

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 General Government Appropriations Committee

BILL: CS/SB 1296

INTRODUCER: General Government Appropriations Committee and Senator Bennett

SUBJECT: Beach Water Contamination

DATE: April 16, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	Favorable
2.	Wiggins	Kiger	EP	Favorable
3.	Pigott	DeLoach	GA	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires the Department of Health (DOH), when it issues a health advisory against swimming in beach waters due to bacterial contamination, to notify the appropriate local government and the local office of the Department of Environmental Protection (DEP). The DEP must investigate wastewater treatment facilities within one mile of the affected beach to determine whether a facility experienced an incident that may have contributed to the contamination. Upon completion of its investigation, the DEP must provide written notification to the local government in which the affected beach is located.

The bill moves the definition of “beach waters” from section 514.023 to section 514.011, Florida Statutes, which provides definitions for chapter 514, Florida Statutes. The bill also makes minor technical changes to sections 514.023 and 514.25(9), Florida Statutes.

The bill takes effect July 1, 2009.

This bill amends the following sections of the Florida Statutes: 514.011, 514.023, 514.025, and 515.25.

II. Present Situation:

Wastewater Contaminants and Their Public Health Effects

Fecal coliform and *enterococci* are both bacteria that normally inhabit the intestinal tract of humans and animals.¹ The presence of these bacteria is an indication of fecal pollution, which may come from storm water runoff, pets and wildlife, and human sewage. If they are present in high concentrations in recreational waters and are ingested while swimming or enter the skin through a cut or sore, they may cause human disease, infections, or rashes.²

Florida Healthy Beaches Program

Chapter 514, F.S., regulates public swimming and bathing facilities. Under s. 514.023, F.S., the DOH may adopt and enforce rules to protect the health, safety, and welfare of persons using the beach waters of the State of Florida. The Florida Healthy Beaches Program is located within the DOH.³ Beginning with a 1998 pilot program, 11 Florida coastal counties began conducting beach water sampling every two weeks and reporting the results on the DOH website and in local news media. In August 2000, the beach water sampling program was expanded to include the 34 Florida coastal counties.⁴ In August 2002, the coastal counties began collecting weekly samples. The coastal beach water samples collected by the county health departments are analyzed for *enterococci* and *fecal coliform* bacteria. If bacteria counts exceed standards established by rule through the DEP, county health departments issue health advisories or warnings when these conditions are confirmed.

Public Swimming Pools

Chapter 514, F.S., which relates to public swimming and bathing facilities, and ch. 515, F.S., which relates to residential swimming pools, both define the term “public swimming pool.” Section 514.011(2), F.S., defines “public swimming pool” or “public pool” to mean a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. The definition also includes examples of the types of pools that are included in the definition. Section 515.25(9), F.S., defines “public swimming pool” to mean a swimming pool, as defined in s. 514.011(2), F.S., which is operated, with or without charge, for the use of the general public. However, the term does not include a swimming pool located on the grounds of a private residence. Section 514.011(2), F.S., defines “private pool” to mean a facility used only by an individual, family, or living unit members and their guests, which does not serve any type of cooperative housing or joint tenancy of five or more living units.

¹ See Florida Department of Health, Florida Healthy Beaches Program. at: <<http://esetapps.doh.state.fl.us/irm00beachwater/terms.htm>> (Last visited on March 6, 2009).

² *Id.*

³ Florida Healthy Beaches Program. Found at: <<http://esetapps.doh.state.fl.us/irm00beachwater/default.aspx>> (Last visited on March 6, 2009)

⁴ These counties include: Bay, Brevard, Broward, Charlotte, Citrus, Collier, Dixie, Duval, Escambia, Flagler, Franklin, Gulf, Hernando, Hillsborough, Indian River, Lee, Levy, Manatee, Martin, Miami-Dade, Monroe, Nassau, Okaloosa, Palm Beach, Pasco, Pinellas, St. Johns, St. Lucie, Santa Rosa, Sarasota, Taylor, Volusia, Wakulla, and Walton.

Section 514.025(1), F.S., requires the DOH to assign to certain county health departments the functions of reviewing applications and plans for the construction, development, or modification of public swimming pools; of conducting inspections for and issuance of initial operating permits; and of issuing all permits. The law assigns to the DOH the responsibility for application and plan review and the issuance of initial operating permits when the county health department is not assigned those functions. The DOH is required to make the determination concerning the qualifications of county health department personnel to perform these functions and is provided rulemaking authority related to this section.

Section 514.025(2), F.S., requires that, after the initial operating permit is issued, the county health departments assume full responsibility for routine surveillance of all public swimming pools and bathing places.

Wastewater Compliance Evaluation Section

The DEP regulates wastewater treatment facilities in accordance with ch. 403, F.S. Wastewater facilities that collect and treat sewage pose the greatest threat for bacterial contamination. These facilities, as part of their operating permit, are required to regularly monitor and report effluent quality to the DEP. Wastewater facilities that treat sewage are inspected by the DEP annually, must report to the DEP any non-compliance, including any spills from their collection system, and provide a written report within five days indicating any corrective actions taken to correct the violation. Immediate response to non-compliance by the wastewater facility is essential, along with immediate notification to the appropriate state agencies. Facilities are able to provide this required notification by calling a 24-hour, toll-free hotline operated by the State Warning Point. When a spill directly affects surface waters or if it poses a threat to the public health, then the State Warning Point or the DEP also notifies the DOH.

In cases where sewage treatment facilities are the source of bacterial contamination, it is usually due to a non-compliance event of which the DEP is aware and is working towards a resolution. Once properly resolved, the facility should no longer continue to be a significant source of bacterial contamination. Other significant sources of bacteria, which do not have nearly the amount of oversight that the DEP has over wastewater facilities, include: stormwater runoff, privately-owned septic tanks, and marinas. According to the DEP, either individually or combined, these minimally regulated sources make up the greater threat to our beach waters.

In terms of beach water contamination, the DEP sets standards for both *fecal coliform* and *enterococci* bacteria levels to determine whether health advisories should be issued.⁵ *Fecal coliform* has long been Florida's preferred indicator organism in both freshwater and saltwater. The measurement of *fecal coliform* levels is used by the DEP to determine water quality in fresh, brackish, and marine water environments. Under the DOH testing program, if a *fecal coliform* result is observed to exceed 399 colony-forming units per 100 milliliters of beach water sampled and a resampling result also exceeds this value, then a health warning would be issued for the sampling site.⁶

⁵ *Id.* at 2.

⁶ 100 milliliters is about 7 tablespoons of water.

Based on recommendations by the United States Environmental Protection Agency (EPA), Florida's statewide testing program also includes testing for *enterococci*, which the EPA recommends states adopt as a saltwater quality indicator of water quality.⁷ According to studies conducted by the EPA, *enterococci* have a greater correlation with swimming-associated gastrointestinal illness in both marine and fresh waters than other bacterial indicator organisms, and are less likely to "die off" in saltwater. In Florida, if an *enterococci* result were observed to exceed 103 colony-forming units per 100 milliliters of beach water sampled and a resampling result also exceeds this value, then an advisory would be issued for the sampling site.

With the collection of weekly samples, the DEP program also calculates the geometric mean for *enterococci*. The geometric mean is a number calculated from five weeks of beach sample results, including any resampling that has taken place.⁸ As a result, it is an indication of average water quality conditions over that time period at that particular location. The EPA's increased illness risk estimates for bathers is based on the geometric mean exceeding 34 colony forming units per 100 milliliters of beach water sampled during this time frame.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 514.011, F.S., to move the definition of "beach waters" from s. 514.023, F.S., relating to the sampling of beach waters by the DOH and the issuance of health advisories, to s. 514.011, F.S., which provides definitions for ch. 514, F.S.

Section 2 amends s. 514.023, F.S., to require the DOH, when it issues a health advisory against swimming in beach waters due to bacterial contamination, to notify the appropriate local government and the local office of the DEP. The DEP must investigate wastewater treatment facilities within one mile of the affected beach to determine if a facility experienced an incident that may have contributed to the contamination. Upon completion of its investigation, the DEP must provide written notification of the result of its investigation to the local government in which the affected beach is located.

The section is also amended to make minor technical changes to s. 514.023(3), F.S., regarding a contingent appropriation of nonrecurring revenue for a three-year study to determine the water quality at beaches located throughout Florida.

Section 3 amends s. 514.025, F.S., to authorize the DOH to assign the responsibilities and functions specified in ss. 514.025(1) and (2), F.S., to an independent special district, created by the Legislature, which is authorized to provide municipal services and improvements. The bill requires that personnel of the special districts meet the requirements specified in s. 514.025(1), F.S.

Section 4 amends s. 515.25(9), F.S., relating to definitions for ch. 515, F.S., to make technical changes to the definition of "public swimming pool."

Section 5 provides an effective date of July 1, 2009.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOH reports that the bill has no fiscal impact on the department.

The DEP states that providing information to relevant local governments as required by the bill can be accomplished at no measurable cost to the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by General Government Appropriations Committee on April 14, 2009:**

The committee substitute authorizes the Department of Health to assign the responsibilities and functions specified in ss. 514.025(1) and (2), F.S., to an independent special district, created by the Legislature, which is authorized to provide municipal

services and improvements. The bill requires that personnel of the special districts meet the requirements specified in s. 514.025(1), F.S.

B. Amendments:

None.

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