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MEMORANDUM

To: SEFLUC

From: Edward P. de la Parte and Kristin Melton

Date: April 4, 2013

RE: 2013 Legislation – SEFLUC April Update

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

- HB 7 / SB 244 – Water Management Districts (Likely to Pass)
- CS-SB 50 / CS-HB 23 – Public Meetings (Passed Senate, Moving through House)
- CS-SB 84 / SB 238 / HB 85 – Public Private Partnerships (Likely to Pass)
- HB 109 / SB 364 – Consumptive Use Permits for Alternative Water Supplies (3rd Read Senate, House likely to take up this week)
- HB 181 / SB 1118 – Public Works Projects / Public Contracting (Likely Dead)
- CS-HB 183 / CS-SB 934 - Stormwater Management Permits (Likely to Pass, On both House and Senate calendars)
- SB 344 / HB 511– Assault or Battery on a Utility Worker (Likely Dead)
- CS-HB 375 / CS-SB 1160– Onsite Sewage Treatment and Disposal (Likely to Pass)
- SB 412 – Governing Board of Southwest Florida Water Management District (Withdrawn)
- CS-SB 444 / CS2-HB 707 – Domestic Wastewater Discharged Through Ocean Outfalls (Moving)
- CS-HB 357 / CS-SB 582 – Manufacturing Development (Moving through Senate)
- CS-SB 754 / CS2-HB 713 – Water Quality Credit Trading (Likely to Pass)
- SB 338 / HB 191 – Theft of Utility Services (Likely to Pass)
- SB 602 / HB 687 – Local Bids and Contracts for Public Construction Works (Likely Dead)
- HB 733 – Government-Owned Utilities (Dead –looking to tack on another bill)
- HB 7019 / SB 1840 – Development Permits (Recently Revived in Senate)
- CS-SB 948 / CS-HB 1063 – Water Supply (Continuing to Move)
- HB 789 / SB 978 – Springs Revival Act (Dead)

- HB 7113 / SB 1806 – TMDLs (Likely to Pass)
- CS-HB 999 / CS-SB 1684 – Environmental Regulation (Moving, but environmental opposition)
- SB 1386 – Water and Wastewater Utility Systems (Likely Dead)
- CS-SB 1594 / CS-HB 1357 – Guaranteed Energy, Water and Wastewater Performance Savings Contracting Act (Continuing to Move)
- SB 1620 – Municipal Public Works (Likely Dead)
- HB 1231 / SB 1712 – Relating to Stormwater Management System Fees (Likely Dead)
- CS-HB 7115/ CS-SB 1808 – Numeric Nutrient Criteria (Likely to Pass)
- CS-SB 1122 / CS-HB 971 – Florida Fire Prevention Code (Still Moving)

HB 7 / SB 244 – Water Management Districts
Likely to Pass

Background

HB7 and SB 244 are identical bills relating to the establishment of MFLs and reservations. These bills are the similar to SB 1178 (2012), the inter-district MFL/Reservation bill, which was passed by the House last session, but failed to pass the Senate at the last minute. It came about as a result of concern by legislators in SRWMD that MFLs adopted by SRWMD for the Suwannee and Santa Fe Rivers would never be met because of the impact of permitted uses within SJRWMD. Notably, the 2013 bills do not include the proposed changes in SB 1178 (2012) relating to the Duration of Permits/Compliance Reports and the Establishment of a Study Committee on Investor-Owned Water and Wastewater Utility Systems.

Summary and Analysis

Section 1

The proposed changes to **Section 373.042(2), F.S.,** would require water management districts ("WMD") to list reservations proposed for adoption and any listed water bodies that have the potential to be affected by withdrawals in an adjacent district for which the DEP's adoption of a reservation or MFL may be appropriate in the annual priority list submitted to DEP. Under existing law, this section only required WMDs to list the proposed MFLs in the annual priority list.

The proposed requirement to list reservations gives DEP a measure of oversight over reservations which it did not previously have. Since SFWMD is probably the only WMD that plans on adopting reservations in the future, this change is probably good for SEFLUC members, as it provides an extra point of entry to influence policy concerning reservations. The additional language about identifying MFLs/reservation water bodies that may be impacted by interdistrict withdrawals probably will not concern SEFLUC members since they are located far away from SFWMD's boundaries.

Section 373.042(4), F.S., requires WMD to support the development of a reservation, MFL, or recovery or prevention strategy adopted by DEP rule. It also requires WMDs to apply any reservation, MFL or recovery or prevention strategy adopted by DEP rule, without the requirement for the WMD to adopt the MFL or reservation by rule.

This change would allow DEP to adopt a reservation/MFL within SFWMD and SFWMD would be forced to apply MFL/reservation in CUP permitting. This transfer of power from SFWMD to DEP may be problematic for SEFLUC, since it typically has greater influence with the locally appointed Governing Board.

Section 2

Section 2 amends **Section 373.046(7), F.S.**, to include additional information relating to interagency agreements.

Section 3

Section 3 adds subsection (5) to Section **373.171, F.S.**, and provides that cooperative funding programs are not subject to the rulemaking requirements of chapter 120, but any portion of the approved programs which affect the substantial interests of a party is subject to 120.569.

This new exemption of WMD cooperative funding programs from rulemaking would allow WMD to establish cooperative funding program policy, which it otherwise may not be authorized to adopt by rule. For example, a WMD could require utilities to agree to place restrictions on the reuse of reclaimed water as a condition to a cooperative funding grant for a reclaimed water project, when the statute prohibits a WMD from imposing those requirements on reclaimed water utilities by rule.

Section 4

Section 4 amends **Section 373.709(3), F.S.**, to require the water supply development component of a regional water supply plan for those areas served by a regional water supply authority be developed jointly by the authority and the applicable WMD. This provision was previously only applicable to regional water supply authorities within SWFWMD.

Recent Activity:

(HB 7)

February 20, 2013 - Favorable by Agriculture and Natural Resources Subcommittee; YEAS 12 NAYS 0; Now in Rulemaking Oversight and Repeal Subcommittee

March 27, 2013 – Favorable by Rulemaking Oversight and Repeal Committee

April 3, 2013 – Favorable by State Affairs Committee, Placed on Calendar

(SB 244) March 27, 2013 – Read 2nd time, Placed on 3rd reading

April 3, 2013 – Late amendment modifying reporting requirements for water management districts to only require submittal of a quarterly report to the Governor and the Legislature; deleting language from initial bill requiring a water management district to apply any reservation, minimum flow or level, or recovery or prevention strategy adopted by the department by rule without the district's adoption by rule of such reservation, minimum flow or level, or recovery or prevention strategy. No action by Senate on amendment.

CS-SB 50 / CS-HB 23 – Public Meetings
(Passed Senate, Moving through House)

Presently, Section 286.011, Florida Statutes only requires that meetings of any board or commission of any state agency or authority or agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken, to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such hearing. However, current law does not guarantee the public the right to be heard at the public meeting.

Senate Bill 50 and House Bill 23 are identical bills, which create Section 286.0114, Florida Statutes, granting the public a reasonable opportunity to be heard before a board or commission of any state agency or authority or any county, municipal corporation, or political subdivision taking official action at a public meeting.

Under the proposed law, the following types of actions or meetings are exempt from this requirement:

- An emergency situation affecting public health, welfare or safety;
- An official act involving no more than a ministerial act;
- Any meeting that is exempt from the provisions of s. 286.011; or
- A meeting in which the board or commission is acting in a quasi-judicial capacity with respect to the rights or interests of a person.

It is not clear whether quasi-judicial encompasses Chapter 120 proceeding such as rule adoption hearings or hearings by the governing board on recommended orders under 120.569 or 120.57, Florida Statutes, or if it is limited to zoning/ comprehensive plan quasi-judicial proceedings.

The proposed law would allow a board or commission to enact rules or policies to:

- Limit the time an individual has to address the board;
- Require, at meetings with a large number of individuals who wish to be heard, that representatives of groups or faction, rather than all members address the board or commission;
- Prescribe procedures or forms for an individual to us in order to inform the board or commission or a desire to be heard; or
- Designate a specified period of time for public comment.

The proposed bills also include a right to reasonable attorney's fees against the agency board or commission, if the public comment process is not met. However, the court may also assess reasonable attorney's fees against the individual filing such an action, if it was filed in bad faith or was frivolous.

Finally, any failure to follow the public comment requirements will not void any official action of the board or commission.

If passed, this process will apply to all decisions made by water management district Governing Boards. In SFWMD, this would include all permitting decisions that are considered to be for projects of heightened concern or where there is the likelihood of a request for an administrative hearing. These projects may include 20-year permits for public utilities, applications within or adjacent to a CERP Project, or permits that have generated significant public interest. Additionally, this process would also apply to all sunshine advisory committee meetings.

This process does not apply to permits issued by single-head agencies such as the Florida Department of Environmental Protection or Florida Department of Transportation.

Recent Activity:

(SB 50) February 6, 2013 – CS by Governmental Oversight and Accountability
The Committee Substitute includes a new subsection (1) in 286.0114, F.S., defining "board or commission" to mean a board or commission of any state agency or authority or any agency or authority of a county, municipal corporation or political subdivision. This language is consistent with the original SB 50 version.

Subsections (2) - (8) of CS-SB 50 contain minor non-substantive changes and are consistent with subsections (1) through (4) in the original bill, except that subsection (7)(b) of CS-SB 50 contains new language authorizing appellate attorney fees against a board or commission that appeals a court order finding the board or commission to have violated this section when the appellate court affirms such order.

March 19, 2013 - Passed the Senate, in House Messages

(HB 23) March 13, 2013 - CS includes a new subsection (1) in 286.0114, F.S., defining "board or commission" to mean a board or commission of any state agency or authority or any agency or authority of a county, municipal corporation or political subdivision. Subsection (2) is amended to delete the requirement that the opportunity to be heard occurs at a meeting that meets the same notice requirements as the meeting at which the board or commission takes official action on an item. Subsection (3) is amended to delete examples of ministerial acts. Subsection (4) contains minor non-substantive changes. A new subsection (6) provides the circuit court with jurisdiction to issue an injunction to enforce this section. Subsection (7)(b) includes new language authorizing appellate attorney fees against a board or commission that appeals a court order finding the board or commission to have violated this section when the appellate court affirms such order.

March 27, 2013 – After favorable votes of CS-HB 23 by Government Operations Subcommittee and Rulemaking Oversight and Repeal Subcommittee, Now in State Affairs Committee

CS2-SB 84 / SB 238 / CS-HB 85 – Public Private Partnerships
(Likely to Pass)

Senate Bill 84, along with companion bills SB 238 and HB 85, create the Florida Public-Private Partnership Act in **Section 287.05712, F.S.**, which contains guidelines for agreements between responsible public entities and private entities to construct, develop or upgrade facilities or other infrastructure that are used predominantly for public purposes. The analysis below is based on the CS-SB 84 and identifies any differences between SB 238 and HB 85.

These bills address the procurement process, project qualification processes, project approval requirements, and comprehensive agreement requirements for qualifying projects. "Qualifying project" means a facility or project that serves a public purpose; improvements, including equipment, of buildings to be principally used by a public entity or the public at large or that supports a service delivery system in the public system; or *a water, wastewater, or surface water management facility* or other related infrastructure.

In subsection (2) of CS-SB 84, the Legislature finds there is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of public project; that such public need may not be wholly satisfied by existing methods of procurement; and that it has been demonstrated that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public. It specifically encourages investment in the state by private entities, to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects.

In subsections (3), (4), (5) and (6), CS-SB 84 outlines the procurement procedures, project approval requirements ,project qualification process, and notice requirements for entering into a comprehensive agreement.

Subsection (7) specifies the information which must be contained within the comprehensive agreement.

The remaining subsections include additional information relating to fees, financing, powers and duties of the private entity, expiration or termination of the agreement, sovereign immunity, and construction of the statute.

Related Bills:

Senate Bill 238

SB 238 is a comparison bill for CS-SB 84. However, the language in SB 238 appears to more similarly reflect the language proposed in SB 576 during the 2012 Legislative Session. While many of the concepts are the same as in CS-SB 84, SB 238 includes some notable differences. First, SB 238 contains additional definitions, including one defining a "water or wastewater management facility" as a project for the treatment, storage, disposal, or distribution of water or wastewater.

SB 238 also removes references to transportation facilities, roads, highways, and bridges, as projects for which there is a need for public/private partnership, but adds technology infrastructure.

In addition, SB 238 includes a new subsection (3), which contains guidelines that a responsible public entity must adopt and make publicly available prior to requesting or considering a proposal for a qualifying project. These guidelines were included in the 2012 legislation, but not in SB 84.

SB 238 also expands on the technical analyses and independent studies that must be performed for project approval.

SB 238 authorizes the use of an interim agreement before or in connection with negotiation of a comprehensive agreement, rather than just a comprehensive agreement between the private and responsible public entities. *See* SB 238 at new subsection (8).

Finally, SB 238 includes changes to the financing and termination provisions of the agreement.

HB 85

HB 85 more similarly reflects the language presented in CS-SB 84 and contains only minor changes. For example, it does not include the additional definitions, subsection on adoption of guidelines, or authorization of an interim agreement between the private and responsible public entity.

Recent Activity:

(CS2-SB 84) March 18, 2013 – Second Committee Substitute – Strike all amendment, which:

- Creates a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force;
- Extends the timeframe in which proposals may be accepted;
- Authorizes the use of interim agreements, which allow for specified terms to be agreed to prior to entering into a comprehensive agreement;
- Authorizes the creation of public-private partnerships for transportation facilities within a county; and
- Makes technical and clarifying changes.

April 2, 2013 – Favorable by Transportation Subcommittee with 2 amendments (1- clarifying actions only required if public entity receives unsolicited proposal and intends to enter an

agreement for the project described in the unsolicited proposal and 2 – providing additional language for preservation of park lands)

(SB 238) March 5, 2013 – Introduced – SJ 22

(CS- HB 85) March 12, 2013 – Government and Operations Subcommittee Substitute Text Adopted which:

- Creates a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to provide guidance on how to implement public-private partnerships to foster uniformity across the state;
- Provides more flexibility in the notice provisions for unsolicited proposals to allow for up to 120 days' notice for complex proposals, rather than 21 days;
- Authorizes the use of interim agreements, which allow for specific terms to be agreed to prior to entering into a comprehensive agreement;
- Authorizes public-private partnerships for county transportation facilities and infrastructure; and
- Makes other clarifying and technical changes, which include the removal of all references to state procurement.

March 13, 2013 - Now in Appropriations Committee (2 committees to pass – appropriation, state affairs)

CS-HB 109 / CS-SB 364 – Consumptive Use Permits for Alternative Water Supplies (Likely to Pass)

While the language in HB 109 and SB 364 varies slightly, the concepts in the two bills are exactly the same. These bills promote the long-term permit language for alternative water supplies that died in the Florida Senate last year with a few changes. The proposed legislation amends Section 373.236(5) to require the issuance of a permit duration of at least 30 and possibly as long as 37 years for an alternative water supply project and prohibits the WMD from reducing the AWS allocation during the compliance review, unless a reduction is needed to address adverse environmental impacts or interference with existing legal uses. In other words, a WMD could not reduce an AWS allocation simply because the total quantity has not been used or anticipated to be used during the permit term.

The bills also include language in Section 373.236(5)(b)3, which says a permit issued under this paragraph (i.e. a 30+ year AWS permit) may not authorize the use of non-brackish groundwater supplies or non-alternative water supplies. That language would prevent utilities from obtaining a longer term consolidated permit for the conjunctive use of traditional groundwater and non-traditional AWS sources. For example, some SEFLUC members currently hold consolidated permits, which authorize the withdrawal and use of traditional and non-traditional sources. When these permits come up for renewal, the utility will not be able to request a single 30+year permit duration because a portion of its permitted use will consist of non-brackish groundwater. Therefore, this provision would force the utility to either bifurcate its permitted use into a 30+ year AWS permit and a 20 year or less traditional water source permit

or apply for a single permit with a duration of 20 years or less. This may create operational difficulties for SEFLUC's members.

Recent Activity:
(HB 109) March 11, 2013 – Committee Substitute Text Filed deleting the requirement that harm to water resources be "unanticipated" in order for a reduction in quantity of alterative water allocation to occur under Section 373.236(5)(b)(2).

March 12, 2013 – Placed on Calendar, on 2nd Reading – **House may take up Thursday, April 4**

(CS-SB 364) February 21, 2013 – Committee substitute filed deleting the requirement that harm to water resources be "unanticipated" in order for a reduction in quantity of alterative water allocation to occur under Section 373.236(5)(b)(2).

March 27, 2013 – CS-SB 364 rolled to 3rd Reading in Senate

HB 181 / SB 1118 – Public Works Projects / Public Contracting
(Likely Dead)

Except as required under federal law, HB 181 and SB 1118 prohibits the state or any political subdivision that contracts for the construction, maintenance, repair or improvement of public works from requiring a contractor, subcontractor, or material supplier or carrier engaged in a public work project to pay a predetermined wage amount; provide certain benefits; control or limit staffing; recruit, train or hire from a single source; designate any particular assignment of work for employees; participate in proprietary training programs; or enter into any type of project labor agreement. These bills further prohibit any state or political subdivision from requiring the contractor, subcontractor, or material supplier or carrier from entering into any labor agreements as a condition of bidding, negotiating or being awarded a contract for a public work project.

HB 181 also amends **Section 120.57(3)(b), F.S.,** to extend the time for filing a protest regarding a solicitations terms, conditions, or specification from 72 hours to 7 days after posting of the solicitation.

Recent Activity:

(HB 181) March 5, 2013 – Introduced- HJ 32

(SB 1118) March 11, 2013 – Temporarily postponed from Community Affairs

CS-HB 183 / CS-SB 934 - Stormwater Management Permits
(Likely to Pass)

Summary and Analysis

Section 1

Section 1 of HB 183 and SB 934 creates **Section 373.41305, F.S.**, authorizing certain municipalities and counties to adopt stormwater adaptive management plans and obtain conceptual permits from the DEP or WMD for urban redevelopment projects. The conceptual permit must meet specific conditions outlined in Section 373.41305(2), including allowance for the rate and volume of stormwater discharges to remain the same within the area as of the date the stormwater adaptive management plan is adopted; a presumption that stormwater discharges for these projects which demonstrate a net improvement in quality of discharged water do not cause or contribute to a violation of water quality criteria; must not prescribe additional or more stringent limitations concerning the quantity and quality of stormwater discharges from stormwater management systems beyond those provided in this section; and must be issued for a duration of 20 years unless otherwise requested by the applicant.

Projects qualifying for a conceptual permit under this section qualify for a noticed general permit and must not conflict with federal NPDES programs, TMDLs or basin management plans.

Section 2 – There is no Section 2 in SB 934

Section 2 of HB 183 requires that any challenges to a consolidated ERP or an associated variance or a sovereign submerged lands authorization proposed or issued by the DEP in connection with the state's deepwater ports be conducted pursuant to a summary hearing within 30 days after the party files a motion for summary hearing, regardless of whether parties agree to the summary hearing. The ALJ's order is in the form of a recommended order. The DEP must issue a final order within 45 working days after receipt of the ALJ's recommended order. Under this legislation, the summary hearing requirements, except those requiring agreement between parties to proceed under a summary hearing, are also applicable to pending administrative proceedings.

Recent Activity:

(CS-HB 183) March 25, 2013 – Committee Substitute Filed. The amendment provides that the rules for a statewide environmental resource permit require a local government to designate a community redevelopment area or urban infill and redevelopment area under chapter 163, F.S., and then develop a stormwater management master plan to serve the entire redevelopment area. The master plan must be reviewed and approved by either the DEP or a WMD, and once approved, individual projects within the designated redevelopment area will only need a general permit to proceed.

April 3, 2013 – Favorable by State Affairs Committee; Placed on Calendar

(CS-SB 934) March 21, 2013 - CS by Environmental Preservation and Conservation on March 21, 2013. The committee substitute differs from the original bill in that it:

- Amends s. 373.4131, F.S., which provides for statewide environmental resource permitting.
- Changes the phrase "stormwater adaptive management plan" to "stormwater management master plan."
- States that the rules promulgated under the bill must provide for a general permit associated with the conceptual permit.
- Adds language that requires permitted entities to assert that what they are planning will result in a net improvement in water quality from the date the conceptual permit is approved.
- Adds language that requires the conceptual permit to include provisions regarding the use of stormwater BMPs and that systems built within an urban redevelopment area are operated in compliance with s. 373.416, F.S.
- Changes the date at which the maximum rate and volume for stormwater management systems is set from the date the stormwater management plan is adopted to the date the conceptual permit is approved.
- Conforms the bill's language with Department of Environmental Protection's draft statewide environmental resource permit rules.

April 3, 2013 - Placed on Calendar, On 2nd Reading

SB 344 / HB 511– Assault or Battery on a Utility Worker
(Likely Dead – the bill, not the utility worker)

These identical bills amend **Section 784.07, F.S.**, to define the term "utility worker" and provide for a reclassification of certain offenses committed against a utility worker. Under this legislation, utility workers are now included among the list of persons, such as law enforcement officers and firefighters, whose assaulters are subject to higher degree of offenses.

Recent Activity:

(SB 344) March 5, 2013 – Introduced – SJ 28

(HB 511) March 4, 2013 – Amendments filed by Criminal Justice Subcommittee to also include process servers in list of protected persons whose assaulters are subject to higher degree of offenses

March 5, 2013 – Introduced – HJ 59

CS-HB 375 / SB 1160 – Onsite Sewage Treatment and Disposal
(Likely to Pass)

Initially, HB 375 amended **Section 381.0065, F.S.**, to revise the frequency of inspections (from twice each year to twice each year for two years and at least once a year thereafter) that owners of aerobic treatment unit systems must provide for under service agreements with certain maintenance entities permitted by the Department of Health.

However, CS-HB 375 deleted the language revising the frequency of inspections in the initial version of proposed SB 375 and replaced it with additional language authorizing reports to be submitted electronically and allowing a property owner of an owner-occupied single-family residence to be approved and permitted by the department as a maintenance entity for his or her own system under certain conditions. CS-HB 375 also provides requirements for such maintenance entity service agreements; prohibits manufacturers from denying certain septic tank contractors access to aerobic treatment unit system training & parts; and authorizes certain replacement parts for aerobic treatment unit systems.

SB 1160 was introduced and includes the same language initially included in SB 375 revising the frequency of inspections (from twice each year to twice each year for two years and at least once a year thereafter) that owners of aerobic treatment unit systems must provide for under service agreements with certain maintenance entities permitted by the Department of Health. CS-SB 1160 included additional language deleting the revised frequency and matching the language proposed in CS-HB375 as well as including additional language relating to Florida keys.

Recent Activity:

(CS2-HB 375) February 26, 2013 – Committee Substitute by Agriculture and Natural Resources Subcommittee

March 18, 2013 –Health Quality Subcommittee Second Substitute adopted, which includes new language in Subsection 381.0065(4)(l) specifically addressing permits within the Florida Keys area of critical state concern and providing an automatic extension and renewal for any ERP permit scheduled to expire between January 1, 2012 through January 1, 2016 for a period of 3 years after its previously scheduled expiration date and providing that an onsite sewage treatment and disposal system meeting the standards in subparagraph 4, installed after July 1, 2010, is not required to connect to sewer until December 31, 2020. The subcommittee amendment also includes additional language in Subsection 381.0065(4)(u)(3) requiring a maintenance entity to maintain documentation for 2 years of any substitute part's equivalency.

April 2, 2013 – Strike all Amendment by State Affairs Committee deleting new CS2 language regarding permits within the Florida Keys; revising language regarding TN concentrations and compliance dates for areas not scheduled to be served by central sewer; reorganizing provisions

April 3, 2013 – Third Committee Substitute Passes State Affairs Committee

(CS-SB 1160) March 20, 2013 – Amendment filed by House Policy Committee, which includes new language in Subsection 381.0065(4)(l) specifically addressing permits within the Florida Keys area of critical state concern and providing an automatic extension and renewal for any ERP permit scheduled to expire between January 1, 2012 through January 1, 2016 for a period of 3 years after its previously scheduled expiration date and providing that an onsite sewage treatment and disposal system meeting the standards in subparagraph 4, installed after July 1, 2010, is not required to connect to sewer until December 31, 2020. The subcommittee amendment also includes additional language in Subsection 381.0065(4)(u)(3) requiring a maintenance entity to maintain documentation for 2 years of any substitute part's equivalency.

April 3, 2013 – After favorable votes by Health Policy and Community Affairs, CS-SB 1160 is now in Environmental Preservation and Conservation

SB 412 – Governing Board of Southwest Florida Water Management District (Withdrawn)

SB 412 amends **Section 373.073, F.S.,** to reduce the number of SWFWMD governing board members from 13 to 9, which is the number of board members authorized for all the other water management districts. This legislation also modifies the residency requirements for the SWFWMD board members.

Recent Activity:

(SB 412) February 21, 2013 - Withdrawn from Environmental Preservation and Conservation; Community Affairs; Rules

- Withdrawn prior to introduction

CS-SB 444 / CS2-HB 707 – Ocean Outfalls (Continuing to Move)

Identical Bills SB 444 and HB 707 (2013) substantially amend **Section 403.086, F.S.** For purposes of this summary, references will be made to SB 444. Section 403.086(c)(1), F.S., is modified to require "utilities that had a permit" for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008 to install or cause to be installed a functioning reuse system within the utility's service area or by contract with another utility within Miami-Dade, Broward or Palm Beach Counties by December 31, 2025. For purposes of determining whether there is a functioning reuse system, the bill defines "baseline flow" as the annual average flow of domestic wastewater discharging through the facility's ocean outfall, as determined by the department, using monitoring data available for calendar years 2003 through 2007.

Section 403.086(9)(c)(2), F.S., is modified to specify that only facilities which shared a common ocean outfall as of July 1, 2008 are required to meet the 60-percent reuse requirement individually but may contract to share or transfer this responsibility with other utilities. Section

403.086(9)(c)(3), F.S., is modified to require that if a facility contracts with another utility to install a functioning reuse system, the DEP must approve any apportionment of the reuse generated from the new or expanded facility that is intended to satisfy the reuse requirement of this section. Furthermore, if the contract is between two utilities, the reuse apportioned to each utility's requirement may not exceed the total reuse generated by the new or expanded reuse system.

Section 403.086(9)(d), F.S., is amended to allow utilities to continue backup discharges through ocean outfalls that are part of a functioning reuse system or other wastewater management system authorized by DEP. Utilities may make backup discharges that:

- Do not cumulatively exceed 5 percent of total baseline flows measured as a five-year rolling average;
- Are subject to applicable secondary waste treatment and water-quality based effluent limitations specified in the DEP rules; and
- Are deemed to meet AWT when in compliance with the effluent limitations.

Section 403.086(9)(e)(1), F.S., is amended so that the detailed plans utilities must develop by July 1, 2013 include:

- The technical, environmental and economic feasibility of various reuse options;
- An analysis of costs necessary to meet the state and local water quality criteria; and
- A comparative cost estimate of achieving reuse requirements from ocean outfalls and other sources.

The plan must evaluate the demand for reuse in the context of future regional water supply demands, the availability of traditional sources of water, the need for alternative water supplies, the offset reuse will have on potable supplies and other factors contained in the SFWMD's Lower East Coast Regional Water Supply Plan. The plan is due to the Legislature by July 1, 2013 with an update due by July 1, 2016.

Finally, the bill requires the DEP, the SFWMD, and the affected utilities to evaluate the detailed plans and recommend to the Legislature adjustments, if necessary, to the reuse requirements in this bill. The report is due to the Legislature by February 15, 2015.

Comparison to Senate Bill 724 (2012)

While SB 444 (2013) is similar to SB 724, which was proposed during the 2012 Legislative session, there are also some important differences. Most notably, the SB 444 (2013) does not include any postponement of the deadlines contained in the existing legislation, which were included in SB 724 (2012). While SB 724 (2012) proposed to postpone the dates by which domestic wastewater facilities must meet the more stringent treatment and management requirements from December 31, 2018 to December 31, 2020, SB 444 (2013) does <u>not</u> include any language requiring postponement of the 2018 date for compliance. Similarly, in paragraphs 403.086(9)(e)(1) and (2), F.S., SB 444(2013) does not extend the deadline for submission of the detailed plan for meeting the requirements of Section 403.086, F.S., or the update for the plan.

Additionally, for purposes of defining what constitutes a "functioning reuse system" in section 403.086(9)(c)(1), F.S. SB Bill 444 (2013) does not include language from SB 724 (2012), which defined the term to include "for utilities operating more than one facility, 60 percent of the utility's entire wastewater system flow on an annual basis on December 31, 2025." This language would have allowed utilities to comply with the 60-percent reuse requirement from their entire service area, rather than just from ocean outfalls. However, this language was controversial because it could also reduce the percentage of reuse derived from ocean outfalls.

Finally, SB 444 (2013) contains the new section 403.086(9)(c)(3), F.S., requiring DEP approval of any apportionment of reuse generated by the new or expanded reuse system that is intended to satisfy the reuse requirement and specifying that if a contract is between two utilities, the reuse apportioned to each utility's requirement may not exceed the total reuse generated by the new or expanded reuse system.

Recent Activity:

(CS-SB 444) March 15, 2013 – Committee Substitute replaced two amendments. The first amendment amends Section 403.086(9)(c)(3), F.S., to require a utility to provide the DEP a copy of any contract with another utility that reflects an agreement between the utilities for one utility to install a functioning reuse system as described in this subsection The second amendment deletes an outdated provision requiring the DPE to submit a reclaimed water use study by February 1, 2012.

Favorable with CS:
March 14 – Community Affairs
March 19 – Appropriations Subcommittee on General Government

April 3, 2013 – Favorable by Appropriations

(CS-HB 707) March 11, 2013 – Agriculture & Natural Resources Subcommittee Substitute Text Filed deleting the outdated provision in 403.086(9)(h) requiring the DEP to submit a report detailing the results and recommendations from phases1 through 3 of its ongoing study on reclaimed water use to the Governor and Legislature by February 1, 2012.

March 20, 2013 - Agricultural and Natural Resources Appropriations Subcommittee file Committee Substitute (C2) text, amending Section 403.086(9)(c)(3), F.S., to require a utility to provide the DEP a copy of any contract with another utility that reflects an agreement between the utilities for one utility to install a functioning reuse system as described in this subsection.

March 28, 2013 – Favorable by State Affairs Committee, Placed on House Calendar, 2nd Reading

CS-HB 357 / CS-SB 582 – Manufacturing Development
(Moving through Senate)

Summary and Analysis

Sections 1-3

HB 357 and SB 582 are identical bills creating **Sections 288.1101through 288.1105, F.S.,** and establishing the "Manufacturing Competiveness Act," which authorizes local governments to establish a local manufacturing development program that provides for master development approval for certain sites. As part of this Act, local governments are required to adopt an ordinance establishing the local manufacturing development program. The Department of Economic Opportunity is required to develop a model ordinance by December 31, 2013. The model ordinance must include certain procedures, provisions, and minimum elements outlined in the statute. While the local government need not adopt the Department of Economic Opportunity Model Ordinance, the local government ordinance must, at a minimum, be consistent with the model ordinance and establish procedures outlined in Section 283.1103(3), F.S.

Section 4

Section 4 creates Section 288.1104, F.S., which establishes the manufacturing coordinated approval process. This coordinated process requires participating agencies to coordinate and review applications for permits by the manufactures participating in a local manufacturing development program and establishes an expedited permitting process. Under this process, unless the deadline is waived by the manufacturer or a different deadline is mandated by federal law, each participating agency must take final action on a state development approval within 60 days after a complete application is filed. Additional information regarding applicable procedures and timelines for the coordinated review process are contained in Section 288.1104, F.S.

Section 5

Section 5 creates Section 288.1105, F.S., which requires the Department of Economic Opportunity to develop, and update annually, materials that identify each local government that establishes a local development program under Section 288.1103, F.S. Certain state agencies are responsible for distributing these materials to prospective, new, expanding and relocating businesses seeking to conduct business in the state.

Recent Activity:

(CS-HB 357) March 19, 2013 – Committee Substitute by Economic Development and Tourism Subcommittee

- Moving language from Sections 288.1101- 288.1104 to Section 163.325 – 163.3253 and Section 288.1105 to 288.111, F.S.
- Removed language pertaining to eligibility requirements for manufacturers seeking to participate in coordinated approval process during the period between a local government repealing its local development program and the effective date of repeal.

- Language added to require involved participating agencies to attend meetings convened by DEO at the request of a manufacturer participating in a coordinated approval process.
- Role of DEO in coordinating the manufacturing development approval process clarified.
- Language added to clarify that DEO is not required to mediate issues arising during coordinated approval process, DEO will not be a party to any proceeding brought as a result of state permitting associated with coordinated approval process, and DEO's participation in a coordinated approval process does not affect its decision whether or not to grant state economic development incentives to an applicant.
- Language added to specify that the bill's permitting and development approval provisions do not apply to permit applications governed by federally delegated or approved permitting programs to the extent that the bill imposes timeframes or other requirements which conflict with federal law.
- Clarifies that EFI is the agency responsible for distributing materials associated with the local manufacturing development program.

March 22, 2013 – Committee Substitute referred to Economic Affairs Committee

(CS-SB 582) April 1, 2013 – Replaced by Committee Substitute, favorable vote by Commerce and Tourism. The committee substitute does the following:
- Places provisions of the bill under ch. 163, F.S., rather than ch. 288, F.S.
- Adds a definition for the term "department."
- Deletes the definition for the term "local government."
- Removes the Department of Economic Opportunity from the coordinated manufacturing development approval process.
- Deletes the grant of rule-making authority to the Department of Economic Opportunity.
- Requires Enterprise Florida, Inc., to distribute materials that identify local governments that have established a local manufacturing development program, as provided in the bill, to prospective, new, expanding, and relocating manufacturers seeking to conduct business in Florida

April 3, 2013 – Committee Substitute described above filed

<u>CS-SB 754 / CS2-HB 713 – Water Quality Credit Trading</u>
(Continuing to move, lots of support in House and Senate)

Summary and Analysis

Identical SB 754 and HB 713 expand upon the water quality credit trading opportunities raised in HB 1107 and SB 1250, which were filed in the 2012 legislative session.

Section 1

For the purpose of incorporating the amendment in Section 2, Section 1 of SB 754 reenacts **Section 373.4595(1)(n)**, F.S., of the Northern Everglades and Estuaries Protection Program, which declares it is the intent of the Legislature that the coordinating agencies encourage and support the development of public-private partnerships and programs, including

opportunities for water storage and quality improvement on private lands and water quality credit trading to further restoration of surface water resources of the Lake Okeechobee watershed, the Caloosahatchee River watershed, and the St. Lucie River watershed.

Section 2

Section 2 amends **Section 403.067**, F.S. to expand the opportunity for water quality credit trading in all adopted basin management action plans. Currently, the water quality credit trading program is limited to the Lower St. Johns River Basin. The expansion of the water quality credit trading program will provide new options for meeting water quality criteria requirements necessary for obtaining permits or retaining existing permits, while continuing to ensure that the water resources will not be harmed.

Section 3

For the purpose of incorporating the amendment in Section 2, Section 3 of SB 754 reenacts **Section 403.088(2)(e)**, F.S., regarding water pollution operation permits to authorize the DEP to issue, renew, revise or reissue the operation permit if it includes a water quality credit trade that meets the requirements of 403.067.

Recent Activity:

(CS-SB 754) March 15, 2013 – Committee substitute incorporating amendments filed amending Section 403.067(7)(b)(2)(i) to specifically identify water quality credit trading as an additional management strategy that a landowner, discharger or other responsible person may not be required to implement and amending Section 403.067(8)(h) to include specific language providing that "participation in water quality credit trading is entirely voluntary."

April 3, 2013 – After favorable vote by Community Affairs, now in Appropriations

(CS-HB 713) March 11, 2013 – Committee Substitute filed amending Section 403.067(7)(b)(2)(i) to specifically identify water quality credit trading as an additional management strategy that a landowner, discharger or other responsible person may not be required to implement and amending Section 403.067(8)(h) to include specific language providing that "participation in water quality credit trading is entirely voluntary."

March 29, 2013 - technical, second amendment filed (CS2-HB 713)

April 1, 2013 – Placed on Calendar, on 2nd reading

SB 338 / HB 191 – Theft of Utility Services
(Likely to Pass)

Identical Bills SB 338 and HB 191 propose to amend **Section 812.14**, F.S., to increase the minimum civil penalty for anyone who commits theft of utility services from $1,000 to $3,000 and therefore are subject to harsher felony prosecution, rather than the existing first degree misdemeanor.

Recent Activity:

(SB 338) March 27, 2013 – On Third Reading in Senate

(HB 191) March 2013 – On Second Reading in House

SB 602 / HB 687 – Local Bids and Contracts for Public Construction Works
(Likely Dead, no movement in Senate)

Identical bills, SB 602 and HB 687, amend Section 255.20, F.S., to eliminate the exception where, after public notice, meeting, and governing board vote determining it is in the public's best interest to perform the project using its own services, employees and equipment, from the requirement that a local government competitively award contracts. As a result, there is one less opportunity for local governments to perform a project using the local government's own services, employees, and equipment rather than placing the project for competitive bidding.

Recent Activity:

(SB 602) March 14, 2013 – Temporarily Postponed by Community Affairs

March 13, 2013 – Amendment filed replacing "local government" with "independent special district"

(HB 687) March 27, 2013 – House Government Operations Subcommittee passed without amendment; now in Local and Federal Affairs Committee

HB 733 – Government-Owned Utilities
(Dead – Looking to tack on to another bill)

Summary and Analysis

Section 1

Section 1 of HB 733 amends **Section 153.03**, F.S., to provide that consent of a municipality's governing authority is not required for a county to furnish any facilities provided to a property already being furnished like facilities by a municipality if the municipality

furnished such services in an unincorporated area of the county pursuant to an expired franchise agreement, resolution, or ordinance.

In addition, in order for a county to furnish any facilities provided to a property already being furnished like facilities by a municipality, HB 733 requires the county obtain a majority referendum vote or response to a mail survey of qualified voters residing in the area proposed to be served by the County supporting service by the county.

Section 2

Section 2 amends the powers of municipalities as set forth in **Section 180.02(2)**, F.S. to provide that a municipalities corporate powers do not extend or apply within the unincorporated areas of any county without the consent of the board of county commissioners of such county.

Section 3

Section 3 amends the definition of "public utility" in **Section 366.02**, F.S. to include any municipality that supplies electricity or gas outside of its incorporated limits, including selling electricity or gas to other municipalities or providing electricity or gas directly to customers in unincorporated areas. The term does not include a municipality supplying electricity or gas solely within its corporate boundaries.

Section 4

Section 4 amends **Section 367.022(2)**, F.S. to provide that any municipality that sells water or wastewater utility service, directly or indirectly, outside of its incorporated limits, including selling utility services to other municipalities or providing utility services directly to customers in unincorporated areas of a county is subject to regulation by the Florida Public Service Commission.

Recent Activity:

(HB 733) February 20, 2013 – Referred to Energy and Utilities Subcommittee; Local and Federal Affairs Committee; Government Operations Appropriations Subcommittee; Regulatory Affairs Committee

See Compare Bill: SB 1620 – Municipal Public Works

HB 7019 / SB 1840 – Development Permits
(Looked dead, but recently revived by Military and Veterans Affairs)

HB 7019 and SB 1840 require local governments to attach certain disclaimers that all other state and federal permits must be obtained before development can begin in mapped flood hazard areas and include certain permit conditions when issuing development permits. In addition, it requires counties and municipalities to demonstrate that applicable permits have been

obtained before development in mapped flood hazard areas. The bills are intended to address FEMA concerns regarding permit streamlining bill, HB 503 (2012), which prohibited state and local permitting agencies from requiring that other local, state, or federal permits be issued first.

Recent Activity:

(HB 7019) March 5, 2013 – Introduced

(SB 1840) April 3, 2012 – Committee Bill Filed by Military and Veterans Affairs, Space, and Domestic Security

CS-SB 948 / CS-HB 1063 – Water Supply

Summary and Analysis

Section 1

Section 1 of SB 948 amends **Section 373.701(3)**, F.S., to provide a legislative declaration that efforts to adequately and dependably meet water needs requires cooperation of utility companies, private landowners, water consumers, and the Department of Agriculture and Consumer Services ("DACS"). These entities are identified in addition to municipalities, counties, WMDs, and the DEP, which are already included in the existing statute.

Section 2

Section 2 amends **Section 373.703**, F.S., to include self suppliers in the list of entities the governing board of a WMD must engage in planning and assist in meeting water supply demands in a manner that will give priority to encouraging conservation and reducing adverse environmental effects. In addition, SB 948 adds self suppliers to the list of entities with which a governing board of a WMD may contract with for purposes of carrying out its powers.

Section 3

Section 3 amends **Section 373.709**, F.S., to include DACS to the list of entities with which the governing board of a WMD must coordinate regional water supply planning. In addition, when quantifying agricultural demand projections for water supply needs, each regional water supply plan must calculate projections based upon the best available data. When calculating agricultural self-supplied water needs, the WMD must consider the data indicative of future water supply demands provided by DACS and any deviation from the data provided by DACS must be fully described, and the original data must be presented with the adjusted data.

Essentially, this section provides more power to DACS for purposes of measuring future water supply needs of agriculture. This could be a concern for public water suppliers if DACS's new power results in additional traditional water supplies being allocated to agriculture, which would limit the traditional water supplies available for public water suppliers.

Section 4

Section 4 amends **Section 570.06**, F.S., to include the correct statutory citation relating to best management practices for agriculture.

Section 5

Section 5 amends **Section 570.085**, F.S., to require DACS to establish an agricultural water supply planning program that includes certain data and provide criteria for development of data.

Recent Activity:

(CS-SB 948) April 1, 2013 -Passed the Senate Agriculture Committee with support from environmental groups that had previously opposed the bill. The committee amended the bill to require conservation to be factored into agricultural water use estimates and to require that private supply water projects not harm other water users.

April 3, 2013 – Now in Appropriations

(CS-HB 1063) March 20, 2013- the Agriculture & Natural Resources Subcommittee amended and reported HB 1063 favorably as a committee substitute. The CS does the following:

- Provides that when the governing board of a WMD may contract with other entities to meet water supply demands, the contracts are consistent with the public interest. The public interest requires that the proposed water use is reasonable and beneficial and does not interfere with another legal existing user.
- Restores existing language requiring that regional water supply plans include appropriate lists of water supply and alternative water supply projects.
- Provides that future water demand projects developed by DACS for agricultural land uses must include appropriate water conservation factors.
- Provides a definition of the term "self-supplier."

March 25, 2013 – Now in Agriculture and Natural Resources Appropriations Subcommittee

HB 789 / SB 978 – Springs Revival Act
(Dead)

Identical bills, HB 789 and SB 978, create **Section 373.126**, F.S., containing the Springs Revival Act. This Act requires each WMD to identify first and second magnitude springs within the district that are in decline based upon historic average water quality and flow levels that are not already identified in the DEP's TMDL rule and, by July 1, 2014, develop a 5-year plan to restore historic average water quality and flow levels. By January 1, 2014, and quarterly thereafter, each WMD must also submit a report on the progress of the restoration efforts to the Governor, President of the Senate, and Speaker of the House of Representatives.

This tight deadline for identifying springs with declined water quality and flow levels may result in the adoption of TMDLs and additional rules which pose restrictions on public water suppliers' abilities to obtain and operate under CUPs.

Recent Activity:

(HB 789) February 28, 2013 - Referred to Agriculture and Natural Resources Subcommittee; Rulemaking Oversight and Repeal Subcommittee; State Affairs Committee

(SB 978) February 22, 2013 - Referred to Environmental Preservation and Conservation; Community Affairs; Rules

HB 7113 / SB 1806 - TMDL
(Likely to Pass)

SB 1806 / HB 7113 amend **Section 403.067(6)(c), F.S.**, to specifically exclude TMDLs from the legislative ratification requirements of s. 120.541(3), F.S. Essentially, the change would exempt rules adopting TMDLS from having to comply with the statute that requires rules having greater than $1 million impact on the regulated community over 5 years from receiving legislative ratification. First, since TMDLs mostly impact point sources of which wastewater utilities are represent the majority, this change would remove an important level of protection from onerous or unreasonable rules. Second, it represents the first step in undoing this important protection for the regulated community. If this change passes, then that opens the door to future changes exempting MFLs and reservations, which may be problematic for many utilities.

Recent Activity:

(SB 1806) March 21, 2013 – Submitted as Committee Bill by Environmental Preservation and Conservation, S 1806 (formerly PCB 7036)

March 27, 2013 – Referred to Governmental Oversight and Accountability

(HB 7113) April 1, 2013 – Favorable by Rulemaking Oversight & Repeal Subcommittee; Now in State Affairs Committee

CS-HB 999 / CS-SB 1684 – Environmental Regulation
(Comprehensive bills facing environmental opposition. However, Section 11 of SB 1684 are included in SB 948, which has been moving quickly through the Senate.)

Summary and Analysis

Identical bills, HB 999 and SB 1684, are comprehensive environmental permitting bills that would restrict cities and counties in requesting additional information for permit

applications, extend the duration for state permits for boat shows, and include language from other bills about agricultural water supply planning.

Section 1

Section 1 amends **Section 125.022**, F.S., to restrict a county from requesting additional information from a development permit applicant more than three times, unless the applicant waives the limitation in writing.

Section 2

Section 2 amends **Section 166.033,** F.S., to restrict a city from requesting additional information from a development permit applicant more than three times, unless the applicant waives the limitation in writing.

Section 6

Section 6 amends **Section 373.233**, F.S., to require a governing board or department to issue an affirmative proposed agency action before two applications can be considered competing applications under the consumptive use permitting rules.

Section 7

Section 7 amends **Section 373.308(1)**, F.S., and provides that upon authorization of a well from the DEP, issuance of well permits is the sole responsibility of WMDs and restricts other governmental entities from imposing additional or duplicate requirements, fees, or programs relating to the installation and abandonment of a groundwater well.

Section 8

Section 8 amends **Section 373.323**, F.S., to require licensure of water well contractors by a WMD to be the only water well construction license required for the construction, repair, or abandonment of water wells in the state or any political subdivision thereof.

Section 9

Section 9 adds **subsection 373.403(23),** F.S., defining “mean annual flood line” for purposes of delineating the ordinary high water line for nontidal water bodies and other surface waters as having the same meaning provided in s. 381.0065, F.S.

Section 10

Section 10 adds subsections (13) through (15) to **Section 373.406**, F.S., to exempt from environmental resource permitting rules in Part IV of Chapter 373 “construction , operation or maintenance of any wholly owned manmade ponds constructed entirely in uplands or drainage ditches construction in uplands” or “activities affecting wetlands created solely by the

unreasonable and negligent flooding or interference with the natural flow of surface water caused by an adjoining landowner," and providing that "any water control district created and operating pursuant to chapter 298 for which a valid environmental resource permit or management and storage of surface waters permit has been issued is exempt from further wetlands or water quality regulations pursuant to chapters 125, 163, and 166.

Section 11

Section 11 includes language from SB 948, which amends **Section 373.709**, F.S., to include DACS to the list of entities with which the governing board of a WMD must coordinate regional water supply planning. In addition, when quantifying agricultural demand projections for water supply needs, each regional water supply plan must calculate projections based upon the best available data. When calculating agricultural self-supplied water needs, the WMD must consider the data indicative of future water supply demands provided by DACS and any deviation from the data provided by DACS must be fully described, and the original data must be presented with the adjusted data.

Section 12

Section 12 amends **Section 376.313(3)**, F.S., to clarify that the nonexclusiveness of remedies and individual cause of action for damages under sections 373.30-376.317 does not apply to discharges of pollution regulated or authorized pursuant to chapter 403.

Section 13

Section 13 amends **Section 403.021(11)**, F.S., to declare it the intent of the legislature that testing, sampling, collection or analysis for water quality may not be conducted or required unless it has been subjected to and validated through inter- and intra-agency testing, quality control, peer review, and adopted by rule.

Section 18

Section 18 amends **Section 570.085**, F.S. to require DACS to establish an agricultural water supply planning program that includes certain data and provide criteria for development of data. This language comes from SB 948/HB 1063.

Recent Activity:

(CS-HB 999) March 27, 2013 – The House Agriculture & Natural Resources Subcommittee adopts a 47-page strike-all amendment and passes HB 999 with support from business groups. The CS makes several changes, including:

- Authorizing DEP to adopt rules for electronic submission of certain permit applications.
- Expanding activities qualifying as 'phosphate-related expenses'
- Providing general permits for local governments to construct certain mooring fields.
- Providing that where there are competing consumptive use permit (CUP) applications, and the governing board of a WMD or DEP has deemed the applications complete, the

governing board of a WMD or DEP has the right to approve or modify the application which best serves the public interest.
- Prohibiting WMDs from reducing certain allocations as a result of seawater desalination plant activities.
- Providing a definition for the term "beneficiary" in ch. 403, F.S.
- Providing restrictions on local governments operating commercial recovered collection services in competition with private companies.
- Authorizing expedited permitting for natural gas pipelines.
- Revising the definition of 'mean annual flood line.'
- Requiring DEP to issue permits for special events relating to boat shows. The permits must be for a period that runs concurrently with the consent of use or lease issued pursuant to s. 253.0345, F.S. The permits must also allow for the movement of temporary structures within the footprint of the lease area.

April 2, 2013 – Committee Substitute Text Filed

(CS-SB 1684) April 1, 2013 – Favorable with CS Environmental Preservation and Conservation including changes described for CS-HB 999.

April 3, 2013 - On Committee agenda - Agriculture, 04/08/13, 1:00 pm, 301 S - If Received

SB 1386 – Water and Wastewater Utility Systems
(Likely Dead – no companion or movement)

Summary and Analysis

SB 1386 includes amendments requiring that the Division of Bond Finance of the State Board of Administration review the allocation of private activity bonds to determine the availability of additional allocation or reallocation of bonds for water and wastewater infrastructure projects; extending tax exemptions to certain investor-owned water and wastewater utilities; establishing criteria for the commission to consider in determining the quality of water and wastewater services provided by a utility; providing reasons to automatically increase or decrease approved rates of a utility, etc.

Section 1

Section 1 creates **Section 159.810**, F.S., to require the Division of Bond Finance to review the allocation of private activity bonds to determine the availability of additional allocation or reallocation of bonds for water and wastewater infrastructure projects.

Section 2

Section 2 amends **Section 212.08**, F.S., to extend tax exemptions for certain investor-owned water and wastewater utilities.

Section 3

Section 3 amends **Section 367.022**, F.S., exempts from regulation by the commission and the provisions of Chapter 367, F.S., any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price plus nine percent of the actual purchase price or the actual cost of meter reading and billing.

Section 4

Section 4 amends **Section 367.081(2)**, F.S., to establish criteria for the commission to consider in determining the quality of water and wastewater services provided by a utility. The criteria for water service include the extent to which the utility meets secondary drinking water standards regarding taste, odor, color, or corrosiveness; testimony and evidence provided by customers and the utility; customer complaints filed within the last 5 years; past test results; and any other tests the commission deems necessary.

The criteria for wastewater value and quality include the extent to which the utility provides wastewater service to its customers which do not cause odor, noise, aerosol drift, or lighting that adversely affects customers; testimony and evidence provided by customers and the utility; and complaints customers have filed over the past 5 years.

If the commission determines a utility does not meet water or wastewater quality standards, the utility is required to provide estimates of the costs and benefits of various solutions to the problems, discuss the costs and benefits with its customers, and report the conclusions to the commission. The commission shall then adopt rules to assess and enforce as necessary the utility's compliance.

In addition to the above, Section 4 authorizes the commission to create a utility reserve fund for purposes of establishing rates for a utility and adopt rules to govern the fund.

Section 4 also amends **Section 367.081(4)**, F.S., to require approved rates of a utility to automatically increase or decrease, without hearing, upon verified notice to the commission 45 days before implementation of the increase or decrease, informing the commission that its costs for a specified expense item have changed. Specific conditions relating to the items eligible for automatic increase or decrease are also contained within this section.

Section 5

Section 5 amends **Section 367.0814(3),** F.S., to address when attorneys and consultant fees may be awarded by the commission.

Section 6

Section 6 amends **Section 367.0816,** F.S., to authorize a utility to recover the 4-year amortized rate case expense for only one rate case at a time and provides limitations on unamortized rate case expenses.

Section 7

Section 7 amends **Section 403.8532**, F.S., to authorize the DEP to make or request the corporation make, loans, grants or deposits for all for-profit privately owned or investor owned systems. The prior statute distinguished between for-profit privately owned or investor-owned systems serving more or less than 1,500 service connections.

Recent Activity:

(SB 1386) March 4, 2013 – Referred to Communications, Energy, and Public Utilities; Environmental Preservation and Conservation; Appropriations Subcommittee on Finance and Tax; Appropriations

CS-HB 1357 / CS-SB 1594 – Guaranteed Energy, Water, and Wastewater Performance Savings Contract Act (Continuing to move)

HB 1357 and SB 1594 propose amendments to **Section 489.145**, F.S., the Guaranteed Energy, Water, and Wastewater Performance Savings Contract Act, including revising the terms "agency," "energy, water, and wastewater efficiency and conservation measure," and "energy, water, or wastewater cost savings"; providing that a contract may provide for repayments to a lender of an installation construction loan in installments for a period not to exceed 20 years; and authorizing certain facility alterations to be included in a performance contract and to be supervised by the performance savings contractor.

Recent Activity:

(CS-HB 1357) March 28, 2013 – Committee Substitute filed:

- retains the existing statutory requirement that cost calculations be based on the lifecycle costs provided in s. 255.255 and the prohibition on applying any grants, etc., in performing these calculations;
- deletes the proposed language allowing a performance contract to include "an improvement that is not causally connected to an energy conservation measure; and
- requires a proposed contract or lease to include an investment-grade audit certified by the Department of Management Services which approves cost savings.

March 29, 2013 – Now in appropriations committee

(CS-SB 1594) April 1, 2013 – CS by Communications, Energy, and Public Utilities:

- retains the existing statutory requirement that cost calculations be based on the lifecycle costs provided in s. 255.255 and the prohibition on applying any grants, etc., in performing these calculations;
- deletes the proposed language allowing a performance contract to include "an improvement that is not causally connected to an energy conservation measure; and

- requires a proposed contract or lease to include an investment-grade audit certified by the Department of Management Services which approves cost savings.

April 2, 2013 - Pending reference review under Rule 4.7(2) - (Committee Substitute); Now in Environmental Preservation and Conservation

SB 1620 – Municipal Public Works
(Likely Dead)

SB 1620 includes a comparable provision to HB 733, amending **Section 180.02**, F.S. to provide that certain corporate powers of a municipality relating to utility facilities do not extend or apply within unincorporated areas of any county without the consent of the board of county commissioners of such county.

Recent Activity:

(SB 1620) March 7, 2013 – Referred to Communications, Energy, and Public Utilities; Community Affairs; Judiciary; Rules -SJ 173; Introduced -SJ 173

Compare Bills: HB 733 – Government-Owned Utilities

HB 1231 / SB 1712 – Relating to Stormwater Management System Fees
(Likely Dead)

Identical HB 1231 and SB 1712 amend **Section 403.0893**, F.S., to provide that certain stormwater utility fees or per acreage fees constitute a lien on the land or premises until such fees are paid and to establish details relating to priority and foreclosure of such liens.

Recent Activity:

(HB 1231) March 8, 2013 – Referred to Agriculture and Natural Resources Subcommittee; Finance and Tax Subcommittee; State Affairs Committee -HJ 212

(SB 1712) March 7, 2013 – Referred to Environmental Preservation and Conservation; Judiciary; Rules -SJ 18; Introduced -SJ 181

CS-HB 7115 / SB 1808– Numeric Nutrient Criteria
(Likely to Pass)

Bills SB 1808 (formerly SPB 7034) and CS-HB 7115(formerly PCB SAC 13-02) amend current law to direct DEP to establish numeric nutrient criteria for remaining waterbodies in the state that were not covered under the rules approved by EPA on November 30, 2012. The bills also specify that once EPA removes federal numeric nutrient criteria and ceases future numeric

nutrient criteria rulemaking in the state, Rule 62-302.531(9), F.A.C., will be removed from the Florida Administrative Code. In addition, the bills exempt from legislative ratification any additional estuary criteria adopted by DEP during 2013. Lastly, the bills direct DEP to establish specific numeric nutrient criteria for unimpaired waters (including DEP's calculation of the current conditions of those waters) and for those estuaries and non-estuarine coastal waters without numeric nutrient criteria established by rule or final order as of the date of the report, and directs DEP to send a report to the Legislature and Governor conveying the status of establishing numeric nutrient criteria.

Recent Activity:

(CS-HB 7115) April 1, 2013 – the Rulemaking Oversight & Repeal Subcommittee adopted one technical amendment to Section 3. The amendment improved the language intended to effect the repeal of R. 62-302.531(9), F.A.C. when the EPA ceases rulemaking.

April 2, 2013 – CS by Rulemaking Oversight and Repeal Subcommittee read first time

(SB 1808) March 27, 2013 - Referred to Community Affairs; Introduced – SJ 273

Likely to Pass

<u>CS-SB 1122 / CS-HB 971 – Florida Fire Prevention Code</u>
(Late amendments, still moving)

CS-SB 1122 includes additional language authorizing authorizes fire-flow requirements to be decreased by authority that has jurisdiction over any isolated group of buildings in a rural area or small community as defined in the FFPC if that authority determines full fire flow requirements impractical. Local governments with populations fewer than 30,000 would be exempted from the state's minimum fire-flow requirements for one-to-two story residences, including national fire codes incorporated by reference.

Recent Activity:

(CS-SB 1122) April 2, 2013 – Committee Substitute by Community Affairs

- Revises specifications related to the decrease of fire flow requirements - authorizes fire-flow requirements to be decreased by authority that has jurisdiction over any isolated group of buildings in a rural area or small community as defined in the FFPC if that authority determines full fire flow requirements impractical. One or two story buildings that are less than 10,000 sq ft and which are classified as either for business or mercantile purposes would be exempted from any 2-hour or longer fire-rated requirement in the FFPC.
- Changes wall fire-rating enforcement provisions for certain structure occupancy
- separations.
- Modifies conditions that trigger an exemption from the Florida Fire Prevention Code for farming or ranching structures.

April 3, 2013 – Committee Substitute filed

(CS-HB 971) March 29, 2013 – Committee substitute text filed which authorizes fire-flow requirements to be decreased by authority that has jurisdiction over any isolated group of buildings in a rural area or small community as defined in the FFPC if that authority determines full fire flow requirements impractical. One or two story buildings that are less than 10,000 sq ft and which are classified as either for business or mercantile purposes would be exempted from any 2-hour or longer fire-rated requirement in the FFPC.

April 2, 2013 – On Local & Federal Affairs committee agenda, 4/04/13