

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 177 Safe Waterways Act
SPONSOR(S): Gossett-Seidman
TIED BILLS: **IDEN./SIM. BILLS:** SB 172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthcare Regulation Subcommittee	17 Y, 0 N	Curry	McElroy
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Regulation of beach waters and bathing places is significant in the prevention of disease, sanitary nuisances, and accidents by which the health or safety of individuals may be threatened or impaired. Under current law, the Department of Health (DOH) may adopt and enforce rules to protect the public health, safety, and welfare. DOH rules must establish health standards and prescribe procedures and timeframes for bacteriological water sampling. If water quality does not meet rule standards, DOH may issue a health advisory.

HB 177 requires, rather than authorizes, DOH to:

- Adopt and enforce rules to protect the health, safety, and welfare of persons using beach waters and public bathing places;
- Issue health advisories if the water quality of beach waters or a public bathing place fail to meet DOH standards; and
- Require closure of beach waters and public bathing places that fail to meet water quality standards if it is deemed necessary to protect the health, safety, and welfare of the public.

The bill establishes additional DOH rule requirements, as follows:

- Specifies that DOH rules, at a minimum, must require owners of beach waters and public bathing places to both notify the local county health department and resample the water within 24 hours after a test result indicates water quality violations.
- Includes public bathing places in the water bodies subject to current law requirements for the issuance and notification of health advisories.
- Requires DOH to adopt by rule a sign to be used when issuing health advisories against swimming in affected waters and requires signs to be displayed in conspicuous areas around the affected waters until subsequent testing shows that the bacteria levels meet water quality standards; and requires DOH to coordinate with the Department of Environmental Protection (DEP) to implement this.

The bill requires local governments, rather than DOH, to post and maintain health advisory signs in affected beach waters and public bathing places that they own. DOH must monitor affected waters for signage compliance.

Finally, the bill requires DOH and DEP to establish a statewide interagency database for reporting fecal indicator bacteria data for beach waters and public bathing places and requires the data to be published in the database within five business days after receipt.

The bill has a significant negative impact on DOH and an indeterminate negative fiscal impact on local government.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Beach Waters and Public Bathing Places

Beach waters are defined as the waters along the coastal and intracoastal beaches and shores and include salt water and brackish water.¹ A public bathing place is a body of water, natural or modified by humans, that is used for swimming, diving, and recreational bathing. The bathing water areas of public bathing places include, but are not limited to, freshwater (lakes, ponds, rivers, streams, and artificial impoundments) and marine waters (salt waters along the coastal and intracoastal beaches and shores).²

Under current law, the Department of Health (DOH) may, but is not required to, adopt and enforce rules to protect the health, safety, and welfare of individuals using beach waters and public bathing places in Florida. If adopted, the rules must establish the health standards and prescribe procedures and timeframes to conduct bacteriological sampling of beach waters and public bathing places.³ DOH may also, but is not required to, issue health advisories if the quality of the beach waters or a public bathing place fails to meet the water quality standards established by the department.⁴ The issuance of health advisories related to the results of bacteriological sampling of beach waters is preempted to the state.⁵

DOH Regulation of Beach Waters and Public Bathing Places

Regulation of bathing places is significant in the prevention of disease, sanitary nuisances, and accidents by which the health or safety of individuals may be threatened or impaired.⁶ 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 the adopted bacteriological standards for fecal coliform, *E. coli*, and *enterococci*.⁷ Bacteriological samples for public bathing places must be collected and tested monthly.⁸

If test results exceed standards, within 24 hours the relevant county health department must be notified and re-sampling of the water must be conducted. The county health department must also perform an inspection and the bathing place owner or manager must post a no swimming advisory.⁹ If the owner or manager does not post the advisory, DOH is required to post it. Once re-sampling confirms that the bathing water meets the standards again, the owner or manager may rescind the posted no-swimming advisory.¹⁰ Currently, there are approximately 402 beach water and public bathing places monitored by DOH through biweekly sampling.¹¹

¹ S. 514.023(1), F.S. Brackish water or estuaries refers to water that is somewhat salty, more salty than freshwater, but not as salty as seawater. Brackish water is typically found at transitional points of water where freshwater, such as from a river or lake, meets with salty seawater. See National Ocean Service: National Oceanic and Atmospheric Administration, *What is an Estuary? Estuaries Tutorial*, at https://oceanservice.noaa.gov/education/tutorial_estuaries/est01_what.html (last visited March 28, 2023).

² S. 514.011(4), F.S.

³ S. 514.023(2), F.S.

⁴ S. 514.023(3), F.S.

⁵ *Id.*

⁶ Rule 65E-9.001, F.A.C.

⁷ Rule 64E-9.013(1)-(3), F.A.C.

⁸ Rule 64E-9.013(1)(a), F.A.C.

⁹ See, form DH 4158, *Bathing Place Public Health Advisory Sign – Poor Water Quality*, incorporated by reference in Rule 64E-9.013(2)(a)2, F.A.C.

¹⁰ Rule 64E-9.013(1)-(2), F.A.C.

¹¹ DOH, *Agency Bill Analysis HB 177 (2023)*, p 2.

Health Advisory

When 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 the Department of Environmental Protection (DEP).¹² The local office of DEP must then promptly investigate wastewater treatment facilities within one 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.¹³

Although, DOH has authority to issue public health advisories, the agency does not have statutory authority to close beaches.

*Fecal Coliform, Escherichia Coli, and Enterococci Bacteria*¹⁴

Coliforms and *enterococci* are bacteria that live in the intestines of warm-blooded animals (humans, pets, farm animals, and wildlife).¹⁵ 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.¹⁶

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.¹⁷ The presence of these pathogens in waterways may cause cloudy water, unpleasant odors, and decreased levels of dissolved oxygen.¹⁸ These pathogens can also 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.¹⁹

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.²⁰

Monitoring Water Quality

Florida Healthy Beaches Program

¹² Section 514.023(4), F.S.

¹³ *Id.*

¹⁴ See Rule 65E-9.013(3), F.A.C. for the bacteriological standards for fecal coliform, *escherichia coli*, and *enterococci* bacteria.

¹⁵ U.S. Environmental Protection Agency (EPA), *Response to 2005 Hurricanes*, at <https://archive.epa.gov/katrina/web/html/> and EPA, *National Aquatic Resource Surveys, Indicators: Enterococci*, <https://www.epa.gov/national-aquatic-resource-surveys/indicators-enterococci> (last visited March 29, 2023).

¹⁶ U.S. Environmental Protection Agency (EPA), *Response to 2005 Hurricanes*, at <https://archive.epa.gov/katrina/web/html/> (last visited March 29, 2023).

¹⁷ *Id.*

¹⁸ EPA, National Service Center for Environmental Publications, *E. coli and Enterococci*, (2009) at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100Z0AU.PDF?Dockey=P100Z0AU.PDF> (last visited March 29, 2023).

¹⁹ *National Aquatic Resource Surveys, Indicators: Enterococci*, <https://www.epa.gov/national-aquatic-resource-surveys/indicators-enterococci> (last visited March 29, 2023).

²⁰ *Id.* note 14.

The Florida Healthy Beaches Program was created to monitor for *enterococci* bacteria and to more accurately determine whether beaches are safe for recreational uses such as swimming.²¹ The program began in 1998 as a pilot program with a few coastal counties conducting bi-weekly beach water samples and reporting the results on the Florida Healthy Beaches Program website and to local media.²² The beach water sampling program was expanded in 2000 through state legislation and funding. Sampling under the program was also expanded to include testing of fecal coliform, in addition to *enterococci* bacteria and the number of counties participating in the program increased.²³ Additional funding from the U.S. Environmental Protection Agency (EPA) in 2002 enabled weekly sampling. However, changes to funding levels in 2011 resulted in a return to bi-weekly sampling.²⁴

The Beaches Environmental Assessment and Coastal Health Act

In 2000, Congress passed the Beaches Environmental Assessment and Coastal Health (BEACH) Act,²⁵ to amend the Clean Water Act to improve the quality of coastal recreation waters.²⁶ The BEACH Act is designed to reduce the risk of disease to users of coastal recreation waters. It authorizes the EPA 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 implementing programs to notify the public of the potential for exposure to disease-causing microorganisms in coastal recreation waters.²⁷

Freshwater Bathing Places

In Florida, 35 county health departments monitor 150 freshwater bathing places where the owners of the bathing places conduct monthly testing for *enterococci bacteria* and post a public health advisory sign when water bacteria levels are above the bacteriological standards set forth in Rule 64E-9.013(3), F.A.C.²⁸ The owners of freshwater bathing places are required to provide laboratory test results for two samples to DOH within 24 hours of receipt of laboratory results.²⁹ Laboratory results take an average of 48-72 business hours to process. If the owners of freshwater bathing places do not post signage advising the public of the health risk, DOH posts signage. DOH's oversight activities of freshwater bathing places are funded through General Revenue.³⁰

Marine Water Bathing Places

Thirty (30) county health departments conduct bi-weekly sampling at 252 marine water bathing places for *enterococci bacteria* and post public health advisory signs when water bacteria levels are above standards.³¹ DOH's oversight and routine water testing activities for marine water bathing places are primarily funded through the BEACH Act grant. The grant provides funding for 186 sampling locations to be tested bi-weekly. One beach water sample is collected per sampling location. The sample is sent to a laboratory which provides results on average within 48-72 business hours. In addition, local funding supports weekly testing at 67 of the EPA grant funded sampling locations. Local funds also support bi-weekly or weekly testing at 66 additional marine sampling locations. All marine public bathing places

²¹ Costal & Heartland National Estuary Partnership Wateratlas, *Learn More: Healthy Beaches*, at https://chnep.wateratlas.usf.edu/library/learn-more/learnmore.aspx?toolsection=lm_healthybeach and DOH, Beach Water Quality, *Florida Healthy Beaches Program*, at <https://www.floridahealth.gov/environmental-health/beach-water-quality/index.html> (last visited March 29, 2023).

²² *Id.*

²³ DOH, Beach Water Quality, *Florida Healthy Beaches Program*, at <https://www.floridahealth.gov/environmental-health/beach-water-quality/index.html> (last visited March 29, 2023).

²⁴ *Id.*

²⁵ Pub. L. No. 106-284, 114 Stat. 870 (2000), available at <https://www.congress.gov/106/plaws/publ284/PLAW-106publ284.pdf> (last visited March 29, 2023).

²⁶ EPA, *Summary of the BEACH Act*, <https://www.epa.gov/laws-regulations/summary-beach-act> (last visited March 29, 2023).

²⁷ *Id.*

²⁸ DOH, *Agency Bill Analysis HB 177 (2023)*, p 2.

²⁹ Rule 64E-9.013(2)(a), F.A.C.

³⁰ *Id.* note 27.

³¹ *Id.*

funded under the grant have permanent signage stating the beach water quality is being monitored by DOH.³²

In Fiscal Year 2021-2022, the county health departments collected 7,922 marine beach water samples—of which 475 (6%) samples statewide exceeded the *enterococci bacteria* standard resulting in 246 public health advisories issued by the DOH. Various conditions can impact the timeframe that waters return to acceptable standards, including concentration of *enterococci bacteria*, water temperature, weather, and water flow. The timeframe for returning to acceptable standards typically varies between 1-5 days.³³

Water Quality Database

In 2019, an interagency database was launched to provide Floridians with information on the water quality status in their area.³⁴ The Protecting Florida Together Water Quality Map delivers statewide water quality information regarding algae blooms (blue-green algae, red tide and nutrients), water impairments, and environmental restoration projects.³⁵ The map is designed to ensure transparency and accountability with respect to water quality data and its availability to the public.

The map displays and describes specific health notifications regarding known or possible health impacts based on prevailing water quality conditions and identifies the precautions that individuals should take in effected areas.³⁶ Information on the map is provided by the Florida Department of Environmental Protection (DEP), Florida Fish and Wildlife Conservation Commission and DOH. DEP manages the maintenance of the website for the map.³⁷

Effect of the Bill

HB 177 requires, rather than authorizes, DOH to:

- Adopt and enforce rules to protect the health, safety, and welfare of persons using beach waters and public bathing places;
- Issue health advisories if the water quality of beach waters or a public bathing place fail to meet DOH standards; and
- Require closure of beach waters and public bathing places that fail to meet water quality standards if it is deemed necessary to protect the health, safety, and welfare of the public. Closure must remain in effect until the quality of the waters is restored to standards and DOH has removed any related health advisories issued.

The bill specifies that DOH rules, at a minimum, must require owners of beach waters and public bathing places to both notify the local county health department and resample the water within 24 hours after a test result indicates that the sample of beach water or public bathing place failed to meet standards.

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 the state. 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 DEP.

The bill requires DOH to adopt by rule a sign to be used when it issues a health advisory against swimming in affected 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:

³² Id.

³³ Id. pgs. 2-3.

³⁴ Id. p 3.

³⁵ Id. Also see Protecting Florida Together, *Protecting Florida Together Water Quality Map*, at <https://protectingfloridatogether.gov/water-quality-status#health-notifications> (last visited March 30, 2023).

³⁶ Protecting Florida Together, *Health Notifications*, at <https://protectingfloridatogether.gov/water-quality-status#health-notifications> (last visited March 30, 2023).

³⁷ DOH, *Agency Bill Analysis HB 177 (2023)*, p 3.

“THIS WATER BODY HAS BEEN VERIFIED 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 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 requires municipalities and counties to post and maintain 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 must coordinate with DEP and the Fish and Wildlife Conservation Commission to implement the signage requirements of the bill.

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 only DOH approved health advisory signs are used and that the signage is posted and maintained in compliance until the health advisory is no longer in effect.

Further, the bill requires DOH to establish a public statewide interagency database for the reporting of fecal indicator bacteria data for beach waters and public bathing places. The bill also requires DOH, in coordination with DEP, to adopt rules and procedures for sharing the fecal indicator bacteria data between agencies and for reporting the data in the database. Fecal indicator bacteria data relating to sampled beach waters and public bathing places must be published in the database within five (5) business days after receipt and confirmation of the data.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Provides a short title.

Section 2: Amends s. 514.023, F.S., relating to sampling of beach waters; and public bathing places; health advisories.

Section 3: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Resource expenditures will be needed: (professional, IT, and legal), travel, two pickup truck vehicles, equipment, computer ware, and laboratory tests.

Additional staff in numerous County Health Departments and at Central Office will be necessary. The cost associated with updating ProtetingFloridaTogether.gov or creating a new system to report fecal indicator bacteria is unknown at this time.

A total of \$5,529,092 is needed in the lapsed first year for 37 FTEs and for both recurring and non-recurring expenses [includes \$1,910,678 Salary and Fringe; \$801,568 for Professional Expense

Standard, \$50,000 for the purchase of two vehicles, \$2,437,500 for Lab Testing, and \$228,750 for water sample collection, \$75,023 for web application development, \$19,221 for ancillary expense purchases, and \$6,352 for HR outsourcing]

Each following year there will be a recurring total cost of \$6,861,603 with \$2,547,570 for the FTEs, \$624,906 for Professional Expense Standard, \$3,250,000 for Lab Testing and \$305,000 for water sample collection shipping, \$100,030 for web application development, \$25,628 for ancillary expense purchases, and \$8,469 for HR outsourcing.³⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments would lose any fees charged during beach closures.³⁹

2. Expenditures:

Local governments would incur costs for additional sampling and monitoring and for labor costs when beaches and bathing places are required to close. Additional clerical staff and attorneys may be needed for database entry and for compliance and enforcement, respectively.

Local government would also incur costs for signage. This would include the cost for manufacturing or purchasing signage and staff time posting and removing the signage. Tamper-resistant lockable aluminum flip-style signs like traffic signage are used for the Healthy Beaches grant program at all marine beaches would be required. The cost of these signs is between \$250 and \$350 each, depending on the quantity ordered. Providing secured wind-resistant installation for the signs would result in an additional cost.⁴⁰

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill [requires counties and municipalities to post and maintain DOH-required health advisory signs at affected beach waters and public bathing places they own, and appears to require them, as owners, to resample the water within 24 hours after a failing test. Similarly, in addition, DOH interprets the bill to require counties and municipalities to enforce closures. However, an exemption may apply: the fiscal impact to counties and municipalities is indeterminate, and may be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rulemaking authority to implement the provisions of the bill.

³⁸ DOH, *Agency Bill Analysis HB 177 (2023)*, p 4.

³⁹ *Id.*

⁴⁰ *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES