

## **2012 Florida Statutes**

Title XXIX

PUBLIC HEALTH

Chapter 381

PUBLIC HEALTH: GENERAL PROVISIONS

### **381.00651 Periodic evaluation and assessment of onsite sewage treatment and disposal systems.—**

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

(2) A county or municipality that contains a first magnitude spring shall, by no later than January 1, 2013, develop and adopt by local ordinance an onsite sewage treatment and disposal system evaluation and assessment program that meets the requirements of this section. The ordinance may apply within all or part of its geographic area. Those counties or municipalities containing a first magnitude spring which have already adopted an onsite sewage treatment and disposal system evaluation and assessment program and which meet the grandfathering requirements contained in this section, or have chosen to opt out of this section in the manner provided herein, are exempt from the requirement to adopt an ordinance implementing an evaluation and assessment program. The governing body of a local government that chooses to opt out of this section, by a 60 percent vote of the voting members of the governing board, shall do so by adopting a resolution that indicates an intent on the part of such local government not to adopt an onsite sewage treatment and disposal system evaluation and assessment program. Such resolution shall be addressed and transmitted to 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, by a 60 percent vote of the voting members of the governing board, notwithstanding a contrary decision of the governing body of a county. Any local government that has properly opted out of this section but subsequently chooses to adopt an evaluation and assessment program may do so only pursuant to the requirements of this section and may not deviate from such requirements.

(3) Any county or municipality that does not contain a first magnitude spring may at any time develop and adopt by local ordinance an onsite sewage treatment and disposal system evaluation and assessment program, provided such program meets and does not deviate from the requirements of this section.

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

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

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

(a) *Evaluations.*—An evaluation of each onsite sewage treatment and disposal system within all or part of the county's or municipality's jurisdiction must take place once every 5 years to assess the fundamental operational condition of the system and to identify system failures. The ordinance may not mandate an evaluation at the point of sale in a real estate transaction and may not require a soil examination. The location of the system shall be identified. A tank and drainfield evaluation and a written assessment of the overall condition of the system pursuant to the assessment procedure prescribed in subsection (7) are required.

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

(c) *Repair of systems.*—The local ordinance may not require a repair, modification, or replacement of a system as a result of an evaluation unless the evaluation identifies a system failure. For purposes of this subsection, the term "system failure" means a condition existing within an onsite sewage treatment and disposal system which results in the discharge of untreated or partially treated wastewater onto the ground surface or into surface water or that results in the failure of building plumbing to discharge properly and presents a sanitary nuisance. A system is not in failure if the system does not have a minimum separation distance between the drainfield and the wettest season water table or if an obstruction in a sanitary line or an effluent screen or filter prevents effluent from flowing into a drainfield. If a system failure is identified and several allowable remedial measures are available to resolve the failure, the system owner may choose the least costly allowable remedial measure to fix the system. There

may be instances in which a pump-out is sufficient to resolve a system failure. Allowable remedial measures to resolve a system failure are limited to what is necessary to resolve the failure and must meet, to the maximum extent practicable, the requirements of the repair code in effect when the repair is made, subject to the exceptions specified in s. [381.0065\(4\)\(g\)](#). An engineer-designed performance-based treatment system to reduce nutrients may not be required as an alternative remediation measure to resolve the failure of a conventional system.

(d) *Exemptions.*—

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

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

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

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

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

(b) *Drainfield evaluation.*—The drainfield evaluation must include a determination of the approximate size and location of the drainfield. The evaluation shall state whether there is any

sewage or effluent visible on the ground or discharging to a ditch or other water body and the location of any downspout or other source of water near or in the vicinity of the drainfield.

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

1. An assessment of dosing tank integrity, including the approximate volume and the type of material used in the tank's construction;
2. Whether the pump is elevated off the bottom of the chamber and its operational status;
3. Whether the system has a check valve and purge hole; and
4. Whether the system has a high-water alarm, and if so whether the alarm is audio or visual or both, the location and operational condition of the alarm, and whether the electrical connections to the alarm appear satisfactory.

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

(d) *Assessment procedure.*—All evaluation procedures used by a qualified contractor shall be documented in the environmental health database of the Department of Health. The qualified contractor shall provide a copy of a written, signed evaluation report to the property owner upon completion of the evaluation and to the county health department within 30 days after the evaluation. The report shall contain the name and license number of the company providing the report. A copy of the evaluation report shall be retained by the local county health department for a minimum of 5 years and until a subsequent inspection report is filed. The front cover of the report must identify any system failure and include a clear and conspicuous notice to the owner that the owner has a right to have any remediation of the failure performed by a qualified contractor other than the contractor performing the evaluation. The report must further identify any crack, leak, improper fit, or other defect in the tank, manhole, or lid, and any other damaged or missing component; any sewage or effluent visible on the ground or discharging to a ditch or other surface water body; any downspout, stormwater, or other source of water directed onto or toward the system; and any other maintenance need or condition of the system at the time of the evaluation which, in the opinion of the qualified contractor, would possibly interfere with or restrict any future repair or modification to the existing system. The report shall conclude with an overall assessment of the fundamental operational condition of the system.

(8) The county health department shall administer any evaluation program on behalf of a county, or a municipality within the county, that has adopted an evaluation program pursuant

to this section. In order to administer the evaluation program, the county or municipality, in consultation with the county health department, may develop a reasonable fee schedule to be used solely to pay for the costs of administering the evaluation program. Such a fee schedule shall be identified in the ordinance that adopts the evaluation program. When arriving at a reasonable fee schedule, the estimated annual revenues to be derived from fees may not exceed reasonable estimated annual costs of the program. Fees shall be assessed to the system owner during an inspection and separately identified on the invoice of the qualified contractor. Fees shall be remitted by the qualified contractor to the county health department. The county health department's administrative responsibilities include the following:

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

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

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

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

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

(d) The Department of Health must allow county health departments and qualified contractors access to the environmental health database to track relevant information and assimilate data from assessment and evaluation reports of the overall condition of onsite

sewage treatment and disposal systems. The environmental health database must be used by contractors to report each service and evaluation event and by a county health department to notify owners of onsite sewage treatment and disposal systems when evaluations are due. Data and information must be recorded and updated as service and evaluations are conducted and reported.

(10) This section does not:

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

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

(c) Prohibit a county or municipality from:

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

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

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

[381.0065](#).

**History.**—s. 33, ch. 2012-184.