

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

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BILL: SB 604

INTRODUCER: Senator Berman

SUBJECT: Safe Waterways Act

DATE: February 4, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Rogers</u>	<u>EN</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 604 revises state law governing the sampling of beach waters and public bathing places, the issuance of health advisories, and the posting of associated signage. The bill:

- Eliminates the definition for, and all references to, “beach waters” in state law, and redefines “public bathing places” to include fresh water, salt water, and brackish water.
- Eliminates Department of Health (DOH) discretion regarding whether to:
  - Adopt and enforce rules to protect the health, safety, and welfare of persons using public bathing places, by making the adoption and enforcement of such rules mandatory; and
  - Issue health advisories if the water quality of a public bathing place fails to meet DOH standards, by making the issuance of such health advisories mandatory.
- Expands the following based upon its revised definition of public bathing places:
  - The area over which the issuance of health advisories related to the results of bacteriological sampling is preempted to DOH; and
  - The area for which DOH must give notice of health advisories against swimming to municipalities, counties, and the local office of the Department of Environmental Protection (DEP).
- Requires local governments having jurisdiction over affected public bathing places to post and maintain conspicuous signs, which contain certain specified language and are adopted by DOH rule, to advise the public that DOH has issued a health advisory against swimming.
- Requires DOH to monitor affected public bathing places to ensure that signage is posted appropriately until the bacterial contamination is resolved.
- Provides that if an affected public bathing place is not within the jurisdiction of a local government, then DOH:
  - Must post and maintain the required signage as provided in the bill; and
  - May coordinate with DEP and the Fish and Wildlife Conservation Commission to implement the signage requirements.

## II. Present Situation:

### Department of Health

The Department of Health (DOH) protects and promotes the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties.<sup>1</sup>

DOH is required to:<sup>2</sup>

- Identify, diagnose, and conduct surveillance of diseases and health conditions in the state and accumulate the health statistics necessary to establish trends;
- Implement interventions that prevent or limit the impact or spread of diseases and health conditions;
- Collect, manage, and analyze vital statistics and other health data to inform the public and formulate public health policy and planning;
- Maintain and coordinate preparedness for and responses to public health emergencies in the state;
- Provide or ensure the provision of quality health care and related services to identified populations in the state;
- Regulate environmental activities that have a direct impact on public health in the state; and
- Regulate health practitioners for the preservation of the health, safety, and welfare of the public.<sup>3</sup>

DOH is comprised of a state health office (i.e. a central office) in Tallahassee, with statewide responsibilities; Florida's 67 County Health Departments (CHDs); 22 Children's Medical Services area offices; 12 Medical Quality Assurance regional offices; 9 Disability Determinations regional offices; and 3 public health laboratories.<sup>4</sup> Facilities for the 67 CHDs are provided through partnerships with local county governments. These 67 CHDs have a total of 255 sites throughout the state, providing a variety of services, and ranging from small to large in location size.<sup>5</sup>

### DOH Regulation of Beach Waters and Public Bathing Places

State law permits, but does not require, DOH to adopt and enforce rules to protect the health, safety, and welfare of persons using the beach waters and public bathing places of the state.<sup>6</sup> State law defines the term "beach waters" to mean the waters along the coastal and intracoastal beaches and shores of the state, and includes all salt water and brackish water.<sup>7</sup> A "[p]ublic bathing place" means a body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by

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<sup>1</sup> Section 20.43(1), F.S.

<sup>2</sup> Section 20.43(1)(a)-(g), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> DOH, *About Us*, <https://www.floridahealth.gov/about/index.html> (last visited Feb. 1, 2022).

<sup>5</sup> *Id.*

<sup>6</sup> Section 514.023(2), F.S.

<sup>7</sup> Section 514.023(1), F.S.

any person or public body, regardless of whether a fee is charged to use it.<sup>8</sup> The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.<sup>9</sup>

If adopted, the rules must establish health standards and prescribe procedures and timeframes for bacteriological sampling of beach waters and public bathing places.<sup>10</sup> State law also permits, but does not require, DOH to issue health advisories if the quality of beach waters or a public bathing place fails to meet standards adopted by it.<sup>11</sup> The issuance of health advisories related to the results of bacteriological sampling of beach waters is preempted to the state.<sup>12</sup>

DOH has adopted and enforces rules requiring the owners or managers of public bathing places to monitor for water quality, report the results to DOH and the relevant county health department, and provide notice to DOH and the public whenever there are water quality violations of adopted bacteriological standards for fecal coliform, *E. coli*, and *enterococci*.<sup>13</sup> Bacteriological samples for public bathing places must be collected and tested monthly.<sup>14</sup> If test results exceed standards, the relevant county health department must perform an inspection and the bathing place owner or manager must post a no swimming advisory; only after re-sampling confirms that the bathing water again meets standards may the owner or manager rescind the posted no-swimming advisory.<sup>15</sup> DOH can close a public pool for failing to comply with the rules, including failing to comply with water quality standards, and may attach a sign that states: “Pool closed. This pool is not in compliance with Chapter 64E-9, F.A.C., and may endanger the health, safety or welfare of persons using this facility.”<sup>16</sup>

By statute, whenever DOH issues a health advisory against swimming in beach waters or a public bathing place on the basis of finding elevated levels of fecal coliform, *Escherichia coli*, or *enterococci* bacteria in a water sample, DOH must concurrently notify the municipality or county in which the affected beach waters are located, whichever has jurisdiction, and the local office of the Department of Environmental Protection (DEP).<sup>17</sup> The local office of DEP must then promptly investigate wastewater treatment facilities within 1 mile of the affected beach waters or public bathing place to determine if a facility experienced an incident that may have contributed to the contamination and provide the results of the investigation in writing or by electronic means to the municipality or county, as applicable.<sup>18</sup>

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<sup>8</sup> Section 514.011(4), F.S.

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

<sup>10</sup> *Id.*

<sup>11</sup> Section 514.023(3), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Fla. Admin. Code R. 64E-9.013(1)-(3).

<sup>14</sup> Fla. Admin. Code R. 64E-9.013(1)(a).

<sup>15</sup> Fla. Admin. Code R. 64E-9.013(1)-(2).

<sup>16</sup> See Fla. Admin. Code R. 64E-9.017(1)(h) (permitting closure for “[a]ny other condition” endangering the health, safety, or welfare of persons using the public pool).

<sup>17</sup> Section 514.023(4), F.S.

<sup>18</sup> *Id.*

### ***Fecal Coliform, Escherichia Coli, and Enterococci Bacteria***

Coliforms are bacteria that live in the intestines of warm-blooded animals (humans, pets, farm animals, and wildlife).<sup>19</sup> Fecal coliform bacteria are a kind of coliform associated with human or animal wastes. *Escherichia coli* (*E. coli*) is part of the group of fecal coliforms.<sup>20</sup> *Enterococci* are also bacteria associated with human and animal wastes.<sup>21</sup>

Sources of fecal indicator bacteria include wastewater treatment plant effluent, leaking septic systems, stormwater runoff, sewage discharged or dumped from recreational boats, domestic animal and wildlife waste, improper land application of manure or sewage, and runoff from manure storage areas, pastures, rangelands, and feedlots.<sup>22</sup>

Coliforms and *enterococci* are indicators of the presence of fecal material in water and, therefore, of the possible presence of disease-causing bacteria, viruses, and protozoa.<sup>23</sup> These pathogens can sicken swimmers and others who use rivers and streams for recreation or eat raw shellfish or fish. Other potential health effects can include diseases of the skin, eyes, ears and respiratory tract. Eating fish or shellfish harvested from waters with fecal contamination can also result in human illness.<sup>24</sup>

### **The Beaches Environmental Assessment and Coastal Health (BEACH) Act**

The federal Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act)<sup>25</sup> amended the Clean Water Act in 2000.<sup>26</sup> The BEACH Act is designed to reduce the risk of disease to users of coastal recreation waters. It authorizes the U.S. Environmental Protection Agency to award program development and implementation grants to eligible states, territories, tribes, and local governments to support microbiological testing and monitoring of coastal recreational waters, including the Great Lakes and waters adjacent to beaches or similar points of access used by the public. BEACH Act grants also provide support for developing and implementing programs to notify the public of the potential for exposure to disease-causing microorganisms in coastal recreation waters.<sup>27</sup>

## **III. Effect of Proposed Changes:**

**Section 1** of the bill revises the definition for “public bathing place” in state law to clarify that it includes fresh, salt, and brackish waters.

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<sup>19</sup> U.S. Environmental Protection Agency (EPA), *Response to 2005 Hurricanes*, <https://archive.epa.gov/katrina/web/html/fecal.html> (last visited Feb. 1, 2022).

<sup>20</sup> *Id.*

<sup>21</sup> EPA, *National Aquatic Resource Surveys, Indicators: Enterococci*, <https://www.epa.gov/national-aquatic-resource-surveys/indicators-enterococci> (last visited Feb 1, 2022).

<sup>22</sup> See EPA, *Response to 2005 Hurricanes*, <https://archive.epa.gov/katrina/web/html/fecal.html> (last visited Feb. 1, 2022) (regarding coliforms); see also EPA, *National Aquatic Resource Surveys, Indicators: Enterococci*, <https://www.epa.gov/national-aquatic-resource-surveys/indicators-enterococci> (last visited Feb 1, 2022) (regarding *enterococci*).

<sup>23</sup> *See id.*

<sup>24</sup> *See id.*

<sup>25</sup> Pub. L. No. 106-284, 114 Stat. 870 (2000), available at <https://www.congress.gov/106/plaws/publ284/PLAW-106publ284.pdf> (last visited Feb. 1, 2022).

<sup>26</sup> EPA, *Summary of the BEACH Act*, <https://www.epa.gov/laws-regulations/summary-beach-act> (last visited Feb. 1, 2022).

<sup>27</sup> *Id.*

**Section 2** of the bill deletes all references to “beach waters” in state law and replaces them with the revised definition of “public bathing place.”

The bill eliminates Department of Health (DOH) discretion regarding whether to adopt and enforce rules to protect the health, safety, and welfare of persons using public bathing places in the state, by making the adoption and enforcement of such rules mandatory. It also eliminates DOH discretion regarding whether to issue health advisories if the quality of a public bathing place fails to meet standards established by DOH, by making the issuance of such health advisories mandatory.

The bill relies upon the revised definition of public bathing places to expand:

- The area over which the issuance of health advisories related to the results of bacteriological sampling is preempted to DOH; and
- The area for which DOH must give notice of health advisories against swimming to municipalities, counties, and the local office of the Department of Environmental Protection (DEP).

The bill requires the municipality or county in which the affected public bathing place is located, whichever has jurisdiction, to post conspicuous signs, adopted by DOH rule, around the affected areas to advise the public that DOH has issued a health advisory against swimming in that area due to elevated levels of fecal coliform, *Escherichia coli*, or *enterococci* bacteria in the water. It requires the sign to include the following language:

THIS WATER BODY HAS BEEN VERIFIED BY THE FLORIDA DEPARTMENT OF HEALTH TO BE CONTAMINATED WITH FECAL BACTERIA. RESTORATION IN COMPLIANCE WITH STATE WATER QUALITY STANDARDS IS REQUIRED. THIS WATER BODY PRESENTS A RISK OF INFECTION OR ILLNESS. AVOID SWIMMING AND USE CAUTION TO AVOID INGESTING THE WATER OR EXPOSING OPEN CUTS. SECTION 514.023, FLORIDA STATUTES.

The bill requires the municipality or county, as applicable, to maintain the signage until subsequent testing of the water shows the bacteria levels meet DOH’s standards again. DOH must monitor affected public bathing places to ensure that signage is posted appropriately until the bacteria contamination is resolved.

The bill provides that if the affected public bathing place is not within the jurisdiction of a municipality or county, DOH must post and maintain the required signage as provided in the bill. DOH may coordinate with DEP and the Fish and Wildlife Conservation Commission to implement the signage requirements in the bill.

**Section 3** of the bill provides an effective date of July 1, 2022.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill will have a positive fiscal impact on the owners and managers of privately-owned public bathing places, who will no longer be responsible for the acquisition, posting, and removal of signage. Instead, municipalities, counties, and the Department of Health will assume these duties under the bill.

## C. Government Sector Impact:

The bill will likely cause municipalities and counties to incur costs associated with the acquisition, posting, and removal of signage. Additionally, DOH estimates that it will incur a total of approximately \$4,660,000 million in costs for FTEs, lab testing, and water sample collections conducted weekly at approximately 920 new water quality testing sites in the first lapsed year, and \$4,860,000 each subsequent year on a recurring basis.<sup>28</sup>

**VI. Technical Deficiencies:**

None.

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<sup>28</sup> DOH, 2022 Agency Legislative Bill Analysis, Agency: Department of Health, Bill No. 604 (on file with the Florida Senate Environment and Natural Resources Committee).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 514.011 and 514.023 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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