

MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: March 10, 2014

RE: 2014 Legislation – SEFLUC March Update

The following is a summary of legislation which may be of interest to the Southeast Florida Utility Council (“SEFLUC”). A summary of proposed changes and an analysis of impacts to SEFLUC is presented for each bill. In some cases, because of the length of the bill, the analysis may be limited to only those provisions impacting SEFLUC. In the event a more extensive summary and analysis is required, a separate memo addressing the specific legislation can be prepared upon request.

List of Bills Contained in Memo:

- SB 1576/HB 1313 – Springs Legislation
- SB 100 – Assault or Battery on a Utility Worker
- SB 272/HB 1321 – Public Utility Regulation/Water and Wastewater Utilities
- HB 357/SB 1050 – Water and Wastewater Utility Systems
- SB 536/HB 601 - Reclaimed Water
- SB 636 - Public Utility Suppliers
- HB 813/SB 1248 – Water and Wastewater Utilities
- SB 910/HB 1107 – Utility Projects

SB 1576/ HB 1313 -Springs Legislation

Summary - Senator Simmons released a six versions draft springs bills. The draft bills required the DEP to create “protection and management zones” for 38 of the state’s springs. Within these zones, among other things, the bill requires the following:

- DEP must develop BMAPs for watersheds impaired for nitrogen and phosphorus;
- Requires WMD to develop MFL by July 2015 for springs areas, with potential for only a one year extension
- Local governments must create or revise stormwater management plans to address nutrient pollution from point or nonpoint sources of stormwater;

- Wastewater treatment facilities must meet a standard of no more than 3 mg/L TN on an annual basis by July 1, 2019;
- Mandatory sewer connections for all homes with more than one bedroom per acre, if available, at no cost to the property owner;
- Advanced septic treatment if sewer connections are not available; and
- DEP and WMDs must conduct a study related to beneficial uses of reclaimed water, stormwater, and excess surface water
- Mandates BMPs for farmers in spring areas

In addition, the proposed bill would prohibit WMDs from issuing consumptive use permits for areas around those springs where MFLs have not been set unless the WMDs can show that no harm would be caused if permits were issued.

The proposed bill would earmark 20 percent of the net documentary stamp tax, approximately \$378 million per year, for the sewage and septic tank improvements. However, this money is not a guarantee and facilities will still be required to comply with the bill requirements regardless of whether funding is provided or not.

Update – Ag, business and utility groups signed letter voicing concerns over draft legislation. Senator Simmons indicated he hopes to work with the groups who raised concerns, but they must propose language that will solve the problems. The senate bill is expected to be filed soon. However, House Speaker Will Weatherford stated on February 6 that the house will not be adopting any water policies this year and will instead focus on funding.

Update 2/20 - The Senate Committee on Environmental Preservation and Conservation held a two-hour workshop on Feb. 20, 2014 on a draft springs bill that would require septic tanks to be upgraded or hooked to sewers near springs with elevated nitrogen levels.

Simmons, R-Altamonte Springs and one of five Senate committee chairmen supporting the draft legislation, told the workshop audience that he has "Plan B" legislation ready to file that will take out a section that requires compliance with advanced treatment standards if cities and counties can't get funding. There isn't an alternative draft bill but one will be ready by the March 4 bill filing deadline.

Update 2/28 – SB 1576 is released by Senator Dean.

Improvements - It is an improvement on the prior 7 versions as a result of 3 major changes:

- **Funding** - Creates new provision authorizing waivers and exemptions to the requirements imposed under the new Part VIII of Chapter 373 and postponing "remedial actions" under Part VIII, until state funding is provided under Section 201.15(1)(c)3.b. or the Legislature provides another source of funding
- **On-Sewage Treatment and Disposal** - revised version of the new Section 373.807, Florida Statutes, which substitutes development and implementation of an on-site sewage treatment and disposal remediation plan in place of strict requirements to upgrade or

connect on-site sewage treatment and disposal systems by a specified deadline at no cost to the land owner

- **MFL** - revised version of Section 373.805, Florida Statutes, no longer creates a moratorium on new or increased permitted water allocations should a WMD fail to adopt a MFL for an Outstanding Florida Spring within one year of the bill's enactment

Remaining Concerns:

- No harm standard for spring MFLs
- 3 mg/L TN standard
- Revised BMAP standards
- Waiver/exemption from compliance creates opportunity for discriminatory and biased permitting
- Still supports concept of requiring utility action at no cost to property owner
 - o DEP can trump funding waiver/exemption by requiring connection as part of BMAP

Update 3/3 – HB 1313 is filed by Representative Brodeur. Appears identical to SB 1576

Impact on SEFLUC – While SEFLUC’s members will not be directly impacted by the bill since they are not located in spring zones, the proposed bill contains many precedent setting concerns such as:

- Potentially unfunded mandates for utility connections;
- New Target for MFLs for spring zones– no longer “significant harm” but rather “ harms water ecology”;
- Simmons comments that he wants to be able to require BMAPs without the water being declared impaired; and
- Establishing water quality standards (the 3 mg/L TN standard)
- Requires existing projects to comply with TMDLs by requiring BMPs to be amended to meet the bill requirements

SB 100 – Assault or Battery on a Utility Worker

Summary – Makes assault or battery of a utility worker a felony

Impact on SEFLUC – greater penalties for crimes against utility workers

*No movement since October 2013

SB 272/HB 1321 – Public Utility Regulation/Water and Wastewater Utilities

SB 272 (Simpson)

HB 1321 (Murphy)

Summary –

Despite the name, these bills only apply to private utilities. The bills create a process whereby customers may petition the Florida Public Service Commission (FPSC, PSC, or commission) to require compliance with secondary water quality standards. If a utility fails to comply with commission orders, the process described by this bill could result in probation or revocation of the utility's certificate of authority. The bill provides petition criteria and factors the commission must consider in its review of the petition and the action it may take to dispose of the petition.

February 4 - Delete everything amendment to SB 272 makes the following changes:

- Refines and clarifies the petition process
- Requires compliance with federal and state secondary water and wastewater criteria, removing references to local or water management districts
- Replaces suspension of a certificate with allowing the commission to place a certificate on probation
- Provides exceptions to the 3 year time frame, such as those which are outside the control of the utility
- Requires DEP to set by rule acceptable secondary water quality and wastewater service standards
- Allows companies to recover its costs for solutions required by the commissions
- Provides tolling from customers filing a petition to revoke a certificate
- Provides penalties including denial of all or part of a rate increase

Impact on SEFLUC – only impacts private utilities. However, the precedent of allowing the legislature to restrict utility rates is something to monitor as it could someday expand to public utilities as well.

Status –

SB 272 - In Appropriations since February 11

HB 1321 – Filed March 3

HB 357/ SB 1050 – Water and Wastewater Utility Systems

Summary:

HB 357 (Santiago)

Only Applies to Investor-Owned Utilities. Chapter 2012-187, Laws of Florida, created the Study Committee on Investor-Owned Water and Wastewater Utility Systems (Study Committee) to “identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers” and to research possible solutions. Consistent with the law, the Study Committee submitted a report containing its recommendations to the Speaker of the House, the President of the Senate, and the Governor, on February 15, 2013.

Does not include language in SB 272 which allows customers of investor-owned water utilities to petition the Public Service Commission to revoke the operating certificate of those utilities because of complaints about water quality

HB 357 adopts several of the Study Committee’s recommendations for legislative action. In particular, the bill:

- Expands the availability of low-interest loans through the State Revolving Fund (SRF) to all for-profit water utilities.
- Directs the Division of Bond Finance to review the allocation of private activity bonds (PABs) in Florida with respect to water and wastewater projects.
- Provides a sales tax exemption for sales or leases to an investor-owned water or wastewater utility (IOU) owned or operated by a Florida corporation.
- Creates an exemption from Public Service Commission (PSC) regulation for persons who resell water service to individually-metered end-users at a price that does not exceed the purchase price of water plus 9 percent or the purchase price of water plus actual costs of meter reading and billing.
- Authorizes the PSC, during a rate case, to create an individual IOU reserve fund to be used for projects identified in an IOU’s capital improvement plan, with disbursement subject to approval by the PSC.
- Identifies specific types of expenses eligible for “pass-through” treatment in IOU rates and authorizes the PSC, by rule, to identify additional types of expenses eligible for such treatment, provided the expenses are beyond the utility’s control.
- Prohibits the recovery of an IOU’s rate case expense:
 - To the extent that the rate case expense exceeds the amount of the total rate increase approved by the PSC exclusive of rate case expense;
 - For more than one rate case at any given time; and
 - To the extent that the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.
- Provides a mechanism, within a rate case, for the identification and potential resolution of issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater operational requirements related to odor, noise, aerosol drift, and lighting.

SB 1050 (Hays) –filed February 13, 2014

Identical to HB 357

Impact on SEFLUC: Only directly affects private utilities. However, the precedents could impact public utilities in the future

Updates:

HB 357 – 2/12/14 scheduled to be discussed during Office of EDR Revenue Estimating Conference

SB 1050 – 2/19/14 referred to communications, energy and public utilities; Environmental preservation and conservation; appropriations subcommittee on finance and tax; appropriations

SB 536/HB 601 –Reclaimed Water

Summary:

HB 601 (Ray)

Requires the Department of Agriculture and Consumer Services and the Department of Environmental Protection to conduct a study in cooperation with the water management districts on the expansion of the beneficial use of reclaimed water [stormwater and excess surface water – added in amendment] and to submit a report based upon such study. Also requires the report to include the following:

- Factors that prohibit or complicate the expansion of the beneficial use of reclaimed water and recommend how factors can be mitigated or eliminated;
- Identify constraints on reclaimed water expansion, including utility rate structures;
- Identify areas of the state where traditional water supply sources are limited;
- Recommend permit incentives, such as long term permits;
- Determine feasibility, benefit, and cost estimate of infrastructure needed for regional storage features for reclaimed water
- SB 536 appears to

The report must be submitted to the Governor and Legislature by December 31, 2015.

SB 536 (Simpson)

Similar to HB 601, but indirectly defines reclaimed water as including “stormwater and excess surface water”

Impact on SEFLUC: SEFLUC may want to monitor and, if passed, assist agencies with the study.

Updates:

March 3 – Agriculture and Natural Resources Subcommittee Adopted Amendment to HB 601 expands scope of study to include use of stormwater and excess surface water, in addition to reclaimed water. Amendment makes HB 601 consistent with the concepts raised in SB536, but clarifies stormwater and excess surface water are not included in definition of “reclaimed water”

NOTE – similar language from SB 536 is included in Section 17 of HB 1313 and SB 1576 (Springs Legislation). The Springs legislation also expands the study to include nutrient reduction improvements for row crops and outlines additional information to include in the report relating to the reduction of nutrients

SB 636 –Public Utility Suppliers

SB 636 (Braynon)

Summary: Requires certain public utilities, defined as regulated companies, to submit a plan for increasing procurement from businesses controlled and operated by women, minorities, and service-disabled veterans; requiring the Florida Public Service Commission to establish guidelines to assist regulated companies in establishing such plans; providing that a regulated company may take certain measures to facilitate the participation of businesses controlled and operated by women, minorities, or service-disabled veterans, etc.

Impact on SEFLUC: Despite name, bill only applies to private utilities (regulated companies). If passed, these utilities would be required to comply with the requirements to submit annual plans for procurement of contracts from woman, minority and disabled-veteran business enterprises.

Update:

2/18 – Passed Communications, energy and public utilities; now in commerce and tourism

HB 703 / SB 1464 – Relating to Environmental Regulation

Summary:

HB 703 (Patronis)

Comprehensive permitting bill

- Provides for water use permits for up to 30 years for a DRI located in a rural area of critical economic concern;
- Provides for WUPs up to 50 years for landowners who participate in water storage programs;
- extends the “right to farm” provisions in state law to prohibit enforcement of local springs and wetlands regulations that also have been modified or readopted since 2003;
- requires DEP to consider the cost of implementing greenhouse gas reductions when developing a plan to meet federal requirements;
- specifies authority of counties to enforce certain wetlands, springs protection, & stormwater ordinances, regulations, & rules;
- provides vote requirements for adoption of certain elements of local government comprehensive plans & plan amendments;
- prohibits local governments from rescinding a comprehensive plan amendment that authorizes land uses other than agricultural use if the land continues to be used primarily for bonafide agricultural purposes and qualifies for an agricultural classification under Section 193.461, FS;
- requires delegated local governments to follow certain criteria & standards for well construction;
- provides that proof of insurance meets certain mitigation bank permit requirements;
- requires certain criteria to be incorporated into regional water supply plans; and
- establishes solid waste landfill closure account within Solid Waste.

Update:

HB 703

- 2/28/14 – Proposed Committee Substitute by Agriculture & Natural Resources Subcommittee
 - o Prohibits a local government from rescinding a prior land use approval solely because the land continues to be used for bona fide agricultural purposes and qualifies for an agricultural classification providing exemptions from lease or permit fees for certain lessees;
 - o Exempts a lessee of sovereign submerged lands for a private residential multi-family dock from permit fees for a certain area of the dock.
 - o Prohibits local governments from requiring water control districts to meet additional regulatory requirements for certain structures included within a water control plan if an environmental resource permit or federal dredge and fill permit has been issued and the structures are incorporated in a plat of the county or city within which the water control district lies.
 - o Revises provisions relating to variances for discharges of waste into waters of the state or hazardous waste management
 - o removes proposed amendment prohibiting state from proposing or submitting certain plans
 - o removes proposed restrictions on the state in implementing federal greenhouse gas regulations
 - o **Provides 2 year permit extension for any building permit or ERP permit scheduled to expire between January 1, 2012 through January 1, 2015, with certain exceptions and conditions**
- **March 4 - Committee Substitute passed Ag & Natural Resources Committee**

SB 1464 (Simpson) – filed 2/28/14

Similar to PCS for HB 703 with minor wordsmithing changes as well as the following additional amendments:

- revises comp plan procedures to have affirmative vote require not less nor more than a simple majority of the members
- requires certain water control districts to obtain ERP permits for facilities, structures or improvements
- requires any local government authorization apply the same mitigation criteria and costs as are applied under chapter 298 for a water control district in the same jurisdiction.
- Excludes a tent up to 30 feet by 30 feet from Florida Fire Prevention Code, including the national codes incorporated by reference.
- Includes 2 year permit extension, but includes additional language requiring permit holder notify the authorizing agency of intent to use extension and anticipated time frame for acting on permit or authorization

Impact on SEFLUC

Provides opportunity for long-term permits and lessens requirements for comprehensive land use plan amendments.

HB 813/SB 1248 – Water and Wastewater Utilities

Summary:

HB 813 (Mayfield)

Designates act as "Ratepayer Representation Act"; prohibits county from providing water or sewer services in unincorporated areas covered by agreement with municipality; authorizes county to services when agreement does not provide expiration date; specifies that corporate powers of municipality do not apply to unincorporated areas of county without county's express consent; limits amount of water & sewer utility rates, fees, charges, & surcharges that municipality may impose on consumers outside of municipality's boundaries or ratepayers in unincorporated areas of county; requires PSC approval of such rates, fees, charges, & surcharges; authorizes ratepayers in unincorporated areas to petition PSC for determination whether rates, fees, & charges imposed by municipality are just & equitable; provides that PSC has regulatory authority over municipality that provides water or wastewater utility service in unincorporated areas of county; requires PSC approval before municipality purchases certain water or wastewater facilities.

SB 1248 (Latvala)

Similar to HB 813. Minor wordsmithing changes as well as the following additional amendments or changes:

- Unlike HB 813, SB 1248 does **not**
 - o strike language in 180.191(a) and (b) providing “municipality may add a surcharge of not more than 25 percent of such rates, fees and charges to consumers outside the boundaries.”
 - o Include language requiring approval by the PSC
- Requires billing disclosure on surcharges imposed on consumers outside the municipality’s borders
- Authorizes ratepayers in unincorporated areas to petition the PSC, or County if the municipality is located in a county that as elected to regulate water and sewer utilities pursuant to chapter 367, for a determination of whether rates are just and equitable.
- Requires and establishes conditions for PSC approval before a municipality may purchase certain water or wastewater facilities, including review of proposed rate structure

Impact on SEFLUC:

Municipalities providing water outside city boundaries and in unincorporated areas of the county will be impacted by this bill as it contains additional restrictions on surcharges or rates, as well as approval by PSC for surcharges and rates. Additionally, the counties are impacted by the restrictions on services and requiring the county to compensate the municipality for the fair market value of any facilities owned by the municipality that are transferred to the county to serve unincorporated areas after the municipality ceases providing such services. Here are some examples:

- Amendment to Section 180.02 at lines 216-227 would prohibit a city with a mandatory reuse zone from exercising its corporate powers under Chapter 180 "within the unincorporated areas of a county without the express consent of the a majority of the

commissioners at a duly noticed meeting of a board of county commissioners of that county."

- Impact – A city could not rely on the MRZ ordinance to require unincorporated areas to connect to your reclaimed water system without the approval of the respective County Commissioners.
- Amends Section 153.03 at lines 66-94 to allow the county to provide water or sewer service to properties in the unincorporated area that are currently served by the City, if the City is serving these properties pursuant to a franchise agreement with the county or by a county resolution or ordinance. Upon expiration of the franchise agreement, resolution or ordinance, the new law would allow the county to provide water or sewer services to these properties provided it pays the city the fair market value of these facilities. Under the current law, a county is prohibited from providing water or sewer service to property already being furnished such services by a municipality without the express consent of the municipality.
 - Impact - unless the city has a franchise agreement with Palm Beach County, the county could in essence acquire the City's service area outside its municipal boundaries upon paying the City the fair market value of the facilities used to serve this area.
- Amendment to Section 180.191 at lines 243-276 limits the City's ability set rates for customers in the unincorporated area. Under the current law, the City can charge customers in the unincorporated area up to 50% higher rates than it charges customers within the city limits and up to 25% of this differential can be in the form of a surcharge. Under the new law the City cannot charge customers in the unincorporated area more than 25% of the rate it charges customers within its municipal boundaries. Also, the amount of the surcharge must be identified as a separate line item in the bill of each customer to whom the surcharge is applied. Finally, the new law would allow customers in the unincorporated area to petition the Florida Public Service Commission to review the rates, fees or charges being imposed by the municipality.

SB 1218 is more amenable to utilities since it does not include language requiring approval by PSC for surcharges and rates and includes petitioning to county for counties that have elected to regulate utilities pursuant to chapter 367. However, SB 1218 includes additional language relating to the purchase of water or wastewater facilities, which is essentially forward application of PSC approval for rates, fees or charges.

Update:

2/14/14 – HB 813 in Energy and Utilities Committee

SB 910/ HB 1107– Utility Projects

SB 910 (Legg)

HB 1107 (Wood)

Summary - "Utility Cost Containment Bond Act"; authorizing certain local government entities to finance the cost of a utility project by issuing utility cost containment bonds upon application

by a local agency; authorizing an authority to issue utility cost containment bonds for specified purposes related to utility projects; requiring the governing body of the authority to adopt a financing resolution and impose a utility project charge on customers of a publicly owned utility as a condition of utility project financing, etc.

Impact on SEFLUC – Monitor as it could assist local government utilities in future projects

Update:

SB 910 - 2/10/14 – Referred to Communications, Energy, and Public Utilities; Community Affairs; Appropriations

HB 1107 – 2/25/14 Filed

HB 1055/ SB 1306 –Onsite Sewage Treatment and Disposal Systems

Summary :

HB 1055 (Mayfield)

SB 1306 (Altman)

Identical bills declaring the intent of the Legislature that where a publicly owned or investor-owned sewerage system is available, the DOH shall issue permits for construction of a combined system when connection to the sewerage system results in the use of any part of an onsite sewage treatment and disposal system; Requiring the Department of Health to establish and collect fees for combined systems; requiring the department to approve the installation of a combined system under certain circumstances; requiring a person to obtain a permit approved by the department before constructing, repairing, modifying, abandoning, or operating a combined system; providing conditions for issuance of permits relating to such systems, etc.

Impact on SEFLUC:

Monitor for potential increase in connections for utilities to combined systems. Legislation is unclear who will be responsible for construction of combined system. While the bill currently appears only charge DOH with permitting responsibilities, this bill could shift towards including language requiring utilities to construct the combined systems and connect to the onsite system.

Update:

3/4/14 – SB 1306 Referred to Health Policy; Environmental Preservation and Conservation; Agriculture; Rules

SB 1160/ HB 1113 – Onsite Sewage Treatment and Disposal Systems

SB 1160 (Evers)

HB 1113 (Edwards)

Summary - Extends the 2016 deadline to halt the land application of septic tank waste, established in SB 550 (2010), for four years until 2020. Some septic tank companies have raised

concerns that the alternative of finding and hauling the waste to sewage treatment plants can be burdensome or costly.

Impact on SEFLUC:

Extends time before utilities will be receiving additional septic tank waste that would otherwise be disposed of by land application.

HB 1289 – City of Vero Beach, Indian River County

(Mayfield)

Summary:

Requires that utility rates be fair, just, & reasonable for customers outside city limits; authorizes PSC to enforce act & adopt rules; provides that Public Counsel shall represent such customers

Impact on SEFLUC:

In the event HB 813 and SB 1248 do not pass this session, HB 1289 could be viewed either as a solution to the issues the broader bills are attempting to resolve or a gateway to additional statewide regulation.