

MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: March 9, 2015

RE: 2015 Legislation – SEFLUC March Update

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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 are 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:

1. HB 63/SB 824 – Public Private Partnerships
2. HB 65/SB 826 – Public Records and Public Meetings
3. HB 81/SB 230 – Public Utilities
4. HB 113/SB 778 – Local Government Construction Preferences
5. HB 163/SB 224 – Public Records/Contractors
6. SB 284 – Permitting
7. HB 383 – Private Property Rights
8. HB 391/SB 896 – Location of Utilities
9. HB 435/SB 718 – Administrative Procedures
10. SB 584/HB 1291, SB 586/HB 1291, SB576, SB578/HB 1295, SB580/HB 1293, and SB582 - Implementation of the Water and Land Conservation Constitutional Amendment
11. HB 617/SB 1102 – Utility Projects
12. SB 660 – Assault on Utility Worker
13. PCB SAC 15-01/HB 7003 – Water Policy
14. SB 648/HB 687 – Land Application of Septage
15. HB 653 – Environmental Control
16. SB 776/HB 1173 – Water and Wastewater
17. SB 918 – Environmental Resources
18. HB 1073/SB 1436 – Water Oversight and Planning
19. HB 993 Growth Management
20. SB 7058 – Administrative Procedures

## **1. HB 63/SB 824 – Public Private Partnerships**

**Summary** – Reforms state and local government P3 procedures. Codifies suggestions put forth by a task force established to study the methods by which states and localities enter into and execute public-private partnerships.

Clarifies that the P3 process must be construed as cumulative and supplemental to any other authority or power vested in the governing body of a county, municipality, district, or municipal hospital or health care system. It also provides that the P3 process is an alternative method that may be used.

The bill expands the list of entities authorized to conduct P3s, to include state universities. It clarifies that the list includes special districts, school districts rather than school boards, and Florida College System institutions.

The bill provides increased flexibility to the responsible public entity by permitting a responsible public entity to deviate from the provided procurement timeframes if approved by majority vote of the entity's governing body. The bill provides that an unsolicited proposal must be submitted concurrently with an initial application fee of \$50,000.00. The bill authorizes a responsible public entity to request additional funds if the initial fee does not cover the costs to evaluate the unsolicited proposal. It also requires the responsible public entity to return the initial application fee if the responsible public entity does not review the unsolicited proposal.

The bill authorizes the Department of Management Services to accept and maintain copies of comprehensive agreements received from responsible public entities. CS provides Department may share comprehensive agreements with other responsible public entities. It also deletes notice requirements for affected local jurisdictions.

**Impact on SEFLUC** – Monitor as this could impact public utilities engaging in P3 Projects.

### **Update:**

#### *HB 63*

- 1/28 – On Gov. Operations Subcommittee for 2/4/15
- 2/4 – Favorable with CS by Gov. Operations which removes provision that exempted P3s from CCNA process; CS removes \$50,000 application fee and instead provides fee shall be determined by public entity.
- 3/25 – Favorable by Local Gov. Affairs Subcommittee; now in Appropriations Committee

#### *SB 824*

- 2/20/15 – Referred to Community Affairs; Gov Oversight and Accountability; Fiscal Policy
- 3/17 – Favorable with CS by Community Affairs, CS requiring responsible public entity to include in a solicitation design criteria package specifying requirements sufficient to allow private entities to prepare a bid or response
- 3/31 – Favorable with CS2 by Governmental Oversight and Accountability, CS2 revises solicitation design criteria requirements identified in CS1

- 4/2 – Now in Fiscal Policy

## 2. HB 65/SB 826– Public Records and Public Meetings

### Summary –

Similar to 2014 HB 1051/SB 1318, the bill creates an exemption from public record and public meeting requirements for unsolicited proposals for P3 projects for public facilities and infrastructure.

The bill provides that an unsolicited proposal is exempt from public record requirements until such time that the responsible public entity provides notice of its intended decision. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to seek additional proposals, the unsolicited proposal remains exempt for a specified period of time; however, it does not remain exempt for more than 90 days after the responsible public entity rejects all proposals received for the project described in the unsolicited proposal.

If the responsible public entity does not issue a competitive solicitation, the unsolicited proposal is not exempt for more than 180 days.

The bill creates a public meeting exemption for any portion of a meeting during which the exempt unsolicited proposal is discussed. A recording must be made of the closed portion of the meeting. The recording, and any records generated during the closed meeting, are exempt from public record requirements until such time as the underlying public record exemption expires.

The public record exemptions and public meeting exemption are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

**Impact on SEFLUC** – Monitor as this could impact public utilities engaging in P3 Projects.

### Status:

#### *HB 65*

- 1/28 – On Gov. Operations Subcommittee for 2/4/15
- 2/4 – Favorable with minor CS by Gov. Operations
- 3/25 – Favorable by Local Gov. Affairs Subcommittee; now in State Affairs Committee
- 4/10 – On Committee Agenda – State Affairs Committee 4/14/15

#### *SB 826*

- 2/20/15 – Referred to Comm. Affairs; Gov. Oversight and Accountability; Fiscal Policy
- 3/17 – Favorable by Community Affairs
- 3/31 – Favorable with CS by Government Oversight and Accountability, CS corrects technical deficiency by including reference to linked bill, SB 824
- 4/2 – Now in Fiscal Policy

3. **HB 81/SB 230 – Public Utilities** – Likely Dead, No movement – Monitor HB 7109 for amendment

**Summary:**

**Applies to electric and gas utilities.** Requires a proposed change in public utility's billing cycle to be approved by the Florida Public Service Commission at least 1 month before change becomes effective. It also requires the commission to consider impact of the proposed change and prohibits the commission from approving more than a 7-day extension of a billing cycle or any change that may cause a consumer or user to be charged a higher rate due to the increased energy usage.

**Impact on SEFLUC:**

While this legislation only applies to electric and gas utilities, it will be interesting for SEFLUC to monitor as it expands the PSC's authority to control utility billing cycles and rates. In 2014, the legislature proposed bills requiring PSC approval for water and wastewater rate changes. These bills are consistent with the intent to expand the PSC's control.

**Status:**

*HB 81*

- 12/19 – in Energy & Utilities Subcommittee

*SB 230*

- 1/13- Referred to Communications, Energy, and Public Utilities; Appropriations Subcommittee on General Government; Fiscal Policy
- 2/17 – Favorable Communications, Energy and Public Utilities
- 3/4 – Favorable Appropriations, Now in Fiscal Policy

4. **HB 113/SB 778 – Local Government Construction Preferences** - HB through last committee stop, SB on Special Order Calendar

**Summary:**

Where 20 percent or more of the cost of a construction project will be paid from state-appropriate funds, legislation prohibits local governments from adopting ordinances or regulations which restrict a certified contractor's competition for award of a contract for constructive services by eliminating local preference. Mandates that any local construction project be open to all contractors in the state if 20 percent or more of the project's funds come from the state coffers.

**Impact on SEFLUC:**

Increased competition among contractors; important impact on future competitive solicitations

**Status:**

**HB 113**

- 2/4 - Passed with CS1 by Gov. Affairs relocating the provisions to chapter 255, F.S.,
- 3/2 – Passed with CS2 by Local Affairs changing applicability to projects where **50 percent** or more of the cost is paid from state funds (rather than 20); changes word vendor to contractor in bill
- 3/19 – Favorable Appropriations Committee
- 4/8 – Favorable with CS3 by State Affairs, CS3 defines state-appropriated funds to mean all funds appropriated in the General Appropriations Act, excluding federal funds.
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**SB 778**

- 2/13 – Referred to Community Affairs; Governmental Oversight and Accountability; Appropriations
- 3/4 - Favorable with CS1 by Community Affairs provides state-appropriated funds do not include any federal aid funds for this section; changes applicability to projects where **50 percent** or more of the cost is paid from state funds (rather than 20); changes word vendor to contractor in bil
- 3/17 - Favorable with CS2 by Governmental Oversight and Accountability; CS2 rather than amending section 287.084 creates a new section in ch. 255, F.S. which prohibits a state college, county, municipality, school district, or other political subdivision from providing a local preference to contractors in competitive solicitations for construction services in which 50 percent or more of the cost will be paid from state appropriated funds
- 3/25 - Favorable by Appropriations;
- 3/26 - Placed on Calendar, on 2nd reading
- 4/02 - Placed on Special Order Calendar, 04/08/15
- 4/08 - Retained on Special Order Calendar

**5. HB 163/SB 224 – Public Records/Contractors**

**Summary:**

Defines term "acting on behalf of public agency"; revises definition of term "contractor" to include performing a governmental function or a function that the public agency would otherwise perform; requires that public agency contract for services include statement providing name & telephone number of public agency's custodian of records; prescribes form of statement; revises contractual provisions in public agency contract for services regarding contractor's compliance with public records laws relating to maintenance of public records upon completion of contract; specifies circumstances under which court may assess & award reasonable costs of enforcement against public agency or contractor.

2/3 Amendment to SB 224 – deletes definition for “acting on behalf of public agency”, revises statement required for public agency contract;

**Impact on SEFLUC:**

Increased public record requirements for government contractors.

**Status:**

*HB 163*

- 1/15 – in Government Operations Subcommittee
- 3/4 – Favorable with CS by Gov. Operations Subcommittee revising form of statement; deleting revisions to definitions; requiring a contractor to produce requested records if public agency does not possess records; providing for penalties if contractor fails to produce records; deleting proposed language requiring court to make specific findings in civil action that contractor acted in bad faith in order to recover attorneys’ fees and costs
- 3/17 - Favorable with CS by Gov. Operations Appropriations Subcommittee, CS2 clarifies language required to be in public agency contracts for services is only for contracts signed or amended on or after July 1, 2015; removes requirement that name of custodian be in contract for services; removes required contract language that the requirements of 119.0701, F.S. apply unless public agency has determined that contractor is not a contractor.
- 3/19 – Now in State Affairs Committee

*SB 224*

- 1/13 – Referred to Governmental Oversight and Accountability; Judiciary; Fiscal Policy
- 2/3 – Favorable with CS by Gov. Oversight and Accountability; CS removes definition of contractor and “acting on behalf of a public agency”; alter settlements and terms which must be placed in each contract; shortens notice requirement from 5 days to 3 days; removes bad faith or willful refusal element from enforcement cases
- 3/10 – Favorable with CS by Judiciary – removes authority which appeared to place duty on custodian of public records to determine whether contractor was subject to public records law; clarifies public records that are exempt or confidential and exempt from public records disclosure cannot be disclosed by the contractor for the duration of the contract term and after completion of the contract if the contractor keeps the records; increases to 5 business days, the number of days required for notice to be provided by certified mail from a plaintiff in a motion to compel production action to the defendants in order to be eligible for costs and attorney fees
- 3/26 – Favorable by Fiscal Policy; Placed on Calendar on 2<sup>nd</sup> reading; Placed on Special Order Calendar
- 4/1 – Read Second time, Amendment Adopted revising attorney’s fees provision in civil action, creating new section outlining agency requirements for staff training and public postings relating to public records, ; Ordered Engrossed; Placed on Third Reading
- 4/2 – Read Third time; Minor Amendment Adopted
- 4/8 – In Messages to House

**6. SB 284 – Permitting**

**Summary: NOTE SUBSTANTIAL CS CHANGE**

Specifies circuit courts may review certain permits issued by state agencies and water management districts that may result in an “unreasonable exercise of the state’s police power constituting an exaction taking as a result of extortionate demands that impermissibly burden the

constitutional right not to have the property taken without just compensation”; providing additional remedies in the event of an exactions taking, etc.

**Impact on SEFLUC:**

Potential additional grounds for challenging permits. Additional language concerning what constitutes an exaction with reference to “extortionate demands”

**Status:**

*SB 284*

- 1/15 – Referred to Env. Preservation and Conservation; appropriations Subcommittee on General Government; Appropriations
- 3/24 – Favorable with CS by EPC, CS is SUBSTANTIAL change to make bill closer to HB 383
  - o Deletes all references to ss. 253.763, 373.617, and 403.90, F.S., which were amended by the original bill to provide a cause of action for exactions takings as a result of extortionate demands as conditions of permits; Clarifies the terms “property owner” and “real property” and provides definitions for “damages,” “governmental entity,” “prohibited exaction,” “property owner,” and “real property” under ch. 70, F.S.; provides circumstances when a governmental entity may treat a claim as pending litigation and clarifies when a settlement offer may be accepted; creates a cause of action under ch. 70, F.S. for governmental exaction; provides that a governmental agency defending the claim has the burden of proof to defend the agency exaction; authorizes awards of attorney fees and costs under certain circumstances; bill provides that the state, its agencies, and political subdivisions waive sovereign immunity for causes of action under new cause of action

**7. HB 383 – Private Property Rights**

**Summary:**

Creates new statute specifically addressing governmental exactions. Changes existing law to provide that only those directly affected (i.e. property owner) by government action may file suit and allows greater flexibility to reach a settlement to satisfy all parties. Specifically, the bill requires state agencies and local governments to justify conditions placed on the use of private property. If government cannot provide an explanation, the bill allows those harmed to file suit.

**Impact on SEFLUC:**

Protects those governments from lawsuits filed by neighbors of the property owner whose property is actually being regulated. By clarifying how settlements may be reached, the proposal would reduce unnecessary litigation.

**Status:**

*HB 383*

- 1/28 - Referred to Civil Justice Subcommittee; Local Government Affairs Subcommittee; Appropriations Committee; Judiciary Committee
- 2/3 - On Committee agenda - Civil Justice Subcommittee, 02/10/15, 10:30 am, 404 H
- 2/10 – Favorable with CS by Civil Justice which revises definition of “real property” to only include parcels that are ‘the subject of’ and directly ‘impacted’ by the action of a government entity and specifically recognizes where unconstitutional exactions exist in Florida, a cause of action for damages is created.
- 4/7 – Favorable with CS2 by Judiciary, CS revising definitions, excluding impact fees from governmental exactions section, requiring cause of action be brought within 180 days; describing procedural requirements following receipt of notice of exaction; revises attorneys fees provisions

**8. HB 391/SB 896 – Location of Utilities**

**Summary:**

Clarifies that board of county commissioners may grant licenses for utility lines within certain right-of-way limits; authorizes DOT & certain governmental entities to prescribe & enforce certain rules regarding utility lines within right-of-way limits; prohibits municipalities & counties from requiring certain information from communications services providers already in their possession; requires authority to bear cost of relocating utility that is located within certain right-of-ways along public roads or rail corridors when authority requires relocation for purposes other than specified interference with public road or rail corridor, for reasons specified in subsection, or if relocation is required as a condition or result of a project by an entity other than the authority.

**Impact on SEFLUC:**

Monitor for impact on location of utility lines and recoupment of costs if utility is forced to relocate lines under certain conditions.

**Status:**

*HB 391*

- 1/28 – In Local Government Affairs Subcommittee
- 3/2 – Amendment Filed
- 3/3 – Favorable by Local Government Affairs Subcommittee with CS requiring other entity to bear costs of relocation if relocation is required as condition or result of a project by an entity other than an authority (original draft legislation required authority or entity to bear costs) and deleting Section 4 of original legislation which required replacement of the phrase “effective date of this act” with the date the act becomes law
- 3/12 – Favorable with CS by Transportation & Economic Dev. App. Sub., CS deletes language prohibiting a municipality or county from requiring a utility to resubmit information already in possession of municipality or local gov.
- 3/16 – Now in Regulatory Affairs

*SB 896*

- 2/26 – Referred to Community Affairs; Transportation; Appropriations
- 3/23 – Favorable with CS by Community Affairs, CS clarifies proprietary maps are type of info that local governments may not require from a utility if facility has been previously subject to a permit and includes statement of important state interest
- 4/2 – Favorable with CS by Transportation – modifies bill to prohibit impairment of any rights holder of any private railroad right-of-way; includes interference with drainage directly associated with the maintenance, improvement, extension, or expansion of a public road in currently-required utility work at the utility owner’s expense, and clarifies cost of utility work within a previously dedicated public easement is shifted to authority only if utility is lawfully located in the easement
- 4/7 – Now in Appropriations

**9. HB 435/SB 718 – Administrative Procedures**

**Summary:**

Changes to rulemaking challenges – defines when a proceeding is considered “substantially justified” for purposes of determining award of attorneys fees’ and costs; requires agency to discontinue reliance on any challenged agency statement or unadopted rule and begin rulemaking workshops upon request by petitioner; requires electronic publishing of list of rules filed for adoption in previous 7 days and for adoption pending legislative ratification; requires email notification service; changes burden of proof “Petitioner has burden of going forward with evidence. The agency has the burden of proving by a preponderance of the evidence that the rule, proposed rule, or agency statement is not an invalid exercise of delegated legislative authority” (previously Petitioner had burden); prohibits reliance on invalidated rule in pending cases or otherwise by agency; additional provisions relating to declaratory statements; additional procedural restrictions on rule challenges; revises authorities of ALJs; revises provisions regarding noticing of agency actions; expands agency reporting requirements of certain minor rules; revises timeframes in administrative proceedings

**Impact on SEFLUC:**

Monitor for changes to rule challenging procedures in the future.

**Status:**

*HB 435*

- 1/28 – in Rulemaking Oversight & Repeal Subcommittee
- 3/11- Favorable by Rulemaking Oversight & Repeal Subcommittee with amendments.
  - o The Rulemaking Oversight & Repeal Subcommittee adopted a strike-all amendment, as amended by one technical amendment, deleting two sections of the original bill relating to declaratory statements and mediation. The amendment also:
    - **removes proposed requirement that agency discontinue reliance upon agency statement or unadopted rule until it adopts rules;**

- removes proposed requirement for agency to publish notice of rule development in FAR;
  - wordsmith changes to rule challenge sections
  - **removes proposed shifting of the burden of proof to the agency to prove that a rule, proposed rule, or agency statement is not an invalid exercise of delegated legislative authority**
  - adds language that after petitioner has met burden of going forward with evidence sufficient to support petition challenging **unadopted rule**, agency has burden to prove statement does not meet definition of unadopted rule, statement was adopted as rule or is not feasible or practicable.
  - Removes proposed language prohibiting bifurcation of petition challenging agency action and unadopted rule challenge
  - Revises attorneys fees provisions relating to what actions constitute an improper purpose
  - Deletes attorneys fee provision for agency prevailing parties in unadopted rule challenge
  - Procedural requirements for notice of filing filed later than 25<sup>th</sup> day
- 4/7 – Favorable with CS by Gov. Operations Appropriations Subcommittee, CS deletes proposed language regarding attorney’s fees describing when proceeding is not substantially justified; deletes proposed changes to section 120.57 regarding attorney fees

*SB 718*

- 2/5- Filed
- 2/13 – Referred to Judiciary; appropriations Subcommittee on Gen. Gov.; Appropriations
- 3/24 - Favorable by Judiciary
- 4/8 – Favorable by Appropriations Subcommittee on General Government; Now in Appropriations

**10. SB 584/HB 1291, SB 586/HB 1291, SB 576, SB 578/HB 1295, SB 580/HB 1293, and SB 582 - Implementation of the Water and Land Conservation Constitutional Amendment**

**Summary:**

In order to implement these three basic requirements of constitutional amendment 1, Senator Dean, Chair of our Senate Committee on Environmental Preservation and Conservation, is proposing a series of six related bills. These six key pieces of legislation create the structure necessary to provide accountability and transparency for the expenditure of documentary stamp tax dollars as directed by the constitution.

SB 584/HB 1291 restructures existing trust funds so documentary stamp tax is no longer commingled with other revenue sources to provide the greatest level of accountability and transparency. Documentary stamp tax revenue intended for expenditure under the constitutional amendment will only be deposited into the Land Acquisition Trust Fund (“LATF”) within the DEP. The purpose of this bill is to meet the letter requirements of the constitution provision and ensure citizens can track the LATF funds previously commingled with other revenue sources.

SB 586/HB 1291 revises section 201.15, F.S., to provide the distribution of 33 percent of documentary stamp tax revenues into the LATF within the DEP. The bill removes existing distributions to environmental trust funds in recognition that future expenditures for qualifying environmental programs will be appropriated from the LATF so that these expenditures will be transparent. The language ensures documentary stamp tax revenues continue to fully secure existing debt service payments as a first priority. The bill also provides for the funding of payments in lieu of taxes that were previously funded from one of the environmental trust funds because it appears these payments do not qualify for expenditure from the LATF under the constitutional amendment.

SB 576, SB 578/HB 1295, SB 580/HB 1293, and SB 582 create new Land Acquisition Trust Funds within the Agency for Persons with Disabilities, Department of Agriculture and Consumer Services, Department of State, and Department of Transportation. These trust funds, along with the LATF that already exists within the Florida Wildlife Commission, will serve as the agency trust funds that will receive documentary stamp tax revenues appropriated from the LATF within the DEP for expenditure on specific qualifying programs in those agencies. Like the LATF within DEP, these “mini-LATFs” will hold only documentary stamp tax revenues so that each dollar of the 33 percent set aside pursuant to the constitution can be easily followed all of the way through to its ultimate expenditure. The Agency for Persons with Disabilities is included because the Agency manages Rish Park, the only state park dedicated for use by persons with disabilities. The Department of Transportation is included for funding for the development of the state’s recreational trail system.

*3/11 Amendments*

Proposals originally changed the funding formula for the Affordable Housing Trust Fund and DOT's work plan, but the Senate Committee on Appropriations passed amended versions of Dean's bills that would leave that funding model intact.

**Impact on SEFLUC:**

Monitor to ensure appropriate programs are included within LATF

**Status:**

*SB 584*

- 2/5 – Referred to EPC; Appropriations Subcommittee on Gen. Govt.; Appropriations
- 2/18 – Favorable EPC
- 3/11 – Favorable with Committee Substitute by Appropriations Subcommittee on Gen. Gov
- 3/18 - Favorable with CS by Appropriations
- 3/24 – Read Second Time; Placed on Third Reading
- 4/1 – Read Third Time, Passed; in messages
- 4/2 – Received from Messages by House; House Amendment Adopted; Read Third Time by House and Passed; in returning messages
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*SB 586*

- 2/5 – Referred to EPC; Appropriations Subcommittee on Gen. Govt.; Appropriations

- 2/18 – Favorable EPC with CS (minor)
- 3/11 – Favorable by Appropriations Subcommittee
- 3/18 – Favorable with CS by Appropriations
- 3/23 – Placed on Calendar 2<sup>nd</sup> Reading

*SB 576*

- 2/5 – Referred to EPC; Appropriations Subcommittee on Gen. Govt.; Appropriations
- 2/18 – Favorable EPC
- 3/11 – Favorable with Committee Substitute by Appropriations Subcommittee on Gen. Gov
- 3/18 - Favorable with CS by Appropriations
- 3/24 – Read Second Time; Placed on Third Reading
- 4/1 – Read Third Time, Passed; in messages
- 4/2 – Received from Messages by House; House Amendment Adopted; Read Third Time by House and Passed; in returning messages

*SB 578*

- 2/5 – Referred to EPC; Appropriations Subcommittee on Gen. Govt.; Appropriations
- 2/18 – Favorable EPC
- 3/11 – Favorable with Committee Substitute by Appropriations Subcommittee on Gen. Gov
- 3/18 - Favorable with CS by Appropriations
- 3/24 – Read Second Time; Placed on Third Reading
- 4/1 – Read Third Time, Passed; in messages
- 4/2 – Received from Messages by House; House Amendment Adopted; Read Third Time by House and Passed; in returning messages

*SB 580*

- 2/5 – Referred to EPC; Appropriations Subcommittee on Gen. Govt.; Appropriations
- 2/18 – Favorable EPC
- 3/11 – Favorable with Committee Substitute by Appropriations Subcommittee on Gen. Gov
- 3/18 - Favorable with CS by Appropriations
- 3/24 – Read Second Time; Placed on Third Reading
- 4/1 – Read Third Time, Passed; in messages
- 4/2 – Received from Messages by House; House Amendment Adopted; Read Third Time by House and Passed; in returning messages

*SB 582*

- 2/5 – Referred to EPC; Appropriations Subcommittee on Gen. Govt.; Appropriations
- 2/18 – Favorable EPC
- 3/11 – Favorable with Committee Substitute by Appropriations Subcommittee on Gen. Gov
- 3/18 - Favorable with CS by Appropriations
- 3/24 – Read Second Time; Placed on Third Reading
- 4/1 – Read Third Time, Passed; in messages

- 4/2 – Received from Messages by House; House Amendment Adopted; Read Third Time by House and Passed; in returning messages

*HB 1291*

- 3/6 – Referred to Ag and National Resources Appropriations Committee; Appropriations Committee; Now in Ag
- 4/2 – Laid on Table

*HB 1293*

- 3/6 – Referred to Transportation & Economic Development Appropriations Subcommittee; Appropriations Subcommittee; Now in Transportation
- 4/2 – Laid on Table

*HB 1295*

- 3/6 – Referred to Ag and National Resources Appropriations Committee; Appropriations Committee; Now in Ag
- 4/2 – Laid on Table

**11. HB 617/SB 1102 – Utility Projects**

**Summary:**

"Utility Cost Containment Bond Act"; authorizes certain local government entities to finance costs of certain utility projects by issuing utility cost containment bonds; specifies application requirements; provides definitions; provides procedures for obtaining utility project financing; provides procedures to establish or adjust utility projects and financing resolutions; provides requirements for collection of project charges; specifies legal status of project charges for securing payment of bonds; specifying payment obligations regarding utility cost containment bonds; provides for construction of law.

**Impact on SEFLUC:**

Monitor

**Status:**

*HB 617*

- 2/18 – Referred to Energy & Utilities; Finance & Tax; Regulatory Affairs; Now in Energy & Utilities
- 3/12 – Favorable by Energy & Utilities
- 3/31 – Favorable with CS by Finance & Tax, CS amendment excluded from “public utility services” stormwater service, communications services, internet access service, and information services and clarified that utility project property does not include any interest in customer’s real or personal property
- 4/9 – Favorable with CS by Regulatory Affairs, CS revises language regarding utility project charge as nonbypassable charge

*SB 1102*

- 2/27 – Referred to Communications, Energy and Public Utilities; Finance and Tax; Appropriations
- 3/24 – Favorable with CS by Communications, Energy and Public Utilities, CS removes all reference to stormwater projects, inserts a cross-reference to clarify what communications services are referred to in defining “public utility services” and provides definition of “utility project property” does not include an interest in a customer’s real or personal property

**12. SB 660 – Assault on Utility Worker – No Movement**

**Summary:**

Defines utility worker; provides assault on utility worker is 3<sup>rd</sup> degree felony

**Impact on SEFLUC:**

Monitor

**Status:**

*SB 660*

- 2/3 – Filed
- 2/6 – Referred to Criminal Justice, Communications, Energy and Public Utilities; Fiscal Policy

**13. PCB SAC 15-01/HB 7003 – Water Policy**

**Summary:**

*HB 7003*

Comprehensive Water Policy Bill – See separate memorandum for complete analysis.

5 categories – water supply, water quality, springs, CFWI, northern everglades.

South Florida Highlights include:

- The bill amends the definition of “water resource development” in s. 373.019(24), F.S., to include self-suppliers as a type of entity that may receive technical assistance related to water resource development.
- Providing additional considerations in the development of water resource and water supply options, regional water supply planning, and the water use permitting process to account for circumstances faced by self-suppliers.
- Establishing a direct link between the water supply planning process and the development of WMD annual funding plans for water resource and water supply projects, including an assessment of the sufficiency of funding to implement regional water supply plans (RWSP).
- Requiring RWSP to be updated concurrent with the adoption of MFLs and implementation of recovery and prevention strategies.
- Requiring the SFWMD to continue exercising the state’s authority to allocate water and assign priorities among other water uses served by the Central and Southern Florida Project (Project) and to provide recommendations to the U.S. Army Corp of Engineers

that are consistent with all SFWMD programs and plans when developing or implementing joint water control plans or regulation schedules required for the Project.

- Updating and restructuring the Northern Everglades and Estuaries Act to reflect and build upon DEP's completion of BMAPs for Lake Okeechobee, the Caloosahatchee Estuary, and the St. Lucie River and Estuary; DEP's continuing development of a BMAP for the inland portion of the Caloosahatchee River watershed; and DACS' implementation of BMPs in the three basins.
- Designating the Lake Okeechobee BMAP as the phosphorus control element of the Lake Okeechobee Watershed Protection Program, designating BMAPs adopted for the Caloosahatchee River and the St. Lucie River watersheds as the pollutant control programs for those watersheds, and requiring the BMAPs to contain an implementation schedule for pollutant load reductions consistent with adopted TMDLs.
- Authorizes DEP to adopt by rule a specific surface water classification for certain waterbodies used as a source of drinking water.

**2/18 Amendments: Amendments 1-3 mostly clarification amendments; Amendment 4 new provision**

**Amendment 1** – referring to GB review of competing applications, clarifies preference is given to use for which an AWS “is not technically *or* financially feasible.” Prior language said technically *and* financially feasible.

**Amendment 2** – revises proposed HB 7003 amendment to clarify only provisions of Lake Okeechobee BMAP subparagraphs 2 and 7 (rather than this subparagraph (11) may not preclude compliance with WQS or BMPs and are only applicable to extent do not conflict with rules adopted to maintain a federally delegated or approved program.

**Amendment 3** – Revises HB 7003 requirements for local governments relating to Priority Florida Springs as follows: “Local governments have primary responsibility for providing urban stormwater management services pursuant to the provisions of their municipal separate storm sewer system permit and the operation of wastewater collection and treatment facilities ~~and domestic wastewater management~~.”

**Amendment 4** – Title amendment and substantive change requiring expanding department powers and duties relating to development of BMPs and implementation of TMDLs to require department to form a working group in areas where sewage treatment and disposal systems represent a source of excess nitrate-nitrite in springs or spring systems that must be controlled in order to meet a total maximum daily load and to implement this new requirement, requires the department to award funds to reduce nutrient impacts under certain conditions.

**Impact on SEFLUC:**

Heavily monitor for potential amendments that could adversely impact public water suppliers.

**Status:**

- 2/19 – Favorable by Appropriations with CS incorporating Amendments described above
- 3/5 - Passed House

- 3/18 – Workshopped by Senate Environmental Preservation and Conservation

#### 14. **SB 648/HB 687 – Land Application of Septage – HB 687 Passed House**

##### **Summary:**

Deletes prohibition on land application of septage and identifies permit requirements for land application of septage in spring protection and management zones and outside spring protection and management zones. – REPLACED BY CS which just extends prohibition effective date until 2018

##### **Impact on SEFLUC:**

Allows permitted land application of septage

##### **Status:**

###### *SB 648*

- 2/6 – Referred to EPC; Community Affairs and Fiscal Policy
- 3/31 – Favorable with CS by EPC, CS requires department to adopt rules to implement section; revises permit requirements in spring protection and management zones
- 4/2 – now in health policy, remaining reference fiscal policy (CA removed)

###### *HB 687*

- 2/18 – Referred to Agriculture & Natural Resources Subcommittee; Health Care Appropriations Subcommittee; State Affairs Committee; Now in Ag & NR
- 3/10 – Favorable with CS by Agriculture & Natural Resources Subcommittee, CS revises bill to only **extend effective date of the prohibition on the land application of septage** until 2018 (removes proposed deletion of land application of septage and permit requirements in spring zones)
- 3/19 – Favorable by State Affairs Committee
- 4/9 – Read Third Time; Passed House

#### 15. **HB 653 – Environmental Control**

##### **Summary:**

###### *CS HB 653*

- Creates solid waste landfill closure within the SWMTF to provide funding for closing and long-term care of solid waste management facilities
- Allows land set-asides and land use modifications, including constructed wetlands or other water quality improvement projects, to be used as activities that are eligible to generate water quality trading credits.
- Incentivizes water conservation by prohibiting permitting agencies from modifying permitted water allocations during the term of the permit if actual water use is less than permitted water use due to documented implementation of water conservation measures, including, but not limited to, those measures identified in best management practices for agriculture activities;
- Directs the WMDs to adopt rules providing water conservation incentives, including permit extensions.

- Amends the requirements for water well contractor license applicants to demonstrate two years of experience in constructing, repairing, or abandoning water wells. The change requires applicants to provide a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency. The statute previously required both;
- Requires water management districts to promote expanded cost share criteria for additional conservation practices, such as soil and moisture sensors, and other irrigation improvements, water-saving equipment, and water-saving household fixtures; and
- Specifies that nothing in the provision restricting when a variances to an environmental standard may be issued prohibits the issuance of moderating provisions under state law, subject to any necessary EPA approval.

*SB 714*

- Creates solid waste landfill closure within the SWMTF to provide funding for closing and long-term care of solid waste management facilities
- Allows land set-asides and land use modifications, including constructed wetlands or other water quality improvement projects, to be used as activities that are eligible to generate water quality trading credits.
- Specifies that nothing in the provision restricting when a variances to an environmental standard may be issued prohibits the issuance of moderating provisions under state law, subject to any necessary EPA approval.

**Impact on SEFLUC:**

Favorable language in HB 653 for utilities requiring WMDs to adopt water conservation incentives, including permit extensions, and prohibiting WMDs from reducing permit allocations due to documented implementation of water conservation measures.

**Status:**

*HB 653*

- 2/8 - Referred to Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee
- 3/10 – Favorable with CS by Ag & Natural Resources
- 4/7 – Favorable with CS2 by Ag & Natural Resources Appropriations Subcommittee, CS2 provides appropriation of \$2,39,764 to DEP for closing and long-term care of SW management facilities

*SB 714*

- 2/13 - Referred to EPC, Appropriations Subcommittee on Gen Gov.; Appropriations
- 4/8 – Favorable with CS by EPC, CS clarifies membership requirements for council, clarifies that lands set asides and land-use modifications that may qualify for water quality credits must not otherwise be required by state law or a permit;

**16. SB 776/HB 1173 – Water and Wastewater**

**Summary:**

*SB 776*

Adds new statutory section requiring Division of Bond Finance of the State Board of Administration to review the allocation of private activity bonds to determine the availability of additional allocation or reallocation of bonds for water and wastewater infrastructure projects.

Exempts investor-owned water and wastewater utilities owned or operated by a Florida Corporation from sales tax if sole or primary function of the corporation is to construct, maintain, or operate a water or wastewater system in Florida and if the goods or services purchased or leased are used in Florida.

Exempts from regulation by the PSC as a utility any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed actual purchase price plus actual cost of meter reading and billing, not to exceed 9 % of actual cost of service.

Authorizes PSC in establishing rates for a utility to create a utility reserve fund for infrastructure repair and replacement to be funded by rates charged by the utility, by a secured escrow credit or through a letter of credit. Requires PSC to adopt rules to govern implementation, management, and utilization of such funds.

Prohibits PSC from awarding attorney's fees or costs for purposes of preparing or filing the case if utility receives staff assistance in changing rates and charges, unless Office of Public Counsel or interested parties have intervened. May award fees or costs if fees are incurred after initial staff report is made available to customers and utility or if there is a protest or appeal by a party other than the utility, for fees incurred after protest or appeal.

Prohibits utility from recovering the 4-year amortized rate case expense for more than one rate case at any given time.

Authorizes the PSC on its own motion or based on complaints of customers of a water utility to 1) review water quality as it pertains to secondary drinking water standards or 2) review wastewater service as it pertains to odor, noise, aerosol drift or lighting.

Includes for-profit, privately owned or investor-owned water systems as systems eligible for drinking water state revolving loan funds.

*HB 1173*

Very similar to SB 776. Includes as additional eligible expense items for inclusion in utility rate: loan service fee or loan origination fees associated with loan related to an eligible project as described therein.

New Section 11, which is a procedural change to reenacts Florida statutes to incorporate amendments.

### **Impact on SEFLUC:**

While some neutral or beneficial elements for utilities are contained within this bill, SEFLUC should oppose the provisions allowing PSC to review water quality as it pertains to secondary drinking water standards or wastewater service as it pertains to odor, noise, aerosol drift or lighting.

### **Status:**

#### *SB 776*

- 2/13 – Referred to EPC; Finance and Tax; Appropriations
- 3/17 – Minor wordsmithing amendment filed by EPC
- 3/31 – Favorable by Communications, Energy and Public Utilities
- 4/1 – now in appropriations

#### *HB 1173*

- 2/27 - Filed
- 3/24 – Favorable with CS by Energy & Utilities Subcommittee, CS clarifies purposes for which a PSC-approved reserve fund may be used; clarifies types of expenses eligible for pass-through treatment

## **17. SB 918 – Environmental Resources**

### **Summary:**

Senate’s Water Policy Bill – picks up on Springs Bill from 2014, increased MFL requirements from HB 7003. SB 918 is the second part of what Senate is laying out as 3 step process being tied to Amendment 1 funding (first part was with trust fund legislation SB 576, SB 578, SB 580, and SB 582, third part will be funding).

Unlike HB 7003, this bill does not contain any language regarding the CFWI or Northern Everglades. Also, where HB 7003 focuses on water quality, SB 918 focuses on water supply.

### **Highlights:**

- Starts with piece on recreation/Sun trail
- First major section focuses on MFLs
  - o Change to level of harm necessary to water resources where MFL is set – deletes “significantly” and just says “harmful”
    - Interesting to see if this changes any WMD existing interpretation
  - o Requires use of **interim MFLs** until final MFL is adopted. Sets Interim as flow exceeded 67 percent of time based on long term conditions.
    - No explanation of where 67% comes from
    - Interim could potentially become basis for recovery prevention strategy
- Springs and Aquifer Protection Act
  - o Lengthy legislative findings, including that sufficient information exists to act and that **immediate action is needed and actions will be updated as new data is obtained.**

- Defines spring zone as area vulnerable to contamination or reduced levels.
- BMAP
  - Requires MFL or BMAP for outstanding Florida spring set before July 1, 2015 be revised by July 1, 2018
    - Significant workload implications
    - Could provide second opportunity to challenge recent MFL
- Septic tanks
  - Requires DEP to identify septic tanks in spring zones that are significant contributions to water quality violations and require local gov. to take action
  - Prohibits property owners from being responsible for paying costs of updates, but does not contain any funding provision
- Fertilizer – requires adoption of model ordinance or more stringent
- Water Resource Advisory Council
  - annually evaluate and recommend to the Legislature water resource projects which have been prioritized by state agencies, water management districts, or local governments and are eligible for some level of state funding.
  - FWCC Director, Commissioner Ag, DEP Secretary, 2 experienced appointees (VOTING), Plus 5 WMD Ed’s (non-voting)
  - Work plan for funding water resources funding by August 31

#### OBSERVATIONS

- Tied to Amendment 1 funding
- Temporary regulations applying until permanent regulations come through is significant
- Significant burden on state agencies/funding
- Number of interlocking and overlapping deadlines – difficult to sort out
- Accepts premise that spring flows are affected by withdrawals without recognizing impact by rainfall – premise of impact by withdrawals is unproven

#### **Impact on SEFLUC:**

While this bill focuses primarily on springs and MFLs, could still have significant implications on South Florida. The concept of allowing interim restrictions to be in effect while the science is being developed is a substantial change. The requirement that local governments replace septic tanks at no costs to owner is similar to legislative efforts last year. This is a precedent that could create significant financial obligations on utilities. Finally, the establishment of the Water Resource Advisory Council could create significant changes on WMD operations and policies.

#### **Status:**

*SB 918*

- 2/26– Referred to Environmental Preservation and Conservation; Appropriations Subcommittee on General Government; Appropriations
- 3/24 – Favorable with CS by EPC
- 4/8 – Favorable with CS2 by Appropriations Subcommittee on General Government
  - FULL ANALYSIS OF CS2 IN SEPARATE ATTACHMENT
  - SEFLUC Highlight

- CUPs with withdrawals of 100,000 or more gpd and well diameters 8 inches or greater are required to be “monitored” and reported to the WMD. The 8 inch limitation would likely eliminate many self-suppliers from the monitoring requirement (lines 887-892).
- **The prior version of the bill provided as a conservation incentive that permitted allocations could not be modified during the term of the permit. The new version of the bill limits this incentive to areas not included in a regional water supply plan and not in an area included in a water shortage declaration (lines 949-963). This means the conservation incentive would not apply in the vast majority of the state, and is less favorable than existing CUPCon conservation incentive rules.**
- **The current version of the bill adds a new provision providing that for CUPs for agricultural irrigation, if actual water use is less than permitted water use due to weather events, crop diseases, nursery stock availability, market conditions or changes in crop type, a WMD may not, as a result, reduce permitted allocations amounts during the terms of the permit (lines 964-969)**
- **For competing uses, local sources first considerations would now be used as a tie breaker for permit issuance (lines 977-982). The provision favors agricultural uses over PWS since agricultural withdrawal is almost always directly located at the place of use. Also, depending how a WMD defines the withdrawal site and the source of water, this provision could reach out to uses located many miles from the withdrawal site. For example, if a WMD defines the withdrawal site as the location of an agricultural water use’s wells and the source of water as the entire Floridan aquifer, uses located dozens or even hundreds of miles away from the withdrawal site could find themselves yielding to the agricultural water use.**
- The bill incorporates an amendment requiring identified WMDs to take the lead in developing and implementing an AWS pilot project in identified resource limited areas.

**18. HB 1073/SB 1436 – Water Oversight and Planning (No Movement)**

**Summary:**

*HB 1073*

Establishes a Water Oversight and Planning Board to address water issues in the state. Under this proposal, the DEP is required to provide staff to support the board. The Board is comprised of one representatives from DACs, DEP, Sierra Club, Florida Home Builders, FCC, AIF the 5 WMDs, house of representatives senate, and 2 members appointed by the governor. Also, the Board is charged with overseeing WMDs including review and monitoring of the RWSPs; using data provided by WMD s to establish forecasting plans, identify and inventory existing sources of potable water, and identify new sources of water for potable uses, agricultural uses, industrial uses and protection and restoration of natural systems. There are a

number of additional oversight activities that would significantly impact WMD and DEP operations.

Requires board submit findings and recommendations every other year to substantive House and Senate committees.

#### *SB 1436*

Establishes Florida Statewide Water Oversight and Planning Council. Provides that an oversight council is necessary to ensure sustainability and availability of sufficient water supplies for current and future uses in the state while protecting natural systems; establishes council to advise in determining best approach to prevent or minimize damage from floods, protect and enhance the natural system values of floodplains; improve, protect and maintain the quality of surface and groundwater; and preserve, protect and restore water dependent natural systems

Unlike HB 1073, does not have minimum meeting requirements and terms. Does not require DEP to make staff necessary to assist.

Requires Council to develop long-range water forecasting plans (5-year, 10-year and 20-year), which address similar but not all requirements from HB and include:

- identify and inventory existing sources of potable water and identify new sources;
- promote water conservation education and reuse of reclaimed water;
- make recommendations on projects for creating new potable water sources, preserving existing water sources, creating reservoirs and water storage, assisting with flood protection and floodplain management;
- review impact of underground activity that may impact or pollute aquifer;
- review impact of dredging;
- develop recommendations for protection of natural water systems to be provided to DEP
- Develop recommendations on management of beaches and coastal systems, Everglades restoration, wetland and submerged land protection and beach renourishment.

#### **Impact on SEFLUC:**

Could present changes to how WMDs and DEP operate and result in increased regulations/studies. Potentially significant impacts on potable water use depending on outcome of studies.

#### **Status:**

##### *HB 1073*

- 2/25 – Filed

##### *SB 1436*

- 3/3 – Referred to EPC; Appropriations Subcommittee on General Government; Appropriations

## **19. HB 933 – Growth Management**

### **Summary:**

#### *HB 933*

Numerous changes to state's growth management laws including changes to sector plans to provide that a WMD may issue to an applicant a CUP for a period of time commensurate with an approved master development order if a) the master development order was issued by a county prior to January 1, 2015, under s. 380.06(21), F.S.; b) at the time of issuance, the county was designated as a rural area of opportunity under s. 288.0656, F.S.; c) at the time of issuance the county was not located in an area encompassed by a regional water supply plan as set forth in s. 373.709(1), F.S.; and d) at the time of issuance the county was not located within the basin area management plan of a first order magnitude spring.

### **Impact on SEFLUC:**

Monitor

### **Status:**

#### *HB 933*

- 3/25 – Favorable with CS by Economic Development & Tourism Subcommittee
- 4/7 Favorable with CS2 by Transportation & Economic Development Appropriations removing \$2.5 million appropriations to the Regional Planning Councils, and removing all sections dealing with constrained agricultural parcels.

## **20. SB 7058 – Administrative Procedures**

### **Summary:**

#### *SB 7058*

Amends the rulemaking procedures of the Administrative Procedure Act relating to public notices and the preparation of statement of estimated regulatory costs (SERC) beginning in the period of rule development. The bill also revises the requirements for preparing a SERC to standardize guidance for administrative agencies in preparing information necessary for decision makers and affected constituencies to understand the economic and policy impacts of proposed rules.

### **Impact on SEFLUC:**

Monitor

### **Status:**

#### *SB 7058*

- 3/30 – Referred to Appropriations Subcommittee on General Government; Appropriations