

# Southwest Florida Water Management District



## Legislative Update

*This week in Tallahassee – March 5, 2013*

The 2013 Legislative Session got underway on March 5<sup>th</sup>. The Session is scheduled to last for 60 days, until May 3, 2013. Both presiding officers, Senate President Don Gaetz and House Speaker Will Weatherford, outlined their priorities to their respective chambers and then Governor Rick Scott gave his annual “State of the State” address to both the House and Senate and touched on his priorities for the Session.

The Governor’s proposed FY 2013-14 budget of \$74.2 billion proposes a number of components related to the environment and natural resources. The environmental budget totals \$3 billion. Highlights include:

- \$60 million for Everglades,
- \$75 million for land acquisition/Florida Forever, and
- \$215.6 million for drinking water/waste water facility construction.

There are several bills that the District is tracking this Session related to environment, water, land, agriculture, and other District-related issues including human resources, legal, ethics, and retirement issues. Each week we will highlight the bills that are moving through the process. As always if you have any questions, please contact Colleen Thayer, Public Affairs Bureau Chief, at [colleen.thayer@watermatters.org](mailto:colleen.thayer@watermatters.org).

### **Minimum Flows and Levels** HB7 (Reps. Porter/Pilon)/SB244 (Sen. Dean)

This legislation is the same bill that was filed (and almost passed) last year, requiring the districts to include certain reservations and water bodies in priority lists and schedules, and provides for adoption of certain reservations and minimum flows and levels by DEP. It requires the districts to provide certain information and support to DEP, and requires the districts to apply, without adopting by rule, certain reservations, minimum flows and levels, and recovery and prevention strategies. The bill enables water management districts to enter into interagency agreements to implement resource management activities by a single district when a local government has geographical areas that cross boundaries. Further, the legislation authorizes water management districts to enter into interagency agreements for resource management activities under specified conditions. This is an effort to promote interagency coordination among the water management districts where boundaries overlaps.

The legislation also exempts cooperative funding programs, which are not regulatory in nature but rather are cost-share programs with cooperators.

Update: HB 7 was reported favorably by the Agriculture and Natural Resources Subcommittee and is now in Rulemaking Oversight and Repeal Subcommittee. SB 244 has passed the Environmental Preservation and Conservation and Governmental Oversight and Accountability Committees and is now on the Senate Calendar.

### **State Lands** HB 33 (Rep. Smith)

This legislation authorizes individuals and corporations to submit requests to Board of Trustees of the Internal Improvement Trust Fund to exchange state-owned land for conservation easements over privately held land, and provides criteria for consideration of such requests. It encourages certain operations on such lands.

There is no Senate companion at this time; however, SB 466 by Senator Altman is similar.

Update: HB 33 was referred to the Agriculture and Natural Resources Subcommittee, Agriculture and Natural Resources Appropriations Subcommittee, and State Affairs Committee, but has not been heard.

### **Public-Private Partnerships**

HB 85 (Rep. Steube)/CS/SB 84 (Sen. Diaz de la Portilla)/SB 238 (Sen. Flores)

While not identical, these bills all facilitate public-private partnerships, when cost-effective, to construct public-purpose infrastructure projects.

HB 85 creates an alternative procurement process and requirements for public-private partnerships to facilitate the construction of public-purpose projects and specifies the requirements for the partnerships. The bill provides that responsible public entities may approve a qualifying project if there is a need for or benefit derived from the project, the estimated cost of the project is reasonable, and the private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

Update: HB 85 passed its first committee, the Government Operations Subcommittee. The bill is now in the Appropriations Committee.

CS/SB 84 provides legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose. The bill provides for notice to affected local jurisdictions as well as for comprehensive agreements between a public and a private entity. The bill specifies the requirements for such partnership. The bill lays out the financing sources for certain projects by a private entity. The applicability of sovereign immunity for public entities with respect to qualified projects is provided for in the bill.

Update: CS/SB 84 has passed its first committee, the Community Affairs Committee. It is now in the Governmental Oversight and Accountability Committee.

SB 238 provides legislative findings and intent relating to the construction or upgrade of facilities by private entities which are used predominately for a public purpose and requires public entities to develop and adopt guidelines governing procedures and criteria for the selection of projects and public-private agreements. It provides for financing from private sources and public entities and for the applicability of sovereign immunity for public entities with respect to qualified projects.

Update: SB 238 was referenced to five committees and has not been heard to date.

### **Consumptive Use Permitting for Development of Alternative Water Supplies**

HB109 (Rep. Young)/SB364 (Sen. Hays)

This legislation also was around last year but didn't cross the finish line. It is based on something that utilities, especially those that seek bonding for long-term water supply projects, want and it authorizes Consumptive Use Permits for 30 years along with the ability for up to an additional seven years, if, after the permit is issued, the applicant issues bonds for the project, completes construction, and requests a permit extension.

The bill prohibits a reduction in permitted water quantities during the extension of the permit, and excludes from application of the act a permit for nonbrackish groundwater or nonalternative water supplies. It also provides an option for the duration of an alternative water supply permit to a county, special district, regional water supply authority, multijurisdictional water supply entity, or publicly or privately owned utility.

There has been one amendment to the bills, replacing the wording “unanticipated harm” with the word “harm.” This wording relates to when a permitted alternative source quantity may be reduced during a compliance report review.

Update: HB 109 has passed both its committees of reference and will now move to the House floor. The Senate bill has passed through three committees already and has one last stop, Senate Appropriations.

**Southwest Florida Water Management District** HB147 (Rep. Pilon)/SB 412 (Sen. Detert)

This legislation would have reduced the number of Governing Board members of the District from 13 to 9 over a period of time. Both bills were withdrawn prior to introduction.

**Stormwater Management Permits** HB183 (Rep. Raulerson)/SB934 (Sen. Lee)

This, too, is legislation that has been filed before. The legislation would expedite the stormwater management permit process for projects that are located in an urban redevelopment area. The goal is to be able to redevelop those areas for economic purposes.

The bill authorizes local governments to adopt stormwater adaptive management plans and obtain conceptual permits for urban redevelopment projects and provides requirements for establishment of such permits by water management districts in consultation with DEP. It provides that certain urban redevelopment projects qualify for noticed general permit, and provides summary hearing requirements for challenges to consolidated environmental resource permits or associated variances or sovereign submerged lands authorizations proposed or issued by DEP in connection with specified deepwater ports.

Unlike last year the FDEP has almost completed its statewide ERP process and has taken almost all of the language related to this issue and put it into that proposed rule. So there is a lot of conversation related to the need for both statute and rule that in effect would do the same thing. The District also has issued Plant City a Conceptual Permit (more than a year ago) to move forward with their urban redevelopment projects.

Update: The House bill has not been heard. SB 934 is a comparable bill but not identical. It also has not been heard.

**Agricultural Lands** HB 203 (Reps. Beshears and Edwards)

Expands the definition of governmental entity as defined in law from adopting or enforcing any ordinance, resolution, rule, or policy to prohibit, restrict, regulate, or otherwise limit the activity of a bona fide farm operation on land classified as agricultural, if such activity is already regulated through BMPs or regulations adopted by rules by DEP, DACS, or a WMD; or if such activity is regulated by the USDA, US ACOE, or US EPA.

HB 203 was amended to exclude the WMDs from the definition of a governmental entity so that there is no impact to the WMDs.

Update: HB 203 is now in Local and Federal Affairs Committee and referred to State Affairs Committee. There is no Senate companion at this time.

**Manufacturing Development** HB357 (Rep. Boyd)/SB582 (Sen. Galvano)

This legislation is economic development driven and authorizes local governments to establish a local manufacturing development program that provides for master development approval for certain sites. It requires the Department of Economic Opportunity (DEO) to develop a model ordinance by December 1, 2013 containing specified provisions and requires local manufacturing development program ordinances to include certain information.

With regards to water management districts, the legislation requires DEO, in cooperation with participating agencies including WMDs, to establish a manufacturing development coordinated approval process for certain manufacturers and requires participating agencies, including Districts, to coordinate and review applications for certain state development approvals.

There are other provisions in the legislation to assist in expediting manufacturing development programs.

Update: HB 357 has been referred to Economic Development and Tourism Subcommittee, the Transportation, the Economic Development Appropriations Subcommittee, and Economic Affairs Committee. SB 582 has been referred to Commerce and Tourism Committee, the Community Affairs Committee, the Appropriations Subcommittee on Transportation, Tourism and Economic Development, and the Appropriations Committee. Neither bill has been heard.

**Southwest Florida Water Management District** SB666 (Sen. Stargel)

This legislation would direct the District to transfer certain water control structures and related real property interests to the Lake Region Lakes Management District. No House bill was filed.

**Water Quality Credit Trading** HB713 (Rep. Pigman)/SB754 (Sen. Grimsley)

The bill expands statewide the water quality credit trading program currently occurring only in the Lower St. Johns River Basin as a pilot project. The bill also provides that DEP may authorize water quality credit trading in adopted BMAPs, and entities that participate in water quality credit trades must timely report to DEP the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits. DEP is not permitted to participate in the establishment of credit prices.

Update: HB 713 passed the Agriculture and Natural Resources Subcommittee and is now in the Agriculture and Natural Resources Appropriations Subcommittee. SB 754 has been referred to Environmental Preservation and Conservation Committee, Community Affairs Committee and Appropriations Committee, but has not been heard to date.

**Springs Revival Act** HB789 (Rep. Stewart)/SB978 (Sen. Soto)

This bill creates Chapter 373.198 requiring the Districts by October 1, 2013 to identify the 1st and 2nd magnitude springs that are in decline based on historic water quality and flows that are not in DEP's rule for impaired water bodies, and requires Districts by July 1, 2014 to develop a 5-year plan to restore historic water quality and flows. It further authorizes the Districts to adopt rules or issue orders to implement the plan, and requires by January 1, 2014 and quarterly thereafter the Districts submit a report to the Governor, President of Senate and Speaker of House of Representatives on progress.

Initial review of the legislation indicates that it is duplicative of current programs and could be difficult and costly to implement. Staff continues to coordinate with FDEP and the Governor's office should this legislation move forward. To date, neither bill has been heard in a committee.

**Purchase of Land by a Governmental Entity** HB901 (Rep. Stone)/SB584 (Sen. Hays)

This is the legislation that has gotten quite a bit of media attention. It would limit the state, a county, or a municipality's ability to purchase land for conservation purposes.

Update: Both the Senate and House bills were referred to four committees and neither has been scheduled for a hearing to date.

**Water Supply** HB1063 (Rep. Hutson)/SB 948 (Sen. Grimsley)

SB 948/HB1063 were brought about by the Florida Department of Agriculture and Consumer Services (DACS) and require DACS to establish an agricultural water supply planning program to develop data regarding prospective agricultural water supply demand. FDEP and the Districts were brought in at the outset of this discussion as language for the bill was being developed.

As written, for purposes of regional water supply plans, the water management districts (WMDs) are required to consider the data supplied by DACS in determining the best available data for future agricultural water supply demands.

Specific provisions of the bill include:

- Adding utility companies, private landowners, water consumers, and DACS to the list of entities that should cooperate to meet the water needs of rapidly urbanizing areas. The bill also adds rural areas to “rapidly urbanizing areas.”
- Add “self-suppliers” to the list of entities the governing boards of the Districts must engage in planning to assist and assisting in meeting water supply needs.
- Add “self-suppliers” to the list of entities that WMDs may join with to carry out any of their powers.
- The bill requires regional water supply plans to include agricultural demand projections and that the projections must be based upon the best available data. The bill requires a full description of any adjustment or deviation from the data supplied by DACS to the District’s and that the original data must be presented along with the adjusted data.
- The bill strikes the word “alternative” from “alternative water supply development project options,” thus broadening the possible water supply development project options that may be considered and chosen by various entities for water supply development.
- The bill includes “self-suppliers” in the list of entities that Districts are to assist in developing multijurisdictional approaches to water supply project development, where appropriate.
- The bill requires DACS to establish an agricultural water supply planning program to supply the District’s with anticipated agricultural water supply demands based on at least a 20-year planning period that must be considered by the District’s when developing District water management plans.

Update: SB 948 passed the Environmental Preservation and Conservation Committee and Agriculture Committee. HB 1063 has been referred to three committees but not received a hearing to date.

**Environmental Regulation** HB999 (Rep. Patronis)/SB 1684 (Sen. Altman)

This is another permitting “streamline” bill, but much less intensive than the last couple of years. There are a few provisions in the bill that at this point impact the Districts. Specifically, the bill

- Clarifies conditions for competing CUPs;
- Amends Section 373.308, F.S., to provide that issuance of well permits is the sole responsibility of District’s, and prohibits governmental entities from imposing requirements and fees and establishes programs for installation and abandonment of groundwater well;
- Amends Section 373.323, F.S., to provide that licenses issued by the District’s are the only water well construction licenses requires for construction, repair or abandonment of water wells and authorizes license water well contractors to install equipment for all water systems.

The bill also revises provisions for general permits to provide for the expansion of certain marinas and limit the number of mooring fields authorized under such permits, defines “mean annual flood line,” exempts specified ponds, ditches, and wetlands from surface water management and storage requirements and exempts certain water control districts from wetland or water quality regulations.

At this point the legislation also contains the substance (although not identical) language contained in SB 948 related to DACS water supply planning. That is likely to come out of the bill at some point. Representative Patronis has scheduled a stakeholder meeting this week to hear concerns about the legislation.

Update: The House bill has been referred to Agriculture and Natural Resources Subcommittee, Agriculture and Natural Resources Appropriations Subcommittee, and State Affairs Committee. It has not been scheduled for a hearing yet. The Senate bill has been referred to Environmental Preservation and

Conservation Committee, Agriculture, Appropriations Subcommittee on General Government, and Appropriations. It also has not been heard.

**Environment** SB1104 (Sen. Brandes)

This is actually a transportation mitigation bill that includes a number of provisions to promote mitigation be implemented in a manner that promotes efficiency, timeless, and cost-effectiveness in project delivery. Specifically, the bill revises the criteria for mitigation of projected impacts, requires DOT to include funding for environmental mitigation for projects in its work program, and revises the process and criteria for the payment by DOT or participating transportation authorities' of mitigation implemented by the District's or DEP.

Further, the bill revises the requirements for payment to the Districts or DEP of the costs of mitigation planning and implementation of the mitigation required by permit, revises payment criteria for preparing and implementing mitigation plans adopted by Districts for transportation impacts based on environmental impact inventory, and revises District responsibilities relating to a mitigation plan.

The bill also amends the outdoor advertisement exemption criteria for a public information system passed last year related to the federal Highway Beautification Act.

FDEP and the Districts have been working with DOT on mitigation language and this continues to be a work in progress. The District still has concerns with a couple sections of this particular legislation.

Update: There is no House companion at this time, and this bill has not been heard in committee.

**Management and Storage of Surface Waters** SB1590 (Sen. Evers)

This legislation adds an exemption to include activities that require a permit issued by a local government which is similar to an ERP. It authorizes a local government to request DACS to make a binding determination as to whether an existing or proposed activity qualifies for an agricultural related exemption, and requires local governments to comply with the memorandum of agreement between the DEP and the water management district having jurisdiction.

SB 1590 has been referred to Environmental Preservation and Conservation Committee, the Agriculture Committee, and the Appropriations Subcommittee on General Government. It has not been heard, and there is no House companion bill.

**Florida Retirement System** HB7011 (Government Operations Subcommittee, Rep. Brodeur)

According to the staff analysis, the Florida Retirement System (FRS) is a multi-employer, contributory plan that provides retirement income benefits to 623,011 active members, 334,682 retired members and beneficiaries, and 40,556 members of the Deferred Retirement Option Program. It is the primary retirement plan for employees of the state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 185 cities and 257 independent hospitals and special districts that have elected to join the system.

There are two plan options available to members of the FRS: the defined benefit plan, also known as the pension plan, and the defined contribution plan, also known as the investment plan. The proposed legislation:

- Closes the pension plan (defined benefit) to new enrollees, and requiring all new enrollees to participate in the investment plan (defined contribution), effective January 1, 2014;
- Eliminates the option for new enrollees to apply for disability benefits, effective January 1, 2014;
- Expands the investment options available to investment plan members;

- Closing the Senior Management Service Optional Annuity Program to new participants and prohibits elected officials from joining the Senior Management Services Class, effective January 1, 2014.

The bill does not impact the ability of any current FRS enrollee to select participation in the pension plan or the investment plan. Changes included in the bill only pertain to new enrollees initially enrolled in the system on or after January 1, 2014.

There is comparable legislation in the Senate, SB1392, by Senator Simpson.

Update: The House bill passed the Appropriations Committee by a 13-9 vote. It moves to the State Affairs Committee. The Senate bill has not been heard.

### **Confirmations**

You may remember that other than approximately 8 individuals that were carry-over from 2011, no confirmations were voted on during the 2012 Session. Subsequently there are several hundred appointments, including the Governing Boards and executive directors of the water management districts, for various boards that will need action by the Governor and Senate this Legislative Session. Additionally, appointments that have been made subsequent to the 2012 Session will need action. To that end, this District has a number of appointments pending confirmation before Session ends on May 3<sup>rd</sup>.