

MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: March 12, 2018

RE: 2018 Legislation – SEFLUC March 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 Passed Bills Contained in Memo:

1. **HB 1149 – Environmental Regulation (mitigation credit language/and reclaimed water**
2. **HB 7043 – State Assumption of Federal Section 404 Dredge and Fill Permitting Authority**
3. **HB 703– Water Management District Surplus Lands**

BILLS

1. **HB 1149 – Environmental Regulation**

Summary:

Requires the Department of Environmental Protection and the water management districts to develop and enter into a memorandum of agreement by December 1, 2018 providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. It also prohibits counties and municipalities from requiring the recycling of contaminated recyclable material, etc.

- **Water Resource Impact Offsets**

- Florida law provides that water utilities can use reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals.
- This legislation explains that such projects may include the use of reclaimed water to prevent or stop further saltwater intrusion, raise aquifer levels, improve the

water quality of an aquifer, or augment surface water to increase the quantity of water available for water supply.

- **Permitting**
 - Directs FDEP to develop a uniform rule for incorporating impact offsets and credits into permits at renewal, issuance, or extension.
 - Provides that the credit may help achieve the requirements of a minimum flow or level
- **Legislative Finding in Support of Aquifer Recharge**
 - Finds that the reuse of reclaimed water through aquifer recharge is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems
- **Streamlines Aquifer Recharge Project Permitting**
 - The permitting of an aquifer recharge project may involve the issuance of a utility operating permit by FDEP, an underground injection control permit by (a different permitting section of) FDEP, and a consumptive use permit by a water management district. Often the same and similar issues are in play, but there is no process for coordinated permit review.
 - This legislation requires the department and water management districts to enter into a memorandum of agreement by December 1, 2018 providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit.
 - Makes the coordinated review voluntary on the part of the permit applicant.
 - States that the goal of such coordinated review shall be to share information, avoid requesting the applicant to submit redundant information, and to ensure, to the extent feasible, harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit in accordance with s. 373.250(5).

Late Amendments Incorporate Blue Star Certification Program, C-51 Reservoir Changes, and Mitigation Credit Changes

- **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 DEP 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.
- **Small Community Sewer Construction Assistance Act** - Authorizes grants under 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.
- **C-51 Reservoir**
- Revises requirements related to the operation of water storage and use for Phase I and Phase II of the C-51 reservoir project if state funds are appropriated for such phases
 - Phase I and Phase II operations shall, to the extent practicable, maximize reduction of harmful discharge to Lake Worth lagoon.
 - Operation of Phase I must be in accordance with any operation and maintenance agreement adopted by the District;
 - Phase I or Phase II water made available shall be used for natural system in addition to permitted amounts for water supply issued in accordance with executed capacity allocation agreements.
 - Water from Lake O is only available for CUPs if use is in accordance with rules for applicable restricted allocation area
 - Authorizes the South Florida Water Management District to enter into certain capacity allocation agreements with a water supply entity for a pro rata share of unreserved capacity in the water storage facility and may request Department of Environmental Protection to waive such loan repayment where the Department has determined it has received reasonable value for the waiver.
- **Mitigation**
- Allows Governmental entity to create or provide mitigation for a project other than its own through offsite regional mitigation areas when credits are not available at a mitigation bank and credits were awarded pursuant to UMAM, under a permit issued before December 31, 2011.

Impact on SEFLUC:

Opportunity for streamlined permitting for utilities; Blue Star Certification provides opportunity for reduced penalties, presumption of compliance, extended permits

Status:

HB 1149

1/3/18 – Filed

1/7/18 - Referred to Natural Resources & Public Lands Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; Government Accountability Committee

1/23/18 – Favorable with CS by Natural Resources & Public Lands Subcommittee

- CS replaces section relating to contaminated recycling

2/6/18 – Favorable by A&NRAS; Now in Government Accountability Committee

2/22/18 – Favorable with CS by Government Accountability Committee

- Required DEP or a WMD to reissue an expired ERP to the original applicant or to a new property owner if the applicant can demonstrate meeting certain criteria and no more than three years have passed since the expiration of the original permit;
- Removed legislative findings regarding reuse through AR as a critical component of meeting the state’s water supply needs and, instead, encouraged the development of AR for reuse implementation;
- Revised provisions relating to the contamination of recyclable material
- Provided that a local government may not require a person claiming an exception to provide further verification from DEP; and
- Required the replacement or repair of an existing dock or pier be within five feet of the same location as a condition for meeting the exception.

2/27/18 - Placed on Calendar, on 2nd reading; Placed on Special Order Calendar

3/2/18 – Read 2nd Time; Amendment withdrawn, amendment adopted; placed on third reading; engrossed text filed

- Amendment Incorporates
 - SB 992 language re C-51 Reservoir
 - HB 837 language re Blue Star Collection System Program and Small Community Sewer Construction Assistance

3/5/18 – Read 3rd time; Amendment re mitigation banking credits adopted; Passed; Engrossed text filed.

SENATE

3/5/18 – In Messages

3/6/18 – Received; Referred to Environmental Preservation and Conservation; Community Affairs; Appropriations

3/9/18 – Withdrawn from committees; Read 2nd time; Read 3rd time

HOUSE

3/9/18 – Ordered Enrolled; Enrolled Text Filed

2. HB 7043 – State Assumption of Federal Section 404 Dredge and Fill Permitting Authority

Summary:

Provides the Department of Environmental Protection with the power and authority to adopt rules to assume and implement the section 404 dredge and fill permitting program pursuant to the federal Clean Water Act. It defines the term “state assumed waters” and requires the Department to adopt rules to create an expedited permit review process.

MOA between DEP and EPA – 5 year permit limit; assumption would occur after EPA publishes in Federal Register with date for actual transfer; still need a lot of rulemaking by DEP to implement

No MOAs from ACOE and FWS (real detail)

Impact on SEFLUC:

Potential streamlined/more efficient permitting through state processes without Federal involvement.

Status:

HB 7043

1/18/18 – Filed

1/19/18 – Referred to Government Accountability Committee; Now in GAC

2/8/18 – Favorable by Government Accountability Committee; Placed on Calendar, on 2nd reading

2/20/18 – Read 2nd Time; Amendment withdrawn; placed on third reading

2/21/18 – Read 3rd time; passed

SENATE

2/28/18 – In Messages; Received; Referred to Environmental Preservation and Conservation; Appropriations Subcommittee on the Environment and Natural Resources; Appropriations

3/7/18 – Withdrawn from committees; Placed on Calendar, on 2nd Reading; Substituted for SB 1402; Read 2nd Time; Placed on Third Reading

3/8/18 – Read Third Time

HOUSE

3/8/18 – Ordered Enrolled; Enrolled Text Filed

3. HB 703– 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

12/6/17 – Favorable by Natural Resources & Public Lands Subcommittee; Now in Agriculture & Natural Resources Appropriations Subcommittee

2/6/18 – Favorable by Agriculture & Natural Resources Appropriations Subcommittee; Now in Government Accountability Committee

2/13/18 – Favorable with CS by Government Accountability Committee

2/21/18 – Read Third Time; Passed

SENATE

2/28/18 – In Messages; Received; Referred to Environmental Preservation and Conservation; Governmental Oversight and Accountability; Rules

3/8/18 – Withdrawn from committees; Read 2nd time; place on calendar for third reading

3/9/18 – Read 3rd time; Passed

HOUSE

3/9/18 – Ordered Enrolled