

**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 Health Policy

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BILL: CS/SB 338

INTRODUCER: Health Policy Committee and Senators Berman and Rodriguez

SUBJECT: Safe Waterways Act

DATE: February 7, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	<b>Fav/CS</b>
2.			AEG	
3.			FP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 338 amends s. 514.023, F.S., to require the Department of Health (DOH) to adopt and enforce rules to protect the health, safety, and welfare of persons using beach waters and public bathing places. At a minimum the rules must require owners of beach waters and public bathing places to notify the DOH and retest waters within 24 hours after a test result indicates that a sample fails to meet bacteriological standards. The DOH is required by the bill, rather than allowed, to issue a health advisory, within 24 hours or the next business day, if water quality does not meet standards and must require the closure of beach waters and public bathing places if necessary to protect public health, safety, and welfare. The closure must remain in effect until the water quality is restored.

Additionally, the DOH must adopt by rule a sign that must be used when it issues a health advisory due to elevated fecal coliform, Escherichia Coli (E. coli), or enterococci bacteria, in tested waters which must be a specific size and be maintained by municipalities and counties around waters they own and by the Department of Environmental Protection (DEP) around state waters.

The bill provides an effective date of July 1, 2024.

## II. Present Situation:

### Bacteria

Water is full of bacteria, some of which are beneficial and others which are not.<sup>1</sup> Fecal coliform are naturally occurring bacteria found in the digestive tracts of most animals and they are shed from the body with excrement.<sup>2</sup> While infections from fecal coliform bacteria are typically not fatal, severe symptoms may lead to death.<sup>3</sup> *Escherichia coli* (*E. coli*), a type of fecal coliform bacteria, are found in the environment, intestines of people and animals, and foods.<sup>4</sup> Some strains of *E. coli* may cause illnesses such as intestinal and urinary tract infections, meningitis<sup>5</sup>, and septicemia<sup>6,7</sup> Enterococci are bacteria that live in the intestinal tracts of humans and warm-blooded animals.<sup>8</sup> These bacteria can sicken swimmers and other potential health effects can include diseases of the skin, eyes, ears and respiratory tract.<sup>9</sup>

Sources of fecal indicator bacteria such as enterococci include wastewater treatment plant effluent, leaking septic systems, storm water 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. There are also natural, non-fecal sources of fecal indicator bacteria, including plants, sand, soil and sediments, that contribute to a certain background level in ambient waters and vary based on local environmental and meteorological conditions.<sup>10</sup>

### Beach Waters and Public Bathing Places

Beach waters are the salt waters and brackish waters along the coastal and intracoastal beaches.<sup>11</sup> A public bathing place is a body of water, including artificial impoundments, waters along the coastal and intracoastal beaches and shores of the state, lakes, streams, and rivers that are used by the public for swimming and recreational bathing.<sup>12</sup>

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<sup>1</sup> United States Geological Survey (USGS), *Bacteria and E. Coli in Water*, <https://www.usgs.gov/special-topics/water-science-school/science/bacteria-and-e-coli-water> (last visited Feb. 2, 2024).

<sup>2</sup> Jesse Minor, Encyclopedia of Environment and Society - Fecal Coliform Bacteria, [https://www.researchgate.net/publication/285400656\\_Fecal\\_Coliform\\_Bacteria](https://www.researchgate.net/publication/285400656_Fecal_Coliform_Bacteria), p. 3 (2007).

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

<sup>4</sup> *Id.*

<sup>5</sup> Some people with meningitis caused by bacteria “die and death can occur in as little as a few hours. However, most people recover from bacterial meningitis. Those who do recover can have permanent disabilities, such as brain damage, hearing loss, and learning disabilities.” CDC, *Bacterial Meningitis* (last updated July 15, 2021), <https://www.cdc.gov/meningitis/bacterial.html> (last visited Feb. 2, 2024).

<sup>6</sup> Septicemia is an infection that occurs when bacteria enter the bloodstream and spread. It can lead to sepsis, the body’s reaction to the infection, which can cause organ damage and even death.

<sup>7</sup> USGS, *supra* note 3.

<sup>8</sup> Environmental Protection Agency (EPA), National Aquatic Resource Surveys, *Indicators: Enterococci, What are enterococci?* (last updated June 9, 2023), <https://www.epa.gov/national-aquatic-resource-surveys/indicators-enterococci> (last visited Feb. 2, 2024).

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

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

<sup>11</sup> Section 514.023(1), F.S.

<sup>12</sup> Section 514.011(4), F.S.

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.<sup>13</sup> If adopted, “[t]he rules must establish health standards and prescribe procedures and timeframes to conduct bacteriological sampling of beach waters and public bathing places.”<sup>14</sup> The issuance of health advisories related to such sampling is preempted to the state, and the DOH is authorized to issue health advisories when beach waters or a public bathing place fail to meet health standards.<sup>15</sup>

### ***DOH Regulation of Beach Waters and Public Bathing Places***

The regulation of bathing places is important to prevent disease and sanitary nuisances which may threaten or impair the health or safety of individuals.<sup>16</sup> The DOH has adopted and enforces rules requiring the owners or managers of public bathing places to monitor for water quality, report the results to the DOH and the relevant county health department, and provide notice to the DOH and the public whenever there are water quality violations of the adopted bacteriological standards for fecal coliform, *E. coli*, or enterococci.<sup>17</sup> The owner or manager of a public bathing place is required to collect and test bacteriological samples each month.<sup>18</sup>

If test results exceed standards established by the DOH, then the owner or manager must, within 24 hours of receipt of the results, notify the relevant county health department and re-sample the water.<sup>19</sup> The county health department must also inspect the waters upon receipt of the test results.<sup>20</sup> If the 24-hour samples confirm an exceedance of standards, the owner or manager must immediately post a no swimming advisory<sup>21</sup>; if the owner or manager does not post the advisory, the DOH is required to post it.<sup>22</sup> Once re-sampling confirms that the bathing water again meets the standards, the owner or manager may rescind the posted no-swimming advisory.<sup>23</sup>

When the DOH issues a health advisory against swimming in beach waters or a public bathing place because elevated levels of fecal coliform, *E. coli*, or enterococci bacteria have been detected in a water sample, it 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), of the advisory.”<sup>24</sup> The local DEP office is required to “promptly investigate” all wastewater treatment facilities located within 1 mile of the affected area(s) to determine whether a facility may have contributed to the contamination.<sup>25</sup> The

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<sup>13</sup> Section 514.023(2), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Section 514.023(3), F.S.

<sup>16</sup> Rule 64E-9.001(1), F.A.C.

<sup>17</sup> Rule 64E-9.013(1)-(3), F.A.C.

<sup>18</sup> Rule 64E-9.013(2)(a), F.A.C.

<sup>19</sup> Rule 64E-9.013(2)(a)1., F.A.C.

<sup>20</sup> Rule 64E-9.013(2)(b), F.A.C.

<sup>21</sup> Form DH 4158, Bathing Place Public Health Advisory Sign – Poor Water Quality, 02/13, is incorporated in rule 64E-0.013(a)2., F.A.C. by reference and available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06899>.

<sup>22</sup> Rule 64E-9.013(2)(a)2., F.A.C.

<sup>23</sup> *Id.*

<sup>24</sup> Section 514.023(4), F.S.

<sup>25</sup> *Id.*

local DEP office is also required to provide the results of its investigation to the local government with jurisdiction over the affected area.<sup>26</sup>

### ***Florida Healthy Beaches Program***

The Florida Healthy Beaches Program was created to monitor salt and brackish water beaches<sup>27</sup> for enterococci bacteria and to more accurately determine whether beaches are safe for recreational uses.<sup>28</sup> In 1998, a grant-funded pilot program allowed 5 of Florida’s coastal counties to monitor for enterococci bacteria.<sup>29</sup> In 2000, the program was expanded to 30 counties and also provided for sampling of fecal coliform.<sup>30</sup> In 2002, the Environmental Protection Agency (EPA) provided funding which enabled sampling on a weekly basis; however, in 2011 funding levels decreased, which resulted in a return to bi-weekly sampling.<sup>31</sup> “The goal of the Healthy Beaches Program is to prevent waterborne illness by advising Florida residents and visitors against recreating in waters potentially contaminated with human pathogens.”<sup>32</sup>

### **III. Effect of Proposed Changes:**

CS/SB 338 amends s. 514.023, F.S., to require:

- Rather than allow, the DOH to adopt and enforce rules to protect the health, safety, and welfare of persons using beach waters and public bathing places. Such rules must require owners of beach waters and public bathing places to notify the DOH and resample water within 24 hours after a tested sample fails to meet standards established by the DOH.
- Rather than allow, the DOH to issue health advisories within 24 hours or the next business day when waters fail to meet established standards and to require closures of beach waters and public bathing places that fail to meet the DOH’s standards if deemed necessary to protect the health, safety, and welfare of the public. These closures must remain in effect until the quality of the water is restored and the DOH has removed any related health advisories.
- Require the DOH to notify, within 24 hours or the next business day of issuing a health advisory, affected local governments, the local DEP office, and local affiliates of national television networks.
- Municipalities and counties or the owners of public boat docks, marinas, and piers, depending on the location of the water, to, within 24 hours or the next business day, notify the DOH immediately of any incident that may affect the quality of beach waters or public bathing places within their jurisdictions.
- The DEP to adopt in rule a sign that must be used when it issues a health advisory against swimming in beach waters or public bathing places due to elevated fecal coliform, *E. Coli*, or enterococci bacteria in the water. The sign:

<sup>26</sup> *Id.*

<sup>27</sup> DOH Lee County, *Healthy Beaches* (last updated Feb. 4, 2016), <https://lee.floridahealth.gov/programs-and-services/environmental-health/healthy-beaches/index.html> (last visited Feb. 2, 2024).

<sup>28</sup> Coastal & Heartland National Estuary Partnership (CHNEP), *Learn More: Healthy Beaches*, [https://chnep.wateratlas.usf.edu/library/learn-more/learnmore.aspx?toolsection=lm\\_healthybeach](https://chnep.wateratlas.usf.edu/library/learn-more/learnmore.aspx?toolsection=lm_healthybeach) (last visited Feb. 2, 2024).

<sup>29</sup> DOH, *Florida Healthy Beaches Program* (last updated Feb. 1, 2022), <https://www.floridahealth.gov/environmental-health/beach-water-quality/index.html> (last visited Feb. 2, 2024).

<sup>30</sup> CHNEP, *supra* note 30.

<sup>31</sup> *Id.*

<sup>32</sup> DOH, *supra* note 31.

- Must be at least 20 inches by 20 inches; and
- Must be displayed at beach access points and in conspicuous areas around affected beach waters and public bathing places until subsequent testing of the water demonstrates that the bacteria levels meet the standards established by the DOH.
- Municipalities and counties to post and maintain health advisory signs around affected beach waters and public bathing places that they own.
- The DEP coordinate with the DOH and the Fish and Wildlife Conservation Commission to post and maintain health advisory signs around state beach waters and public bathing places.
- The signage must remain in place until the health advisory is no longer in effect.

The bill provides an effective date of July 1, 2024.

#### **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:

The bill may have an indeterminate fiscal impact on local area businesses should a beach or public bathing place be closed under the provisions in the bill.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on the DOH related to additional duties required of the DOH by 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 Health Policy on February 6, 2024:**

The committee substitute:

- Eliminates the underlying bill's transfer of the beach water and public bathing places testing program from the DOH to the DEP;
- Specifies that reporting and health advisory requirements established and amended by the bill must be initiated within 24 hours or the next business day, whichever is sooner;
- Eliminates specific language for signage requirements established in the bill and adds that the sign must be a specific size;
- Eliminates the requirement that the DOH monitor affected water bodies to ensure signage requirements are met; and
- Eliminates the requirement to create an interagency database for reporting specified data.

- B. **Amendments:**

None.