

MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: April 14, 2014

RE: 2014 Legislation – SEFLUC April 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 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:

- 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
- HB 1055/ SB 1306 –Onsite Sewage Treatment and Disposal Systems
- SB 1160/ HB 1113 – Onsite Sewage Treatment and Disposal Systems
- HB 1289 – City of Vero Beach, Indian River County
- HB 1051/ SB 1318 – Public Records/Public Private Partnerships
- SB 1632 and HB 1237 - Special Districts
- HB 1355 and SB 1626 - Administrative Procedures

SB 1576/ HB 1313 -Springs Legislation
(No House Movement)

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.

February 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.

Updates:

SB 1576

February 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

March 14 – Amendment to SB 1576 Prohibits concentrated animal feeding operations and slaughter houses in springs areas , which raises questions and concerns about whether modifications of existing cattle operations would be affected by the law change. Section 9 of the draft bill would pre-empt local governments from having stronger ordinances than a state model ordinance regulating fertilizer use.

March 20 – Committee Substitute by Environmental Preservation and Conservation:

- Removes provisions concerning the Acquisition and Restoration Council;
- Renames the act, calling it the “Florida Springs and Aquifer Protection Act;”
- Removing legislative intent provision stating that a precautionary approach should be taken in addressing spring protection, and that the DEP or the WMDs should take common sense actions to protect springs;
- Adds legislative recognition that aquifers and springs are complex systems affected by many variable and influences;
- Removes the definition of “bedroom”;
- Directs the DEP to consider groundwater travel time, hydrogeology, and nutrient load when delineating spring protection and management zones;
- Removes a one-year extension for the DEP to delineate spring protection and management zones by July 1, 2015;
- Provides a yearly extension until July 1, 2020, for each WMD to establish MFLs for all OFSs within its jurisdiction;
- Provides that an MFL adopted for an OFS prior to July 1, 2014, does not have to be changed until it is revised or amended, rather than directing it to be revised by July 1,

2014;

- Provides that land spreading, dumping, or disposal of all domestic wastewater residuals or septage is not allowed in spring protection and management zones;
- Removes a provision stating that a WMD may not issue new CUPs unless the entity requesting the CUP provides reasonable assurance that the withdrawal will not cause harm to the OFS. It was a restatement of existing law;
- Provides that WMDs may provide less than 25 percent of total project cost if there is another funding source that provides more than 75 percent of the funding costs, and exempts the Northwest Florida and Suwannee River WMDs from the requirement to provide 25 percent of total project costs;
- Shortens a deadline from July 1, 2017, to July 1, 2015, for the DEP to assess any OFS that does not have an impairment determination;
- Clarifies that detailed allocations have to be listed for categories of nonpoint sources rather than each one;
- Creates and describes the concept of a spring action plan;
- Removes a provision requiring that fertilizer ordinances mandate the use of 50 percent slow release nitrogen;
- Removes a provision regarding revision of stormwater management plans;
- Changes a deadline from July 1, 2019, to July 1, 2021, for wastewater treatment facilities to upgrade to a standard of 3mg/L Total Nitrogen;
- Provides a deadline of July 1, 2016, for wastewater treatment facilities to file a plan for complying with requirement of 3 mg/L Total Nitrogen;
- Provides that required remedial actions do not have to be taken if funding is not available unless those actions are required as part of a BMAP;
- Provides a deadline of July 1, 2019, for agricultural producers within a spring protection and management zones to implement BMPs;
- Provides a deadline of July 1, 2016, for local governments to develop an OSTDS remediation plan;
- Directs the DEP to provide rules for funding water conservation pilot projects and provides considerations;
- Directs the DEP to create a program to evaluate and rank submitted projects based on the TMDL Water Quality Restoration Grants program;
- Provides conditions for establishing RMEs; and
- Removes a provision requiring the study of nutrient loading from row crops.

March 31 – Favorable with Committee Substitute by Agriculture Committee:

- Adds Poe Spring to the list of Outstanding Florida Springs;
- Clarifies that the aquifer is vulnerable to multiple sources of contamination, not just not just surface sources;
- Amends the definition of “springshed” to delete “historically contributed” and add those areas of the springshed in favor of an analysis that takes into account “relevant facts, circumstances, and data”;
- Clarifies timelines for the DEP to develop and adopt spring action plans. In the CS, there was no completion date, as it was intended that these plans were to be open ended. This led to confusion;

- Specifies that the spring action plan must be continually updated;
- Clarifies that the projects may be partially or fully within a spring protection management zone;
- Requires an estimated allocation for each point source or category of nonpoint source pollutant loads instead of a “detailed allocation.” A detailed allocation analysis could significantly slow down progress as those determinations would have to be made first;
- Specifies considerations the DEP must account for when reviewing an onsite sewage treatment and disposal system remediation plan, including density of systems, the total number of systems, the proximity to an OFS, the estimated nutrient load, and an estimated cost of the remedial action;
- Defines “adequate funding” to mean that the DEP provides 100 percent of its portion of the project proposal’s costs;
- Specifies that even though certain remedial actions are dependent on adequate funding, the protection for taking action based on funding is supplemental to other specific requirements or authority provided by other controlling laws;
- Specifies that pilot projects can now consider practices in addition to technologies; and
- Extends the ban on new onsite sewage treatment and disposal systems until July 1, 2015.

April 2 – Second Committee Substitute incorporating Ag Amendments filed

HB 1313

March 3 – HB 1313 is filed by Representative Brodeur. Appears identical to original version of SB 1576

March 11 – Referred to Ag & Natural Resources Subcommittee; Ag & Natural Resources Appropriations Subcommittee; State Affairs Committee; Now in Ag & Natural Resources Subcommittee

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
(Dead)

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 Moving, But HB not heard by committee – likely dead in these versions but will incorporate into HB 357/SB 1050)

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.

Updates:

SB 272

February 6 – Committee Substitute incorporating amendment filed

March 13 – Favorable with CS by Appropriations

March 17 – Committee Substitute 3 filed with the following changes, most notably deleting reference to quality of wastewater service as criterion for rate fixing:

- Defines customer
- Clarifying petition process

- Deleting requirement that commission review petition and within 10 days advise customer if additional information is needed and how to cure petition
- Deleting requirement to place utility's certificate on probationary status if not in compliance
- Deleting wastewater rate fixing provisions in 367.0812
- Deleting requirement that DEP establish secondary wastewater service standards
- Adding funding provision for salary of three new employees to Florida Public Service Commission

March 18 – Placed on Senate Calendar, on 2nd reading

HB 1321

March 3- Filed

March 11 – in Energy and Utilities Subcommittee

HB 357/ SB 1050 – Water and Wastewater Utility Systems
(Moving)

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.

Allow PSC to consider secondary water quality standards including taste and odor when setting rates for water utilities.

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 Identical to HB 357 *on February 13, 2014*. Subsequent amendments have changed the bills to only be similar.

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

Updates:

HB 357

March 13 - The Finance and Tax Subcommittee adopted four amendments on March 13, 2014. These amendments:

- Removed a proposed sales tax exemption.
- Allowed utilities to recover costs incurred to resolve deficiencies found by the PSC or DEP with respect to secondary drinking water standards or certain wastewater service issues.
- Authorized water utilities to establish a surcharge to recover fixed costs of system improvements intended to maintain or achieve compliance with secondary drinking water standards.
- Removed proposed limits on rate case expense recovery.

March 18 – Committee Substitute Filed

March 27 – Favorable by Regulatory Affairs; Placed on Calendar on 2nd Reading

SB 1050

April 1 – Communications, Energy and Public Committees passed Committee Substitute CS/SB 1050:

- Removes a proposed sales tax exemption.
- Allows utilities to recover costs incurred to resolve deficiencies found by the PSC or DEP with respect to secondary drinking water standards or certain wastewater service issues.
- Authorizes water utilities to establish a surcharge to recover fixed costs of system improvements intended to maintain or achieve compliance with secondary drinking water standards.
- Removes proposed limits on rate case expense recovery.

April 3 – Committee Substitute Text Filed

April 10 – Favorable with CS by Environmental Preservation and Conservation

SB 536/HB 601 –Reclaimed Water
(Passed Senate, 2nd Reading in House)

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

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:

HB 601

March 4 – The Agriculture & Natural Resources Subcommittee adopted one amendment and reported the bill favorably with a committee substitute. The amendment specifies that DEP will take the lead in conducting the study required in the bill and that DACS and the WMDs will work in conjunction with DEP. Under the bill, stormwater and excess surface water was referenced as examples of reclaimed water. However, stormwater and excess surface water are not statutorily defined as reclaimed water. The amendment makes a technical change to specify that stormwater and excess surface water are separate from reclaimed water.

March 21 – State Affairs Committee Adopted Amendment to Committee Substitute HB 601 report to identify measures that would lead to the efficient use of reclaimed water. The amendment also specifies that DEP must hold at least two public meetings to gather input on the study design.

March 21 – CS2/HB 601 Filed

March 24 – Placed on Calendar, on 2nd Reading

SB 536

March 20 – Environmental Preservation and Conservation Subcommittee passed Committee Substitute to SB 536 expanding scope of study

March 21 – Committee Substitute 2/SB536 filed removing the word “including” to clarify reclaimed water does not include stormwater and excess surface water

April 2 - Amendment to CS2 SB 536 requiring the entities “in coordination with the stakeholders” required to conduct the study and submit the report

April 3 – Read Second Time, Amendment Adopted, Ordred Engrossed; Placed on Third Reading Engrossed Text Filed

April 11 – Read Third Time, Amendment Adopted, **Passed**

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 **(Dead)**

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
(Dead in current bills, parts may be tacked on to others)

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.

SB 1464 (Simpson) –

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

Update:

HB 703

- February 28 – 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
- March 31 – Favorable by Ag& Natural Resources Appropriations Subcommittee; now in state affairs committee

SB 1464

February 28 – Filed

March 26 - CS by Environmental Preservation and Conservation:

- Deletes the provision prohibiting counties from requiring duplicative regulations for agricultural activities;
- Allows charter counties to retain greater than simple majority voting requirements if approved by a countywide election;
- Deletes the provision prohibiting local governments from rescinding prior land use approvals for certain agricultural lands;
- Exempts multi-family dock owners from paying a lease processing fee;
- Deletes the provision that prohibits local government from requiring additional authorizations for a water control structure or water control infrastructure that is included within a water control plan and incorporated in a plat of the county or municipality in which the water control district lies and has been issued an environmental resource permit or a federal Clean Water Act permit;
- Deletes the provisions authorizing a CUP for up to 50-years to landowners that make land available for dispersed water projects that provide water resource benefits and AWS development;
- Encourages counties to create a Water Well Construction Advisory Board;
- Deletes the provision that revises the application requirements for well contractor licensure;
- Deletes the provision that requires a water control district to obtain an environmental resource permit and the applicable permit or authorization from the applicable general purpose government for facilities, structures, or improvements;
- Deletes the provision that requires local government authorizations to apply the same mitigation criteria and costs that are applied in ch. 298, F.S.;
- Deletes the provision that provides an exemption from the requirements of a population analysis of a water supply plan;
- Allows state agencies and local governments to use additional safety warning devices at public beaches;
- Specifies that the DEP may grant relief mechanisms in federally delegated or approved permitting programs if the action is not inconsistent with the implemented federal program;
- Deletes the provision that exempts certain tents from the Fire Code Prevention Code;
- Extends the expiration date by two years for any environmental resource permit issued by the DEP or WMD with an expiration date from January 1, 2014, through January 1, 2016;
- Specifies the total permit extension time for this bill or the 2009, 2010, and 2011 extensions cannot exceed four years;
- Deletes the provision that allows the time extensions granted in the bill to be self-executing; and
- Requires that permits that are extended are subject to the rules in effect at the time of the extension, unless the rule is superseded by laws in effect after July 1, 2014.

April 8 – Temporarily postponed by Community Affairs Committee

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

(Dead, may be tacked on to other bills)

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."
 - o 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.
 - o 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:
HB 813

March 24 – Committee voted to kill HB 813, before a motion for reconsideration allowed the bill to be tabled.

SB 1248

February 28 – Referred to Community Affairs; EPC and Rules

SB 910/ HB 1107– Utility Projects
(Still moving, but slow)

SB 910 (Legg)
HB 1107 (Wood)

Summary - "Utility Cost Containment Bond Act" - creates an alternative method for financing the costs of certain utility projects using utility cost containment bonds. These bonds are issued by an authority on behalf of a local agency that owns and operates a publicly owned utility that provides public utility services, including water, wastewater, electric, or stormwater. The bonds may receive a lower interest rate because payment is secured by a pledge of the utility project property. The utility project property charge serves as the primary utility project property, and would ensure timely payment of all financing costs with respect to utility cost containment bonds. The utility project charge on customers is based on estimates of water, wastewater, electric, or stormwater service usage.

Impact on SEFLUC:

Monitor as it could assist local government utilities in future projects

Update:

SB 910

March 18 – Passed Communications, Energy and Public Utilities

March 31- Amendment adding language requiring savings from issuance of utility cost containment bonds be used for the benefit of the customers of a public utility

April 1 – Favorable with CS by Community Affairs, incorporating amendment requiring revenue be used to benefit customers

April 7 – In Appropriations

HB 1107

March 24 – Favorable

March 31 – In Finance & Tax Subcommittee

HB 1055/ SB 1306 –Onsite Sewage Treatment and Disposal Systems
(Moving through House and Senate)

Summary :

HB 1055 (Mayfield)

SB 1306 (Altman)

Filed as 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:

SB 1306

March 14 - Referred to Health Policy; Environmental Preservation and Conservation; Agriculture; Rules

March 19 – Favorable with CS by Health Policy

CS/SB 1306 amends s. 381.00655, F.S., to allow an existing onsite sewage treatment and disposal systems (OSTDS) to continue to be used after the property is hooked up to a sewer system if the Department of Environmental Protection (DEP) approves the use of all or part of the OSTDS as an integral part of the sewer system.

April 3 – Favorable by Environmental Preservation and Conservation; Now in Agriculture

HB 1055

March 19 – Committee Substitute Filed incorporating strike-all amendment that:

- deletes everything related to combined systems in s. 381.0065, F.S.
- amends s. 381.00655, F.S., to specify that an existing OSTDS, including the drainfield, is not required to be abandoned if DEP, or DEP's designee, approves the use of all or a portion of the existing OSTDS as an integral part of a sanitary sewer system.

April 3 – Favorable by Environmental Preservation and Conservation; Now in Agriculture

April 4 – Pass with two CS Amendments requiring:

- existing septic tank must be evaluated by a registered septic tank contractor to ensure that the tank is not in failure at the time of transition and
- providing that under certain situations a licensed septic tank contractor may perform maintenance or repair on the drainfield of an aerobic treatment unit system

April 7 – CS2 Text Filed

April 9 – Placed on Calendar, on 2nd Reading

SB 1160/ HB 1113 – Onsite Sewage Treatment and Disposal Systems
(Moving through House and Senate with amendment to only 1 year extension)

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. Monitor for participation in study regarding management of waste in areas with vulnerable aquifers and sensitive surface waters, particularly those utilities using Biscayne Aquifer.

Updates:

SB 1160

March 26, 2014 - Favorable CS by Environmental Preservation and Conservation. Committee Substitute:

- Extends the effective date of the ban on land application of septage to January 1, **2017**; and,
- Requires the DEP to submit a report to the Governor, the Senate President, and the Speaker of the House of Representatives by February 1, 2015 to determine the sufficiency of state rules for issues including managing waste in areas with vulnerable aquifers and sensitive surface waters.

April 8 – Placed on Calendar 2nd Reading

HB 1113

March 18 - Agriculture & Natural Resources Subcommittee adopted one strike-all amendment and reported the bill favorably with a committee substitute. The amendment changes the date of prohibition on the land application of septage from January 1, 2020 to January 1, 2018. The amendment also directs DEP, in consultation with various entities and individuals, to examine potential options for safe and appropriate disposal or reuse of septage and to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2015.

March 31 – CS Passed House Ag and Natural Resources Appropriations Subcommittee; Now in State Affairs Committee

April 11 – Favorable by State Affairs Committee

HB 1289 – City of Vero Beach, Indian River County
(No Movement)

(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.

Update:

March 11 – Referred to Local & Federal Affairs Committee;

HB 1051/ SB 1318 – Public Records/Public Private Partnerships
(On 2nd Reading in House and Senate)

Summary:

CS-HB 1051 (Roberson)

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, 2019, 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.

CS/SB 1318 (Evers)

Creates public records and public meetings exemptions for materials related to unsolicited proposals and held by a responsible public entity. The bill provides conditions under which the public records exemption will terminate.

The bill provides a definition of “proprietary confidential business information.”

The bill states that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reenacted by the Legislature.

The bill provides statements of public necessity for the exemptions

Updates:

CS/HB 1051

April 7 –Placed on Calendar, on 2nd Reading

CS/SB 1318

April 4 – On Rules Committee Agenda

April 10 – Placed on Calendar, on 2nd reading

Impact on SEFLUC:

Monitor

SB 1632 and HB 1237 - Special Districts

Summary:

CS/CS/SB 1632 (Stargel)

Omnibus special district bill that reorganizes, renumbers and makes numerous technical and conforming changes to the provisions in Chapter 189 of the Florida Statutes. The bill outlines a process by which the Joint Legislative Auditing Committee (JLAC) and the Department of Economic Opportunity (DEO) may enforce reporting and other requirements when special districts fall out of compliance with their obligations or become inactive. Subsequent to notifying DEO, relevant legislators and the local general-purpose government, and subsequent to a public hearing, JLAC may request that DEO file a petition for enforcement with the Circuit Court of Leon County. Additionally, the bill:

- Requires special districts to maintain a website that offers the public specified information;
- Requires special districts to give the website address to the DEO for publication on its website;
- Amends the definition of agency in the Code of Ethics to specifically include special districts;
- Redefines the term special district in s. 189.403, F.S.;
- Removes provisions concerning a special district’s application to amend its charter;
- Amends the circumstances under which the DEO may declare a special district inactive;
- Requires the DEO to notify the chair of the county legislative delegation and the Legislative

- Auditing Committee;
- Prohibits inactive districts from collecting taxes, fees, and assessments;
- Changes the required education for new special district members;
- Revises the provisions concerning the failure to file certain reports;
- Requires administrative fees to be placed into the Operating Trust Fund; and
- Requires public hearings concerning certain noncompliance

CS/CS/HB 1237 (Metz)

The bill renumbers sections and subsections in Ch. 189, F.S., makes substantive changes to the oversight and enforcement of special district financial reporting, revises the type of enforcement proceedings which may be brought against noncompliant districts, and increases the notice provided to the legislative presiding officers. The Governor’s power to suspend county officers, and the power to suspend and remove certain municipal officers, is extended to permit suspension or removal of special district governing board members.

The bill revises the local government requirements for overseeing and reviewing special districts. Additionally the bill makes conforming changes to a number of related statutes.

Impact on SEFLUC:

Will affect any special district members

Update:

CS/CS/SB 1632

April 7 – In Appropriations

CS/CS/HB 1237

April 9 - On Committee agenda - State Affairs Committee, 04/11/14

April 10 – Amendment Filed to CS2 HB 1237

- Adding language to s. 189.067 (failure to disclose financial reports) allowing Department to enforce compliance with s. 112.63 by filing a petition for enforcement with Circuit court in Leon County
- Deleting amendments to 189.018 regarding operating trust fund versus grants and donations trust fund
- Amending 189.068 to include language authorizing review of independent special districts and all special districts by either President of Senate or Speaker of the House, or by general-purpose government, as applicable.
- Amending 189.035 to require local general purpose government to notify Legislative Auditing Committee within 30 days after receiving written notice of noncompliance if a hearing will be held
- Adding clarifying language to reporting requirements in 189.069

CS/HB 1355 and SB 1626 - Administrative Procedures
(Stalled in Senate)

Summary:

CS/HB 1355 (Adkins)

The Administrative Procedure Act (APA) provides uniform procedures for the exercise of specified administrative authority. The bill amends 8 provisions of the APA to enhance the opportunities for substantially affected parties to challenge rules, and be awarded attorney fees in certain successful administrative matters. Specifically, the bill makes the following changes to the APA, including, but not limited to:

- Revising rulemaking procedures based on petitions to initiate rulemaking alleging an unadopted rule;
- Expanding the listing of information that must be published on the Florida Administrative Register to include rules filed for adoption in the previous seven days and a listing of all rules filed for adoption but awaiting legislative ratification;
- Revising the pleading requirements and burden of going forward with evidence in challenges to proposed and unadopted rules;
- Removing a defense to an award of fees and costs that an agency did not know or should not have known that an agency statement or policy was an unadopted rule in cases where notice is actually provided;
- Extending the time to appeal certain final orders when notice to the party was delayed;
- Authorizing rule challenges in challenges to agency actions on similar terms as petitions challenging rules and unadopted rules, including the award of reasonable attorney fees to prevailing challengers;
- Requiring agencies to identify and certify all of the rules the violation of which would be a minor violation.

The bill also provides conditions for when an agency action is not substantially justified for purposes of an award of attorney fees under the Florida Equal Access to Justice Act.

SB 1626 (Lee)

SB 1626 makes a number of changes to the Administrative Procedure Act, which relate to a state agency's reliance on unadopted or invalid rules, a state agency's liability for attorney fees and costs, and the provision of notices and information to the public.

The bill strengthens a party's ability to assert an agency's reliance on an unadopted or invalid rule as a defense to an agency action. When the defense is asserted, a DOAH judge (an administrative law judge with the Division of Administrative Hearings) must determine the validity of a rule or unadopted rule. This determination may not be rejected by the agency as is currently authorized.

The Administrative Procedure Act makes agencies liable for attorney fees and costs of others in some circumstances as a result of challenges to proposed rules, existing rules, and unadopted rules. When attorney fees and costs are available, they are limited to \$50,000.

Under the bill, a state agency may be liable for attorney fees and costs in additional

circumstances. These circumstances may result, for example, from the agency improperly denying a petition for a declaratory statement, acting contrary to a declaratory statement, or relying on an unadopted or invalid rule in an enforcement action or licensing decision. The existing limit on attorney fees and costs will not apply to attorney fees and costs for litigating the amount and entitlement to these fees and costs.

Lastly, the bill requires the Department of Management Services and state agencies to provide additional notices and information to the public relating to rulemaking activities. For example, the bill requires state agencies using rulemaking workshops to establish a time certain for the workshops and requires the department to publish information on its website describing the status of rulemaking activities.

Impact on SEFLUC:

In the event of rule challenge, proposed amendments provide opportunities for attorney's fees and more involvement with rule development.

Update:

CS/HB 1355

April 2 – In Appropriations

SB 1626

April 1 – Not Considered by Judiciary Committee (first committee – no movement)