



FLORIDA'S 2013 LEGISLATIVE SESSION WRAP-UP **Environmental and Water Bills**

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While continued environmental regulatory reform was initially not a high priority in Tallahassee this year, it turned out to be an active legislative session for environmental and water-related bills. Both the 2011 and 2012 sessions included major changes to environmental and growth management laws. Stormwater management, water supply, water quality trading, public-private partnerships, and numeric nutrient criteria are merely a few of the subjects addressed by the legislature in 2013. Overall, during the 2013 session, a total of 286 bills passed both the Senate and House. Gov. Scott signed 37 bills, and vetoed 11. The remaining bills were passed without signature.

The Appropriations Bill (SB 1500) included a relatively modest budget for conservation and Everglades restoration. Florida Forever was approved for \$70 million total, with \$10 million from general revenue, \$10 million from Land & Water Trust Fund for military buffers, and \$50 million from sales of surplus lands by Florida Department of Environmental Protection (FDEP). Everglades restoration projects were authorized for \$70 million from trust funds. Springs protection was granted \$10 million by the legislature. Greenways and trails funding was approved for \$10 million a year for 5 years from the FDOT Trust Fund.

Numeric Nutrient Criteria

Numeric nutrient criteria (NNC) are the regulatory criteria established by the FDEP to regulate the discharge of nutrients, namely nitrogen and phosphorus, into the state's waterbodies. The NNC resulted from years of litigation between environmental groups, the FDEP, the U.S. Environmental Protection Agency (EPA) and other interest groups. SB 1808 represents the final step in resolving the FDEP/EPA struggle over NNC.

The Bill directs FDEP to establish specific numeric nutrient criteria for unimpaired waters and for those estuaries and non-estuarine coastal waters without numeric nutrient criteria established by rule or final order. SB 1808 orders the FDEP to establish estuary specific nitrogen, phosphorus and chlorophyll-a criteria for any estuaries not already subject to NNC, and establish chlorophyll-a criteria for non-estuary coastal waters by December 1, 2014. The Bill directs FDEP to send a report to the Legislature and Governor conveying the status of establishing numeric nutrient criteria. Providing direction for implementing the NNC, the Bill codifies the document titled "Implementation of Florida's Numeric Nutrient Standards".

In essence, SB 1808 finalizes Florida's assumption of the regulation of nutrients in its waterbodies. However, the federal court must approve an amendment to the Consent Decree authorizing FDEP assume

primacy in NNC regulation. Further, the EPA's 2009 Determination Letter, finding that NNC for Florida were necessary, must be withdrawn.

Environmental Regulation

HB 999 was the vehicle by which a myriad of changes to environmental laws was accomplished. Among other things, the Bill limits the ability of local governments to request additional information on development permit applications to three requests unless waived by the applicant. HB 999 authorizes the lease of sovereign submerged lands for use as marinas, boatyards, and marine retailers, with restrictions. It also reduces the lease fees assessed for docks constructed over state-owned submerged lands.

The Bill revises how a water management district (WMD) will deal with competing water use permit applications. Further, HB 999 provides that a WMD may not reduce an existing permitted allocation of water as a result of water becoming available from a new seawater desalination plant that is not funded by a WMD.

HB 999 provides that WMDs, existing delegated local governments or delegated local county health departments have exclusive jurisdiction to issue well permits. However, those local programs without an existing delegation are restricted from implementing well permitting programs. Under the Bill, WMDs are the only entities authorized to issue licenses to water well contractors.

HB 999 authorizes several new permit exemptions related to agricultural ponds, and unauthorized changes to surface flow by adjoining property owners. Similar to SB 948 discussed below, HB 999 provides that the Department of Agriculture and Consumer Services (DACS) is given greater role in regional water supply planning.

The Bill specifies how the FDEP calculates annual fees for air pollution operation licenses. HB 999 provides that interstate natural gas pipelines qualify for expedited permitting under Ch. 403.

On the last day of the session, the legislature removed some controversial provisions of the Bill. First, the moratorium on fertilizer regulation by local governments was removed. Also, the section concerning impacts to wetlands by water control districts was stricken. Finally, the approved Bill did not include provisions related to payment of fees charged to governmental entities for stormwater utility bills.

Water Supply

SB 948 strengthens the role of agriculture in water supply planning process. It does so by adding DACS to the list of agencies the WMDs must consult with for regional water supply planning. Further, the WMDs must include agricultural demand projections in regional water supply plan. On the other hand, DACS must establish an agricultural water supply planning program that uses best available data to determine agricultural demand.

Additionally, SB 948 adds utility companies, private landowners, water consumers, and DACS to the list of entities that should cooperate to meet water needs. Finally, the Bill requires WMD engage with, and assist, "self-suppliers" during the regional water supply planning process.

Liability of Design Professionals

SB 286 creates a new Section 558.022, Florida Statutes, which limits the professional liability of “design professionals”. A design professional includes a licensed architect, interior designer, landscape architect, engineer, surveyor or geologist. Geologist is a new profession added to the definition. SB 286 provides that design professionals are not individually liable for damages resulting from their negligence occurring within the course and scope of professional services while employed or acting as an agent of a business entity.

The Bill provides specific conditions that must exist for such limitation on liability apply. Namely, the contract between the business entity and claimant must not name the design professional as a party to the contract, the contract must clearly state that an individual employee or agent may not be held individually liable, the business entity maintains professional liability insurance pursuant to the contract, and the damages alleged are economic, and do not extend to personal injuries or property not subject to the contract.

Water Quality Credit Trading

After several attempts, the legislature finally opened water quality credit trading throughout Florida with HB 713. Previously, trading was limited to a specified geographic area in the lower St. Johns River basin. The Bill provides that FDEP may authorize water quality credit trading through basin management action plans, and that participation is voluntary. Point or nonpoint sources that will achieve greater reductions than required by an adopted total maximum daily load or waste load allocation are now authorized to generate, register, and trade water quality credits created by excess reductions to enable other sources to achieve their reduced allocation. However, the generation of water quality credits does not remove the obligation of a source or activity to comply with applicable technology requirements or adopted best management practices. The sellers of water quality credits are responsible for achieving the load reductions on which the credits are based, as well as complying with the terms of applicable permits and any trading agreements into which they may have entered.

Public-Private Partnerships

Joining at least 6 other states, HB 85 creates the Florida Public-Private Partnership Act, which contains standards for agreements between public entities and private entities to finance, construct, develop or upgrade facilities or other public infrastructure defined as “qualifying projects”. Water, wastewater and surface water facilities are included as qualifying projects. The Bill addresses the procurement process, project qualification processes, project approval requirements, and comprehensive agreement requirements for qualifying projects. HB 85 authorizes, but does not mandate, governmental entities to accept unsolicited bids, and sets forth the notice/procedural requirements after receipt of an unsolicited bid. Once the public entity agrees to enter into a partnership, the Bill specifies the information which must be contained within the comprehensive agreement between the public and private entities. Finally, HB 85 creates a task force for the purpose of recommending guidelines for creating a uniform process for establishing public-private partnerships, including the types of factors public entities should review and consider when processing requests for public-private partnership projects.

Consumptive Use Permits for Alternative Water Supplies

To provide incentives, SB 364 creates longer duration permits for alternative water supplies (AWS). The Bill requires issuance of a permit duration of at least 30, and possibly as long as 37 years, for an alternative water supply project. Strengthening water conservation efforts, the Bill prohibits the WMDs from reducing the AWS allocation during the 10-year compliance review, unless a reduction is needed to address adverse environmental impacts or interference with existing legal users. A permit authorizing the use of non-brackish groundwater supplies or non-alternative water supplies may not enjoy the longer duration process of this Bill.

Onsite Sewage Treatment and Disposal Systems

HB 375 revises, and reduces some of the onsite sewage treatment and disposal system (septic tank) permitting and inspection requirements that were imposed by the legislature over the past several years. The Bill provides that single-family home owners may be approved by FDEP to operate and maintain their own onsite sewage. To do so, an owner-occupied, single family homeowner must receive certification from the treatment system's manufacturer that the property owner received training on service and installation of the system. Additionally, the Bill revises the compliance dates and compliance criteria for onsite treatment systems in portions of Monroe County and the Florida Keys.

Manufacturing Development

HB 357 creates an expedited permitting and development approval process for manufacturing projects, either new construction or expansion of an existing facility. Under the Bill, a local government may develop a local manufacturing development program that sets forth procedures and criteria for approval of a mater development plan. During the term of the master development plan, the local government may not require additional local approvals other than building permits.

Once a manufacturer applies for a master development plan under an approved local government manufacturing program, the Florida Department of Economic Opportunity (DEO) shall coordinate the permit approval process with other participating agencies, including: Florida Department of Environmental Protection, Florida Department of Transportation, Fish and Wildlife Conservation Commission, and the WMDs. The approval process for permits from these agencies must occur simultaneously with one another. The timeframes for approval from the participating agencies are reduced for manufacturing projects. The Florida DEO will keep a list of all local governments with local manufacturing development programs, and may promote those local governments to businesses seeking to conduct business in Florida.

Water Management Districts

SB 244 provides for the adoption of certain reservations and minimum flows and levels by the FDEP. The Bill requires WMDs to apply, without adopting by rule, the reservations, minimum flows and levels, and recovery and prevention strategies adopted by FDEP. SB 244 also requires a regional water supply authority and the applicable WMD to jointly develop the water supply component of the regional water

supply plan, including use of interagency agreements, when the geographic area of a study or project crosses WMD boundaries.

Everglades Improvement & Management

Everglades restoration and funding is typically a hot topic each year. This year's Bill, HB 7065, provides an additional funding mechanism for Everglades restoration, while encouraging agricultural property owners to implement best management practices to reduce the flow of nutrients into the Everglades. The funding is accomplished through a new per acre tax for agricultural property located in EAA to fund \$880 million Everglades restoration plan ("Long-Term Plan"). Additionally, the Bill authorizes \$32 million annually from general revenue and trust fund for FDEP Restoration Strategies Regional Water Quality Plan

Stormwater Management Permit

SB 934 authorizes certain municipalities and counties to adopt stormwater 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).