

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 661 Sanitary Sewer Lateral Inspection Programs

**SPONSOR(S):** Truenow

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Water Quality, Supply & Treatment Subcommittee		Curtin	Curtin
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

A sanitary sewer lateral is the portion of the sewer network connecting individual private properties to public sewer systems. Sanitary sewer laterals may constitute up to half of the total length of a sewer system. Sanitary sewer laterals are often in poor condition and deficiencies are the result of aging systems, inferior design or construction, structural failure, and failure to maintain the laterals. Deficiencies in sanitary sewer laterals can have a significant negative, and costly, impact on the performance of the entire sewer system.

The bill:

- Authorizes a county or municipality to access any sanitary sewer mainline it owns within or outside its jurisdiction to investigate, clean, repair, recondition, or replace the sanitary sewer mainline.
- Authorizes a county or municipality to access any sanitary sewer lateral within its jurisdiction to investigate, clean, repair, recondition, or replace the sanitary sewer lateral.
- Removes the deadline of July 1, 2022, by which a county or municipality may create a program to evaluate and rehabilitate sanitary sewer laterals on residential and commercial properties within their respective jurisdictions to reduce flows from leaking sanitary sewer laterals and allows such a program to be established at any time.
- Requires a county or municipality that identifies a defective, damaged, or deteriorated sanitary sewer lateral, and initiates a program to eliminate extraneous flow, to notify the property owner.
- Requires the county or municipality to issue any permit required to address the defective, damaged, or deteriorated sanitary sewer lateral to be repaired under the program.
- Specifies that the county or municipality is responsible for any repair work done on the private property, and if any disruption of the property is necessary to access the sanitary sewer lateral, the county or municipality must ensure that the property is restored to at least its pre-work condition.
- Requires that any repair work done to a sanitary sewer lateral must provide one continuous monolithic pipe system and be inspected using a lateral launch or similar CCTV camera system and conducted by a Pipeline Assessment Certification Program (PACP) and Lateral Assessment and Certification Program (LACP) certified camera operator.
- Requires the contractor to produce and provide the municipality with a PACP and LACP certified report describing the conditions of the continuous monolithic pipe system and the respective connections to the main sewer pipe and the structure.
- Authorizes the use of state or local funds allocated for the purpose of environmental preservation or the protection of water quality to be used for sanitary sewer lateral repairs.

The bill may have an indeterminate negative fiscal impact on local governments. See comments in II.B.2., Fiscal Impact on Local Governments, below.

# FULL ANALYSIS

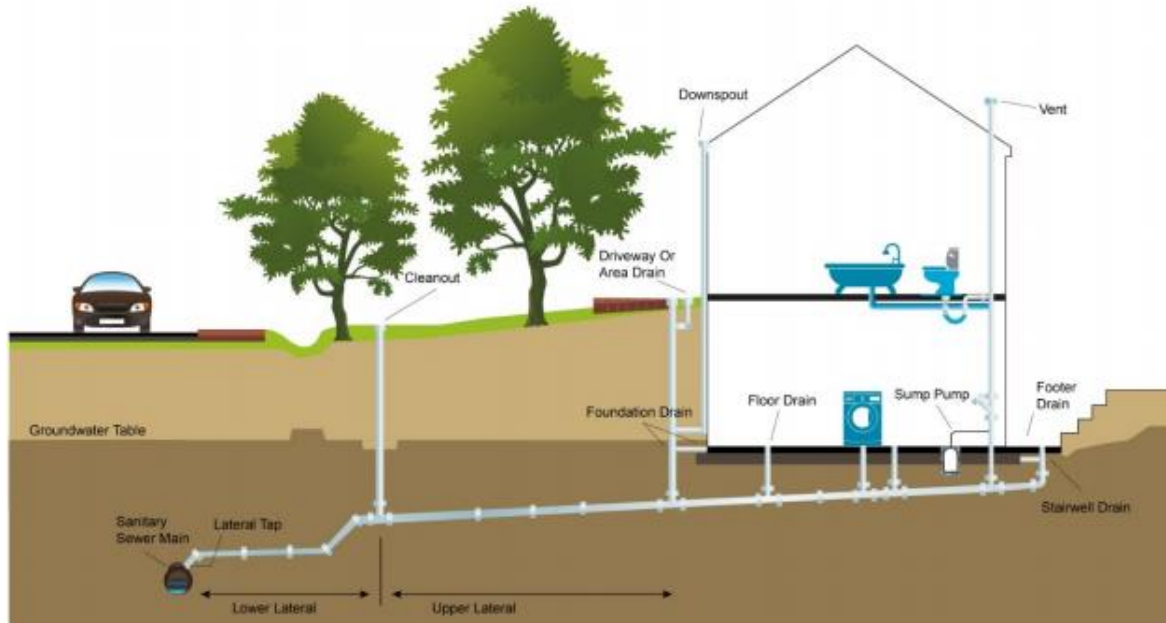
## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Sanitary Sewer Laterals

A sanitary sewer lateral is the portion of the sewer network connecting individual private properties to public sewer systems.<sup>1</sup> The following diagram illustrates a sanitary sewer lateral configuration:<sup>2</sup>



Sanitary sewer laterals may constitute up to half of the total length of a sewer system.<sup>3</sup> Sanitary sewer laterals are often in poor condition and deficiencies are the result of aging systems, inferior design or construction, structural failure, and failure to maintain the laterals.<sup>4</sup> Deficiencies in sanitary sewer laterals can have a significant negative, and costly, impact on the performance of the entire sewer system.<sup>5</sup>

The owners of laterals are often unaware that their laterals are deficient.<sup>6</sup> Some municipalities have adopted ordinances that require property owners to be responsible for the maintenance, operation, and/or repair of sanitary sewer laterals.<sup>7</sup>

##### Evaluation and Rehabilitation Program

A sanitary sewer lateral is defined as “a privately owned pipeline connecting a property to the main sewer line which is maintained and repaired by the property owner.”<sup>8</sup> Current law encourages each county and municipality to establish, by July 1, 2022, a program to evaluate and rehabilitate sanitary

<sup>1</sup> United States Environmental Protection Agency (EPA), *Private Sewer Laterals* (June 2014), <https://www3.epa.gov/region1/sso/pdfs/PrivateSewerLaterals.pdf> (last visited Feb. 27, 2023).

<sup>2</sup> Water Environment Federation, *Sanitary Sewer Rehabilitation Fact Sheet*, <https://www.wef.org/globalassets/assets-wef/direct-download-library/public/03---resources/wsec-2017-fs-009---csc---sewer-rehabilitation---final---9.27.17.pdf> (last visited Feb. 27, 2023).

<sup>3</sup> EPA, *supra* note 1, at 1.

<sup>4</sup> Water Environment Federation, *supra* note 2, at 1-2.

<sup>5</sup> EPA, *supra* note 1, at 1.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> City of Orlando, Fla., Code of Ordinances ch. 30, § 30.02, s.4.2(k); City of Tarpon Springs, Fla., Code of Ordinances ch. 20, art. IX, § 20-110(d).

<sup>8</sup> Ss. 125.569(1) and 166.0481(1), F.S.

sewer laterals on residential and commercial properties within their respective jurisdictions to reduce flows from leaking sanitary sewer laterals.<sup>9</sup>

The programs, at a minimum, are authorized to “[e]stablish a system to identify defective, damaged, or deteriorated sanitary sewer laterals; [c]onsider economical methods for a property owner to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral; and [e]stablish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified.”<sup>10</sup>

### Sewer System Inspections

Historically, sewer inspections were conducted by workers entering an access point (manhole) and visually examining the pipes or by attempting to illuminate the interior of a pipe by lowering a light source into the pipe (lamping).<sup>11</sup> Today, workers generally conduct remote, non-entry inspections utilizing cameras, closed-circuit television (CCTV), laser profiling, and sonar assessment.<sup>12</sup>

The National Association of Sewer Service Contractors (NASSCO) has established “de facto” industry standards for pipeline condition assessment and inspection.<sup>13</sup> NASSCO offers the Pipeline Assessment and Certification Program (PACP) as well as the Lateral Assessment Certification Program (LACP).<sup>14</sup>

### **Effect of the Bill**

The bill authorizes a county or municipality to access any sanitary sewer mainline it owns within or outside its jurisdiction to investigate, clean, repair, recondition, or replace the sanitary sewer mainline.

The bill authorizes a county or municipality to access any sanitary sewer lateral within its jurisdiction to investigate, clean, repair, recondition, or replace the sanitary sewer lateral.

The bill removes the deadline of July 1, 2022, by which a county or municipality may create an evaluation and rehabilitation program and allows such a program to be established at any time.

If a county or municipality identifies a defective, damaged, or deteriorated sanitary sewer lateral, and initiates a program to eliminate extraneous flow, the bill requires the county or municipality to notify the property owner of the issue by certified mail, return receipt requested. The notice must:

- Specify that within 14 days of receiving the notice, the county or municipality will access the owner’s property to address the defective, damaged, or deteriorated sanitary sewer lateral;
- Identify the issue and inform the property owner that the owner will be indemnified and held harmless in the repair process; and
- Provide a proposed timeline and plan for the completion of the sanitary sewer lateral project, including start and completion dates.

The bill requires the county or municipality to issue any permit required to address the defective, damaged, or deteriorated sanitary sewer lateral to be repaired under the program.

The bill specifies that the county or municipality is responsible for any repair work done on the private property, and if any disruption of the property is necessary to access the sanitary sewer lateral, the county or municipality must ensure that the property is restored to at least its pre-work condition after the repair is complete.

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<sup>9</sup> Ss. 125.569(2) and 166.0481(2), F.S.

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

<sup>11</sup> EPA, *Demonstration of Innovative Sewer System Inspection Technology: SL-RAT™* § 1.2, p. 1-3 (June 2014), <https://nepis.epa.gov/Adobe/PDF/P100IY1P.pdf> (last visited Feb. 28, 2023).

<sup>12</sup> *Id.* at pp. 1-3 – 1-5.

<sup>13</sup> *Id.* at 1-5; NASSCO, <https://www.nassco.org/> (NASSCO describes itself as “[t]he source of education, technical resources and advocacy for the underground infrastructure industry.”) (last visited Feb. 28, 2023).

<sup>14</sup> NASSCO, *Education and Training – PACP, LACP, MACP*, <https://www.nassco.org/education-and-training/pacp-lacp-macp/> (last visited Feb. 28, 2023).

The bill requires that:

- Any repair work provide one continuous monolithic pipe system;
- The connections for the structure, mainline, and cleanout must be installed and integrated into the continuous monolithic pipe system by a plumber licensed by a municipality or county;
- The repair work be inspected using a lateral launch or similar CCTV camera system and conducted by a PACP and LACP certified camera operator; and
- The contractor produce and provide the municipality with a PACP and LACP certified report describing the conditions of the continuous monolithic pipe system and the respective connections to the main sewer pipe and the structure.

The bill authorizes the use of state or local funds allocated for the purpose of environmental preservation or the protection of water quality to be used for sanitary sewer lateral repairs.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 125.569, F.S., related to sanitary sewer lateral inspection programs for counties.

Section 2. Amends s. 166.0481, F.S., related to sanitary sewer lateral inspection programs for municipalities.

Section 3. Provides an effective date of July 1, 2023.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on counties and municipalities that choose to implement a sanitary sewer lateral program associated with the costs of repairing sanitary sewer laterals, providing notice to property owners, and any damages that may occur during the repair. However, any negative fiscal impact may be offset as the bill authorizes the use of state funds allocated for the purpose of environmental preservation or the protection of water quality to be used for repairs to sanitary sewer laterals.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate positive fiscal impact on private contractors in counties and municipalities that choose to implement sanitary sewer lateral repairs associated with increased project procurement.

**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:

###### Takings Clause

A taking occurs when private property is taken for public use without just compensation.<sup>15</sup> “The right to exclude is ‘one of the most treasured’ rights of property ownership.”<sup>16</sup> Regulatory restrictions may be so burdensome that they rise to a taking.<sup>17</sup> The consideration of whether a taking has occurred typically involves an ad hoc, fact-specific analysis to determine whether economic injuries caused by government action must be compensated.<sup>18</sup> Certain factors, such as the economic impact of the regulation, the character of the governmental action, and the public interest being addressed by the regulation, have particular significance when engaging in these analyses.<sup>19</sup>

The bill may implicate the Takings Clause because it grants counties and municipalities a right of access on private property to inspect and fix sanitary sewer laterals. Inspecting and fixing leaking sanitary sewer laterals may be considered a significant public interest, and this would likely be considered by a court when evaluating whether the action rises to a taking.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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<sup>15</sup> *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 123 (1978).

<sup>16</sup> *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2072 (2021).

<sup>17</sup> *See id.* at 2074 (holding that a California regulation granting labor organizations a right of access to the property of agricultural producers to solicit support for unionization was an uncompensated taking in violation of the Fifth and Fourteenth Amendments).

<sup>18</sup> *Penn Cent. Transp. Co.*, 438 U.S. at 124, 128.

<sup>19</sup> *Id.* at 123.