

MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: November 9, 2015

RE: 2016 Legislation – SEFLUC November 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. HB 183/SB 372 – Administrative Procedures
2. HB 191 / SB 318 – Regulation of Oil and Gas Resources
3. SB 688 – Ban on Well Stimulation or Resource Extraction
4. SB 324 / HB 347 – Utility Projects
5. CS/SB 416 / HB 461 – Location of Utilities
6. SB 444 / HB 525–Small Community Sewer Construction Assistance Act
7. SB 534 / HB 491– Water and Wastewater
8. SB 552/HB 7005 – Environmental Resources
9. SB 598 / HB 181 – Public Works

**1. HB 183/SB 372 – Administrative Procedures**

**Summary:**

Similar to HB 435 (2015), which passed the House and Senate but was vetoed by the Governor during the 2015 session, these bills propose procedural revisions to administrative proceedings regarding rules, proposed rules, unadopted rules, & agency statements. The Bills:

- require 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;

- *deletes requirements that petition challenging proposed rules be filed by a “substantially affected person” and “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” to subparagraph
- 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

SB 372 also conforms a statutory cross-reference relating to attorney’s fees.

**Impact on SEFLUC:**

Monitor for changes to rule challenging procedures in the future.

**Status:**

***SB 372***

**10/6/15** – Referred to Judiciary; Appropriations Subcommittee on General Government; Appropriations

***HB 183***

**9/24/15** - Referred to Rulemaking Oversight & Repeal Subcommittee; Government

Operations Appropriations Subcommittee; State Affairs Committee  
10/20/15 – Favorable with minor CS by Rulemaking Oversight and Repeal Subcommittee

## **2. HB 191 / SB 318 – Regulation of Oil and Gas Resources**

### **Summary:**

Bills provide state with exclusive authority for permitting relating to oil and well exploration activities, including fracking. They also delete provisions that prohibit Division of Water Resource Management from granting permits to drill gas or oil wells within the limits of a municipality without approval of the governing authority of the municipality.

### **Impact on SEFLUC:**

Limits local governments' abilities to prohibit oil or well exploration activities within their boundaries.

### **Status:**

#### ***HB 191***

9/24/15 – Referred to Agriculture & Natural Resources Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; State Affairs Committee

11/4/15 - Favorable by Agriculture & Natural Resources Subcommittee

#### ***SB 318***

10/6/15 – Referred to Environmental Preservation and Conservation; Appropriations Subcommittee on General Government; Appropriations

## **3. SB 688 – Ban on Well Stimulation of Resource Extraction**

### **Summary:**

Proposed resolution by Florida Senate to support statewide ban on hydraulic fracturing and any form of extreme well stimulation and resource extraction, including prohibiting the disposal of related materials and byproducts anywhere within the State of Florida or in the waters adjacent thereto.

### **Impact on SEFLUC:**

Monitor

### **Status:**

10/30/15 – Filed

## **4. SB 324 / 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.

**Impact on SEFLUC:**

Monitor as new finance mechanism for utility projects.

**Status:**

***SB 324***

**10/6/15** – Referred to Communications, Energy, and Public Utilities; Finance and Tax; Appropriations

***HB 347***

**10/30/15** - Referred to Energy & Utilities Subcommittee; Finance & Tax Committee; Regulatory Affairs Committee

**5. CS/SB 416 / HB 461 – 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***

**10/2/15** – Filed

**10/9/15** – Referred to Community Affairs; Transportation; Fiscal Policy

**10/20/15** – Favorable with CS by Community Affairs

**11/4/15** – Favorable by Transportation

***HB 461***

10/27/15 – Filed

11/5/15 – Referred to Local Government Affairs Subcommittee; Appropriations Committee

**6. SB 444 / 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:**

***SB 444***

10/9/15 – Referred to Community Affairs; Appropriations Subcommittee on General Government; Appropriations

***HB 525***

11/2/15 – Filed

**7. SB 534 / 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.

**Impact on SEFLUC:**

Possible funding opportunities for private utilities.

**Status:**

***SB 534***

10/14/15 – Filed

10/21/15 – Referred to Environmental Preservation and Conservation; Communications, Energy, and Public Utilities; Appropriations

***HB 491***

10/30/15 – Filed

11/5/15 – Referred to Energy & Utilities Subcommittee; Finance & Tax Committee; Regulatory Affairs Committee

## **8. SB 552/HB 7005 – 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.

### **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***

**10/16/15** – Filed

**10/23/15** – Referred to Environmental Preservation and Conservation; Appropriations

**11/4/15** – Favorable with corrective CS by Environmental Preservation and Conservations

***HB 7005***

**10/26/15** – Filed

**11/5/15** – Referred to Agriculture & Natural Resources Subcommittee

## **9. SB 598 / HB 181 – Public Works**

### **Summary:**

Prohibits the state or political subdivisions that contract for the construction, maintenance, repair, or improvement of public works (i.e. projects that are paid for in whole or part with state funds) may not require on contractors, subcontractors, or material suppliers or carriers:

- Pay employees a predetermined amount of wages or prescribe any wage rate
- Provide specified type, amount or rate of employee benefits
- Control, limit, or expand staffing
- Recruit, train or hire employees from a designated, restricted, or single source.

Also prohibits the state and political subdivisions from restricting qualified bidders from submitting bids on any public works project.

### **Impact on SEFLUC:**

Monitor for changes to public works contracts/bids

### **Status:**

#### ***SB 598***

**10/21/15** – Filed

**11/4/15** – Referred to Governmental Oversight and Accountability; Community Affairs; Appropriations.

#### ***HB 181***

**9/17/15** – Filed

**9/24/15** – Referred to Government Operations Subcommittee; Local Government Affairs Subcommittee; State Affairs Committee

**10/20/15** – Favorable by Government Operations Subcommittee

**11/04/15** – Favorable with minor CS by Local Government Affairs Subcommittee