

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1136

INTRODUCER: Community Affairs and Senator Trumbull

SUBJECT: Regulation of Water Resources

DATE: January 31, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carroll</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1136 revises the qualification requirements a person must meet to take the water well contractor licensure examination. The bill requires an applicant to have at least two years of experience in constructing, repairing, or abandoning water wells specifically permitted in Florida.

The bill authorizes an authority to whom a water management district has delegated enforcement powers to consistently apply disciplinary guideline rules relating to wells.

The bill includes business entities as possible violators of certain unlawful acts relating to wells. The bill adds that it is unlawful to advertise water well drilling or construction services if the business entity is not owned by a licensed water well contractor or does not employ a full-time water well contractor.

The bill removes a requirement that the Department of Environmental Protection must appoint and staff a variance review and advisory committee relating to onsite sewage treatment and disposal systems, and changes rules relating to water well contractors applying for and receiving a variance.

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Department of Environmental Protection and Water Management District Authority

The Department of Environmental Protection (DEP) is responsible for the administration of water resources at the state level and exercises general supervisory authority over the Water Management Districts (WMDs).¹ The state's five water management districts (WMDs) are responsible for the administration of water resources at the regional level. The five regions are Northwest Florida, Suwannee River, St. Johns River, Southwest Florida, and South Florida.²

DEP has authorized the WMDs to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells.³ Because of this authorization, the issuance of well permits are the sole responsibility of the WMDs, delegated local governments, or local county health departments. Further, DEP has authorized the WMDs to adopt rules and procedures relating in part to the location, construction, repair, and abandonment of water wells; to implement a program for the licensing of water well contractors; and to adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the WMDs.⁴

Water Well Regulations

Licensure of Water Well Contractors

A water well is defined as any excavation to acquire, locate, or artificially recharge groundwater.⁵ The law requires that every person who wishes to engage in business as a water well contractor must obtain a license from the appropriate WMD.⁶ Each person desiring to be licensed as a water well contractor must apply to take a licensure examination. The application must be made to the WMD in which the applicant resides or in which his or her principal place of business is located. If the applicant resides in another state, he or she must apply to the WMD in which most of his or her business will take place.⁷

An applicant who meets the following requirements shall be entitled to take the water well contractor licensure examination:

- Is at least 18 years of age.
- Has at least two years of experience in constructing, repairing, or abandoning water wells.
- Has completed the application form and remitted a nonrefundable application fee.⁸

¹ DEP, *Water Management Districts*, <https://floridadep.gov/owper/water-policy/content/water-management-districts#:~:text=The%20state%27s%20five%20water%20management%20districts%20include%20the,District%2C%20and%20the%20South%20Florida%20Water%20Management%20District>. (last visited Jan. 24, 2024).

² *Id.*

³ Section 373.308, F.S.; DEP *Water Well Contractor Licensing and Permitting*, <https://floridadep.gov/water/source-drinking-water/content/water-well-contractor-licensing-and-permitting> (last visited Jan. 24, 2024).

⁴ *Id.*; see ss. 373.323, 373.333, and 373.336, F.S.; see, e.g., ch. 40E-3, F.A.C. (South Florida Water Management District rules relating to water wells).

⁵ Institute of Food and Agricultural Sciences (UF/IFAS), *2021 Handbook of Florida Water Regulation: Water Wells*, <https://edis.ifas.ufl.edu/publication/FE603> (last visited Jan. 24, 2024).

⁶ Section 373.323, F.S.

⁷ *Id.*

⁸ *Id.*

An applicant must demonstrate satisfactory proof of his or her two years of experience by providing the following:

- Evidence of the length of time the applicant has been engaged in the business of the construction, repair, or abandonment of water wells as a major activity, as attested to by a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency.
- A list of at least ten water wells that the applicant has constructed, repaired, or abandoned within the preceding five years. Of these wells, at least seven must have been constructed by the applicant. The list shall also include:
 - The name and address of the owner or owners of each well.
 - The location, primary use, and approximate depth and diameter of each well that the applicant has constructed, repaired, or abandoned.
 - The approximate date the construction, repair, or abandonment of each well was completed.⁹

The WMD must issue a water well contracting license to any applicant who:

- Receives a passing grade on the examination,
- Has paid the initial application fee,
- Takes and completes a minimum of 12 hours of approved coursework, and
- Has complied with the requirements listed above.

Once licensed, a water well contractor may install, repair and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 612—Wells pumps and tanks used for private potable water systems.¹⁰ Due to revisions to the Florida Building Code, Section 612 now refers to solar systems and Section 614 refers to water wells.¹¹ In addition, licensed water well contractors may install pumps, tanks, and water conditioning equipment for all water systems.¹²

Exemptions to these licensing requirements may be made if the WMD finds that compliance with all requirements would result in undue hardship.¹³ A WMD may grant an exemption to the extent necessary to ameliorate such undue hardship and to the extent such exemption can be granted without impairing the intent and purpose of water well regulations. Further, a person who is not licensed may construct a well if the well is two inches or under in diameter, on his or her own or leased property intended for use only in a single-family house which is his or her residence, or intended for use only for farming purposes on the person's farm, and when the waters are not intended for use by the public or any residence other than his or her own, and he or she complies with all local and state rules and regulations relating to the construction of water wells.¹⁴

⁹ *Id.*

¹⁰ *Id.*

¹¹ 2023 Florida Building Code, Plumbing, Eight Edition, Sections 612 and 614, available at https://codes.iccsafe.org/content/FLPC2023P1/chapter-6-water-supply-and-distribution#FLPC2023P1_Ch06_Sec614. (last visited Jan. 24, 2024)

¹² Section 373.323, F.S.

¹³ Section 373.326, F.S.

¹⁴ *Id.*

Disciplinary Guidelines

The WMDs may adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the WMDs.¹⁵ A specific finding of mitigating or aggravating circumstances shall allow a WMD to impose a penalty other than that provided in the guidelines. Disciplinary action may be taken by any WMD, regardless of where the contractor's license was issued.¹⁶

When a WMD has reasonable grounds for believing that there has been a violation of water well regulations or of any rule or regulation adopted pursuant thereto, it must give written notice to the alleged violator. The notice must be served in the manner required by law for the service of process upon a person in a civil action or by registered U.S. mail to the last known address of the alleged violator.

Notice alleging a violation of a rule setting minimum standards for the location, construction, repair, or abandonment of wells shall be accompanied by an order of the WMD requiring remedial action which, if taken within the time specified in the order, will effect compliance with the requirements of water well regulations and regulations issued pursuant thereto. Such order shall become final unless a request for a hearing is made within 30 days from the date of service of such order. Upon compliance, the WMD shall serve notice stating that compliance with the order has been achieved.¹⁷

Unlawful Acts

The statutes provide that, with respect to water well regulations, it is unlawful for any person to:

- Practice water well contracting without an active license.
- Construct, repair, or abandon a water well, or operate drilling equipment for such purpose, unless employed by or under the supervision of a licensed water well contractor or exempt.
- Give false or forged evidence to obtain a license.
- Present as his or her own the license of another.
- Use or attempt to use a license to practice water well contracting that has been suspended, revoked, or placed on inactive status.
- Engage in willful or repeated violation of water well regulations or of any DEP rule or regulation or WMD or state agency rule or regulation relating to water wells which endangers the public health, safety, and welfare.¹⁸

¹⁵ Section 373.333, F.S.

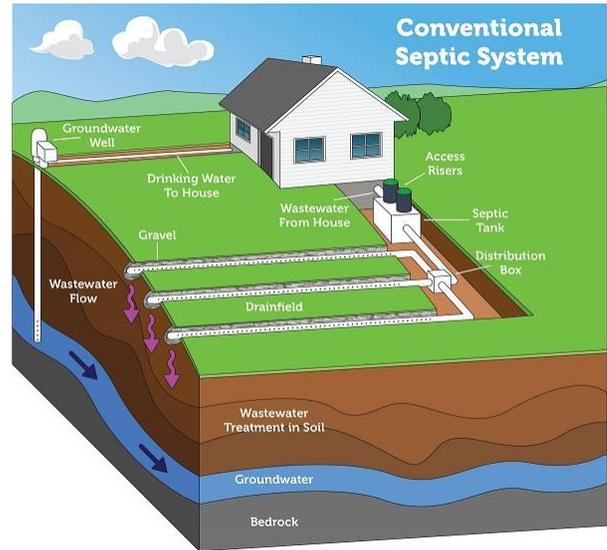
¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 373.336, F.S.

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.¹⁹ 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.²⁰



There are an estimated 2.6 million OSTDSs in Florida, providing wastewater disposal for 30 percent of the state’s population.²¹ In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.²² For example, in rural areas and low-density developments, central sewer systems are not cost-effective. In 2008, less than one percent of OSTDSs in Florida were actively managed under operating permits and maintenance agreements.²³ The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.²⁴

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. In Florida, approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater.²⁵ This still leaves a significant amount of nitrogen to percolate into the groundwater, which makes nitrogen from OSTDSs a potential contaminant in groundwater.²⁶

¹⁹ 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. 9, 2024); EPA, *Types of Septic Systems*, <https://www.epa.gov/septic/types-septic-systems> (last visited Jan. 24, 2024) (showing the graphic provided in the analysis).

²⁰ *Id.*

²¹ DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage#:~:text=Onsite%20sewage%20treatment%20and%20disposal%20systems%20%28OSTDS%29%2C%20commonly,represents%2012%25%20of%20the%20United%20States%20E2%80%99%20septic%20systems> (last visited Jan. 24, 2024).

²² DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, Executive Summary (Oct. 1, 2008), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/costs-implement-mandatory-statewide-inspection.pdf. (last visited Jan. 24, 2024).

²³ *Id.*

²⁴ *Id.*

²⁵ DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, 21 (Dec. 2015), available at <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/draftlegreportsm.pdf>; (last visited Jan. 24, 2024). *See* Fla. Admin. Code R. 64E-6.006(2).

²⁶ University of Florida Institute of Food and Agricultural Sciences (IFAS), *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, 3 (Oct. 2020), available at <http://edis.ifas.ufl.edu/pdf/SS/SS5000.pdf>. (last visited Jan. 24, 2024).

Different types of advanced OSTDSs exist that can remove greater amounts of nitrogen than a typical septic system (often referred to as “advanced” or “nutrient-reducing” septic systems).²⁷ DEP publishes on its website approved products and resources on advanced systems.²⁸ Determining which advanced system is the best option can depend on site-specific conditions.

In 2020, the Clean Waterways Act provided for the transfer of the Onsite Sewage Program from the Department of Health (DOH) to DEP.²⁹ The Onsite Sewage Program will be transferred over a period of five years, and guidelines for the transfer are provided by an interagency agreement.³⁰ Per the agreement, DEP has the primary powers and duties of the Onsite Sewage Program, meaning that the county departments of health will implement the OSTDS program under the direction of DEP instead of DOH.³¹ The county departments of health still handle permitting and inspection of OSTDS.³² In the event of an alleged violation of OSTDS laws, county departments of health will be responsible for conducting an inspection to gather information regarding the allegations.³³

Variations

DEP is required by law to grant variances in hardship cases relating to OSTDSs under certain conditions.³⁴ DEP may grant variances in hardship cases which may be less restrictive than OSTDSs regulations specified in law.³⁵ A variance may not be granted until DEP is satisfied of the following:

- The hardship was not caused intentionally by the action of the applicant;
- A reasonable alternative, taking into consideration factors such as cost, does not exist for the treatment of the sewage; and
- The discharge from the OSTDS will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.³⁶

The law provides that where soil conditions, water table elevation, and setback provisions are determined by DEP to be satisfactory, special consideration must be given to those lots platted before 1972.³⁷

²⁷ DOH, *Nitrogen-Reducing Systems for Areas Affected by the Florida Springs and Aquifer Protection Act* (updated May 2021), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/products/_documents/bmap-n-reducing-tech-18-10-29.pdf. (last visited Jan. 24, 2024).

²⁸ DEP, *Onsite Sewage Program, Product Listings and Approval Requirements*, <https://floridadep.gov/water/onsite-sewage/content/product-listings-and-approval-requirements>. (last visited Jan. 24, 2024).

²⁹ DEP, *Program Transfer*, <https://floridadep.gov/water/onsite-sewage/content/program-transfer> (last visited Jan. 24, 2024).

³⁰ DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida’s Clean Waterways Act for Transfer of the Onsite Sewage Program*, 5 (June 30, 2021), available at http://www.floridahealth.gov/environmental-health/onsite-sewage/_documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf. (last visited Jan. 24, 2024).

³¹ *Id.* at 14.

³² *Id.* at 11; and DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Jan. 24, 2024).

³³ DOH, DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida’s Clean Waterways Act for Transfer of the Onsite Sewage Program* at 11.

³⁴ Section 381.0065(3), F.S.

³⁵ Section 381.0065(4), F.S.

³⁶ *Id.*

³⁷ *Id.*

DEP is required to appoint and staff a variance review and advisory committee, which meets monthly to recommend agency action on variance requests.³⁸ The committee makes its recommendations of variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee must consider the criteria listed above in its recommended agency action on variance requests and must also strive to allow property owners the full use of their land where possible.³⁹

The variance review and advisory committee consists of the following:

- The Secretary of Environmental Protection or his or her designee.
- A representative from the county health departments.
- A representative from the home building industry recommended by the Florida Home Builders Association.
- A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.
- A representative from the Department of Health.
- A representative from the real estate industry who is also a developer in Florida who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.
- A representative from the engineering profession recommended by the Florida Engineering Society.⁴⁰

Members of the variance review and advisory committee shall be appointed for a three-year term, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses.⁴¹

III. Effect of Proposed Changes:

Section 1 amends s. 373.323, F.S., to specify that an applicant is eligible to take the water well contractor licensure examination if he or she has at least two years of experience in constructing, repairing, or abandoning water wells specifically permitted in this state.

The bill amends the requirement that an applicant must show proof that he or she is eligible by providing a list of at least ten water wells he or she has constructed, repaired, or abandoned within the preceding five years by requiring those water wells to be permitted in this state.

The bill updates a reference to the Florida Building Code, Plumbing. It provides that water well contractors licensed under this section may install, repair, and modify pumps and tanks in accordance with the Florida Building Code, Plumbing; Section 614—Wells pumps and tanks used for private potable water systems.

³⁸ *Id.*; DEP, *Variances*, available at <https://floridadep.gov/water/onsite-sewage/content/variances> (last visited Jan. 24, 2024).

³⁹ Section 381.0065(4), F.S.

⁴⁰ *Id.*; DEP, *Variance Review and Advisory Committee for Onsite Sewage Treatment and Disposal Systems*, available at https://floridadep.gov/sites/default/files/OSTDSVarianceReviewAdvisoryCommittee-Members_0.pdf (last visited Jan. 24, 2024).

⁴¹ Section 381.0065(4), F.S.

Section 2 amends s. 373.333, F.S., to provide that the disciplinary guideline rules must be consistently applied by the water management districts (WMDs) or by an authority to whom a WMD has delegated enforcement powers.

The bill requires that if a written notice for an alleged violation of this part or any rule or regulation adopted pursuant hereto is served by mail, it must be certified U.S. mail. Current law requires registered U.S. mail.

The bill provides that an order of a WMD requiring remedial action is final unless a request for hearing is made within 30 days after the date of service of such order.

Section 3 amends s. 373.336, F.S., to provide that the listed unlawful acts are also unlawful for a business entity, as applicable. The bill adds that it is unlawful to advertise water well drilling or construction services if the business entity is not owned by a licensed water well contractor or does not employ a full-time water well contractor.

The bill provides that a person who violates this part or a regulation or an order issued hereunder commits a misdemeanor of the second degree. The bill deletes language providing that a person shall, upon conviction, be guilty of a misdemeanor of the second degree.

Section 4 amends s. 381.0065, F.S., to delete language requiring the Department of Environmental Protection (DEP) to appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The bill removes provisions relating to the advisory committee. The bill also removes language providing that an engineer-designed performance-based treatment system may be used to meet the requirements of the variance review and advisory committee recommendations.

The bill provides that DEP's rules relating to the location of onsite sewage treatment and disposal systems must, in consultation with the water management districts, allow a licensed water well contractor to apply for and receive a variance for the installation of a private or public potable water well from the applicable water management district in the region of installation.

Section 5 provides an effective date of July 1, 2024.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.323, 373.333, 373.336, 381.0065.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Community Affairs on January 29, 2024:

The CS provides that DEP's rules relating to the location of onsite sewage treatment and disposal systems must, in consultation with the water management districts, allow a licensed water well contractor to apply for and receive a variance for the installation of a private or public potable water well from the applicable water management district in the region of installation.

B. Amendments:

None.

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