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ATTORNEYS AT LAW

MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: June 8, 2015

RE: 2015 Legislation – SEFLUC June Update

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The following is a summary of the status of passed legislation which may be of interest to the Southeast Florida Utility Council ("SEFLUC").

List of Passed Bills:

1. SB 778 – Local Government Construction Preferences
2. HB 383 – Private Property Rights
3. HB 435– Administrative Procedures
4. SB 1216 - Growth Management

## PASSED BILLS

### 1. SB 778 – Local Government Construction Preferences

**Summary:**

Where 50 percent or more of the cost of a construction project will be paid from state-appropriate funds (funds appropriated in the general appropriations act, excluding federal funds), legislation prohibits local governments, school districts, state college, or other political subdivision of the state from using a local ordinance or regulation which provides certain local preference in awarding competitive solicitation. Local preference includes: contractor maintaining an office or place of business within a particular local jurisdiction; contractor's hiring employees or subcontractors from within a particular local jurisdiction; or contractor's prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

Any state college, county, municipality, school district or other political subdivision of the state is also required to disclose in the competitive solicitation involving 50% or more state funding that any applicable local ordinance or regulation does not include any local preference.

**Impact on SEFLUC:**

Increased competition among contractors; important impact on future competitive solicitations

**Update:**
**May 21, 2015 – Approved by Governor, Chapter No. 2015-63**

## 2. HB 383 – Private Property Rights

**Summary:**

Creates Section 70.45, F.S. to provide a cause of action and monetary damages for landowners in cases of prohibited exactions by governmental entities. Defines prohibited exaction as "any condition imposed by a governmental entity on a property owner's proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use the governmental entity seeks to avoid, minimize or mitigate." The bill defines the scope of damages the affected property owner may recover and revises the Chapter 70 definition of property owner and real property as follows:

> "property owner" means the person who holds legal title to the real property that is the subject of and directly impacted by the action of a governmental entity ~~at issue~~. The term does not include a governmental entity.
>
> "real property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the property owner has ~~had~~ a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.

In sum, HB 383 creates a new cause of action allowing property owners to bring a cause of action to recover damages caused by a prohibited exaction. However, the bill also narrows the new cause of action and all other state private property rights causes of action (i.e. Bert Harris Act) to only persons holding title to the property that is the subject of and directly impacted by the governmental entity. Previously, adjacent landowners could arguably have a private property rights claim under Bert Harris Act if their property was inordinately burdened by a government action on the adjoining property.

**Impact on SEFLUC:**

Protects those governments from lawsuits filed by neighbors of the property owner whose property is actually being regulated.

**Update:**
April 29, 2015 – Enrolled Text filed
**Still Not Sent to Governor**

### 3. HB 435 – Administrative Procedures

**Summary:**

Changes to rulemaking challenges:

- requires agency that has initiated rulemaking after a rule challenge public hearing to publish notice of rule development within 30 days after hearing and file notice of proposed rule within 180 days or publishes notice in the FAR explaining why a proposed rule will not be filed within 180 days;
- where rulemaking is initiated following a rule challenge public hearing, the agency must discontinue reliance on the unadopted rule unless the agency publishes a statement as to why rulemaking is not feasible or practicable;
- requires electronic publishing of list of rules filed for adoption in previous 7 days and for adoption pending legislative ratification and email notification service;
- additional procedural restrictions on rule challenges and identifying applicable procedures in 120.54 applying to challenges against an unadopted rule versus challenges alleging a rule is an invalid exercise of delegated legislative authority;
- deleting previous language allowing an agency to reject an ALJ's conclusion of law regarding an unadopted rule or rule challenged as an invalid exercise of delegated legislative authority;
- providing petitioner opportunity for a separate collateral challenge under 120.56 even if adequate remedy exists under 120.57;
- prohibits agency from basing agency action on an unadopted rule or rule that is an invalid exercise of delegated legislative authority; amending timeline for appeals;
- no later than June 30, 2016 requires each agency to certify to Governor and others those rules that have been designated as minor violation; and
- beginning July 1, 2016, review all rules and publish rules that have been designated as minor violation, ensure personnel knowledge about agency designation as minor violation, and for each rule filed for adoption certify whether any part of rule is designated as a rule that would be a minor violation.

**Impact on SEFLUC:**

Impacts future rule challenge procedures.

**Update:**
**June 1, 2015 – Signed by Officers and Presented to Governor (Governor must act by 6/6/15)**

### 4. SB 1216 – Community Development

**Summary:**

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.

The bill also provides a local government that does not operate, or maintain its own water supply facilities, including but not limited to wells, treatment facilities, and distribution infrastructure, and is served by a public water utility with a permitted allocation of greater than 300 million gallons per day is not required to amend its comprehensive plan in response to an updated regional water supply plan or to maintain a work plan if any such local government's usage of water constitutes less than 1 percent of the public water utility's total permitted allocation. However, any such local government is required to cooperate with, and provide relevant data to, any local government or utility provider that provides service within its jurisdiction, and to keep its general sanitary sewer, solid waste, potable water, and natural groundwater aquifer recharge element updated in accordance with s. 163.3191.

**Impact on SEFLUC:**

Minimal impact – additional CUP applicants through master development order; deletes comp plan amendment requirements for local governments not operating or maintaining water supply facilities while still requiring local government to cooperate and provide data to utility provider.

**Update:**
**May 14, 2015 – Approved by Governor, Chapter No. 2015-30**