

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 1706

INTRODUCER: Senator Montford

SUBJECT: Water Testing for Pollution

DATE: February 7, 2020 REVISED: _____

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

I. Summary:

SB 1706 provides that if a government entity discovers or confirms pollution in an area which could impact certain drinking water systems and result in a violation of water quality standards then any potentially affected resident, business, or property owner may request the Department of Health (DOH) or its agents to test the water source for contamination relating to the pollution. If DOH receives such a request, DOH or its agents must collect or receive water samples from the system’s water source and submit the samples to certain laboratories for contaminant analysis. The analysis must be completed as expeditiously as possible, but not later than seven business days after DOH’s receipt of the request. DOH must provide information regarding the test results sufficient for the requesting party to understand whether the sample contains contaminants exceeding water quality standards.

The bill requires that certain money going into the County Health Department Trust Fund be used to pay the costs of expenditures for the section created by the bill.

II. Present Situation:

Florida Drinking Water Quality and Testing

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 pollution from a range of human activities.² Consumption of contaminated

¹ South Florida Water Management District, *Groundwater Modeling*, <https://www.sfwmd.gov/science-data/gw-modeling> (last visited Feb. 4, 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 Feb. 4, 2020); DEP, *Regulated Drinking Water Contaminants and Contaminants of Emerging Concern*, <https://floridadep.gov/comm/press-office/content/regulated-drinking-water-contaminants-and-contaminants-emerging-concern> (last visited Feb. 4, 2020).

drinking water results in thousands of cases of illness each year and can even be fatal.³ Water quality testing can make people aware of contaminants in their drinking water, protect public health and safety, and enhance corrective action.

Under Florida's drinking water laws, a "well" is defined 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 to issue 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 provide recommended criteria or standards for individual wells, and the EPA 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 DEP has the primary role of regulating public water systems in Florida.¹²

³ 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 Feb. 4, 2020).

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 Feb. 4, 2020).

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 Feb. 4, 2020).

¹⁰ U.S. EPA, *Private Drinking Water Wells*, <https://www.epa.gov/privatewells> (last visited Feb. 4, 2020).

¹¹ Chapter 403, pt. IV, F.S.

¹² DEP, *Source & Drinking Water Program*, <https://floridadep.gov/water/source-drinking-water> (last visited Feb. 4, 2020).

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 county health departments, to assure the availability of safe drinking water.¹³ 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.¹⁴ Approximately 88% of Florida's residents are served by public water systems covered by the FSDWA.¹⁵

DEP adopts and enforces drinking water standards that apply to public water systems.¹⁶ DEP rules contain the drinking water standards, monitoring requirements, and treatment techniques required of these systems.¹⁷ In seven Florida counties, DEP delegates to DOH the authority to fully implement drinking water quality standards in public drinking water systems.¹⁸ DOH implements a certification program for laboratories that perform analyses of drinking water samples.¹⁹ 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.²⁰

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.²¹ 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.
- “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.

¹³ Sections 403.850-403.864, F.S.; Fla. Admin. Code chapters 62-550, 62-555, 62-560, and 64E-8.

¹⁴ 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.”

¹⁵ DOH, *Private Well Testing: Private Well Owner's Guide*, <http://www.floridahealth.gov/environmental-health/private-well-testing/index.html> (last visited Feb. 4, 2020).

¹⁶ Section 403.853, F.S.; Fla. Admin. Code Ch. 62-550.

¹⁷ Fla. Admin. Code Ch. 62-550.

¹⁸ DOH, *Public Drinking Water Systems in Florida*, <http://www.floridahealth.gov/environmental-health/drinking-water/public-drinking-water-systems.html> (last visited Feb. 4, 2020).

¹⁹ Sections 403.863 and 403.8635, F.S.; see Fla. Admin. Code ch. 64E-1.

²⁰ Section 403.857, F.S.

²¹ Section 381.0062(2), F.S.

- “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.²²

Limited use public water systems are subject to monitoring schedules and specific water quality standards, maintained through sampling coordinated by the owner or operator of the water system.²³ 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.²⁴ DOH requires water quality testing and the clearance of certain standards during the construction of new multi-family water systems.²⁵ 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.²⁶

DEP responds to pollutants entering surface and ground waters, and maintains programs to restore contaminated potable water supplies.²⁷ Together, DEP and DOH implement a Well Surveillance Program that monitors and identifies threats to 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 The two main activities of the program are surveys to find drinking water wells around areas of known or suspected contamination, and sampling for contamination.²⁹ Priority is given to areas around wells where elevated levels of contamination appear to pose a public health threat, followed by wells in areas near reported contamination sites that have not yet been investigated.³⁰ Since 2005, the program has identified over 4,400 wells with chemical concentrations that exceed state or federal drinking water standards.³¹ Private and other small wells with water sampling results showing certain levels of contamination are eligible for assistance through DEP’s Water Supply Restoration Program.³²

²² 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).

²³ Fla. Admin. Code R. 64E-8.006.

²⁴ Fla. Admin. Code Rules 64E-8.007 and 64E-8.008.

²⁵ Fla. Admin. Code R. 64E-8.003.

²⁶ DOH, *Private Well Testing: Private Well Owner’s Guide*, <http://www.floridahealth.gov/environmental-health/private-well-testing/index.html> (last visited Feb. 4, 2020).

²⁷ Section 376.30(3), F.S.

²⁸ DOH, *Well Surveillance Program*, <http://www.floridahealth.gov/environmental-health/drinking-water/well-surveys.html> (last visited Feb. 4, 2020); see also DEP, *Petroleum Cleanup Participation Program (PCPP)*, <https://floridadep.gov/waste/petroleum-restoration/content/petroleum-cleanup-participation-program-pcpp> (last visited Feb. 4, 2020).

²⁹ DOH, *Well Surveillance Program*, <http://www.floridahealth.gov/environmental-health/drinking-water/well-surveys.html> (last visited Feb. 4, 2020).

³⁰ DEP, *Private Well Water Sampling*, <https://floridadep.gov/wra/water-supply-restoration/content/private-well-water-sampling> (last visited Feb. 4, 2020).

³¹ DOH, *Well Surveillance Program*, <http://www.floridahealth.gov/environmental-health/drinking-water/well-surveys.html> (last visited Feb. 4, 2020).

³² DEP, *Water Supply Restoration*, <https://floridadep.gov/wra/water-supply-restoration> (last visited Feb. 5, 2020).

County Health Departments

County health departments are units of DOH that are located in each of Florida's 67 counties.³³ They are state-local partnerships created to protect and improve public health and safety through "a system of coordinated county health department services."³⁴ 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.³⁵ The state maintains the County Health Department Trust Fund.³⁶ 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.³⁷

Fees from permitting the construction, alteration, or operation of public water systems, and administrative penalties assessed for violations of the FSDWA, are deposited into the County Health Department Trust Fund.³⁸ Such funds must then be used by DOH for paying the costs of expenditures required to carry out its responsibilities for: water systems not covered under the FSDWA, and county health departments' regulating and monitoring public water systems.³⁹

Private well owners can consult their local county health department for how to test their own well, and the cost is usually around \$20-30 per sample if the well owner collects the water samples.⁴⁰ In some cases, local health department staff can come to a home and collect the samples, generally for an additional fee of \$30-\$40 per visit.⁴¹ DOH strongly recommends that private well owners test their water at least once a year for contaminants such as bacteria, nitrates, and arsenic.⁴² Private laboratories that have been certified by the state are also available to perform water testing.⁴³ 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.⁴⁴ In some cases, DOH may be able to do testing for certain toxic substances free of charge.⁴⁵

III. Effect of Proposed Changes:

Section 1 creates s. 381.00621, F.S., entitled "Testing for contamination."

³³ Chapter 154, part I, F.S.; DOH, *County Health Departments*, <http://www.floridahealth.gov/programs-and-services/county-health-departments/index.html> (last visited Feb. 4, 2020).

³⁴ Section 154.001, F.S.

³⁵ DOH, *County Health Departments*, <http://www.floridahealth.gov/programs-and-services/county-health-departments/index.html> (last visited Feb. 4, 2020).

³⁶ Section 154.02(2), F.S.

³⁷ Section 154.02(3), F.S.

³⁸ Sections 381.0063, 403.860(5), and 403.861(7)(a), F.S.

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

⁴⁰ DOH, *Private Well Testing: How and When to Test*, <http://www.floridahealth.gov/environmental-health/private-well-testing/index.html> (last visited Feb. 4, 2020).

⁴¹ *Id.*

⁴² *Id.*

⁴³ DOH, *National Environmental Laboratory Accreditation Program*, <http://www.floridahealth.gov/licensing-and-regulation/environmental-laboratories/environmental-laboratory-certification/nelap.html> (last visited Feb. 4, 2020).

⁴⁴ DOH, *Private Well Testing: How and When To Test*, <http://www.floridahealth.gov/environmental-health/private-well-testing/index.html> (last visited Feb. 4, 2020).

⁴⁵ *Id.*

The bill defines the term “pollution,” as used in the section of law created by the bill, to mean: “the presence in the outdoor land, air, or waters of the state of any substance, contaminant, or manmade or human-induced impairment or alteration of the chemical, physical, biological, or radiological integrity of a water source in quantities that are or may be potentially harmful or injurious to human health or welfare.”

The bill provides that if a government entity discovers or confirms that pollution exists in an area which could impact a private water system, multifamily water system, or public water system not subject to the Florida Safe Drinking Water Act, and result in a violation of water quality standards adopted by the Department of Health (DOH) or the Department of Environmental Protection, any potentially affected resident, business, or property owner may request DOH or its agents to test the water source for contamination relating to the pollution identified by the government entity.

If DOH receives such a request, DOH or its agents must collect or receive water samples from the system’s water source, and submit the samples to a DOH laboratory or a DOH-certified drinking water laboratory for contaminant analysis. Water samples received by DOH for such analysis must be collected using methods acceptable to DOH. The analysis must be completed as expeditiously as possible, but not later than seven business days after DOH’s receipt of the request. DOH must provide information regarding the test sufficient for a resident, business, or property owner making the request and receiving the results to understand whether the sample contains contaminants that exceed water quality standards.

Section 2 amends s. 381.0063, F.S., which requires revenue from permitting fees for public water systems and certain administrative penalties to be deposited into the County Health Department Trust Fund to pay the costs of DOH carrying out its responsibilities under the Florida Safe Drinking Water Act. The bill adds paying the costs of expenditures pursuant to s. 381.00621, F.S., to the authorized uses of the funds in the County Health Department Trust Fund.

Section 3 states that the act takes effect July 1, 2020.

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:

Residents, businesses, and property owners with water systems that are not regulated under the Florida Safe Drinking Water Act often have to pay the costs of testing their water system or the cost of having someone else test their water system. This bill would prevent such costs from being incurred. Therefore, the bill may result in an indeterminate, positive fiscal impact on the private sector.

C. Government Sector Impact:

This bill requires DOH and its agents, in certain situations, to conduct testing of water systems, and to communicate the results of the testing. This may result in DOH and/or its agents incurring additional costs. The bill likely has an indeterminate, negative fiscal impact on DOH.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.
