

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 338

INTRODUCER: Senators Berman and Rodriguez

SUBJECT: Safe Waterways Act

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Pre-meeting
2.			AEG	
3.			FP	

I. Summary:

SB 338 creates the “Safe Waterways Act” to create a timeline for the Department of Health (DOH) to transfer the regulation of bacteriological sampling of beach waters and public bathing places to the Department of Environmental Protection (DEP) by July 1, 2025. The bill requires the DOH to:

- By July 1, 2024, provide a report to the Governor and the Legislature detailing specified information on the DOH’s bacteriological sampling of beach waters and public bathing places.
- By December 31, 2024, submit recommendations to the Governor and the Legislature regarding transferring the sampling program to the DEP.
- By June 30, 2025, enter into an interagency agreement with the DEP, based on the prior report and recommendations, which must address all aspects of cooperation between the two agencies for at least five years after the transfer of the sampling program and include details specified in the bill.
- Effective July 1, 2025, transfer, by a type two transfer, the duties, powers, functions, records, offices, personnel, associated administrative support positions, property, pending issues, administrative authority, administrative rules, and unexpected balances of appropriations, allocations, and other funds to the DEP.

The bill also requires, effective July 1, 2025, owners of beach waters and public bathing places to notify the DEP and retest waters within 24 hours after a test result indicates that a sample fails to meet bacteriological standards. The DEP is required, rather than allowed, to issue a health advisory 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. Additionally, the DEP 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 include specified language and must be posted and maintained by municipalities and counties around waters they own and by the DEP around state waters. Finally, the bill requires

the DEP to establish an interagency database for the reporting of fecal indicator bacteria data and, in coordination with the DOH, adopt rules and procedures for sharing such data between agencies.

The bill makes technical and conforming changes.

Except as otherwise specified, the bill takes effect upon becoming law.

II. Present Situation:

Bacteria

Water is full of bacteria, some of which are beneficial and others which are not.¹ Fecal coliform are naturally occurring bacteria found in the digestive tracts of most animals and they are shed from the body with excrement.² While infections from fecal coliform bacteria are typically not fatal, severe symptoms may lead to death.³ *Escherichia coli* (*E. coli*), a type of fecal coliform bacteria, are found in the environment, intestines of people and animals, and foods.⁴ Some strains of *E. coli* may cause illnesses such as intestinal and urinary tract infections, meningitis⁵, and septicemia^{6,7} Enterococci are bacteria that live in the intestinal tracts of humans and warm-blooded animals.⁸ These bacteria can sicken swimmers and other potential health effects can include diseases of the skin, eyes, ears and respiratory tract.⁹

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.¹⁰

¹ 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).

² Jesse Minor, Encyclopedia of Environment and Society - Fecal Coliform Bacteria, https://www.researchgate.net/publication/285400656_Fecal_Coliform_Bacteria, p. 3 (2007).

³ *Id.*

⁴ *Id.*

⁵ 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).

⁶ 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.

⁷ USGS, *supra* note 3.

⁸ 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).

⁹ *Id.*

¹⁰ *Id.*

Beach Waters and Public Bathing Places

Beach waters are the salt waters and brackish waters along the coastal and intracoastal beaches.¹¹ 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.¹²

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.¹³ 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.”¹⁴ 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.¹⁵

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.¹⁶ 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.¹⁷ The owner or manager of a public bathing place is required to collect and test bacteriological samples each month.¹⁸

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.¹⁹ The county health department must also inspect the waters upon receipt of the test results.²⁰ If the 24-hour samples confirm an exceedance of standards, the owner or manager must immediately post a no swimming advisory²¹; if the owner or manager does not post the advisory, the DOH is required to post it.²² Once re-sampling confirms that the bathing water again meets the standards, the owner or manager may rescind the posted no-swimming advisory.²³

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

¹¹ Section 514.023(1), F.S.

¹² Section 514.011(4), F.S.

¹³ Section 514.023(2), F.S.

¹⁴ *Id.*

¹⁵ Section 514.023(3), F.S.

¹⁶ Rule 64E-9.001(1), F.A.C.

¹⁷ Rule 64E-9.013(1)-(3), F.A.C.

¹⁸ Rule 64E-9.013(2)(a), F.A.C.

¹⁹ Rule 64E-9.013(2)(a)1., F.A.C.

²⁰ Rule 64E-9.013(2)(b), F.A.C.

²¹ 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>.

²² Rule 64E-9.013(2)(a)2., F.A.C.

²³ *Id.*

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.”²⁴ 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.²⁵ The local DEP office is also required to provide the results of its investigation to the local government with jurisdiction over the affected area.²⁶

Florida Healthy Beaches Program

The Florida Healthy Beaches Program was created to monitor salt and brackish water beaches²⁷ for enterococci bacteria and to more accurately determine whether beaches are safe for recreational uses.²⁸ In 1998, a grant-funded pilot program allowed 5 of Florida’s coastal counties to monitor for enterococci bacteria.²⁹ In 2000, the program was expanded to 30 counties and also provided for sampling of fecal coliform.³⁰ 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.³¹ “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.”³²

Department of Environmental Protection Water Testing

The DEP runs multiple water testing programs concurrently with the DOH and the FWC.

Water Quality Assessment Program

The DEP’s Water Quality Assessment Program (WQAP) determines the quality of the state’s surface and ground water resources. This is primarily accomplished through several water quality monitoring strategies that are administered through the. Responsibilities of the program, include:

- Monitoring and assessing how water quality is changing over time,
- Monitoring and assessing overall water quality of the state’s water resources,
- The effectiveness of water resource management,
- Monitoring for protection and restoration programs.

The WQMP the Watershed Monitoring Section, and the Regional Operation Centers.

²⁴ Section 514.023(4), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ 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).

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

²⁹ 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).

³⁰ CHNEP, *supra* note 30.

³¹ *Id.*

³² DOH, *supra* note 31.

The Watershed Monitoring Section (WMS) implements the monitoring design and assessment of the statewide Status and Trend Monitoring Networks. The Watershed Assessment Section (WAS) develops the monitoring plans and coordinates with Regional Operations Centers to execute the Strategic Monitoring Plan with the goal of collecting sufficient data for use in the assessment and determination of impairment based on the methodology in the Impaired Waters Rule 62-303, F.A.C. Other sections in the DEP use data collected by the ROCs to identify which waters are impaired and what should be done to restore them. The success of these plans is dependent upon accurate and representative data. In support of carrying out the goals of the department's monitoring and assessment strategies, the WQMP generates several types of documentation and reports including the Integrated 303(d)/305(b) Report,³³ which represents one of the most comprehensive data collection efforts in the nation and provides the reader with substantial information regarding the quality of our waters.

The information produced from WQMP monitoring activities provides the basis for advising the Environmental Protection Agency (EPA), relevant DEP programs, partner agencies, and the Governor and Legislature on the status of Florida's water quality.³⁴

Water Quality Evaluation and Total Maximum Daily Load Program

The Water Quality Evaluation and TMDL Program (WQETP) includes two sections: the Watershed Evaluation and TMDL (WET) section and the Watershed Assessment Section (WAS).

The Watershed Evaluation and TMDL (WET) section is responsible for conducting statewide, basin-scale assessments of surface water quality, focusing its main efforts on Total Maximum Daily Load (TMDL) development. The WET section also assists with technical reviews, model evaluation for mixing zones and other department needs.

A TMDL is a scientific determination of the maximum amount of a given pollutant that a surface water can absorb and still meet the water quality standards that protect human health and aquatic life. Waterbodies that do not meet water quality standards are identified as "impaired" for the pollutants of concern - nutrients, bacteria, dissolved oxygen, mercury (in fish tissue), etc. - and TMDLs must be developed, adopted and implemented for those pollutants to reduce pollutants and clean up the waterbody.

The department's mechanism for prioritizing its TMDL development schedule was to use a recovery potential screening approach to choose impaired waters where site-specific TMDLs are most appropriate and most likely to succeed. View a document detailing the approach.

The core function of the Watershed Assessment Section is to use the best available information to identify waterbodies and water segments (WBIDs) that are not meeting the applicable water

³³ Available at https://publicfiles.dep.state.fl.us/DEAR/DEARweb/WAS/Integrated_Report/2022_IR_Master_Final.pdf, (last visited Feb. 2, 2024).

³⁴ Water Quality Assessment Program, Florida DEP, available at <https://floridadep.gov/dear/water-quality-assessment>, (last visited Feb. 2, 2024).

quality standards and designated uses based on the Impaired Waters Rule Chapter 62-303 and Surface Water Quality Standards Chapter 62-302, F.A.C.³⁵

III. Effect of Proposed Changes:

SB 338 creates the Safe Waterways Act. The bill creates an undesignated section of the Florida law to establish a timeline for the transfer of the DOH's bacteriological sampling of beach waters and public bathing places to the DEP as follows:

- By July 1, 2024, the DOH must provide the Governor and the Legislature with a reporting detailing:
 - The average number of bacteriological samples collected each year, differentiated by those collected by the DOH and those submitted by owners of beach waters or public bathing places.
 - The average number of health advisories issued each year, including their average duration.
 - The number of DOH employees conducting work on or related to the bacteriological sampling of beach waters and public bathing places, including enforcement duties.
 - The costs associated with fulfilling the DOH's duties, including, but not limited to, salaries and benefits, operational costs, and equipment costs.
- By December 31, 2024, the DOH and the DEP must submit recommendations to the Governor and the Legislature regarding the transfer of bacteriological sampling of beach waters and public bathing places from the DOH to the DEP. The recommendations must address all aspects of the transfer, including the continued role, if any, of the county health departments in the collection and tracking of data relating to bacteriological sampling of beach waters and public bathing places and enforcement of posted signage requirements imposed under s. 514.023, F.S., which would be conducted under the direction of the DEP.
- By June 30, 2025, the DOH and the DEP must enter into an interagency agreement based on the report and recommendations above which must address all aspects of cooperation between the two agencies for a period of at least five years after the transfer, including, but not limited to:
 - Any continued role of the county health departments in the collection and tracking of data relating to bacteriological sampling of beach waters and public bathing places and enforcement of posted signage requirements imposed under s. 514.023, F.S.
 - The proportionate number of administrative, auditing, inspector general, attorney, and operational support positions, and their respective related funding levels and sources and assigned property, that is appropriate to be transferred from the Office of General Counsel, the Office of Inspector General, and the Division of Administrative Services or other relevant offices or divisions within the DOH to the DEP.
 - The development of a recommended plan to address the transfer or shared use of buildings, regional offices, and other facilities used or owned by the DOH.
 - Any operating budget adjustments that are necessary to implement the requirements of this act. Adjustments made to the operating budgets of the agencies in the implementation of this act must be made in consultation with the appropriate substantive and fiscal committees of the Senate and the House of Representatives. The adjustments to the

³⁵ Water Quality Evaluation and TMDL Program, Florida DEP, available at <https://floridadep.gov/dear/water-quality-evaluation-tmdl>, (last visited Feb. 2, 2024).

approved operating budgets for the 2025-2026 fiscal year which are necessary to reflect the organizational changes made by this act must be implemented pursuant to s. 216.292(4)(d), F.S., and are subject to s. 216.177, F.S. Subsequent adjustments between the DOH and the DEP that are determined necessary by the respective agencies and approved by the Executive Office of the Governor are authorized and subject to s. 216.177, F.S. Before such adjustments are made, the appropriate substantive committees of the Senate and the House of Representatives must be notified of the proposed adjustments to ensure their consistency with legislative policy and intent.

- Effective July 1, 2025, all powers, duties, functions, records, offices, personnel, associated administrative support positions, property, pending issues, administrative authority, administrative rules, and unexpended balances of appropriations, allocations, and other funds for the regulation of bacteriological sampling of beach waters and public bathing places of the DOH are transferred by a type two transfer, as defined in s. 20.06(2), F.S., to the DEP.

The bill specifies that, notwithstanding ch. 60L-34, F.A.C., or any law to the contrary, employees transferred from the DOH to the DEP retain and transfer any accrued annual leave, sick leave, and regular and special compensatory leave balances.

Effective July 1, 2025, the bill amends ss. 514.021, 514.023, and 514.0231, F.S., to make conforming changes related to the program transfer from the DOH to the DEP. Additionally, the bill amends s. 514.023, F.S., to require:

- The DEP's rules to require owners of beach waters and public bathing places to notify the DEP and resample water within 24 hours after a tested sample fails to meet standards established by the DEP;
- Rather than allow, the DEP to issue health advisories when waters fail to meet established standards and to require closures of beach waters and public bathing places that fail to meet the DEP'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 DEP has removed any related health advisories.
- Municipalities and counties to notify the DEP 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:
 - 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 DEP; and
 - Must include the following statement: "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 THE WATER OR EXPOSING OPEN WOUNDS. SECTION 514.023, FLORIDA STATUTES."
- 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 DEP to monitor affected waters for compliance with signage requirements.
- The DEP to establish a public statewide interagency database for the reporting of fecal indicator bacteria data for beach waters and public bathing places in this state. The DEP, in coordination with the DOH, shall adopt rules and procedures for the sharing of fecal indicator bacteria data between agencies and for the reporting of such data in the database. Fecal indicator bacteria data relating to sampled beach waters and public bathing places must be published in the database within one business day after receipt and confirmation of the data.

Except as otherwise provided, the bill takes effect upon becoming law.

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 may have an indeterminate fiscal impact on the DOH and the DEP relating to the transfer of the beach water and public bathing place testing duties from the DOH to the DEP.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 514.021, 514.023, and 514.0231.

This bill creates two non-statutory sections of the Laws of Florida.

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.