

ENVIRONMENTAL NEWS AND NOTES
SESSION WEEK THREE

Numeric Nutrients

State Rule Challenge: The DOAH hearing was postponed by Administrative Law Judge Bram D. E. Canter until February 27 through March 2, 2012.

Legislative Ratification: **PCB 7184** was presented this week by the Senate Environmental Preservation and Conservation Committee. The bill would exempt the DEP rule, which was adopted by the Environmental Regulation Commission, from the legislative ratification process. The bill also directs the DEP to submit the rule to the EPA for approval. The bill was passed by the committee and was then submitted as a Committee Bill (filed as **SB 2060**). The bill has been placed on the calendar of the Environmental Preservation and Conservation Committee for 1/30/12, at 3:30 pm.

The House took similar action, with **PCB ANR 7** being passed out of the Agriculture and Natural Resources Committee, and then filed as HB 7051. The bill was then referred to the State Affairs Committee. The House State Affairs Committee unanimously approved the bill on Thursday, and it is expected to be placed on the Special Order Calendar next week.

BILL ACTION

SB 1132 – Relating to Beekeeping

This bill revises definitions in the Florida Right to Farm Act for “farm operation” and “farm product” so that the definitions include honeybee and aquaculture activities and the placement and operation of an apiary. The bill revises the definition of “apiary” and “apiculture” to allow honeybee hives to be placed on agricultural land or land integral to a beekeeping operation. Finally, the bill grants the Department of Agriculture and Consumer Services (DACCS) exclusive authority to regulate, inspect, permit, and determine placement of managed honeybee colonies.

The bill was passed unanimously this week in the Senate Agriculture Committee, and now moves on to the Budget Committee, its final committee of reference. The companion bill, **HB 1197**, was also passed unanimously by the Community & Military Affairs Subcommittee. The House bill has an additional section dealing with “farm signs” which exempts such signs from the Florida Building Code and any county or municipal code or fee, except for those which provide floodplain management regulations.

SB 1496 – Relating to Agritourism

This bill provides that it is the intent of the Legislature to eliminate duplication of regulatory authority over “agritourism.” The bill would prohibit a local government from adopting ordinances, regulations, rules or policies that prohibit, restrict, regulate or otherwise limit an activity of a bona fide agritourism operation on land that has been classified as agricultural by a property appraiser.

The bill was passed by the Senate Agriculture Committee this week, and now moves on to Community Affairs, its final committee of reference.

CS / SB 758 – Relating to Beach Management

This bill streamlines the permitting processes for coastal construction permits and joint coastal permits, including beach restoration and nourishment projects. In addition, the bill:

- Allows the Department of Environmental Protection (DEP) to issue coastal construction permits or joint coastal permits before an incidental take authorization is issued pursuant to the federal Endangered Species Act;
- Directs the DEP to adopt rules related to turbidity mixing zones to reduce or eliminate the need for variances;
- Requires the DEP to justify Requests for Additional Information (RAIs) by statute or rule;
- Clarifies that the DEP may not enforce guidelines as rules;
- Alleviates the need for a detailed review of a new application for a previously constructed project that met design expectations;
- Requires the DEP to amend rules related to beach maintenance projects and inlet sand bypassing activities; and
- Exempts from permitting certain exploratory activities related to beach restoration and nourishment.

The bill was passed by the Senate Community Affairs Committee this week and now moves on to the Budget Committee, its final committee of reference. The companion, **HB 691**, was passed this week by the Rulemaking & Regulation Subcommittee, and now moves on to the Agriculture & Natural Resources Appropriations Subcommittee, its third of four committee of reference.

CS / CS /SB 540 - Relating to Secondhand Dealers and Secondary Metals Recyclers

This bill regulates both secondhand dealers and secondary metals recyclers and requires that secondary metals recyclers maintain and transmit daily an electronic record of all the previous day’s purchase transactions to the appropriate law enforcement official. The bill creates and defines “restricted regulated metals property” and limits the liability of secondary metals recyclers for the conversion of motor vehicles to scrap metal. The bill also modifies the acceptable forms of payment and outlines time

restrictions relating to purchase transactions of regulated metals property and provides that the regulation of regulated metals property is preempted to the state except with respect to ordinances enacted prior to March 1, 2012.

Three amendments were adopted by the Community Affairs Committee this week including technical changes and a provision that states that a person who is found in a civil action to have illegally taken copper or other nonferrous metals from a utility or communications services provider is liable for damages equal to three times the actual damages sustained due to any personal injury, wrongful death, or property damage. The bill as amended passed unanimously and now moves on to Criminal Justice, its third of four committee of reference.

HB 639 – Reclaimed Water

DEP defines reclaimed water by rule as water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility. While the statutory definition of “water” or “waters in the state” broadly encompasses “any and all water on or beneath the surface of the ground,” it does not expressly include reclaimed water.

This bill expressly excludes reclaimed water from the definition of “water” and “waters in the state” until it is discharged and prohibits a WMD from requiring a permit for the use of reclaimed water. The DEP and WMDs may continue to require the use of reclaimed water in lieu of all or a portion of a proposed use of surface water or groundwater when the use of reclaimed water is available; is environmentally, economically, and technically feasible; and is of such quality and reliability as is necessary to the user. The bill also prohibits WMDs from specifying any user to whom a reuse utility must provide reclaimed water or restricting the use of reclaimed water.

The bill was passed this week by the Rulemaking & Regulation Subcommittee (12 Yeas, 3 Nays) and will now move on to State Affairs, its final committee of reference. The Senate companion, **SB 1086**, has been referenced but has yet to be heard in committee.

SB 1354 - Relating to Environmental Resource Permitting

This bill directs the Department of Environmental Protection (DEP) to adopt statewide environmental resource permit (ERP) rules. The Water Management Districts (WMDs) and delegated local governments are directed to implement the rules without rulemaking, except to conform to existing rules. The bill specifies the statewide ERP rules are to be based on existing DEP and WMD rules. Differences are allowed that are based on geographic differences in physical or natural characteristics.

The bill allows the WMDs, with DEP oversight, to continue to adopt rules governing design and performance standards for stormwater quality and quantity. “Grandfather” clauses are included for ongoing activities that will not be subject to the new rules. The bill also requires local governments

seeking delegation to implement the ERP program to use statewide ERP rules and gives local governments that have already received delegation, one year from adoption of the rules to conform their ordinances.

After an amendment was withdrawn, the bill was passed unanimously by the Senate Environmental Preservation and Conservation Committee and now moves on to Budget, its final committee 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 that was (narrowly) passed last 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 last week, the bill was temporarily passed. This week, the Committee continued the hearing and debate on the issue. The bill was eventually passed, as amended, by a vote of 9-6. The bill will now move to State Affairs, its final committee 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 Community & Military Affairs Subcommittee, and now moves on to Agriculture & Natural Resources Appropriations Subcommittee, its third of four committees of reference.

HB 503 – Relating to Environmental Regulation

The bill creates, amends, and revises numerous provisions relating to development and construction permitting, application and procedural requirements, and programmatic and regional general permits. Among other things, the bill:

- Prohibits a county or municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency;
- Provides that terms and conditions for coastal construction permit applications must be set forth by rule;
- Requires the DEP to cite certain provisions in requests for additional information;
- Prohibits the DEP from issuing guidelines that are enforceable as standards without going through rulemaking;
- Provides for streamlined permitting for periodic maintenance of beach nourishment and inlet management projects, and authorizes DEP to issue permits in advance of the issuance of incidental take authorizations as provided under the Endangered Species Act;
- Exempts municipalities from showing extreme hardship for sale, transfer, or lease of sovereignty submerged lands in the Biscayne Bay Aquatic Preserve, and allows dredging and filling for the purpose of creating a waterfront promenade;
- Expands the use of Internet-based self-certification services for certain exemptions and general permits;
- Requires action on certain permit applications within 60 days of receipt of last timely requested material and precludes state agencies from delaying action because of pending approval from other local, state, or federal agencies;
- Provides that the transfer of title for a petroleum contaminated site to a child of the owner or a corporate entity created by the owner to hold title for the site does not disqualify the site from financial assistance;
- Provides expedited permitting for any “inland multimodal facility” receiving and/or sending cargo to and/or from Florida ports;
- Exempts owners of onsite sewage treatment and disposal systems from the evaluation and assessment program unless the board of county commissioners has adopted a resolution to the contrary;
- Requires the DEP to establish reasonable zones of mixing for discharges into specified waters;
- Exempts any new solid waste disposal areas at an already permitted facility from having to be specifically authorized in a permit if monitored by an existing or modified groundwater monitoring plan;
- Extends the duration of all permits issued to solid waste management facilities that are designed with a leachate control system;

- Provides a general permit for a surface water management system under 10 acres under certain conditions;
- Requires local governments with populations greater than 400,000 to obtain delegation of state environmental resource permitting authority before 2016 or that government may not require permits that “in part or in full are substantially similar to the requirements needed to obtain an environmental resource permit.”

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

HB 7045 - Relating to Permits for Alternative Water Supplies

This bill 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 shall not be reduced unless needed to address unanticipated harm to water resources or uses present when the permit was issued.

An amendment was adopted this week which would make the 7-year permit extension also applicable to any 30-year permit granted between June 1, 2011 and July 1, 2012. The bill as amended was passed unanimously by the State Affairs Committee on Thursday.
