

MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: May 6, 2016

RE: 2016 Legislation – SEFLUC May Update

The following is a summary of legislation which passed during the 2016 legislative session and may be of interest to the Southeast Florida Utility Council (“SEFLUC”).

List of Passed Bills:

1. HB 183 – Administrative Procedures
2. HB 347 – Utility Projects
3. SB 416 – Location of Utilities
4. HB 525–Small Community Sewer Construction Assistance Act
5. HB 491– Water and Wastewater
6. SB 552 – Environmental Resources
7. HB 589 – Environmental Control
8. HB 1025 – Public Records/Security of Utility Agency Technology
9. HB 1075 – State Lands

1. HB 183 – Administrative Procedures

Summary:

Similar to HB 435 (2015), which passed the House and Senate but was vetoed by the Governor during the 2015 session, HB 183 proposes the following procedural revisions to administrative proceedings regarding rules, proposed rules, unadopted rules, & agency statements:

- 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 of proposed or final rules;
- requires a petitioner prove by the preponderance of the evidence that the petitioner would be substantially affected by the proposed rule.

- *deletes requirements that petition challenging proposed rules state with particularity the objections to the proposed rule and reasons the proposed rule is an invalidated exercise of legislative authority;*
- *deletes requirements that petition challenging rules in effect be filed by a “substantially affected person;”*
- *deletes requirement that petition for unadopted rule challenge state “with particularity” facts showing statement is an unadopted rule*
- agency or ALJ may not base agency action “rule that is an invalid exercise of delegated legislative authority”
- specifying additional procedures for challenges to proposed agency action based on invalid exercise of delegated legislative authority or based on unadopted rule
- provides exception to allow agency action being based on unadopted rule if ALJ determines rulemaking is not feasible or practicable and unadopted rule would not constitute invalid exercise of delegated legislative authority if adopted.
- Provides petitioner separate, collateral challenge under 120.56
- Prohibits agency from basing agency action that determines substantial interests of a party on an unadopted rule or rule that is invalid exercise of delegated legislative authority for cases not involving disputed issues of material fact.
- direct each agency to timely review its rules and certify to the President of the Senate, the Speaker of the House of Representatives, the Administrative Procedures Committee, and the rules ombudsman those rules that have been designated as rules the violation of which would be a minor violation no later than June 30, 2016
- Beginning July 1, 2017, each agency will be required to publish all rules of that agency designated as rules the violation of which would be a minor violation either as a complete list on the agency’s Internet webpage or by incorporation of the designations in the agency’s disciplinary guidelines adopted as a rule. Each agency must ensure that all investigative and enforcement personnel are knowledgeable of the agencies’ designations of these rules. The agency head must certify for each rule filed for adoption whether any part of the rule is designated as one the violation of which would be a minor violation and update the listing on the webpage or disciplinary guidelines
- Provides that administrative challenges to proposed regulatory permits related to special events are subject to the summary hearing provisions of s. 120.574, F.S., except that the summary proceeding must be conducted within 30 days after a party files a motion for summary hearing.

Impact on SEFLUC:

Changes rule challenging procedures.

Status:

HB 183

3/25/16 – Approved by Governor; Chapter No. 2016-116

2. HB 347 – 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. Any cost savings that arise from the issuance of a utility cost containment bond be used to benefit customers of the utility through lower rates and other programs. However, no mechanism for determining the amount of cost savings is provided.

Expands definition of authority to include any entity created under s. 163.01 with at least two of the following: a municipality, a county, or a public agency that provides retail water or wastewater services in two or more counties and at least one member providing service to at least 75,000 customers. Prior definition of authority limited to entity created under s. 163.01(7)(g)n and required membership of at least three counties.

Makes it permissive rather than required for authority to work with local agencies that request assistance to determine the most cost-effective manner of financing regional water projects.

Impact on SEFLUC:

New finance mechanism for utility projects.

Status:

HB 347

3/25/16 – Approved by Governor; Chapter No. 2016-124

3. SB 416 – Location of Utilities

Summary:

Similar to failed SB 896 (2015). Addresses the responsibility for the cost of relocating utility facilities (e.g., water, sewage, gas, power, telephone, other public utilities, and television lines) in a public easement. The bill flips the responsibility to bear relocation costs from the utility owner to the state or local government requiring the facilities to be relocated, effectively shifting such costs currently borne by the utility and its users to taxpayers. The owner of a utility that must be relocated from a public easement will be liable for relocation costs only if their lines and facilities are across, on or “within” the right-of-way, rather than “along” any right-of-way.

Impact on SEFLUC:

Utilities will no longer bear responsibility for relocation required by state or local government. However, if your local government is the one requiring the relocation, the cost will still be on your city.

Status:

SB 416

3/10/16 – Approved by Governor; Chapter No. 2016-44

4. HB 525 – Small Community Sewer Construction Assistance Act

Summary:

Amends Small Community Sewer Construction Assistance Act to include counties and special districts with population of 10,000 or fewer in definition for “financially disadvantaged small community.” The term currently only includes qualifying municipalities.

Impact on SEFLUC:

Qualifying counties or special districts now eligible for grants.

Status:

HB 525

3/10/16 – Approved by Governor; Chapter No. 2016-55

5. HB 491– Water and Wastewater

Summary:

Creating a provision requiring the 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 and reallocation of bonds for water and wastewater infrastructure projects; authorizing the Department of Environmental Protection to require or request that the Florida Water Pollution Control Financing Corporation make loans, grants, and deposits to for-profit, privately owned, or investor-owned water systems, etc. Requires PSC create a reserve fund if requested by a utility in a rate case proceeding and that PSC allow recovery of rate case expense (i.e., fees for attorneys and other outside consultants) incurred by a utility in a staff-assisted rate case after any protest or appeal of the PSC’s decision by a party other than the utility.

Provides the amount of rate case expense that the commission determined a public utility may recover through its rates pursuant to this chapter shall be apportioned for recovery over 4 years unless longer period justified in the public interest; at conclusion of recovery period, required public utility to immediately reduce rates by the amount of the rate case expense; prohibits ANY utility from earning a return on the unamortized balance of the rate case expense.

Requires a county that regulates water or wastewater services to comply with requirements for abandoned water and wastewater systems.

Impact on SEFLUC:

Possible funding opportunities for private utilities.

Status:

HB 491

4/14/16 – Approved by Governor; Chapter No. 2016-226

6. SB 552 – Environmental Resources

Summary:

These “general water policy” bills are nearly identical to the 2015 session bills with the following changes:

- Bills do not propose a water advisory council
- Bills require feasibility study for creating and maintaining a web-based interactive map of state’s waterbodies (2015 legislation required enactment of web-based interactive map)
- Creating the Florida Springs and Aquifer Protection Act to expedite protection and restoration of the water flow and water quality in the aquifer and Outstanding Florida Springs.
- Ensuring that the appropriate governmental entities continue to develop and implement uniform water supply planning, consumptive water use permitting, and resource protection programs for the area encompassed by the Central Florida Water Initiative.
- Updating and restructuring the Northern Everglades and Estuaries Act to reflect and build upon the Department of Environmental Protection’s (DEP) completion of basin management action plans (BMAP) 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 Department of Agriculture and Consumer Services’ implementation of best management practices in the three basins.
- Modifying water supply and resource planning documents and processes in order to provide more robust representations of the state’s water needs and goals.
- Requiring the Office of Economic and Demographic Research to conduct an annual assessment of water resources and conservation lands.
- Requiring DEP to publish an online publicly accessible database of conservation lands on which public access is compatible with conservation and recreation purposes.

A detailed analysis of the bills is contained in the separate 2016 water policy update previously provided.

Impact on SEFLUC:

SEFLUC’s members will remain largely unaffected by a general water policy bill as the most significant changes impact areas in the CFWI, Springs, and Northern Everglades. The following provisions are most likely to involve some impact on SEFLUC’s members:

- Section 4 – establishes pilot program for alternative water supply development in restricted allocation areas. The pilot project selected by the District will not be subject to rulemaking requirements of chapter 120 or subject to legal challenge. The legislation authorizes the District to provide up to 50 percent funding for each project.
- Section 8 – requires SFWMD to exercise authority to allocate water quantities within its jurisdiction including water supply in relation to the Central and Southern Florida Project and to be responsible for allocating water and assigning priorities among other water users served by the Project.
- Section 10 – requires monitoring and reporting requirements for a new consumptive use permit, or the renewal or modification of a CUP that authorizes 100,000 gallons or more per day from a well with an inside diameter of 8 inches or more. This is aimed at

accounting for cumulative impact of smaller withdrawals. However, the minimum 8 inch well size will likely eliminate many self suppliers.

- Section 11 – requires the governing board to give priority consideration of preferred water supply sources for water users for whom access to or development of new water supplies is not technically or financially feasible.
- Section 12 – protects CUP holder from having their water allocations reduced due to documented implementation of water conservation measures during the term of a permit and requires WMDs to adopt rules providing water conservation incentives, such as permit extensions.
- Section 17 – changes to water management district water resource development work program and work plan further encourages utilities seeking funding for projects to submit projects to the district early in the process in order to obtain funding.
- Section 19 – priority funding consideration for projects that reduce or eliminate adverse effects of competition between legal users and the natural system.
- Section 20 – authorizes WMD to provide technical and financial assistance to self-suppliers for AWS projects to the extent assistance promotes policies of the WMD and for projects determined by the governing board to be in the public interest if the projects are not otherwise financially feasible. – public interest component appears to be a catchall that opens the door for additional projects to be funded
- Section 30 – authorizes DEP to adopt by rule a specific surface water classification to protect surface water used for treated potable water supply.
- Section 31 – allows DEP to fund pilot projects to test effectiveness of nutrient reduction or water conservation technologies
- Section 32 - Requires DEP to establish uniform standards for collecting and analyzing water quality, water quantity, and related data and coordinate with federal agencies, WMDs and local governments.
- Section 35 – Requires DEP to add treated potable water supply as a designated use of a surface water in certain circumstances.
- Section 36 - Requires Office of Economic and Demographic Research to conduct an annual assessment of water resources and conservation lands. This is the alternative to the Water Advisory Council proposed as part of the 2015 legislation. The assessment is required to include expenditures on projects associated with water supply and demand and water quality protection and restoration.

Status:

SB 552

1/21/16 – Approved by Governor, Chapter No. 2016-1

7. HB 589 – Environmental Control

Summary:

Originally included select portions of the general water policy bills. However, these changes were removed after the passage of SB 552. The enrolled bill:

- Repeals Section 373.245, Florida Statutes, which provided abutting CUP holders a cause of action for damages against holders of CUPs who violated permit conditions.
- Revises clay settling area reclamation requirements

- Allows land set-asides and land use modifications not otherwise required by state law or permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into the nutrient impaired surface waters to be included as part of water quality credit trading.
- Revises solid waste landfill closure account requirements.
- Added provision incorporating minor changes to the general permit for stormwater management systems and requiring certification of system by registered professional

Impact on SEFLUC:

CUP holders no longer subject to private cause of action for damages by adjacent CUP holders. Stormwater management system general permit changes.

Status:

HB 589

3/25/16 – Approved by Governor; Chapter No. 2016-130

8. HB 1025– Public Records/Security of Utility Agency Technology

Summary:

Provides exemption from public records requirements for information related to security of utility agency's technology; provides for future legislative review & repeal of exemption; provides statement of public necessity for exemption from Florida public records laws.

Impact on SEFLUC:

Would allow exemptions from public record laws for certain utility technology information

Status:

HB 1025

3/24/16 – Approved by Governor; Chapter 2016-95

9. HB 1075 – State Lands

Summary:

Creates, revises, & deletes provisions relating to acquisition, surplus, sale, lease, & use of state-owned conservation, nonconservation, recreation, & submerged lands; provides appropriation & authorizes positions.

Impact on SEFLUC:

Proposed revision changing definition of “water resource development project” to include construction of water treatment, transmission, or distribution facilities was removed during amendments. Therefore, water treatment, transmission and distribution facilities are still excluded from the definition of water resource development project and therefore still not eligible for funding through this definition.

Status:

HB 1075

4/14/16 – Approved by Governor; Chapter No. 2016-233