

MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: December 11, 2017

RE: 2018 Legislation – SEFLUC December 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. **SB 244/HB 837 – Domestic Wastewater Collection System Assessment and Maintenance**
2. **HB 83/SB 912 – Agency Rulemaking**
3. **HB 339/SB 786 – Land Acquisition Trust Fund**
4. **HB 459/SB 956 – Public Records**
5. **SB 656 – Public Utility Environmental Remediation Costs**
6. **HB 703/SB 806 – Water Management District Surplus Lands**
7. **HB 585/SB 658 – Tourism Development Tax**
8. **SB 324/HB 697 – Impact Fees**

List of Constitutional Revisions:

1. **CRC Proposal 23**

**BILLS**

1. **SB 244/HB 837 – Domestic Wastewater Collection System Assessment and Maintenance**

**Summary:**

Blue Star Certification Program

- Establishes blue star collection system assessment and maintenance program as a voluntary incentive program to assist public and private utilities in limiting sanitary sewer overflows and the unauthorized discharge of pathogens.

- Blue Star utilities may receive reduced penalties in the event of sanitary sewer overflow and/or allow utility to apply amount of penalty toward investment in assessment and maintenance activities to identify and correct cause of unauthorized releases
- Blue Star utilities receive a presumption of compliance with state water quality standards for pathogens where also show history of compliance.
- Blue Star utilities receive 10 year permit upon blue star application for renewal under Section 403.087, Florida Statutes
- Requires Environmental Regulation Commission to adopt standards for blue star certification based on specific standards outlined in the legislation.
- Requires DEP to review and approve utilities applying for certification and maintain on its website a list of certified blue star utilities beginning January 1, 2019.
- Program certification expires after 10 years and utility applying for renewal must meet all criteria existing at time of its application for renewal.
- Provides that DEP shall allow public and not-for-profit private utilities to participate in Clean Water State Revolving Program for any purpose consistent with federal law, including planning and implementation of sanitary sewer assessment programs and activities associated with becoming certified or maintaining certification.
- Authorizes grants under Small Community Sewer Construction Assistance Act for private not-for-profit utilities serving financially disadvantaged small communities for planning and implementing sanitary sewer assessment programs to identify causes of unauthorized releases due to physical condition or defect in system

**Impact on SEFLUC:**

SEFLUC utilities should support and then take steps to become blue star certified.

**Status:**

**SB 244**

**08/31/17** - Filed

**09/22/17** – Referred to Environmental Preservation and Conservation; Communications, Energy, and Public Utilities; Appropriations; Rules

**HB 837**

**11/29/17** - Filed

**2. HB 83/SB 912 – Agency Rulemaking**

**Summary:**

Increases circumstances where a statement of estimated regulatory costs (SERC) is required. The bill requires an agency to prepare a SERC before the adoption or amendment of any rule other than an emergency rule. Existing rules only require SERC if rule will have an adverse impact on small businesses or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after implementation. Additionally, the bill requires an agency to prepare a SERC for a rule repeal if such repeal would impose a regulatory cost, and establishes that in a challenge to a rule repeal, the repeal must be considered presumptively correct by the adjudicating body.

The bill requires each agency to have a website where each of their SERCs may be viewed in their entirety. The department must include on the Florida Administrative Register website the agency website addresses where the SERCs can be viewed. An agency must provide in its notice of intended action the agency website addresses where the SERCs can be viewed. If an agency revises a SERC, it must provide a notice that a revision has been made and include an agency website address where the revision can be viewed for publication on the Florida Administrative Register website.

Lastly, the bill removes the requirement that the agency head approve certain rulemaking notices.

**Impact on SEFLUC:**

Monitor – SERC is a point of entry for legal challenges

**Status:**

***HB 83***

**08/30/17** - Referred to Oversight, Transparency & Administration Subcommittee; Transportation & Tourism Appropriations Subcommittee; Government Accountability Committee

**10/11/17** – Favorable with CS by Oversight, Transparency & Administration Subcommittee

- Changed the phrase “Joint Administrative Procedures Committee” to “committee” as that term is defined in s. 120.52(4), F.S.;
- Changed the phrase “Division of Administrative Hearings” to “division” as that term is defined in s. 120.52(5), F.S.;
- Removed a phrase in s. 120.541(1)(a), F.S., to conform to changes made by the bill;
- Repealed s. 120.541(1)(b), F.S., as the provision was rendered redundant; and
- Changed “Department” to “department” in s. 120.541(6), F.S.

**10/16/17** – Now in Transportation & Tourism Appropriations Subcommittee

**11/15/17** – Favorable by Transportation & Tourism Appropriations Subcommittee; Now in Government Accountability Committee

***SB 912***

**11/15/17** – Filed

**12/4/17** - Referred to Governmental Oversight and Accountability; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations

**3. HB 339/SB 786 – Land Acquisition Trust Fund**

**Summary:**

Provides appropriation of minimum of the lesser of 7.6 percent or \$50 million for certain projects related to Indian River Lagoon Comprehensive Conservation & Management Plan and authorizes DEP to make grants for such projects. It also directs DEP to submit annual report to Governor and Legislature.

Preference for grants shall be given to projects for ecosystem monitoring and habitat restoration, projects to connect onsite sewage treatment and disposal systems to central sewer systems, and projects for the management of stormwater, freshwater, and agricultural discharges. Grants for sewer system connection projects and discharge management projects shall require a minimum 50 percent local match.

**Impact on SEFLUC:**

Monitor – SERC is a point of entry for legal challenges

**Status:**

***HB 339***

**10/26/17** - Referred to Agriculture & Natural Resources Appropriations Subcommittee; Natural Resources & Public Lands Subcommittee; Appropriations Committee: Now in A&NRAS

***SB 786***

**11/07/17** – Filed

**11/17/17** - Referred to Environmental Preservation and Conservation; Appropriations Subcommittee on the Environment and Natural Resources; Appropriations

**4. HB 459/SB 956 – Public Records**

**Summary:**

In pertinent part, amends public records act as follows:

- Provides that any contract or agreement, or addendum thereto, which an agency or an entity subject to Chapter 119 and any financial agreement related to such a contract including, but not limited to, the amount of money paid, any payment structure or plan, expenditures, incentives, fees, or penalties are NOT confidential and exempt from the public records act.
- Removes or revises numerous provisions relating to exemptions from public records requirements for trade secrets

**Impact on SEFLUC:**

Monitor – affects entities subject to public records act

**Status:**

***HB 459***

**11/01/17** - Referred to Oversight, Transparency & Administration Subcommittee; Government Accountability Committee; Now in OT&AS

***SB 956***

**11/17/17** – Filed

**12/4/17** - Referred to Governmental Oversight and Accountability; Appropriations; Rules

**5. SB 656 – Public Utility Environmental Remediation Costs**

**Summary:**

If the Department of Environmental Protection makes a determination that a public utility has caused environmental damage within the state, a municipality or county in which such damage occurred may file a request for a hearing with the commission for a determination of prudence on the environmental damage the public utility caused within the boundaries of the municipality or county or adjacent bodies of water. Such request must be submitted by the municipality or county as prescribed by the commission.

The commission may not conduct any hearing regarding recovery for remediation of such environmental damage until after the commission makes its determination or the request is dismissed.

If the commission determines that the public utility failed to act prudently, the public utility may not recover any expenditures to remedy the environmental damage from ratepayers.

**Impact on SEFLUC:**

Monitor

**Status:**

**SB 656**

**10/26/17** – Filed

**11/8/17** - Referred to Communications, Energy, and Public Utilities; Community Affairs; Environmental Preservation and Conservation; Rules

**6. HB 703/SB 806 – Water Management District Surplus Lands**

**Summary:**

The bill makes several changes to the surplus procedures for WMDs:

- Requires a WMD to publish notice of its intent to sell surplus property at least 30 days, but not more than 360 days, before the WMD approves the sale. The current law does not specify a date from which the 30 or 360 days must be counted;
- Authorizes a WMD to sell land valued at \$25,000 or less to the adjacent property owner rather than giving such property owners the opportunity to purchase the property before the rest of the general public;
- Requires a WMD to publish the notice of intention to offer to sell land valued at \$25,000 or less to adjacent property owners in the newspaper in the county where the land is located only one time;
- Defines “adjacent property owners;” and
- Removes the requirement that a WMD accept sealed bids and sell the property to the highest bidder or reject all offers 30 days after publication of notice, if the WMD does not sell the land to the adjacent property owner. Instead, the bill authorizes a WMD to sell the parcel valued at \$25,000 or less at any time to the general public for the highest price obtainable, if the WMD does not sell the parcel to the adjacent property owner.

**Impact on SEFLUC:**

Monitor

**Status:**

***HB 703***

**11/15/17** – Filed

**11/27/17** - Referred to Natural Resources & Public Lands Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; Government Accountability Committee

**12/4/17** - On Committee agenda - Natural Resources & Public Lands Subcommittee, 12/06/17, 2:00 pm, 12 H

***SB 806***

**11/8/17** – Filed

**11/17/17** - Referred to Environmental Preservation and Conservation; Governmental Oversight and Accountability; Rules

**7.     HB 585/SB 658 – Tourism Development Tax**

**Summary:**

Authorizes counties to use tourism tax revenues to finance estuary or lagoon improvements or to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district in which the tax is levied. Public facilities includes major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities.

**Impact on SEFLUC:**

support

**Status:**

***HB 585***

**11/8/17** – Filed

**11/15/17** - Referred to Tourism & Gaming Control Subcommittee; Ways & Means Committee; Commerce Committee; Now in T&GCS

***SB 658***

**11/8/17** – Referred to Community Affairs; Appropriations Subcommittee on Finance and Tax; Appropriations

**12/5/17** – Favorable by Community Affairs

**8.     SB 324/HB 697 – Impact Fees**

**Summary:**

Requires an impact fee adopted by ordinance of a county or municipality or by resolution of a special district to specify that the collection of the impact fee be no earlier than the issuance of the certificate of occupancy for the property that is subject to the fee.

**Impact on SEFLUC:**

monitor

**Status:**

**SB 324**

**10/12/17** – Referred to Community Affairs; Appropriations Subcommittee on Finance and Tax; Appropriations

**12/5/17** – Favorable with CS by Community Affairs

**HB 697**

**11/14/17** – Filed

**11/27/17** - Referred to Local, Federal & Veterans Affairs Subcommittee; Ways & Means Committee; Government Accountability Committee; Now in Local, Federal & VA Subcommittee

**CONSTITUTIONAL REVISIONS**

**1. Constitutional Revision Committee Proposal 23**

**Summary:**

Provides any person the ability to litigate “against any party, public or private” if they feel their right to a “clean and healthful environment, including clean air and water” is threatened, to control pollution, or if the conservation and restoration of the natural, scenic, historic, and aesthetic values of the environment are threatened.

**Impact on SEFLUC:**

- The vague nature of this language opens the door to a very wide interpretation of this provision. As a result, any public or private entity may be sued if any person feels that their right to a “clean and healthful environment, including clean air and water” is threatened. This vague language adds a threat of legal challenge even if a permittee is in full compliance with existing laws or the terms and conditions of existing, valid permits.
- Similarly, allowing a new avenue to challenge threats to aesthetic values of the environment without any limitation threatens the ability to develop any property.
- This amendment appears to circumvent existing legal remedies to address concerns over air and water by opening an entirely new avenue for raising environmental challenges.

**Status:**

**CR 23**

**10/19/17** – Filed

**11/3/17** – Referred to Judicial; General Provisions