

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1163 Water Well Contractors

**SPONSOR(S):** Water Quality, Supply & Treatment Subcommittee, McClain

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Water Quality, Supply & Treatment Subcommittee	18 Y, 0 N, As CS	Guy-Hudson	Curtin
2) Criminal Justice Subcommittee			
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

The Department of Environmental Protection (DEP) regulates water quality to ensure public health and environmental safety. In particular, DEP regulates contracting and permitting for water wells but delegated its authority to implement these activities to each of the five Water Management Districts (WMDs). DEP is responsible for the Onsite Sewage Program relating to onsite sewage treatment and disposal systems (OSTDSs). County health departments permit and inspect OSTDSs at the direction of DEP.

In Florida, an estimated 2.5 million people rely on private wells for home drinking water. To protect public health and the environment, Florida law regulates the construction and permitting of water wells. Water well contractors are required to be licensed to perform construction, repair or abandonment of wells.

Commonly referred to as septic systems, OSTDSs process sewage and wastewater. OSTDS permit applicants that cannot meet all permitting requirements may apply for a variance. Variance applications are reviewed by the Variance Review and Advisory Committee (VRAC), which makes recommendations to DEP regarding action on variance applications.

The bill amends ch. 373, pt. III, F.S., relating to the regulation of water wells and:

- Requires an individual to demonstrate 2 years of experience in water well construction in Florida to be considered for water well contractor licensure.
- Prohibits a business entity from advertising water well drilling or construction services if the business entity is not owned by a licensed water well contractor or employs at least one full-time licensed water well contractor.
- Subjects a business entity to criminal penalties for engaging in unlawful activities.
- Requires entities to whom a WMD has delegated certain enforcement powers to consistently apply disciplinary guidelines.

The bill repeals the VRAC. Thus, DEP would review and grant or deny variance applications according to statutory requirements without a VRAC recommendation.

The bill has no fiscal impact on state or local governments or the private sector.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Regulation of Wells

Approximately 23 million American households rely on a private well for drinking water<sup>1</sup> and, in Florida, an estimated 2.5 million people rely on private wells for home drinking water.<sup>2</sup> Florida law defines a well 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 . . . .”<sup>3</sup>

Regulations for private water wells are focused on permitting and construction requirements to protect groundwater from contamination and the health of water users.<sup>4</sup> Because there is less emphasis on consumer protection, private owners often are unaware of the responsibilities for testing and maintenance and the expense to repair or replace a water well.<sup>5</sup> As such, Florida law regulates water well contractor licensure to prevent incompetent contractors from potentially threatening the health of the public and the environment.<sup>6</sup> “The Legislature finds that a threat to the public and the environment exists if water resources become contaminated as a result of wells drilled by incompetent or dishonest contractors . . . .”<sup>7</sup> “[T]o prevent contamination, it is necessary to regulate the construction, repair, and abandonment of wells, and the persons and businesses responsible therefor.”<sup>8</sup>

Water well contracting is governed by ch. 373, pt. III, F.S., relating to regulation of wells and is defined to mean “all parts necessary to obtain groundwater by wells, including the location and excavation of the well, but excluding the installation of pumps and pumping equipment.”<sup>9</sup> The Department of Environmental Protection (DEP) regulates water well licensure and permitting within the Division of Resource Management, Source and Drinking Water program. DEP delegated its authority to license water well contractors and permit the location, construction, repair and abandonment of water wells to each of the five Water Management Districts (WMDs).<sup>10</sup> These activities are implemented in Rule Chapter 62-531, F.A.C., as well as administrative rules for each of the WMDs.<sup>11</sup>

A person applying for licensure or renewing a license does so with the WMD where she or he will perform most of their work; however, a contractor license is valid statewide.<sup>12</sup> Licensure authorizes a

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<sup>1</sup> The Columbus Telegram, *Well Water Tests* (Jan. 4, 2024), [Well water tests \(columbustelegram.com\)](https://www.columbus-telegram.com/2024/01/04/well-water-tests/) (last visited Jan. 11, 2024).

<sup>2</sup> University of Florida, Institute of Food and Agricultural Sciences (UF/IFAS), *Private Wells 101: Bacterial Contamination and Shock Chlorination*, (Feb. 16, 2021), [SL487/SS700: Private Wells 101: Bacterial Contamination and Shock Chlorination \(ufl.edu\)](https://www.ifas.ufl.edu/private-wells-101-bacterial-contamination-and-shock-chlorination/) (last visited Jan. 16, 2024).

<sup>3</sup> S. 373.303(7), F.S. The definition excludes 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.

<sup>4</sup> Department of Health (DOH), *Well Construction in Florida* (last updated Aug. 18, 2022), [Well Construction in Florida | Florida Department of Health \(floridahealth.gov\)](https://www.floridahealth.gov/water-safety/well-construction-in-florida/) (last visited Jan. 16, 2024).

<sup>5</sup> WMFE, *Many Floridians with private wells don't know how to take care of them*, (Nov. 21, 2023), [Many Floridians with private wells don't know how to take care of them \(wmfe.org\)](https://www.wmfe.com/news/local/many-floridians-with-private-wells-dont-know-how-to-take-care-of-them/) (last visited Jan. 16, 2024).

<sup>6</sup> S. 373.302, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> S. 373.302(2), F.S.

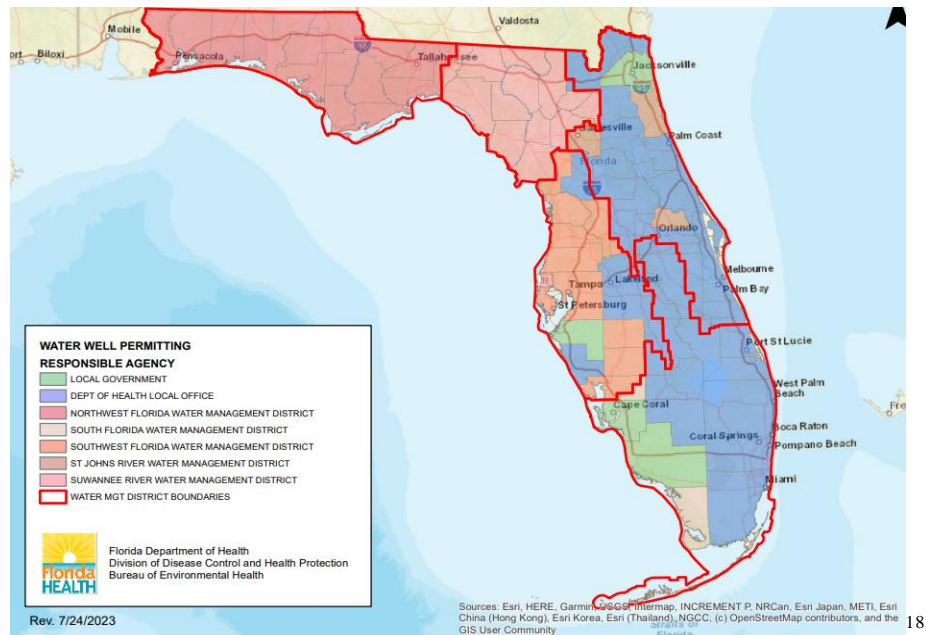
<sup>10</sup> Department of Environmental Protection (DEP), *Water Well Contractor Licensing and Permitting* (last updated Dec. 7, 2022), [Water Well Contractor Licensing and Permitting | Florida Department of Environmental Protection](https://www.dep.state.fl.us/water/well-contractor-licensing-and-permitting/) (last visited Jan. 10, 2024).

<sup>11</sup> Individual administrative rules for the WMDs are: r. 40A-3, F.A.C., Northwest Florida WMD; r. 40B-3, F.A.C., Suwannee WMD; r. 40C-3, F.A.C., St. Johns WMD; 40D-3, F.A.C., Southwest Florida WMD; and, r. 40E-3, F.A.C., South Florida WMD.

<sup>12</sup> S. 373.323(1), F.S.

contractor to install, repair and modify pumps and tanks in accordance with the Florida Building Code.<sup>13</sup> A licensed contractor may also install pumps, tanks and water conditioning equipment for all water systems.<sup>14</sup> Current law cites to the Florida Building Code, Plumbing; Section 612—Wells pumps and tanks used for private potable water systems. Due to revisions to the Florida Building Code, Section 612 now refers to solar systems and Section 614 refers to water wells.<sup>15</sup>

A permit must be obtained from the appropriate WMD or its delegated permitting authority<sup>16</sup> prior to the construction, repair or abandonment of any water well. Twenty-two Department of Health (DOH) offices and 4 municipal governments have delegated authority from the respective WMD to permit water well construction.<sup>17</sup>



Each person desiring to be licensed as a water well contractor must apply to take the licensure examination.<sup>19</sup> Application must be made to the WMD where the applicant resides or where his or her principal place of business is located.<sup>20</sup> A resident of another state must apply to the WMD where most of the business of the applicant will take place.<sup>21</sup>

To take the water well contractor licensure examination, an applicant must:

- Be at least 18 years of age.
- Have at least 2 years of experience in constructing, repairing or abandoning water wells and demonstrate satisfactory proof of such experience by providing:
  - Evidence of the length of time the applicant has been engaged in the business of the construction, repair or abandonment of water wells as a major activity, as attested to by a

<sup>13</sup> S. 373.323(10), F.S.

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

<sup>15</sup> Florida Building Code (2023), [CHAPTER 6 WATER SUPPLY AND DISTRIBUTION, 2023 Florida Building Code, Plumbing, Eighth Edition | ICC Digital Codes \(iccsafe.org\)](#) (last visited Jan. 16, 2024).

<sup>16</sup> S. 373.308(1), F.S. Some WMDs delegate drinking water well oversight to local county health department or other entities. DOH, *Well Construction in Florida*, *supra* note 4.

<sup>17</sup> DOH, *Find Your Well Permitting Agency*, [Florida's Local Well Permitting Agencies Lookup \(arcgis.com\)](#) (last visited Jan. 11, 2024).

<sup>18</sup> DOH, *Water Well Permitting Responsible Agency* (July 24, 2023), [countyprograms-well-permitting1.pdf \(floridahealth.gov\)](#) (last visited Jan. 11, 2024).

<sup>19</sup> S. 373.323(2), F.S.

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

<sup>21</sup> *Id.*

- letter from a water well contractor or a letter from a water well inspector employed by a governmental agency.
- A list of at least 10 water wells the applicant has constructed, repaired or abandoned within the preceding 5 years. Of these wells, at least 7 must have been constructed by the applicant and according to state law. The list must also include:
  - ❖ The name and address of the owner(s) of each well.
  - ❖ The location, primary use and approximate depth and diameter of each well the applicant has constructed, repaired or abandoned.
  - ❖ The approximate date the construction, repair or abandonment of each well was completed.
- Have completed the application form and remitted a nonrefundable application fee.<sup>22</sup>

A WMD must issue a license to an applicant who: satisfies all requirements; passes the examination; pays the fee; and, completes a minimum of 12 hours of approved coursework.<sup>23</sup> A WMD may grant an exemption to one or more licensure requirements if the WMD finds that: compliance with all regulatory requirements would result in undue hardship to the extent necessary to ameliorate such undue hardship; and, to the extent such exemption can be granted without impairing the intent and purpose of state law relating to regulation of wells.<sup>24</sup> Licensure renewal is conditioned upon completing 12 hours of continuing education.<sup>25</sup>

Generally, s. 373.333, F.S., addresses impermissible activities by a licensee and provides for a fine up to \$5,000 per occurrence against a person engaged in the unlicensed practice of water well contracting.<sup>26</sup> Disciplinary guidelines for water well licensees are set by DEP with input from the WMDs and industry representatives.<sup>27</sup>

Disciplinary action may be taken by a WMD upon a finding of reasonable grounds<sup>28</sup> and the WMD must provide written notice regarding an alleged violation by service of process or registered mail.<sup>29</sup> A WMD must apply disciplinary guidelines consistently.<sup>30</sup> Disciplinary guidelines must:

- Specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses;
- Distinguish minor violations from those which endanger public health, safety, and welfare or contaminate the water resources; and,
- Inform the public of likely penalties which may be imposed for proscribed conduct.<sup>31</sup>

Any WMD may impose disciplinary action without regard to where or in which WMD the activity took place.<sup>32</sup>

Water well contracting unlicensed activity is also subject to criminal penalties as is engaging in willful or repeated violations of laws or rules for activities which endanger public health, safety and welfare.<sup>33</sup>

### Onsite Sewage Treatment and Disposal Systems

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<sup>22</sup> S. 373.323(3), F.S.

<sup>23</sup> S. 373.323(5), F.S.

<sup>24</sup> S. 373.326 (1), F.S.

<sup>25</sup> S. 373.324, F.S. *See also* r. 62-531.330, F.A.C.; DEP, *Water Well Contractor Continuing Education Program* (last updated Dec. 7, 2022), [Water Well Contractor Continuing Education Program | Florida Department of Environmental Protection](#) (last visited Jan. 16, 2024).

<sup>26</sup> S. 373.333(8), F.S.

<sup>27</sup> S. 373.333(1), F.S.

<sup>28</sup> S. 373.333(2), F.S.

<sup>29</sup> S. 373.333(3), F.S.

<sup>30</sup> S. 373.333(1), F.S.

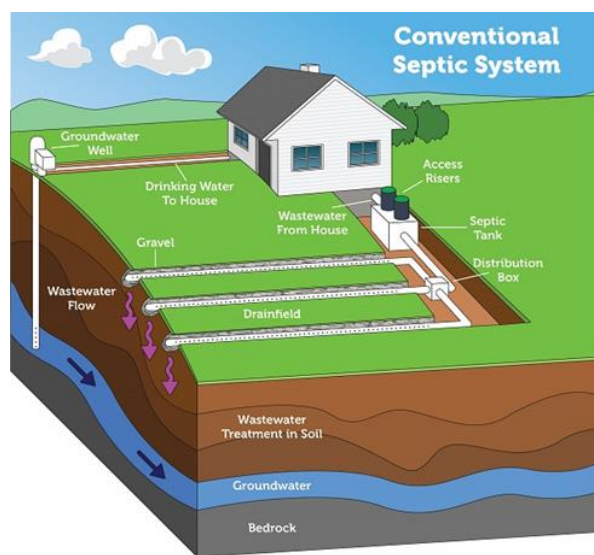
<sup>31</sup> 373.333(1)(a) – (c), F.S.

<sup>32</sup> S. 373.333(1), F.S. (flush left provision).

<sup>33</sup> S. 373.336(3), F.S., provides that violations are punishable as a misdemeanor in the second degree. Continued violations are treated as separate, by day, counts.

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. A person generates approximately 100 gallons of domestic wastewater<sup>34</sup> per day.<sup>35</sup> This wastewater must be managed to protect public health, water quality, recreation, fish, wildlife and the aesthetic appeal of the state's waterways.<sup>36</sup> The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by DEP. However, there are an estimated 2.6 million onsite sewage treatment and disposal systems (OSTDSs) in Florida, providing wastewater disposal for 30 percent of the state's population.<sup>37</sup>

An OSTDS, commonly referred to as "septic system," generally consist of two basic parts: the septic tank and the drainfield.<sup>38</sup> Waste from toilets, sinks, washing machines and showers flows through a pipe into the septic tank, where anaerobic bacteria break the solids into a liquid form. The liquid portion of the wastewater flows into the drainfield, which is generally a series of perforated pipes or panels surrounded by lightweight materials such as gravel or Styrofoam. The drainfield provides a secondary treatment where aerobic bacteria continue deactivating the germs. The drainfield also provides filtration of the wastewater, as gravity draws the water down through the soil layers.<sup>39</sup>



Please note: Septic systems vary. Diagram is not to scale.

In a conventional OSTDS, a septic tank does not reduce nitrogen from the raw sewage. Approximately 30-40 percent of the nitrogen levels are reduced in the drainfield of a system that is installed 24 inches or more from groundwater in Florida.<sup>40</sup> This still leaves a significant amount of nitrogen to percolate into the groundwater which makes nitrogen from OSTDSs a potential contaminant in groundwater.<sup>41</sup>

<sup>34</sup> S. 367.021(5), F.S., defines "domestic wastewater" as wastewater principally from dwellings, business buildings, institutions and sanitary wastewater or sewage treatment plants.

<sup>35</sup> DEP, *Domestic Wastewater Program*, <https://floridadep.gov/water/domestic-wastewater> (last visited Jan. 16, 2024).

<sup>36</sup> Ss. 381.0065(1) and 403.021, F.S.

<sup>37</sup> DEP, *Onsite Sewage Program*, <https://floridadep.gov/water/onsite-sewage> (last visited Jan. 16, 2024).

<sup>38</sup> DOH, *Septic System Information and Care* (last updated Oct. 17, 2014), <http://columbia.floridahealth.gov/programs-and-services/environmental-health/onsite-sewage-disposal/septic-information-and-care.html> (last visited Jan. 16, 2024); Environmental Protection Agency (EPA), *Types of Septic Systems* (last updated Aug. 7, 2023), <https://www.epa.gov/septic/types-septic-systems> (last visited Jan. 16, 2024).

<sup>39</sup> *Id.*  
<sup>40</sup> DOH, *Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report 2008-2015*, p. 18 (Dec. 31 2015), <https://www.floridahealth.gov/environmental-health/onsite-sewage/research/finalnitrogenlegislativereportsmall.pdf> (last visited Jan. 18, 2024); see r. 62-6.006(2), F.A.C.

<sup>41</sup> UF/IFAS, *Onsite Sewage Treatment and Disposal Systems: Nitrogen*, p. 3 (Oct. 29 2020), <http://edis.ifas.ufl.edu/pdf/SS/SS5000.pdf> (last visited Jan. 16, 2024).

In Florida, development in some areas is dependent on OSTDSs due to the cost and time it takes to install central sewer systems.<sup>42</sup> For example, in rural areas and low-density developments, central sewer systems are not cost-effective. Less than 1 percent of OSTDSs are actively managed under operating permits and maintenance agreements.<sup>43</sup> The remainder of systems are generally serviced only when they fail, often leading to costly repairs that could have been avoided with routine maintenance.<sup>44</sup>

The Onsite Sewage Program (Program) is responsible for implementing laws and regulations relating to OSTDSs in Florida as proper design, construction and maintenance of septic systems is important to help protect groundwater.<sup>45</sup> The Clean Waterways Act, enacted in 2020, provided for the transfer of the Program from the Department of Health (DOH) to DEP, effective July 1, 2021.<sup>46</sup> The Program will be transferred over a period of 5 years and guidelines for the transfer are provided by an interagency agreement.<sup>47</sup> Per the agreement, DEP has the primary powers and duties of the Program; the county health departments implement the Program under DEP's direction and perform OSTDS permitting and inspection.<sup>48</sup> In the event of an alleged violation of OSTDS laws, a county health department is responsible for conducting an inspection to gather information regarding the allegations.<sup>49</sup>

Prior to the Program's transfer, DOH operated the variance review process and the Variance Review and Advisory Committee (VRAC); DEP took over the process and VRAC as a part of the transfer and operates it according to the same state law and administrative rules.<sup>50</sup> The VRAC is supposed to meet monthly<sup>51</sup> according to a schedule maintained by DEP<sup>52</sup> and is made up of specific OSTDS stakeholders and the Secretary of DEP.<sup>53</sup> The VRAC recommends agency action on variance applications for OSTDS permitting and construction requirements.<sup>54</sup> Variances may be granted in hardship cases and may be less restrictive than the OSTDS provisions required by statute and rule.<sup>55</sup> A variance may not be granted until DEP is satisfied that:

- The hardship was not caused intentionally by the action of the applicant;
- A reasonable alternative, taking into consideration factors such as cost, does not exist for the treatment of the sewage; and,
- The discharge from the OSTDS will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.<sup>56</sup>

The VRAC makes its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for: an extraordinary change in circumstances; the receipt of new

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<sup>42</sup> DOH, *Report on Range of Costs to Implement a Mandatory Statewide 5-Year Septic Tank Inspection Program*, § 1.0 (Oct. 1, 2008), <http://www.floridahealth.gov/environmental-health/onsite-sewage/research/documents/rvac/2008-11-06.pdf> (last visited Jan. 16, 2024). The report begins on page 56 of the PDF.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> DEP, *Onsite Sewage Program*, *supra* note 37.

<sup>46</sup> Ch. 2020-150, s. 2, Laws of Fla.

<sup>47</sup> DOH and DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, p. 5 (June 30, 2021), <http://www.floridahealth.gov/environmental-health/onsite-sewage/documents/interagency-agreement-between-fdoh-fdep-onsite-signed-06302021.pdf> (last visited Jan. 16, 2024).

<sup>48</sup> *Id.*, pp. 14, 11; DEP, *Onsite Sewage Program*, *supra* note 37.

<sup>49</sup> DOH and DEP, *Interagency Agreement between DEP and DOH in Compliance with Florida's Clean Waterways Act for Transfer of the Onsite Sewage Program*, *supra* note 47, p. 11.

<sup>50</sup> S. 381.0065, F.S., and ch. 62-6, F.A.C. See DEP, *Variances* (last updated Dec. 27, 2023), [Variances | Florida Department of Environmental Protection](#) (last visited Jan. 16, 2024).

<sup>51</sup> S. 381.0065(4)(h)2., F.S.

<sup>52</sup> DEP, *Variances*, *supra* note 50.

<sup>53</sup> S. 381.0065(4)(h)2., F.S. Members are appointed for 3-year, staggered term and serve without remuneration except for per diem and travel expenses. S. 381.0065(4)(h), F.S. (flush left provision).

<sup>54</sup> S. 381.0065(4)(h)2., F.S. (2020).

<sup>55</sup> Section 381.0065(4)(h), F.S.

<sup>56</sup> S. 381.0065(4)(h)1.a - c, F.S.

information that raises new issues; or, when the applicant requests an extension.<sup>57</sup> The VRAC must “strive to allow property owners the full use of their land where possible.”<sup>58</sup>

## Effect of the Bill

The bill conditions eligibility to take the water well contractor licensure exam on having 2 years of experience in constructing, repairing or abandoning water wells *permitted in this state* which may be demonstrated by providing a list of 10 water wells *permitted in this state* that the applicant has constructed.

The bill requires water well contractor disciplinary guidelines to be consistently applied by delegated permitting authorities. When a WMD or delegated authority finds grounds for an alleged violation of disciplinary guidelines, the bill requires notice to be provided via *certified* mail.

The bill includes a business entity in addition to an individual that may be subject to the imposition of criminal penalties for violations of specific well water contractor activities. It prohibits a business entity from advertising water well drilling or construction services if the business entity is not owned by a licensed water well contractor or employs at least one full-time licensed water well contractor.

The bill updates a reference to Ch. 6, Plumbing, of the Florida Building Code, to Section 614, Wells, Pumps and Tanks Used for Private Potable Water Systems.

The bill repeals s. 381.0065(4)(h)2., F.S., relating to the OSTDS VRAC. DEP would review and grant or deny variance applications according to statutory requirements without a VRAC recommendation.

### B. SECTION DIRECTORY:

Section 1: Amends section 373.323, F.S., relating to the licensure of water well contractors; application, qualifications, and examinations; equipment identification.

Section 2: Amends section 373.333, F.S., relating to disciplinary guidelines; adoption and enforcement; license suspension or revocation.

Section 3: Amends section 373.336, F.S., relating to unlawful acts; penalties.

Section 4: Amends section 381.0065, F.S., relating to onsite sewage treatment and disposal systems; regulation.

Section 5: Provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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<sup>57</sup> S. 381.0065(4)(h)2., F.S.

<sup>58</sup> *Id.*

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Water Quality, Supply and Treatment Subcommittee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Conforms language to the Senate companion.
- Repeals the VRAC, the entity that recommends to DEP agency action on variance applications for OSTDS permitting and construction requirements.

This analysis is drafted to the committee substitute as approved by the Water Quality, Supply and Treatment Subcommittee.