

**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.)

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Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

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**BILL:** CS/SB 604

**INTRODUCER:** Environment and Natural Resources Committee and Senator Berman

**SUBJECT:** Safe Waterways Act

**DATE:** February 8, 2022      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Rogers	EN	<b>Fav/CS</b>
2.			CA	
3.			AP	

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 604 revises state law governing the sampling of beach waters and public bathing places, the issuance of health advisories, and the posting of associated signage. The bill:

- Eliminates Department of Health (DOH) discretion regarding whether to:
  - Adopt and enforce rules to protect the health, safety, and welfare of persons using beach waters and public bathing places, by making the adoption and enforcement of such rules mandatory; and
  - Issue health advisories if the water quality of beach waters or a public bathing place fails to meet DOH standards, by making the issuance of such health advisories mandatory.
- Includes public bathing places as areas over which the issuance of health advisories related to the results of bacteriological sampling is preempted to DOH.
- Includes public bathing places as areas for which DOH must give notice of health advisories against swimming to municipalities, counties, and the local office of the Department of Environmental Protection (DEP).
- Requires DOH to adopt by rule a sign containing certain language, to be used when it issues a health advisory against swimming in beach waters or public bathing places due to bacterial contamination.
- Provides that DOH must require health advisory signs to be posted around affected beach waters or public bathing places until bacteria levels meet DOH standards.
- Makes municipalities and counties responsible for posting and maintaining health advisory signs in affected beach waters and public bathing places that they own.

- Makes DOH responsible for posting and maintaining health advisory signs in affected beach waters and public bathing places owned by the state.
- Authorizes DOH to coordinate with DEP and the Fish and Wildlife Conservation Commission to implement signage requirements.
- Requires DOH to monitor affected beach waters and public bathing places to ensure that signage is posted appropriately until the bacterial contamination is resolved.

## II. Present Situation:

### Department of Health

The Department of Health (DOH) protects and promotes the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties.<sup>1</sup>

DOH is required to:<sup>2</sup>

- Identify, diagnose, and conduct surveillance of diseases and health conditions in the state and accumulate the health statistics necessary to establish trends;
- Implement interventions that prevent or limit the impact or spread of diseases and health conditions;
- Collect, manage, and analyze vital statistics and other health data to inform the public and formulate public health policy and planning;
- Maintain and coordinate preparedness for and responses to public health emergencies in the state;
- Provide or ensure the provision of quality health care and related services to identified populations in the state;
- Regulate environmental activities that have a direct impact on public health in the state; and
- Regulate health practitioners for the preservation of the health, safety, and welfare of the public.<sup>3</sup>

DOH is comprised of a state health office (i.e. a central office) in Tallahassee, with statewide responsibilities; Florida's 67 County Health Departments (CHDs); 22 Children's Medical Services area offices; 12 Medical Quality Assurance regional offices; 9 Disability Determinations regional offices; and 3 public health laboratories.<sup>4</sup> Facilities for the 67 CHDs are provided through partnerships with local county governments. These 67 CHDs have a total of 255 sites throughout the state, providing a variety of services, and ranging from small to large in location size.<sup>5</sup>

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<sup>1</sup> Section 20.43(1), F.S.

<sup>2</sup> Section 20.43(1)(a)-(g), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> DOH, *About Us*, <https://www.floridahealth.gov/about/index.html> (last visited Feb. 1, 2022).

<sup>5</sup> *Id.*

## DOH Regulation of Beach Waters and Public Bathing Places

State law permits, but does not require, DOH to adopt and enforce rules to protect the health, safety, and welfare of persons using the beach waters and public bathing places of the state.<sup>6</sup> State law defines the term “beach waters” to mean the waters along the coastal and intracoastal beaches and shores of the state, and includes all salt water and brackish water.<sup>7</sup> A “[p]ublic bathing place” means a body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, regardless of whether a fee is charged to use it.<sup>8</sup> The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.<sup>9</sup>

If adopted, the rules must establish health standards and prescribe procedures and timeframes for bacteriological sampling of beach waters and public bathing places.<sup>10</sup> State law also permits, but does not require, DOH to issue health advisories if the quality of beach waters or a public bathing place fails to meet standards adopted by it.<sup>11</sup> The issuance of health advisories related to the results of bacteriological sampling of beach waters is preempted to the state.<sup>12</sup>

DOH has adopted and enforces rules requiring the owners or managers of public bathing places to monitor for water quality, report the results to DOH and the relevant county health department, and provide notice to DOH and the public whenever there are water quality violations of adopted bacteriological standards for fecal coliform, *E. coli*, and *enterococci*.<sup>13</sup> Bacteriological samples for public bathing places must be collected and tested monthly.<sup>14</sup> If test results exceed standards, the relevant county health department must perform an inspection and the bathing place owner or manager must post a no swimming advisory; only after re-sampling confirms that the bathing water again meets standards may the owner or manager rescind the posted no-swimming advisory.<sup>15</sup> DOH can close a public pool for failing to comply with the rules, including failing to comply with water quality standards, and may attach a sign that states: “Pool closed. This pool is not in compliance with Chapter 64E-9, F.A.C., and may endanger the health, safety or welfare of persons using this facility.”<sup>16</sup>

By statute, whenever DOH issues a health advisory against swimming in beach waters or a public bathing place on the basis of finding elevated levels of fecal coliform, *Escherichia coli*, or *enterococci* bacteria in a water sample, DOH must concurrently notify the municipality or county in which the affected beach waters are located, whichever has jurisdiction, and the local office of

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<sup>6</sup> Section 514.023(2), F.S.

<sup>7</sup> Section 514.023(1), F.S.

<sup>8</sup> Section 514.011(4), F.S.

<sup>9</sup> *Id.*

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

<sup>11</sup> Section 514.023(3), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Fla. Admin. Code R. 64E-9.013(1)-(3).

<sup>14</sup> Fla. Admin. Code R. 64E-9.013(1)(a).

<sup>15</sup> Fla. Admin. Code R. 64E-9.013(1)-(2).

<sup>16</sup> See Fla. Admin. Code R. 64E-9.017(1)(h) (permitting closure for “[a]ny other condition” endangering the health, safety, or welfare of persons using the public pool).

the Department of Environmental Protection (DEP).<sup>17</sup> The local office of DEP must then promptly investigate wastewater treatment facilities within 1 mile of the affected beach waters or public bathing place to determine if a facility experienced an incident that may have contributed to the contamination and provide the results of the investigation in writing or by electronic means to the municipality or county, as applicable.<sup>18</sup>

### ***Fecal Coliform, Escherichia Coli, and Enterococci Bacteria***

Coliforms are bacteria that live in the intestines of warm-blooded animals (humans, pets, farm animals, and wildlife).<sup>19</sup> Fecal coliform bacteria are a kind of coliform associated with human or animal wastes. *Escherichia coli* (*E. coli*) is part of the group of fecal coliforms.<sup>20</sup> *Enterococci* are also bacteria associated with human and animal wastes.<sup>21</sup>

Sources of fecal indicator bacteria include wastewater treatment plant effluent, leaking septic systems, stormwater runoff, sewage discharged or dumped from recreational boats, domestic animal and wildlife waste, improper land application of manure or sewage, and runoff from manure storage areas, pastures, rangelands, and feedlots.<sup>22</sup>

Coliforms and *enterococci* are indicators of the presence of fecal material in water and, therefore, of the possible presence of disease-causing bacteria, viruses, and protozoa.<sup>23</sup> These pathogens can sicken swimmers and others who use rivers and streams for recreation or eat raw shellfish or fish. Other potential health effects can include diseases of the skin, eyes, ears and respiratory tract. Eating fish or shellfish harvested from waters with fecal contamination can also result in human illness.<sup>24</sup>

### **The Beaches Environmental Assessment and Coastal Health (BEACH) Act**

The federal Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act)<sup>25</sup> amended the Clean Water Act in 2000.<sup>26</sup> The BEACH Act is designed to reduce the risk of disease to users of coastal recreation waters. It authorizes the U.S. Environmental Protection Agency to award program development and implementation grants to eligible states, territories, tribes, and local governments to support microbiological testing and monitoring of coastal recreational waters, including the Great Lakes and waters adjacent to beaches or similar points of access used by the public. BEACH Act grants also provide support for developing and

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<sup>17</sup> Section 514.023(4), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> U.S. Environmental Protection Agency (EPA), *Response to 2005 Hurricanes*, <https://archive.epa.gov/katrina/web/html/fecal.html> (last visited Feb. 1, 2022).

<sup>20</sup> *Id.*

<sup>21</sup> EPA, *National Aquatic Resource Surveys, Indicators: Enterococci*, <https://www.epa.gov/national-aquatic-resource-surveys/indicators-enterococci> (last visited Feb 1, 2022).

<sup>22</sup> See EPA, *Response to 2005 Hurricanes*, <https://archive.epa.gov/katrina/web/html/fecal.html> (last visited Feb. 1, 2022) (regarding coliforms); see also EPA, *National Aquatic Resource Surveys, Indicators: Enterococci*, <https://www.epa.gov/national-aquatic-resource-surveys/indicators-enterococci> (last visited Feb 1, 2022) (regarding *enterococci*).

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

<sup>25</sup> Pub. L. No. 106-284, 114 Stat. 870 (2000), available at <https://www.congress.gov/106/plaws/publ284/PLAW-106publ284.pdf> (last visited Feb. 1, 2022).

<sup>26</sup> EPA, *Summary of the BEACH Act*, <https://www.epa.gov/laws-regulations/summary-beach-act> (last visited Feb. 1, 2022).

implementing programs to notify the public of the potential for exposure to disease-causing microorganisms in coastal recreation waters.<sup>27</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 514.023, F.S., which regulates the sampling of beach waters and public bathing places, as well as the issuance of health advisories.

The bill eliminates Department of Health (DOH) discretion regarding whether to:

- Adopt and enforce rules to protect the health, safety, and welfare of persons using beach waters and public bathing places, by making the adoption and enforcement of such rules mandatory; and
- Issue health advisories if the water quality of beach waters or a public bathing place fails to meet DOH standards, by making the issuance of such health advisories mandatory.

The bill revises existing law to include public bathing places as areas over which the issuance of health advisories related to the results of bacteriological sampling is preempted to DOH. It also revises existing law to include public bathing places as areas for which DOH must give concurrent notice of health advisories against swimming to municipalities, counties, and the local office of the Department of Environmental Protection (DEP).

The bill requires DOH to adopt by rule a sign to be used when it issues a health advisory against swimming in beach waters or public bathing places due to elevated levels of fecal coliform, *Escherichia coli*, or *enterococci* bacteria in the water. The sign must include the following language:

THIS WATER BODY HAS BEEN VERIFIED BY THE FLORIDA DEPARTMENT OF HEALTH TO BE CONTAMINATED WITH FECAL BACTERIA. RESTORATION IN COMPLIANCE WITH STATE WATER QUALITY STANDARDS IS REQUIRED. THIS WATER BODY PRESENTS A RISK OF INFECTION OR ILLNESS. AVOID SWIMMING AND USE CAUTION TO AVOID INGESTING THE WATER OR EXPOSING OPEN WOUNDS. SECTION 514.023, FLORIDA STATUTES.

DOH must require health advisory signs to be displayed in conspicuous areas around affected beach waters or public bathing places until subsequent testing of the water shows that the bacteria levels meet DOH's standards.

The bill provides that municipalities and counties are responsible for maintaining health advisory signs in affected beach waters and public bathing places that they own. DOH is responsible for maintaining health advisory signs in affected beach waters and public bathing places owned by the state. DOH may coordinate with DEP and the Fish and Wildlife Conservation Commission to implement the signage requirements of the bill.

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<sup>27</sup> *Id.*

The bill requires DOH to monitor affected beach waters and public bathing places for compliance with the signage requirements of the bill, to ensure that signage is posted appropriately until the bacteria contamination is resolved.

**Section 2** of the bill provides an effective date of July 1, 2022.

**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:

None.

C. Government Sector Impact:

The bill will likely cause municipalities, counties, and DOH to incur costs associated with the acquisition, posting, and removal of signage. DOH will also likely incur costs associated with monitoring affected beach waters and public bathing places for compliance with the signage requirements of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 514.023 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Environment and Natural Resources on February 7, 2022:**

Retains the following from the underlying bill:

- Elimination of Department of Health (DOH) discretion by requiring (not just authorizing) it to:
  - Adopt and enforce rules to protect the health, safety, and welfare of persons using beach waters and public bathing places; and
  - Issue health advisories if the water quality of beach waters or a public bathing place fails to meet DOH standards.
- Requirement of DOH to adopt by rule a sign containing certain language, to be used when it issues a health advisory against swimming in beach waters or public bathing places due to bacterial contamination.

Amends the underlying bill as follows:

- Deletes revisions to the definitions of “public bathing place” and “beach waters” and deletes all conforming changes.
- Eliminates the requirement that municipalities and counties having jurisdiction post and maintain health advisory signage, unless they own the affected beach waters and public bathing places, in which case they are responsible.
- Provides that DOH is responsible for maintaining signs at beach waters and public bathing places owned by the state.

**B. Amendments:**

None.