

MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: January 8, 2018

RE: 2018 Legislation – SEFLUC January 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:

1. **SB 244/HB 837 – Domestic Wastewater Collection System Assessment and Maintenance**
2. **HB 83/SB 912 – Agency Rulemaking**
3. **HB 339/SB 786 – Land Acquisition Trust Fund**
4. **HB 459/SB 956 – Public Records**
5. **SB 656 – Public Utility Environmental Remediation Costs**
6. **HB 703/SB 806 – Water Management District Surplus Lands**
7. **HB 585/SB 658 – Tourism Development Tax**
8. **SB 324/HB 697 – Impact Fees**
9. **SB 1402 – State Assumption of Federal Section 404 Dredge and Fill Permitting Authority**
10. **SB 1308 – Environmental Regulation**
11. **SB 992 – C-51 Reservoir Project**

List of Constitutional Revisions:

1. **CRC Proposal 23**

BILLS

1. **SB 244/HB 837 – Domestic Wastewater Collection System Assessment and Maintenance**

Summary:

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 Environmental Regulation Commission 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.
- Authorizes grants under Small Community Sewer Construction Assistance Act 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

Impact on SEFLUC:

SEFLUC utilities should support and then take steps to become blue star certified.

Status:

SB 244

08/31/17 - Filed

09/22/17 – Referred to Environmental Preservation and Conservation; Communications, Energy, and Public Utilities; Appropriations; Rules

HB 837

11/29/17 – Filed

12/8/17 - Referred to Natural Resources & Public Lands Subcommittee; Agriculture & Natural Resources Appropriations Subcommittee; Government Accountability Committee; Now in Natural Resources & Public Lands Subcommittee

2. HB 83/SB 912 – Agency Rulemaking

Summary:

Increases circumstances where a statement of estimated regulatory costs (SERC) is required.

The bill requires an agency to prepare a SERC before the adoption or amendment of any rule other than an emergency rule. Existing rules only require SERC if rule will have an adverse impact on small businesses or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after implementation. Additionally, the bill requires an agency to prepare a SERC for a rule repeal if such repeal would impose a regulatory cost, and establishes that in a challenge to a rule repeal, the repeal must be considered presumptively correct by the adjudicating body.

The bill requires each agency to have a website where each of their SERCs may be viewed in their entirety. The department must include on the Florida Administrative Register website the agency website addresses where the SERCs can be viewed. An agency must provide in its notice of intended action the agency website addresses where the SERCs can be viewed. If an agency revises a SERC, it must provide a notice that a revision has been made and include an agency website address where the revision can be viewed for publication on the Florida Administrative Register website.

Lastly, the bill removes the requirement that the agency head approve certain rulemaking notices.

Impact on SEFLUC:

Monitor – SERC is a point of entry for legal challenges

Status:

HB 83

08/30/17 - Referred to Oversight, Transparency & Administration Subcommittee; Transportation & Tourism Appropriations Subcommittee; Government Accountability Committee

10/11/17 – Favorable with CS by Oversight, Transparency & Administration Subcommittee

- Changed the phrase “Joint Administrative Procedures Committee” to “committee” as that term is defined in s. 120.52(4), F.S.;
- Changed the phrase “Division of Administrative Hearings” to “division” as that term is defined in s. 120.52(5), F.S.;
- Removed a phrase in s. 120.541(1)(a), F.S., to conform to changes made by the bill;
- Repealed s. 120.541(1)(b), F.S., as the provision was rendered redundant; and
- Changed “Department” to “department” in s. 120.541(6), F.S.

10/16/17 – Now in Transportation & Tourism Appropriations Subcommittee

11/15/17 – Favorable by Transportation & Tourism Appropriations Subcommittee; Now in Government Accountability Committee

SB 912

11/15/17 – Filed

12/4/17 - Referred to Governmental Oversight and Accountability; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations

3. HB 339/SB 786 – Land Acquisition Trust Fund

Summary:

Provides appropriation of minimum of the lesser of 7.6 percent or \$50 million for certain projects related to Indian River Lagoon Comprehensive Conservation & Management Plan and authorizes DEP to make grants for such projects. It also directs DEP to submit annual report to Governor and Legislature.

Preference for grants shall be given to projects for ecosystem monitoring and habitat restoration, projects to connect onsite sewage treatment and disposal systems to central sewer systems, and projects for the management of stormwater, freshwater, and agricultural discharges. Grants for sewer system connection projects and discharge management projects shall require a minimum 50 percent local match.

Impact on SEFLUC:

Monitor – SERC is a point of entry for legal challenges

Status:

HB 339

10/26/17 - Referred to Agriculture & Natural Resources Appropriations Subcommittee; Natural Resources & Public Lands Subcommittee; Appropriations Committee: Now in A&NRAS

SB 786

11/07/17 – Filed

11/17/17 - Referred to Environmental Preservation and Conservation; Appropriations Subcommittee on the Environment and Natural Resources; Appropriations

4. HB 459/SB 956 – Public Records

Summary:

In pertinent part, amends public records act as follows:

- Provides that any contract or agreement, or addendum thereto, which an agency or an entity subject to Chapter 119 and any financial agreement related to such a contract including, but not limited to, the amount of money paid, any payment structure or plan, expenditures, incentives, fees, or penalties are NOT confidential and exempt from the public records act.
- Removes or revises numerous provisions relating to exemptions from public records requirements for trade secrets

Impact on SEFLUC:

Monitor – affects entities subject to public records act

Status:

HB 459

11/01/17 - Referred to Oversight, Transparency & Administration Subcommittee; Government Accountability Committee; Now in OT&AS

SB 956

11/17/17 – Filed

12/4/17 - Referred to Governmental Oversight and Accountability; Appropriations; Rules

5. SB 656 – Public Utility Environmental Remediation Costs

Summary:

If the Department of Environmental Protection makes a determination that a public utility has caused environmental damage within the state, a municipality or county in which such damage occurred may file a request for a hearing with the commission for a determination of prudence on the environmental damage the public utility caused within the boundaries of the municipality or county or adjacent bodies of water. Such request must be submitted by the municipality or county as prescribed by the commission.

The commission may not conduct any hearing regarding recovery for remediation of such environmental damage until after the commission makes its determination or the request is dismissed.

If the commission determines that the public utility failed to act prudently, the public utility may not recover any expenditures to remedy the environmental damage from ratepayers.

Impact on SEFLUC:

Monitor

Status:

SB 656

10/26/17 – Filed

11/8/17 - Referred to Communications, Energy, and Public Utilities; Community Affairs; Environmental Preservation and Conservation; Rules

6. HB 703/SB 806 – 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

SB 806

11/8/17 – Filed

11/17/17 - Referred to Environmental Preservation and Conservation; Governmental Oversight and Accountability; Rules

7. HB 585/SB 658 – Tourism Development Tax

Summary:

Authorizes counties to use tourism tax revenues to finance estuary or lagoon improvements or to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district in which the tax is levied. Public facilities includes major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities.

Impact on SEFLUC:

support

Status:

HB 585

11/8/17 – Filed

11/15/17 - Referred to Tourism & Gaming Control Subcommittee; Ways & Means Committee; Commerce Committee; Now in T&GCS

SB 658

11/8/17 – Referred to Community Affairs; Appropriations Subcommittee on Finance and Tax; Appropriations

12/5/17 – Favorable by Community Affairs; Now in Appropriations Subcommittee on Finance and Tax

8. SB 324/HB 697 – Impact Fees

Summary:

Requires an impact fee adopted by ordinance of a county or municipality or by resolution of a special district to specify that the collection of the impact fee be no earlier than the issuance of the certificate of occupancy (CHANGED TO BUILDING PERMIT IN SB 324 12/5 CS) for the property that is subject to the fee.

Impact on SEFLUC:

Monitor

Status:

SB 324

10/12/17 – Referred to Community Affairs; Appropriations Subcommittee on Finance and Tax; Appropriations

12/5/17 – Favorable with CS by Community Affairs

- Provides that collection of impact fees may not occur before the issuance of the building permit, rather than the issuance of the certificate of occupancy, for the property that is subject to the fee.
- Requires that the impact fee be reasonably connected to, or have a rational nexus with:
 - The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
 - The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.
- Requires the local government to specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents.
- Prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction

12/13/17 – Now in Appropriations Subcommittee on Finance and Tax

HB 697

11/14/17 – Filed

11/27/17 - Referred to Local, Federal & Veterans Affairs Subcommittee; Ways & Means Committee; Government Accountability Committee; Now in Local, Federal & VA Subcommittee

9. SB 1402 – 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.

Impact on SEFLUC:

Monitor, potential streamlined/more efficient permitting through state processes

Status:

SB 1402

12/28/17 – Filed

10. SB 1308 – 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.

The reuse portions of the legislation clarify and streamline the permitting process for aquifer recharge projects, as follows...

- Water Resource Impact Offsets
 - o 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.
 - o 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
 - o Directs FDEP to develop a uniform rule for incorporating impact offsets and credits into permits at renewal, issuance, or extension.
 - o Provides that the credit may help achieve the requirements of a minimum flow or level
- Legislative Finding in Support of Aquifer Recharge
 - o 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).

Impact on SEFLUC:

Support

Status:

SB 1308

12/19/17 – Filed

11. SB 992 – C-51 Reservoir Project

Summary:

Revising 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.

Impact on SEFLUC:

Monitor

Status:

SB 992

12/13/17 – Referred to Environmental Preservation and Conservation; Appropriations Subcommittee on the Environment and Natural Resources; Appropriations

CONSTITUTIONAL REVISIONS

1. Constitutional Revision Committee Proposal 23

Summary:

Provides any person the ability to litigate “against any party, public or private” if they feel their right to a “clean and healthful environment, including clean air and water” is threatened, to control pollution, or if the conservation and restoration of the natural, scenic, historic, and aesthetic values of the environment are threatened.

Impact on SEFLUC:

- The vague nature of this language opens the door to a very wide interpretation of this provision. As a result, any public or private entity may be sued if any person feels that their right to a “clean and healthful environment, including clean air and water” is threatened. This vague language adds a threat of legal challenge even if a permittee is in full compliance with existing laws or the terms and conditions of existing, valid permits.
- Similarly, allowing a new avenue to challenge threats to aesthetic values of the environment without any limitation threatens the ability to develop any property.
- This amendment appears to circumvent existing legal remedies to address concerns over air and water by opening an entirely new avenue for raising environmental challenges.

Status:

CR 23

10/19/17 – Filed

11/3/17 – Referred to Judicial; General Provisions

12/12/17 – On Judicial Committee Agenda, temporarily postponed