to audit 25 percent of private providers each year to ensure the accurate performance of OSTDS inspections. The bill clarifies it does not prevent DEP from inspecting complaints.

The bill authorizes a private provider or an authorized representative of a private provider to conduct periodic evaluations of OSTDSs required by a county or municipality.

The bill may have a negative fiscal impact on the state.

FULL ANALYSIS

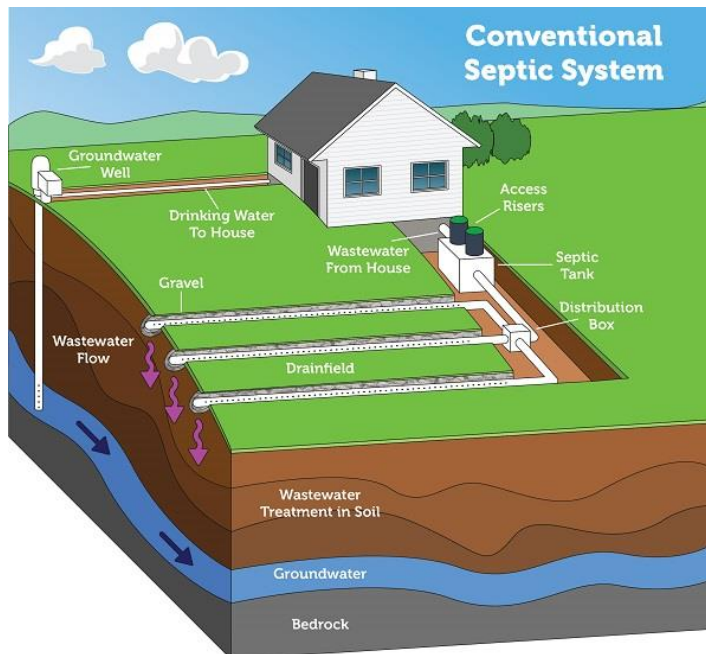
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Onsite Sewage Treatment and Disposal Systems

Onsite sewage treatment and disposal systems (OSTDSs), commonly referred to as “septic systems,” generally consist of two basic parts: the septic tank and the drainfield.¹ Waste from toilets, sinks, washing machines, and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.²



Please note: Septic systems vary. Diagram is not to scale.

There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.³ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.⁴ For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than one percent of OSTDSs in Florida are actively managed under operating permits and maintenance agreements.⁵ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.⁶

¹ DOH, *Septic System Information and Care*, <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Jan. 6, 2022); Environmental Protection Agency, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Jan. 6, 2022).

² *Id.*

³ DEP, *Onsite Sewage*, <https://floridadep.gov/water/onsite-sewage> (last visited Jan. 6, 2022).

⁴ DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, § 1.0 (Oct. 1, 2008), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/research/_documents/rac/2008-11-06.pdf (last visited Jan. 6, 2022). The report begins on page 56 of the PDF.

⁵ *Id.*

⁶ *Id.*

The Clean Waterways Act transferred the Onsite Sewage Program from the Department of Health (DOH) to the Department of Environmental Protection (DEP), effective July 1, 2021.⁷ Accordingly, as of July 1, 2021, DEP has assumed responsibility for conducting inspections associated with the construction, installation, maintenance, modification, abandonment, operation, use, or repair of OSTDSs for residences and certain other establishments.⁸

OSTDS Inspections

Regarding the installation or construction of OSTDSs, DEP's Onsite Sewage Program regulations provide that, before covering an OSTDS with earth and before placing an OSTDS into service, a person installing or constructing any portion of an OSTDS is required to notify DEP of the completion of construction activities and must have the system inspected by DEP for compliance with applicable regulatory requirements, except for repair installations, which may be inspected by either DEP or a master septic tank contractor under certain conditions.⁹

If an owner or an owner's authorized representative is proposing alterations to an existing and prior-approved OSTDS that will modify its sewage characteristics or increase sewage flow, the owner or authorized representative is required to apply for and receive reapproval of the OSTDS by DEP prior to any alteration of the OSTDS.¹⁰ The owner or authorized representative must first have all system tanks pumped by a permitted septage disposal service, then have either a registered septic tank contractor, a state-licensed plumber, a certified environmental health professional, or a master tank contractor determine the tank volume and perform a visual tank inspection to detect any observable defects or leaks in the tank. The person performing the inspection must submit the results of the inspection to DEP.¹¹

Whenever an owner or the owner's authorized representative wishes to abandon an OSTDS, the owner or the representative must apply for a permit from DEP to abandon the OSTDS and submit the required fee.¹² Upon receiving a permit, the tank must be pumped out by a permitted septage disposal company, unless the tank is already empty and dry, in which case a written statement to that effect must be provided to DEP. The bottom of the tank must then be opened or ruptured, or the entire tank collapsed, so as to prevent the tank from retaining water. The tank must also be filled with clean sand or other suitable material and completely covered with soil. DEP or the local utility or plumbing authority performing the system abandonment must then perform an inspection of the system abandonment.¹³ DEP maintains a schedule of fees, including inspection fees, for the services it provides.¹⁴

Periodic Evaluation and Assessment of OSTDSs

A county or municipality that contains a first magnitude spring must, and any county or municipality that does not contain a first magnitude spring may, develop and adopt by local ordinance an OSTDS evaluation and assessment program meeting the requirements of state law.¹⁵ If a county or municipality that contains a first magnitude spring has already adopted an OSTDS evaluation and assessment program, and it meets the grandfathering provisions of the statute, it is exempt from the requirement to establish a program.¹⁶ The governing body of a local government can also choose to opt out of the

⁷ Chapter 2020-150, s. 2, Laws of Fla.

⁸ Section 381.0065(3)(b), F.S. Although DEP is now responsible for the Onsite Sewage Program, DEP and DOH have agreed that county health departments should continue to have a role in the inspection, permitting, and tracking of OSTDSs, under the direction of DEP. See DOH and DEP, *Interagency Agreement between Florida Department of Environmental Protection and Florida Department of Health in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf (last visited Jan. 6, 2022).

⁹ Rule 62-6.003(2), (3), F.A.C.

¹⁰ Rule 62-6.001(4), (4)(b), (5), F.A.C.

¹¹ *Id.*

¹² Rule 62-6.011(2)(a), F.A.C. However, permitting is not necessary if a local utility or local plumbing authority performs a system abandonment program that includes completion of the other steps identified in the rule. Rule 62-6.011(3), F.A.C.

¹³ Rule 62-6.011(2), F.A.C.

¹⁴ Rule 62-6.030, F.A.C.

¹⁵ Section 381.00651(2), F.S.

¹⁶ *Id.*

requirement by adopting a resolution by a 60 percent vote that indicates an intent to not adopt such a program.¹⁷

If adopted, the OSTDS evaluation and assessment program requires that each OSTDS within all or part of the county's or municipality's jurisdiction be evaluated once every five years to assess the fundamental operational condition of the system and to identify system failures.¹⁸ Evaluations must be performed by a qualified contractor, who may be a septic tank contractor or master septic tank contractor registered under state law; a professional engineer having wastewater treatment system experience and licensed under state law; or an environmental health professional certified under state law in the area of OSTDS evaluation.¹⁹ Evaluations and pump-outs may also be performed by an authorized employee working under the supervision of one of these individuals.²⁰

The county or municipality adopting the OSTDS evaluation and assessment program may develop a reasonable fee schedule in consultation with the county health department.²¹ Fees are assessed to the system owner during the inspection and separately identified on the invoice of the qualified contractor. Fees are then remitted by the qualified contractor to the county health department.²²

Effect of the Bill

Notwithstanding any other law, ordinance, or policy, the bill authorizes the owner of an OSTDS or a contractor upon the owner's written authorization to hire a private provider to perform an inspection that follows applicable regulatory requirements of the OSTDS and pay the private provider directly if the inspection is the subject of a written contract between the private provider or the private provider's firm and the owner or the authorized contractor.

The bill prohibits the private provider or authorized representative of the private provider from inspecting an OSTDS that the private provider or authorized representative installed.

The bill prohibits DEP from charging an inspection fee for an OSTDS inspection performed by a private provider under written contract with an owner or authorized contractor.

The bill specifies that OSTDS inspections may only be performed by a private provider or an authorized representative of a private provider if they are:

- An environmental health professional certified by DOH;
- A master septic tank contractor;
- A licensed professional engineer and have passed all parts of the OSTDS accelerated certificate of training; or
- Working under the supervision of a licensed professional engineer and have passed all parts of the OSTDS accelerated certification training.

The bill requires an owner or authorized contractor using a private provider for an OSTDS inspection to provide notice to DEP at the time of the permit application or by 2 p.m. local time two business days before the first scheduled inspection by DEP.

The bill requires the notice to include the following information for each authorized representative performing the inspection:

- The name and firm name, address, telephone number, and e-mail address;
- Professional license or certification number; and
- Qualification statement or resume.

¹⁷ *Id.*

¹⁸ Section 381.00651(6)(a), F.S.

¹⁹ Section 381.00651(6)(b), F.S.

²⁰ *Id.*

²¹ Section 381.00651(8), F.S.

²² *Id.*

Additionally, the bill requires the notice to contain an acknowledgement from the owner that states the owner or authorized contractor has elected to use a private OSTDS inspector and has made an inquiry regarding the competence of the licensed or certified private provider. The acknowledgement requires the owner or authorized contractor to agree to indemnify, defend, and hold harmless DEP from any claims arising from the use of the licensed or certified private provider identified in the application. The acknowledgement must also specify that the owner understands that in the event the OSTDS does not comply with applicable rules and law, the owner will be responsible for remediating the system in accordance with existing law.

If an owner or authorized contractor makes any changes to the listed private provider or the service to be performed by the private provider, the bill requires the owner or authorized contractor to update the notice to reflect the change within one business day after the change. The change of an authorized representative identified in the permit application does not require a revision of the permit and the department may not charge a fee for making such change.

The bill authorizes DEP to audit up to 25 percent of private providers each year to ensure the accurate performance of OSTDS inspections and specifies that the bill it does not prevent DEP from investigating complaints. The bill allows work on a building, a structure, or an OSTDS to proceed after inspection and approval by a private provider if the owner or authorized contractor has given notice of the inspection. The bill specifies that subsequent to the inspection and approval, such work may not be delayed for the completion of an inspection audit by DEP.

The bill requires DEP to adopt rules to implement the bill and initiate rulemaking by August 21, 2022.

Additionally, the bill authorizes a private provider or an authorized representative of a private provider to conduct periodic evaluations of OSTDSs required by a county or municipality.

B. SECTION DIRECTORY:

Section 1. Amends s. 381.0065, F.S., relating to OSTDS inspections.

Section 2. Amends s. 381.00651, F.S., relating to periodic evaluations and assessments of OSTDSs.

Section 3. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate negative fiscal impact on DEP because the bill prohibits DEP from collecting fees for OSTDS inspections conducted by private providers.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would likely have a positive fiscal impact on the private sector by allowing private OSTDS inspectors to conduct OSTDS inspections.

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 spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DEP to adopt rules related to OSTDS inspections by private providers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 12, 2022, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibited a private OSTDS inspector from inspecting an OSTDS he or she installed;
- Authorized DEP to audit 25 percent of private providers each year;
- Specified that the bill does not prevent DEP from investigating OSTDS inspection complaints;
- Required DEP to adopt rules and initiate rulemaking by August 31, 2022;
- Authorized a private provider or an authorized representative to conduct periodic evaluations of OSTDSs; and
- Changed the effective date from upon becoming a law to July 1, 2022.

This analysis is drafted to the committee substitute as approved by the Environment, Agriculture & Flooding Subcommittee.