

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 Health Policy

BILL: SB 1614
 INTRODUCER: Senator Baxley
 SUBJECT: Lakes and Lagoons
 DATE: March 15, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Williams	Brown	HP	Pre-meeting
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

SB 1614 provides an exemption for a manmade lake or lagoon with a surface area of 43,000 square feet or more from the definition of “public swimming pool” or “swimming pool” as those terms are used in regulation of pools by the Department of Health (DOH).

The bill has no fiscal impact.

The effective date of the bill is July 1, 2019.

II. Present Situation:

Department of Health Regulation of Public and Residential Swimming Pools

The DOH is charged by law with responsibilities relating to environmental health. This is reflected in the inclusion of environmental health services as a key part of the functional system of county health department services. Such services include those relating to swimming pools.¹ This is further reflected in the powers and duties of the DOH, which include administering and enforcing “laws and rules relating to sanitation, control of communicable diseases, illnesses and hazards to health among humans and from animals to humans, and the general health of the people of the state,”² and, more specifically, the inclusion of a public swimming and bathing facilities function as provided in chapter 514, F.S., as part of the general environmental health functions of the DOH.³

¹ See s. 154.01(1) and (2), F.S.

² See s. 381.0011, F.S.

³ See s. 381.006, F.S.

Chapter 514, F.S., relates to the DOH responsibilities specific to public swimming and bathing facilities. This chapter addresses: definitions, exemptions from supervision or regulation, and variances; DOH authorization; sampling of beach waters, public bathing places, and the issuance of advisories; an advisory committee specific to the sampling of beach waters; assignment of authority to county health departments; an advisory review board; approval for construction, development, or modification of public swimming pools or public bathing places; permitting for public swimming pools; required safety features for public swimming pools and spas; fee schedules; right of entry and inspection; denial, suspension, or revocation of permits and administrative fines; injunctions to restrain violations; certification of swimming instructors and lifeguards; certification of swimming instructors for people who have developmental disabilities; and certification of public pool service technicians.

As a supplement to the statutory provisions, the DOH has adopted rules specific to its public swimming and bathing places responsibilities. The rules address: general provisions; exemptions; operational requirements; supervision and safety; bathing places; fees; variances; enforcement; and technician certification.⁴

The general purpose and intent in regulating public swimming places is to ensure water quality sanitation to prevent disease outbreaks, avoid sanitary nuisances, and to ensure safety engineering to avoid accidents by public swimming pool users.⁵

Exemptions that currently exist include those specific to: private pools and water therapy facilities connected with facilities such as hospitals, medical doctors' offices, and licensed physical therapy establishments; pools serving condominium or cooperative associations of more than 32 units and which are not rented for less than 60 days; a private pool used for private swimming lessons; any pool serving a residential child care agency registered and exempt under s. 409.176, F.S.; a portable pool used for swimming lessons; and a temporary pool. Further, the DOH may grant variances from its own rules under certain circumstances and grant variance under the Florida Building Code under certain circumstances.⁶ The DOH rules provide the process and procedures to be followed and the basis for the granting of exemptions.⁷

It should be noted that the Department of Health's involvement with the "supervision over sanitation, healthfulness and cleanliness of swimming pools, bath houses, public swimming and bathing places and all related appurtenances" dates back to 1919, a full 100 years.⁸

Closely related to ch. 514, F.S., specific to public swimming pools and bathing places is ch. 515, F.S., relating to DOH's authority regarding swimming pool safety in the context of residential requirements.⁹

⁴ See Ch. 64E-9, Florida Administrative Code (F.A.C.)

⁵ Department of Health, *Senate Bill 1614 Analysis* (Mar. 11, 2019) (on file with the Senate Committee on Health policy).

⁶ See s. 514.0115, F.S.

⁷ See Rule 64E-0035, F.A.C.

⁸ Chapter 7825, section 2, 1919, found at: <http://edocs.dlis.state.fl.us/fldocs/leg/actsflorida/1919/LOF1919V1-7783-7906.pdf> (last visited Mar. 12, 2019).

⁹ See ch. 515, F.S.

Construction Requirements for Pools and Equipment

The construction requirements for pools and equipment are regulated under ch. 553, F.S., the Florida Building Codes Act, and the 2017 Florida Building Code, chapter 4, section 454.1. Section 553.79, F.S., is specific to permits, applications, issuance, and inspections under the Florida Building Code. Subsection (11) of this section provides that the local (county or municipal) enforcing agency may not issue a building permit to construct, develop, or modify a public swimming pool without proof of application, whether complete or incomplete, for an operating permit pursuant to s. 514.031, F.S., from the DOH. A certificate of completion or occupancy from the local enforcing agency may not be issued until such operating permit is issued. The local enforcing agency must conduct its review of the building permit application upon filing and in accordance with this chapter. The local enforcing agency may confer with the DOH, if necessary, but may not delay the building permit application review while awaiting comment from the DOH.

The Florida Building Code, chapter 4, section 454.1, as amended, provides specifications for swimming pool construction. Included are definitions, structural specifications such as slope, depth and markings, signage, color, stairs, handrails and grab-rails, obstructions, sun shelves, electrical equipment and wiring including ground-fault circuit interrupter protection, underwater lighting, ultraviolet light disinfectant equipment, filtration and recirculating system, repairs and alterations, and ionization units and ozone generators.¹⁰

III. Effect of Proposed Changes:

Section 1 provides an exemption for a manmade lake or lagoon with a surface are of 43,000 square feet or more from the definition of “public swimming pool” as that term is used for the regulation of public swimming pools by the Department of Health under ch. 514, F.S.

Section 2 provides an exemption for a manmade lake or lagoon with a surface are of 43,000 square feet or more from the definition of “swimming pool” as that term is used for the regulation of residential swimming pools by the Department of Health under ch. 515, F.S.

Section 3 provides for an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁰ See the Florida Building Code, chapter 4 revisions, 2017, available at <http://www.floridapoolpro.com/wp-content/uploads/2014/09/2017-FLORIDA-BUILDING-CODE-6TH-EDITION-RECAP-OF-APPROVED-PUBLIC-POOL-CHANGES-6.16.17-with-logos.pdf> (last visited Mar. 13, 2019).

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:

The DOH indicates that it is unclear if a “manmade lake or lagoon with a surface area of 43,000 square feet or more” would be regulated as a public bathing place, as defined in s. 514.011(4), or not regulated at all. If not regulated, then no sanitation or safety standards would apply, according to the DOH.¹¹

On June 15, 2018, a Petition for a Declaratory Statement was entered between Crystal Lagoons U.S. Corp and the State of Florida, Department of Health, and on August 21, 2018, a Final Order was issued stating that “lagoons” are defined as “public bating places” as defined under s. 514.011(4), F.S., not as “swimming pools” as defined under s. 514.011(2), F.S.¹²

The DOH has developed and shared with the Department of Business and Professional Regulation (DBPR) on December 15, 2018, verbiage to be included in the Florida Building Code

¹¹ *Supra* note 5

¹² *Crystal Lagoons v. State of Florida, Department of Health, DOH Case No.: 2018-0137; Rendition No.: DOH-18-0357-FOI-HO* (on file with the Senate Committee on Health policy).

specific to public bathing places.¹³ The code does not have any related provisions at present. Specially addressed are proposed standards relating to equipment that delivers chemicals, chemical application, size and capacity of place, liner material, safety considerations, vacuum outlet safety, review of specific structural features, and review of specific activity features. A public meeting is scheduled on March 22, 2019, at which the Florida Building Commission will consider this modification to the Florida Building Code.¹⁴

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 514.011 and 515.25.

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.

¹³ Proposed Code Modifications document submitted to the Department of Business and Professional Regulation, Dec. 15, 2018 (available from staff of the Senate Committee on Health Policy).

¹⁴ See the link to the Florida Building Commission meeting calendar, and specifically beginning at page 176, available at: http://www.floridabuilding.org/fbc/commission/FBC_0319/Code_Development/Details/swimming_pool_detail2.pdf (last visited Mar. 14, 2019).