

NEWS AND NOTES – SESSION WEEK TWO

Numeric Nutrient Criteria

Litigation: Oral arguments on the consolidated federal litigation were made last week. Judge Hinkle indicated that he intends to rule on the matter quickly, and that he would not be considering actions being taken on the state level.

The state rule challenge is scheduled to be heard February 6-10.

Rule Ratification: Next week, we expect to see a PCB (proposed committee bill) introduced that will address the NNC legislative ratification process. The PCB will likely be presented in the Senate Environmental Preservation & Conservation Committee, scheduled to meet on Tuesday, January 24. A companion bill is expected to be considered by the House State Affairs Committee on Wednesday.

Everglades Water Supply Summit

This week in Tallahassee, the Everglades Foundation is sponsoring an Everglades Water Supply Summit to highlight the values associated with the protection and restoration of one of the world's most unique natural ecosystems. The Summit was intended to provide informative and thought provoking events designed to build momentum towards restoration funding and a secure water supply. The Summit included such esteemed speakers such as former Florida Governor and U.S. Senator Bob Graham, Governor Rick Scott, DEP Secretary Hershel Vinyard, EPA Regional Administrator Gwendolyn Fleming, Agriculture Commissioner Adam Putnam, Senators Mike Haridopolos and Paula Dockery, Representative Will Weatherford, and SFWMD Executive Director Mellissa Meeker.

Among the values extolled by these presenters included a 4-to-1 return on investment including the creation of jobs and economic gains in real estate and increased park visitation, flourishing habitat with improved hunting and fishing, and enhancement of the region's drinking water supply.

BILL ACTION

HB 115 - Relating to Land Application of Septage

During the 2010 session, SB 550 was passed by the Legislature which contained a number of provisions relating to onsite sewage treatment and disposal systems (septic tanks). One of the provisions of that legislation was the prohibition of the land application of septage waste by January 1, 2016. This bill repeals the prohibition on the land application of septage and the requirement that DOH provide a report recommending alternative methods to establish enhanced treatment levels.

The bill was passed this week by the House Agriculture and Natural Resources Committee, and will now move on to State Affairs, its final committee of reference.

HB 639 - Relating to Reclaimed Water

This bill removes reclaimed water from the current statutory definition of “water” and “waters in the state” until such time as the reclaimed water has been discharged back into state “waters.” The bill also provides that reclaimed water will remain a statutorily defined “alternative water supply” eligible for State and WMD alternative water supply funding.

The bill provides that WMDs are not authorized to require a CUP for the use of reclaimed water, but does not impair or limit the WMDs’ authority to regulate consumptive use permits (CUPs) for water from other sources, such as ground or surface waters, or to regulate the use of surface water or groundwater to supplement a reclaimed water system. Further, WMDs may neither restrict the use of reclaimed water, nor specify any user to whom a reuse utility must provide reclaimed water.

Lastly, the bill requires DEP to initiate rulemaking to adopt revisions to the Water Resource Implementation Rule to include criteria for the use of “impact offsets” and “substitution credits.” “Impact offset” is defined as “the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals.” “Substitution credit” is defined as “the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source.”

The bill was passed this week by the House Agriculture and Natural Resources Committee, and will now move on to the Rulemaking & Regulation Subcommittee, its third of four committees of reference.

HB 989 - Relating to Domestic Wastewater Discharged Through Ocean Outfalls

In 2008, SB 1302 was passed by the Legislature with the intent to protect Florida’s coastal waters and coral reefs by decreasing the amount of nutrients discharged into coastal waters. The bill required that by 2018, existing outfall discharges must meet advanced wastewater treatment (AWT) and management requirements. That legislation required that by 2025, 60% of the facility flows were to be reused for beneficial purposes.

This bill postpones the date by which domestic wastewater facilities must meet AWT requirements from December 31, 2018, to December 31, 2020. The bill provides that each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must install a functioning reuse system by December 31, 2025. The bill provides that a “functioning reuse system” means an environmentally, economically, and technically feasible system that provides a minimum of 60% of a facility’s baseline flow or, for utilities operating more than one facility, 60% of the utility’s entire wastewater system flow on an annual basis on December 31, 2025. The bill also defines “baseline flow” to mean the annual average flow of domestic wastewater discharging through the facility’s ocean

outfall, using monitoring data available from 2003 through 2007. The bill also provides that for utilities operating more than one outfall, the reuse requirement may be apportioned between the facilities served by the outfalls.

The bill was passed on Tuesday by the House Agriculture and Natural Resources Committee, and then on Thursday by the State Affairs Committee. It will now be placed on the calendar for second reading.

HB 1103 - Relating to Ordinary High-Water Mark for Navigable, Nontidal Waterbodies

This bill establishes criteria that must be applied when determining the location of the “ordinary high water mark” for navigable, nontidal water bodies, and defines the ordinary high water mark as the “highest reach of a navigable, nontidal water body as it usually exists when in its ordinary condition and is not the highest reach of such water body during the high water season or in times of freshets.”

The bill states that these criteria do not alter the public’s right to use navigable waters and sovereignty submerged lands for common law public trust purposes up to the ordinary high water mark, nor do they affect the ownership by the public of sovereignty submerged lands lying below that mark.

After heated debate on the issue, the bill was passed this week by the House Agriculture and Natural Resources Committee, and will now move on to the Civil Justice Subcommittee, its second of three committees of reference.

HB 1197 - Relating to Agriculture

This bill provides the Department of Agriculture and Consumer Services with the exclusive authority to regulate beekeeping, apiaries, and apiary locations. It also provides that an apiary may be located on land classified as agricultural land or on land that is integral to a beekeeping operation.

The bill also defines and exempts “farm signs” from the Florida Building Code and any county or municipal code or fee. A “farm sign” is defined as “a sign erected, used, or maintained on a farm by the owner or lessee of the farm which displays a message exclusively relating to farm produce, merchandise, services, or entertainment sold, produced, manufactured, or furnished on the farm.”

The bill was passed this week by the House Agriculture and Natural Resources Committee, and will now move on to the Community & Military Affairs Subcommittee, its second of four committees of reference.

HB 421 – Relating to Limited Certification for Urban Landscape Commercial Fertilizer Application

This bill provides legislative intent finding that the implementation of best management practices (BMPs) for commercial fertilizer application is a critical component of the state’s efforts to minimize

potential impacts to water quality. The bill states that persons who have obtained the limited certification for urban landscape commercial fertilizer application are required to follow BMPs, and are exempt from local government ordinances that address the fertilization of urban turfs, lawns, and landscapes. The bill grants DACS enforcement authority over persons that have obtained the limited certification for urban landscape commercial fertilizer application.

An amendment was (narrowly) passed this week limits the exemption to prohibited application period bans, and otherwise restores in local government the authority to regulate commercial applicators. After a long and contentious hearing before the Community and Military Affairs Committee, the bill was temporarily passed.

HB 999 - Relating to Onsite Sewage Treatment and Disposal Systems

This bill, pursuant to a strike-all amendment, repeals the state-wide onsite sewage treatment and disposal system evaluation program from SB 550 in 2010. This includes all program requirements, and the Department of Health's (DOH) rulemaking authority to implement the program.

The bill requires a county or municipality with a first magnitude spring to develop and adopt by local ordinance a septic system evaluation and assessment program, unless the county or municipality opts out. All other counties and municipalities may opt in. Existing septic system inspection programs are grandfathered in unless they contain a mandatory inspection at the point of sale in a real estate transaction.

If the evaluation program is adopted by a county or municipality, the bill requires:

- A pump out and evaluation of a septic system to be performed every five years, unless an exception applies;
- Only authorized persons to perform the pump out and evaluation;
- Notice to be given to septic system owners at least 60 days before the septic system is due for an evaluation;
- Penalties for qualified contractors and septic system owners who do not comply with the requirements of the evaluation program;
- Certain evaluation and assessment procedures to be followed during the inspection of a septic system;
- A county or municipality to develop a database based on evaluation reports submitted. This database, which may be Internet-based, is required to include certain information and allow for notification of homeowners when evaluations are due;

The bill provides that a local ordinance may authorize the assessment of reasonable fee to cover the costs of administering the evaluation program. The bill also defines "bedroom" and provides that a modification, replacement, or upgrade of a septic system is not required for a remodeling addition to a

single-family home if a bedroom is not added. The bill provides that a permit issued for the installation, modification, or repair of a septic system will transfer with the title to the property, and that a title is not encumbered upon transfer if new permit requirements are in place. The bill provides for the reconnection of properly functioning septic systems, and clarifies that such systems may not be considered “abandoned” after disaster or foreclosure.

The bill was passed this week by the Economic Affairs Committee, and will now move to the House Appropriations Committee, its second of three committees of reference.

SCWP1 - Relating to Consumptive Use Permits for Development of Alternative Water Supplies

This proposed committee bill (PCB) provides that permits approved for the development of alternative water supplies shall be granted for a term of at least 20 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit. The PCB provides that permits approved after July 1, 2012, shall be granted for a term of at least 30 years and that if, within 7 years, the permittee completes construction using its bonding authority; the permit shall be extended to expire upon the retirement of such bonds. This would amount to 30 years after construction is completed, but in no case greater than seven years after the original expiration date.

Permits will be subject to compliance reports, however, if the permittee demonstrates that bonds are outstanding, the quantity of alternative water allocated in these permits shall not be reduced unless needed to address unanticipated harm to water resources or uses present when the permit was issued.

The PCB was passed this week by the Select Committee on Water Policy.