

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 Environment and Natural Resources

BILL: SB 1100

INTRODUCER: Senator Montford

SUBJECT: Water Testing for Pollution

DATE: March 19, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schreiber	Rogers	EN	Favorable
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1100 provides that if pollution exists that could impact a water system and lead to a violation of water quality standards then any potentially impacted resident, business, or property owner may request that the Department of Health or its agents test the source of the water system for contamination. If the Department of Health receives such a request the bill requires the department or its agents to collect water samples from the water system's source and submit the samples to a certified laboratory for contaminant analysis no later than three business days after receipt of the request.

The bill authorizes certain fees and penalties deposited into the County Health Department Trust Fund to be used by the Department of Health to pay the costs of expenditures for the procedures specified in the bill.

II. Present Situation:

Drinking Water Quality

Groundwater is the primary source of drinking water in Florida.¹ While most groundwater is naturally protected from contaminants, chemicals and microorganisms can reach drinking water sources due to a wide array of pollution from human activities.² Consumption of contaminated drinking water results in thousands of cases of illness each year and can even be fatal.³ Water quality testing is necessary to make people aware of contaminants in their drinking water, protect public health and safety, and take corrective action.

Under Florida law, a “well” is as any excavation that is drilled, dug, or otherwise constructed with the intended use of locating, acquiring, or developing groundwater.⁴ The Department of Environmental Protection (DEP) delegates to the water management districts authority for issuing permits for the location, construction, repair, and abandonment of water wells.⁵ Under state regulations, a “water system” is the mechanical and electrical assembly of one or more pumps, pipes, storage structures, treatment equipment, and distribution network meant to provide water to the plumbing of a building or premises.⁶ In general, Florida regulates drinking water quality by regulating the entire “water system” that provides water to a building for human consumption, and this includes the well. The term “private well” is often used interchangeably with other terms for small, private water systems.

The Safe Drinking Water Act is the federal law that protects public drinking water supplies.⁷ It applies to “public water systems,” which are defined as having at least 15 service connections or serving at least 25 individuals.⁸ The Safe Drinking Water Act is implemented by the United States Environmental Protection Agency (EPA).⁹ Federal law does not regulate private wells or

¹ South Florida Water Management District, *Groundwater Modeling*, <https://www.sfwmd.gov/science-data/gw-modeling> (last visited Mar. 14, 2019).

² Florida Department of Health in Charlotte County, *Private Well Testing*, <http://charlotte.floridahealth.gov/programs-and-services/environmental-health/private-well-testing/index.html> (last visited Mar. 14, 2019).

³ *Id.*

⁴ Section 373.303(7), F.S. A “well” is defined as “any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, acquisition, development, or artificial recharge of groundwater, but such term does not include any well for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying; for inserting media to dispose of oil brines or to repressure oil-bearing or natural gas-bearing formation; for storing petroleum, natural gas, or other products; or for temporary dewatering of subsurface formations for mining, quarrying, or construction purposes.”

⁵ Section 373.308, F.S.; Fla. Admin. Code Ch. 40A-3; Fla. Admin. Code Ch. 40B-3; Fla. Admin. Code Ch. 40C-3; Fla. Admin. Code Ch. 40D-3; Fla Admin. Code Ch. 40E-3.

⁶ Fla. Admin. Code R. 64E-8.001. A “water system” is defined as “the mechanical and electrical assembly of one or more pumps, pipes, storage structures, treatment equipment, and distribution network meant to provide water to the plumbing of a building or premise. For the purposes of this chapter, except as described in subsection 64E-8.007(8), F.A.C., a water system does not include any connections after a master water meter where the water is obtained from a public water system that is covered or included in the Florida Safe Drinking Water Act, the water is not treated, collected or resold after the master water meter, and the end user is not a carrier which conveys passengers in interstate commerce.”

⁷ 42 U.S.C. s. 300f, *et seq.*; U.S. EPA, *Safe Drinking Water Act (SDWA)*, <https://www.epa.gov/sdwa> (last visited Mar. 13, 2019).

⁸ 42 U.S.C. s. 300f(4)(A).

⁹ U.S. EPA, *Laws and Regulations, Summary of the Safe Drinking Water Act*, <https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act> (last visited Mar. 13, 2019).

provide recommended criteria or standards for individual wells, and generally states that private well owners are responsible for the safety of their water.¹⁰ The EPA delegates authority to the state of Florida to adopt and enforce Florida's drinking water standards pertaining to public water systems.¹¹

Florida Safe Drinking Water Act

The Florida Safe Drinking Water Act (FSDWA) establishes a water supply program implemented by DEP, and the Department of Health (DOH) and its units including county health departments, to assure the availability of safe drinking water.¹² The FSDWA, like the federal law, applies to public water systems that have at least 15 service connections or regularly serve at least 25 individuals.¹³ Approximately 88% of Florida's resident are served by public water systems covered by the FSDWA.¹⁴

DEP adopts and enforces drinking water standards that apply to public water systems.¹⁵ DOH requires county health departments to collect water samples from public water systems for analysis within their respective jurisdictions.¹⁶ DOH implements a certification program for laboratories that perform analyses of drinking water samples.¹⁷ When a public water system in Florida is not in compliance with the requirements of the FSDWA the owner or operator of the system is required to notify DEP, the local public health departments, and the communications media serving the area.¹⁸

Smaller Water Systems

Many water systems in Florida are too small to fit the FSDWA's definition of a public water system. DOH has general supervision and control over water systems not covered under the FSDWA.¹⁹ These smaller water systems are regulated under the following definitions:

- “Private water system”: a water system that provides piped water for one or two residences, one of which may be a rental residence.
- “Multifamily water system”: a water system that provides piped water to three or four residences, one of which may be a rental residence.

¹⁰ U.S. EPA, *Private Drinking Water Wells*, <https://www.epa.gov/privatewells> (last visited Mar. 15, 2019).

¹¹ DEP, *Source & Drinking Water Program*, <https://floridadep.gov/water/source-drinking-water> (last visited Mar. 13, 2019).

¹² Sections 403.850-403.864, F.S.; Fla. Admin. Code Chapters 62-550, 62-555, and 62-560.

¹³ Section 403.852(2), F.S. Under Florida law, the term “public water system” is defined as “a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system is either a community water system or a noncommunity water system. The term ‘public water system’ includes: (a) Any collection, treatment, storage, and distribution facility or facilities under control of the operator of such system and used primarily in connection with such system. (b) Any collection or pretreatment storage facility or facilities not under control of the operator of such system but used primarily in connection with such system.”

¹⁴ Florida Department of Health, *Private Well Testing: Private Well Owner's Guide*, <http://www.floridahealth.gov/environmental-health/private-well-testing/index.html> (last visited Mar. 14, 2019).

¹⁵ Section 403.853, F.S.; Fla. Admin. Code Ch. 62-550.

¹⁶ Section 403.862, F.S.

¹⁷ Sections 403.863 and 403.8635, F.S.; see Fla. Admin. Code Chapter 64e-1.

¹⁸ Section 403.857, F.S.

¹⁹ Section 381.0062(2), F.S.

- “Limited use commercial public water system”: a public water system not covered under the FSDWA, serving one or more nonresidential establishments and providing piped water.
- “Limited use community public water system”: a public water system not covered under the FSDWA, serving five or more residences, or two or more rental residences, providing piped water.²⁰

Limited use public water systems are subject to monitoring schedules and specific water quality standards, maintained through sampling done by the owner or operator of the water system.²¹ When a sample analysis reveals contamination in limited use public water systems, corrective actions must be taken by the owner or operator of the system, including disinfection of the system and public notification to caution consumers.²² DOH requires water quality testing and the clearance of certain standards during the construction of new multi-family water systems.²³ However, while all public water systems in Florida are required to perform routine testing to maintain state drinking water standards, private well owners are responsible for ensuring that the water in their systems is safe to drink.²⁴ When owners and operators of existing private, multifamily, and limited use public water systems request testing services from DOH, DOH is required to charge a fee sufficient to cover the costs of sample collection, review of analytical results, health-risk interpretations, and coordination with other agencies.²⁵

DEP responds to the escape of pollutants into surface and ground waters, and maintains a program to restore contaminated potable water supplies.²⁶ This includes paying the reasonable costs of DOH in providing laboratory and field services in the investigation of drinking water contamination complaints.²⁷ DEP and DOH implement a Well Surveillance Program that monitors and identifies threats to the drinking water supplies, ensures that contaminated sites posing the greatest risk get cleaned up first, and prevents long-term consumption of contaminated drinking water.²⁸ DEP conducts surveys to identify drinking water wells that are near areas of known or suspected contamination. Wells located during the surveys are tested by DOH for chemical contamination. DOH submits water well samples to DEP for analysis.²⁹ Since 2005, the program has identified over 4,400 wells with chemical concentrations that exceeded state or federal drinking water standards. Private wells with water sampling results showing certain levels of contamination are eligible for assistance through DEP’s Water Supply Restoration Program.³⁰

²⁰ Section 381.0062(1)(e), (f), (h), and (k), F.S.; see DOH, *Limited Use Wells*, <http://www.floridahealth.gov/environmental-health/drinking-water/limited-use-wells.html> (last visited Mar. 14, 2019).

²¹ Fla. Admin. Code R. 64E-8.006.

²² Fla. Admin. Code R. 64E-8.007 and 64E-8.008.

²³ Fla. Admin. Code R. 64E-8.003.

²⁴ Florida Department of Health, *Private Well Testing: Private Well Owner’s Guide*, <http://www.floridahealth.gov/environmental-health/private-well-testing/index.html> (last visited Mar. 14, 2019).

²⁵ Section 381.0062(2)(f), F.S. The fee is required to be no less than \$10 and no more than \$90.

²⁶ Section 376.30(3), F.S.

²⁷ Section 376.30(3)(c)3, F.S.

²⁸ DOH, *Well Surveillance Program*, <http://www.floridahealth.gov/environmental-health/drinking-water/well-surveys.html> (last visited Mar. 14, 2019).

²⁹ DEP, *Private Well Water Sampling*, <https://floridadep.gov/wra/water-supply-restoration/content/private-well-water-sampling> (last visited Mar. 17, 2019).

³⁰ DEP, *Water Supply Restoration*, <https://floridadep.gov/wra/water-supply-restoration> (last visited Mar. 14, 2019).

County Health Departments

County health departments are units of DOH that are located in each of Florida's 67 counties.³¹ They are state-local partnerships created to protect and improve public health and safety through "a system of coordinated county health department services."³² Each county government enters into a contract annually with DOH that specifies the services to be provided and the revenues that will fund the services.³³ The state maintains the County Health Department Trust Fund.³⁴ This trust fund contains all state and local funds that are expended by county health departments, and these funds are expended in accordance with budgets and plans agreed on by DOH and each county.³⁵

DOH receives fees from permitting the construction, alteration, or operation of public water systems.³⁶ DOH and county health departments assess administrative penalties for violations of the FSDWA.³⁷ The money from these functions is deposited into the County Health Department Trust Fund.³⁸ Such money must then be used for carrying out DOH's responsibilities for water systems not covered under the FSDWA and for funding the costs of county health departments for regulating and monitoring public water systems.³⁹

DOH strongly recommends that private well owners test their water at least once a year for contaminants such as bacteria, nitrates, and arsenic.⁴⁰ County health departments provide private well owners with instructions on how to collect water samples or may test the water at the location of the well for an additional fee.⁴¹ Private laboratories that have been certified by the state are also available to perform water testing.⁴² DOH advises well owners to contact county health departments to assess the need for testing their water and to seek help from county health departments to understand test results and respond to findings of contamination.⁴³

³¹ Chapter 154, part I, F.S.; DOH, *County Health Departments*, <http://www.floridahealth.gov/programs-and-services/county-health-departments/index.html> (last visited Mar. 12, 2019).

³² Section 154.001, F.S.

³³ DOH, *County Health Departments*, <http://www.floridahealth.gov/programs-and-services/county-health-departments/index.html> (last visited Mar. 12, 2019); see Contract Between Broward County and State of Florida Department of Health For Operation of The Broward County Health Department, *Contract Year 2017-2018* (2017) available at http://cragenda.broward.org/docs/2017/CCCM/20171212_553/25392_Exhibit%20%20-%20Florida%20Department%20of%20Health%20Agreement.23%20pages.pdf (last visited Mar. 12, 2019).

³⁴ Section 154.02(2), F.S.

³⁵ Section 154.02(3), F.S.

³⁶ Section 403.861(7), F.S.; Fla. Admin. Code R 64E-8.002 and 64E-8.004.

³⁷ Section 403.860(5), F.S.

³⁸ Section 381.0063, F.S.

³⁹ Section 381.0063, F.S.; see ss. 381.0062 and 403.862(1)(c), F.S.

⁴⁰ DOH, *Is your Well Water Well?*, http://www.floridahealth.gov/environmental-health/private-well-testing/images/well_water_poster_2015.pdf (last visited Mar. 14, 2019); DOH, *Private Well Testing: How and When To Test*, <http://www.floridahealth.gov/environmental-health/private-well-testing/index.html> (last visited Mar. 14, 2019).

⁴¹ DOH, *Private Well Testing: How and When To Test*, <http://www.floridahealth.gov/environmental-health/private-well-testing/index.html> (last visited Mar. 14, 2019); Florida Department of Health Indian River County, *IRCHD Laboratory Collection and Submittal Information*, <http://indianriver.floridahealth.gov/programs-and-services/environmental-health/drinking-water-laboratory/documents/lab-collection-form-rev-aug-2018.pdf> (last visited Mar., 14, 2019).

⁴² DEP, *Laboratories Certified Under NELAP by the Florida Department of Health*, https://fldeplc.dep.state.fl.us/aams/loc_search.asp (last visited Mar. 14, 2019).

⁴³ DOH, *Private Well Testing: How and When To Test*, <http://www.floridahealth.gov/environmental-health/private-well-testing/index.html> (last visited Mar. 14, 2019).

III. Effect of Proposed Changes:

Section 1 creates s. 381.00621, F.S., which involves testing water for contamination.

The bill defines the word “pollution,” as used in the section, as “a physical, biological, chemical, or radiological substance or matter in the air, the land, or the waters of the state.”

The bill provides that if pollution exists in an area that could impact a private water system and result in a violation of water quality standards then any potentially impacted residents, business owners, or property owners are authorized to request that the Department of Health (DOH) or its agents test the water source of the system for contamination. The applicable water quality standards are those developed by DOH or the Department of Environmental Protection. The bill applies to three groups of water systems: private water systems, which provide piped water to one or two properties; multifamily water systems, which provide piped water to three or four properties; and public water systems that provide piped water to the public but serve less than 25 individuals and have less than 15 service connections.

If DOH receives a request for water testing as described in the bill, DOH or its agents must collect water samples from the system’s water source and submit the samples to a laboratory for contaminant analysis. The analysis must be completed no later than three business days after the department’s receipt of the request. The laboratory performing the analysis must either be a DOH laboratory or a laboratory certified by DOH.

Section 2 amends s. 381.0063, F.S., to authorize the costs of expenditures for the water quality testing required by s. 381.00621, F.S., to be paid for from the appropriate County Health Department Trust Fund.

Section 3 states that the act shall take effect July 1, 2019.

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:

Indeterminate.

C. Government Sector Impact:

This bill would require DOH and its agents, in certain situations, to conduct testing of water systems. This may result in DOH and its agents incurring additional costs. The bill likely has an indeterminate, negative fiscal impact on DOH.

The number of wells that would need to be tested as a result of this bill is unknown. DOH indicates that testing 20,000 wells would cost \$2.9 million.⁴⁴ DOH estimates that implementing the bill would require DOH to hire 25 additional full-time employees.⁴⁵ DOH is required under existing law to charge not less than \$10 or more than \$90 to cover the costs of collecting samples and interpreting results, which may offset the cost to DOH.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DOH's bill analysis for SB 1100 suggests the following definition of pollution be used instead of the definition provided in the bill: "the presence in the outdoor atmosphere or waters of the state of any one or more substances, contaminants, or manmade or human-induced impairment of water or alteration of the chemical, physical, biological, or radiological integrity of the water in quantities which are or may be potentially harmful or injurious to human health or welfare."⁴⁶

DOH's bill analysis suggests it is not clear who will determine whether pollution exists to the extent it would potentially violate a DOH or Department of Environmental Protection water quality standard.⁴⁷ Therefore, it may improve clarity to change the language from "[i]f pollution exists in an area" to "[i]f a government entity determines that pollution exists in an area . . ."

⁴⁴ DOH, 2019 Agency Legislative Bill Analysis, *Bill Number: SB 1100*, 2 (2019)(on file with the Senate Committee on Environment and Natural Resources).

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 6.

⁴⁷ *Id.*

DOH's bill analysis states that the bill's 3-day timeframe for collection and analysis of drinking water samples is not feasible, and that depending on the analytes being tested turnaround time is greater than 3 days and can be up to 14 days, involving various steps in the testing process.⁴⁸

VIII. Statutes Affected:

This bill substantially amends section 381.0063 of the Florida Statutes.

This bill creates section 381.00621 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.

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

⁴⁸ *Id.* at 3.