

2016 FLORIDA LEGISLATIVE UPDATE: ENVIRONMENT, GROWTH MANAGEMENT AND WATER

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ENVIRONMENTAL

BILLS THAT PASSED

CONSERVATION EASEMENTS (HB 749). Generally relating to agriculture, this bill also specifies that an allowable use of land subject to a conservation easement may include agricultural activities, such as silviculture, forest management, and livestock grazing, if such activities are a current or historic use of the land placed under the easement and the activities are conducted in accordance with the applicable best management practices adopted by DACS.

The act became effective on July 1, 2016; Chapter No. [2016-88](#)

CONTAMINATED SITES (SB 100). In addition to revising provisions relating to Petroleum Restoration Program (see below), the bill seeks to make selected statutory changes and clarifications for the implementation of risk-based corrective action (RBCA) provisions that govern site rehabilitation of contaminated sites. Specifically, the proposed changes:

- Clarify the definition of “background” to conform to current practices which can provide for reasonable consideration of background conditions other than those which are naturally occurring, such as is the case for the definition of background conditions when determining the applicable groundwater quality standard under Chapter 62-520, Florida Administrative Code (F.A.C.).
- Clarify that long term natural attenuation (for a period greater than five years) is an allowable cleanup strategy and may be the most appropriate strategy for some sites.
- Modify language with regard to consideration of the interactive effects of chemicals when determining that site cleanup is deemed complete.
- Clarify language with regard to establishing compliance with surface water criteria for contaminated sites.
- Allow for the unconditional closure of contaminated sites when the groundwater no longer exceeds any human-health based criteria, but may still exceed criteria based on taste, odor or nuisance criteria. Such closures would be limited to situations where none of the groundwater criteria were exceeded at the property boundaries and where the groundwater will not affect any surface water body.

- Conform existing statutory Brownfield RBCA provisions to changes made by this bill in the global RBCA statute.

The act became effective July 1, 2016, Chapter No. [2016-184](#)

DREDGE AND FILL ACTIVITIES (SB 1176). This bill amends section 373.4144, Florida Statutes, to increase the acreage threshold for the Department of Environmental Protection (DEP) to implement a voluntary state programmatic general permit (SPGP) program for dredge and fill activities under agreement with the Corps of Engineers. The program would be focused on dredge and fill activities affecting 10 acres or less (wetlands or surface waters). An applicant seeking to use a SPGP must consent to federal wetland jurisdictional criteria. The bill also authorizes DEP to pursue delegation of the federal wetlands permitting program and eliminates the requirement that such delegation must include all dredge and fill activities in state or federal jurisdictional wetlands or waters, including navigable waters.

The act became effective April 6, 2016; Chapter No. [2016-195](#)

DEP RE-ORGANIZATION (HB 561). This bill amends Section 20.255, F.S., “Organizational Structure,” to provide the Secretary of DEP the authority to establish divisions as necessary to accomplish the missions and goals of DEP; the authority to establish offices as necessary to promote the efficient and effective operation of DEP; delete the required establishment of certain offices and divisions. Those changes include:

- Amends Subsections 20.255(2)(a), F.S., to remove references to specific special offices within DEP;
- Amends Subsection 20.255(3), F.S., to remove references to specific divisions within DEP;
- Amends Subsection 20.255(2), F.S., to grant the Secretary of DEP authority to establish divisions and appoint directors including, but not limited to, the following areas of program responsibility; water resources management, regulatory programs, and lands and recreation;
- Amends Subsection 20.255(2), F.S., to grant the Secretary of DEP authority to establish, separate, delete and/or combine offices, as deemed necessary, in consultation with the Executive Office of the Governor;
- Amends Paragraph 20.255(2)(b), F.S., to remove the specific number of administrative districts; and
- Amends Paragraph 20.255(2)(b), F.S., to remove language related to the number of assistant or deputy directors each division may have.

The act became effective July 1, 2016; Chapter No. [2016-85](#)

ENVIRONMENTAL CONTROL (HB 589). This bill makes the following changes to the law:

1. Repeals Section 373.245, F.S. This section provided supplemental liability for violations of consumptive use permit conditions that damage abutting permitholders.
2. Revises the licensure requirements for water well contractors.

3. Provides that when the beneficial use of a constructed clay settling area (CSA) of a phosphate mine is extended, the rate of reclamation requirements and the financial responsibility requirements apply to the CSA when the beneficial use of the CSA is complete.
4. Allows the use of land set-asides and land use modifications not otherwise required by state law or permit, including constructed wetlands or other water quality improvement projects that reduce nutrient loads into nutrient impaired surface waters to generate water quality credits for trading.
5. Provides that the limitation on the granting of a variance do not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Protection Agency.
6. Expands the allowable use of funds in the solid waste landfill closure account. The repealed date for the account is removed. The use of the Solid Waste Management Trust Fund is authorized to pay or reimburse additional expenses needed for performing or completing approved facility closure or long-term care under certain circumstances.
7. Requires a Florida registered professional to certify that a stormwater management system will meet additional requirements for a general permit. The certification must be submitted to DEP or water management district before, rather than after, construction of the stormwater management system begins.

The act became effective March 25, 2016; Chapter No. [2016-130](#)

FLORIDA KEYS STEWARDSHIP ACT (HB 447). This bill makes the following changes:

1. Expands the use of the local government infrastructure surtax to include acquiring any interest in lands for public recreation, conservation or protection of natural resources or prevent or satisfy any property rights claims resulting from limitations imposed by the designation of an area of critical state concern.
2. Expands the definition of infrastructure under the local government infrastructure surtax to include any fixed capital expenditure or fixed capital outlay associated with all professional and related costs to bring public facilities. “Public facilities” is defined broadly to include a wide variety of major capital improvements, such as transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities; healthcare systems and facilities; and water management and control facilities, alternative water supply systems, and certain spoil disposal sites for maintenance dredging in waters of the state.
3. Adds the City of Key West Area of Critical State Concern (ACSC) to the list of eligible areas for which Everglades restoration bonds may be issued and expands the range of uses to include projects that protect, restore, or enhance nearshore water quality and

fisheries, such as storm water or canal restoration projects, and projects to protect and enhance the water supply for the Florida Keys.

4. Allows lands that are purchased in the Florida Keys ACSC and the City of Key West ACSC from Everglades restoration bond proceeds to be surplus under certain circumstances. The applicable general purpose local government must agree to the disposal of lands and must be offered the first right to purchase those lands.
5. Revises DEP's criteria for recommendation to the Board of Trustees for the purchase of conservation lands in an ACSC to include:
 - a. Lands that conserve habitat;
 - b. Lands that protect, restore, or enhance nearshore water quality and fisheries;
 - c. Lands used to protect and enhance water supply to the Florida Keys, including alternative water supplies such as reverse osmosis and reclaimed water systems; and
 - d. Lands used to prevent or satisfy property rights claims resulting from limitations imposed by the designation of an area of critical state concern if the acquisition of such lands fulfills a public purpose listed in s. 259.032(2), F.S.
6. Requires that of funds appropriated to the DEP in the Florida Forever Act for land acquisition and capital projects, a minimum of \$5M annually is allocated within the Florida Keys ACSC beginning in FY 17-18 through FY 26-27.
7. Appropriates to the DEP \$5M in nonrecurring GR for FY 16-17 for various water purposes and to enhance water supply in the Florida Keys ASCS and City of Key West ACSC, or alternatively, for the purposes of land acquisition within the Florida Keys ACSC.
8. Provides that the ACSC land authority may only make an acquisition or contribution if it is not used to improve public transportation facilities or otherwise increase road capacity to reduce hurricane evacuation clearance times.

This act became effective July 1, 2016; Chapter No. [2016-225](#)

NATURAL GAS REBATE PROGRAM (SB 90). This bill authorizes the Department of Agriculture and Consumer Services (DACS) to receive applications for additional rebates from the natural gas fuel fleet vehicle rebate program, giving initial preference to governmental applicants over commercial applicants. Applications are received June 1-June 30 from applicants that have reached the program's annual fiscal year maximum of \$250,000 in rebates. Applicants are eligible to receive rebates on a first come, first-served basis, until all funds for the fiscal year are expended. The maximum additional amount an applicant after June 1 of each year may receive is \$25,000 per vehicle, up to a total of \$250,000. Any unencumbered funds remaining in the natural gas fuel fleet vehicle rebate program after June 30 of each fiscal year will revert to the General Revenue Fund. SB 90 passed as amended and was signed by the Governor.

The act became effective July 1, 2016; Chapter No. [2016- 183](#)

PETROLEUM RESTORATION PROGRAM (SB 100). In addition to addressing contaminated sites (see above), the bill:

Amends the eligibility requirements for the Abandoned Tank Restoration Program (ATRP) by striking both the June 30, 1996, deadline to apply to the ATRP and June 30, 1996, application deadline for the waiver for those financially unable to properly close the storage tank. The provisions would also strike the reference to independent petroleum related liability and defense provisions under Paragraph 376.308(1)(c), F.S., that are separate from the ATRP funding eligibility requirements.

Amends several provisions of the low-scored site initiative (LSSI, renaming it the low-risk site initiative). It amends the “No Further Action” requirements by eliminating the one-quarter acre restriction and allows the contamination plume to be located off-site if it is located on property owned by the Florida Department of Transportation. The bill increases the amount of funds the DEP may approve for performing site assessment from \$30,000 to \$35,000. The bill allows for the approval of an additional \$35,000 for limited remediation activities needed to achieve a “No Further Action” order. The bill extends the amount of time to complete the assessment and limited remediation from six to nine months. Additionally, language is added to allow for a six-month extension if additional groundwater monitoring is necessary. The bill increases from \$10 million to \$15 million the funds available to be encumbered for this program. Lastly, the bill provides that if a site rehabilitation completion order is issued under this section and it is later determined that the discharge still may pose a threat to public health, safety or welfare, water resources or the environment, site rehabilitation may resume under the respective state-funded program.

Amends language related to the Petroleum Cleanup Participation Program (PCPP). The current PCPP provides state funding to sites where a discharge occurred before January 1, 1995, with an application deadline of December 31, 1998. Once eligible, the sites receive up to \$400,000 of funding assistance with a 25 percent copayment requirement on the part of the owner, operator or responsible party. The bill specifies that the petroleum contamination must be from a petroleum storage system. The bill removes the PCPP application deadline, regardless of whether ownership of the property has changed.

Decreases the threshold for the number of sites from 20 to 10 that would be needed for a bundle to be eligible to compete for performance based contracts for advanced cleanup by demonstrating a commitment to pay or demonstrating a cost savings of at least 25 percent to DEP under the program. The bill also increases the total annual appropriation for this effort from \$15 million to \$25 million. It would also permit a property owner or responsible party to enter into a voluntary cost-share agreement in which they commit to bundle multiple sites and lists those sites that will be included in future advanced cleanup bundles. These bundles would not be subject to agency term contractor assignment. DEP would be allowed to terminate these agreements if the party failed to submit an application to bundle multiple sites within an open application period.

The act became effective July 1, 2016; Chapter No. [2016-184](#)

PREEMPTION OF LOCAL REGULATION OF POLYSTYRENE PRODUCTS (CS/CS/HB 7007). This bill generally addresses a variety of issues relating to the powers and duties of DACS. It was amended to preempt local bans or regulations of the use of polystyrene products by businesses regulated under Chapter 500, Florida Statutes. Polystyrene includes products such as Styrofoam and can be found in cups, coolers, and cold food packaging. Chapter 500 regulated businesses include grocery stores, restaurants and convenience stores. As amended, the bill still allows local governments to ban polystyrene products in areas such as public beaches and parks.

This act became effective July 1, 2016; Chapter No. [2016-61](#)

SMALL COMMUNITIES ASSISTANCE/SPECIAL DISTRICTS (HB 525). This bill amends Section 403.1838, F. S. to allow DEP to award grants for sewer service to special districts serve a disadvantaged small community with populations of 10,000 or fewer persons.

The Act became effective July 1, 2016; Chapter No. [2016-55](#)

SPRINGS PROTECTION ZONES/STATE LANDS (HB 1075). Generally dealing with state lands, this bill also creates s. 373.469, F.S., and requires the Fish and Wildlife Conservation Commission (FWC) to establish protection zones restricting the speed and operation of vessels to prevent harm to Florida's springs. Under the bill, harm includes negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic species. The bill requires the FWC to develop each protection zone in cooperation with the jurisdictional water management district and local government. If the zone includes navigable waters of the United States, the FWC must also coordinate with the Coast Guard and the Corps of Engineers. Any individual who operates a vessel in violation of a spring protection zone is subject to citation and penalties.

The act became effective July 1, 2016; Chapter No. [2016-233](#)

STATE LANDS (HB 1075); The bill also reorganizes Chapters 253 and 259, F.S., to streamline the acquisition, surplus and management processes for state lands. Obsolete language was identified for deletion. Various sections within Chapter 259, F.S., were relocated to Chapter 253, F.S., and some sections within Chapter 253, F.S., were relocated elsewhere within Chapter 253, F.S., for better organization and to avoid the potential for conflict and confusion caused by related processes being spread across two different chapters. The wording "...consistent with the purposes for which the lands were acquired" has been eliminated throughout the text to clarify that management of these lands will focus on uses "compatible with conservation or recreation purposes."

This legislation revises the Florida Forever Act to direct the Acquisition and Restoration Council (ARC) to give additional weight in the list to two additional projects - projects that contribute to the improvement of groundwater quality and quantity, and improvement of spring flow criteria.

Language regarding the identification of lands for potential surplus by land managers in their management plans is revised. The bill adds a requirement for the Department of Environmental Protection's (DEP) Division of State Lands (DSL) to perform a comprehensive analysis of all

state-owned conservation lands every 10 years to identify lands no longer needed for conservation. It requires the Board of Trustees of the Internal Improvement Trust Fund (BOT) to consider and dispose of such lands, when three or more members are in favor of the surplus of such lands. It also adds the requirement to review non-conservation lands every 10 years to identify lands that should not be retained in public ownership.

Section 253.42, F.S., is revised to establish a process for the request of a landowner whose property is contiguous to state-owned lands to submit an exchange request to the DSL and sets forth criteria for such exchanges.

Section 253.87, F.S., sets a date of July 2018 for the Florida State Owned Lands and Records Information System (FL-SOLARIS) database to include all federally owned conservation lands, all lands on which the federal government holds a permanent conservation easement and all lands on which the state holds a permanent conservation easement. In addition, by July 2018, each county and municipality must identify all conservation lands they own in fee simple and lands on which they hold a permanent conservation easement, for addition to that database.

The act became effective July 1, 2016; Chapter No. [2016-233](#)

WASTE MANAGEMENT/LANDFILL CLOSURE (SB 922). This bill makes a series of changes concerning authorized uses of revenues deposited into the Solid Waste Management Trust Fund. Provisions of the bill:

- Provide that up to 37 percent of revenues to Solid Waste Management Trust Fund (SWMTF) be used for funding a waste tire abatement program and a solid waste management grant program. Of that funding, no more than 5 percent may be used for the Department of Environmental Protection's (DEP) waste tire abatement program.
- Re-create and modify provisions adopted in 2015, and scheduled to sunset on July 1, 2016, which created a solid waste landfill closure account. The modifications would expand the circumstances under which DEP may use funds, if appropriated, to perform or complete needed closure and long-term care activities where funds from financial assurance mechanisms are insufficient or otherwise not available.
- Expand the use of grant funds awarded to small counties to include waste tire abatement in addition to general solid waste management, litter prevention and control, and recycling and education programs as currently allowed.
- Delete a provision that provided for a waste tire grant program.
- Delete a provision that directed funds from the Solid Waste Management Trust Fund appropriated for grants be distributed equally between the small county consolidated grant program and the waste tire grant program.

The act became effective July 1, 2016; Chapter No. [2016-174](#)

BILLS THAT DIED

FRACKING – CONSTITUTIONAL AMENDMENT (SJR 358). Would have created Section 29 of Article X of the State Constitution to prohibit hydraulic fracturing in Florida. This measure was never heard.

FRACKING – STATUTORY PROHIBITION (HB 19/SB 166): While drafted differently, would have prohibited hydraulic fracturing in Florida.

FRACKING/LOCAL PRE-EMPTION (HB 191/SB 318). These bills would have amended Part I of Chapter 377, F.S., “Regulation of Oil and Gas Resources,” to provide for: increased fines; consideration of a permit applicant’s previous violations of oil and gas regulations; definition of high-pressure well stimulation; permitting oversight of and permitting criteria for high-pressure well stimulations; clear monitoring and inspecting authority; financial surety; and disclosure of chemicals used for a high-pressure well stimulation to DEP during permitting and within 60 days after initiation of the high-pressure well stimulation; the language requires DEP to report such information (excluding any information subject to Chapter 688, F.S.) to a disclosure registry, FracFocus.

In addition, the bills would have required DEP to conduct a study of the effects of high pressure well stimulations, and they included an appropriation for DEP to complete the study. The bills also would have required DEP to adopt administrative rules to ensure that all precautions are taken to prevent spillage of oil or other pollutants during high-pressure well stimulations, as well as to implement the chemical disclosure registry in Florida. Finally, the bills would have preempted all regulation pertaining to oil and gas exploration, drilling and production to the state.

- Section 1: Amends Section 377.06, F.S., to preempt local government regulation of the exploration, development, production, processing, storage, and transportation of oil and gas, and voids any such local regulations already enacted. Existing zoning ordinances adopted before January 1, 2015, are not affected.
- Section 2: Amends Section 377.19, F.S., to revise the definition of “division” to refer to the Division of Water Resource Management and to define “high-pressure well stimulation” to include hydraulic and acid fracturing but to exclude conventional, near-wellbore well stimulation activities.
- Section 3: Amends Section 377.22, F.S., to specify that DEP’s order and rulemaking authority extends to high-pressure well stimulation; to direct DEP to develop regulations for high-pressure well stimulation; to clarify that financial security be conditioned upon proper drilling, casing, producing, operating, and plugging of wells; to require DEP inspection during certain well-testing activities; and, to direct DEP to evaluate an applicant’s history of past adjudicated violations.
- Section 4: Amends Section 377.24, F.S., to require that a permit be granted prior to performance of high-pressure well stimulation; to clarify that DEP may only deny an application for high-pressure well stimulation for lawful cause; to prohibit DEP from issuing a permit for high-pressure well stimulation until DEP adopts rules for high-pressure well stimulation, which are based upon the findings of the study authorized in

the newly-created section 377.2425, and such rules take effect; and, to require that rules for high-pressure well stimulation must be submitted to the President of the Senate and Speaker of the House of Representatives and that they will not take effect until they are ratified by the Legislature.

- Section 5: Amends Section 377.241, F.S., to require that DEP consider during permit application review whether a proposed high-pressure well stimulation will contaminate groundwater at the well site, and to provide that DEP may deny a permit application, impose specific permit conditions, or require increased bonding up to five times applicable limits based on an applicant's history of past adjudicated, uncontested, or settled violations, including those that have occurred outside the state.
- Section 6: Amends Section 377.242, F.S., to specify that DEP is authorized to require permits for high-pressure well installation, and to clarify that a permit holder may not prevent inspection during performance of specific site activities.
- Section 7: Amends Section 377.2425, F.S., to require financial surety for high-pressure well stimulations.
- Section 8: Creates Section 377.2436, F.S., to require DEP to conduct a study on high-pressure well stimulations; to require DEP to continue conventional oil and gas business operations during performance of the study; to provide that the study is subject to peer review; to require DEP to submit the study to the Governor.

The House bill passed the House; the Senate bill passed a number of committees, but failed in the Appropriations Committee, 9-10.

LAND APPLICATION OF SEPTAGE (SB 658/HB 851): These measures would have eliminated the upcoming prohibition on the land application of septage from onsite sewage treatment and disposal systems. The Florida Onsite Wastewater Association (FOWA) was the primary proponent of these bills. FOWA also attempted to amend other legislation with a two-year extension on the effective date of the prohibition on land application. However, both the stand-alone bills and attempted amendments were unsuccessful. As such, beginning July 1, 2016, the land application of septage from onsite sewage treatment and disposal systems is prohibited. See Section 381.0065(6), F.S.

MITIGATION BANKS (HB 1238/SB 1232): Currently mitigation banking law requires a governmental entity creating a mitigation bank on conservation lands to comply with the same financial assurances as a private mitigation bank. The amendment to Section 373.4136, F. S. would have exempted mitigation banks for mining construction aggregate materials including mitigation for the removal and management of exotic plant species.

PLASTIC BAGS (SB 306): This measure would have allowed certain local governments in coastal communities with a population of less than 100,000 to regulate or ban plastic bags as part of a pilot program that includes certain regulatory and data collection requirements. New taxes or fees on the use or distribution of plastic bags would be prohibited under the terms of the proposed pilot program. Any regulation or ban must be enacted by ordinance, shall not take effect earlier than January 1, 2017, and must expire no later than June 30, 2019. Data on the impact of the pilot program must be submitted to the municipality at a public hearing, with a copy of the report also made available to the Department of Environmental Protection. SB 306

was filed without a House companion, passed its first senate committee of reference (Environmental Preservation and Conservation) by 8-1 margin and ultimately died after not being heard in its second committee of reference (Community Affairs).

WASTE MANAGEMENT (SB 1192). This measure would have:

- Precluded a local government from preventing a private company from listing separately on the company's invoice for solid waste collection, disposal, or recycling any governmental taxes or fees;
- Amended provisions regulating local government competition with solid waste collection companies to include disposal and recycling; and
- Created the crime of theft of recyclable property and provided for a civil right of action for violations.

FUNDING

LEGACY FLORIDA (HB 989). The bill requires the following minimum distributions from the Land Acquisition Trust Fund to be appropriated annually:

1. The minimum of the lesser of 25 percent of the funds remaining after the payment of debt service or \$200M, whichever is less, for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), including the Central Everglades Planning Project, the Long-Term Plan (also referred to as "Restoration Strategies", and the Northern Everglades and Estuaries Program. The bill requires that from these funds, \$32M will be distributed each year through FY 23-24 to the South Florida Water Management District (SFWMD) for the Long-Term Plan. From the funds remaining, a minimum of the lesser of 7.6 percent or \$100M will be appropriated each year through FY 25-26 for the planning, design, engineering and construction of the CERP. The bill requires the DEP and the SFWMD to give preference to projects that reduce harmful discharges from Lake Okeechobee to the St. Lucie or Caloosahatchee estuaries in a timely manner.
2. The minimum of the lesser of 7.6 percent of the funds remaining after the payment of debt service or \$50M for spring restoration, protection, and management projects, whichever is less.
3. 5M through FY 25-26 for projects dedicated to the restoration of Lake Apopka.

This act became effective July 1, 2016, Chapter No. [2016-201](#)

Note: Some environmental interest groups remain dissatisfied with the manner in which the Legislature has implemented Amendment 1, which was approved by voters in 2014. They have filed suit challenging the legislature's implementation of Amendment 1, and recently have [asked](#) the court to declare the appropriations unconstitutional.

GROWTH MANAGEMENT

BILLS THAT PASSED

GROWTH MANAGEMENT (HB 1361). The bill makes several changes to the state's growth management programs. Specifically, the bill:

- Adds that a county governing board may hold joint public meetings with the governing body or bodies of one or more adjacent municipalities or counties to discuss matters regarding land development or other multi-jurisdictional issues at any appropriate public place within the jurisdiction of any participating municipality or county;

- Establishes a timeframe for issuing a final order if the state land planning agency fails to take action; in particular, the bill provides that recommended orders submitted to the Department of Economic Opportunity (DEO) by an ALJ regarding a challenged comprehensive plan amendment become final within certain periods absent agency action or an agreement to extend the time:

 - *In cases in which the ALJ recommends that the amendment be found in compliance, the recommended order becomes the final order 90 days after issuance unless within that time: DEO finds the plan amendment to be in compliance and issues its final order; DEO finds the plan amendment not in compliance and it refers the recommended order to the Administration Commission for final action; or all parties consent in writing to an extension of the 90-day period.

 - *In so-called expedited proceedings under Section 163.3184(3), Florida Statutes, if the ALJ recommends that the amendment be found in compliance, DEO must issue a final order within 45 days after issuance of the recommended order. If DEO fails to timely issue a final order, the recommended order finding the amendment to be in compliance immediately becomes the final order.

- Amends the minimum acreage for application of a sector plan from 15,000 to 5,000 acres;

- Changes the acreage for annexation of enclaves under certain circumstances from 10 to 110 acres;

- Replaces the Administration Commission with the state land planning agency (DEO) as the reviewing entity for modifications and proposed changes dealing with plans and regulations for the Apalachicola Bay Area of Critical State Concern;

- Authorizes a developer, DEO, and a local government to amend a development of regional impact (DRI) agreement when a project has been determined to be essentially built out;

- Authorizes a local government to approve the exchange of one approved DRI land use for another so long as there is no increase in impacts to public facilities;

- Specifies that persons do not lose the right to complete DRIs upon certain changes to those developments;

- Clarifies that certain proposed developments which are currently consistent with the local government comprehensive plan are not required to be reviewed pursuant to the State Coordinated Review Process for comprehensive plan amendments [also passed the Senate early as SB 7000].

- Revises conditions under which the DRI aggregation requirements do not apply; and

- Establishes procedures relating to rights, duties, and obligations related to certain development orders or agreements if a development elects to rescind a development order

The act became effective July 1, 2016; Chapter No. [2016-148](#)

AGRITOURISM (HB 59); This bill amends the legislative intent in s 570.85, F.S., to express the Legislature’s intent to promote agritourism. The bill provides that a local government may not "enforce" (as well as adopt) any local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461, F.S. However, the bill specifies that a local government is not limited by the prohibitions when adopting or enforcing local regulations that address substantial off-site impacts of agritourism activities.

The bill adds “civic,” “ceremonial,” and “training and exhibition” activities to the enumerated list of agritourism activities defined in s. 570.86, F.S. It also adds “livestock operation” to the list of places where an agritourism activity can occur.

The bill amends s. 570.87, F.S., to provide that lands classified as agricultural under 193.461, F.S., cannot be divested of that classification as long as the land remains used primarily for bona fide agricultural purposes.

The Act became effective July 1, 2016; Chapter No. [2016-14](#)

WATER

BILLS THAT PASSED

ANCHORING LIMITATION AREAS (CS/CS/HB 1051). Prohibits the overnight anchoring of vessels in five specified anchoring limitation areas in Broward and Miami-Dade Counties. Exceptions for severe weather, mechanical breakdown, and similar situations were included. The bill provides a sunset upon the adoption of recommendations from the Florida Fish and Wildlife Conservation Commission’s anchoring and mooring pilot program, scheduled to conclude in July 2017. HB 1051 passed as amended and was signed by the Governor.

The Act became effective July 1, 2016; Chapter No. [2016-96](#)

WATER (CS/SB 552); Was the first legislation passed by the 2016 Florida Legislature (January 14th, 2016) and signed into law by the Governor January 21st, 2016. It is a 134 page omnibus act substantially modifying numerous areas of current water law relating primarily to water quality, water quantity, and springs protection. The act amends the following provisions of Florida law:

1. Section 259.02(9), F.S. By July 1, 2017, the Department of Environmental Protection (DEP) must publish, update and maintain a downloadable data base of state-owned conservation lands where public access is compatible with conservation and recreation purposes. The data base must include location, types of allowable recreational opportunities, points of public access or other amenities or restrictions appropriate to increase public awareness of recreational opportunities on conservation lands. Beginning January 1, 2018, the data base should include, to the extent possible, similar information for lands owned by federal and local government agencies.
2. Section 373.036, F.S. The Consolidated Water Management District Annual Report for each district must now include information on all water quality and water quantity projects in each district's 5 year work program including a list of specific projects identified to implement a basin management action plan (BMAP) or a recovery or prevention plan. The new requirements also include estimated BMAP project costs and an assessment of the severity of impairment of water quality or quantity within a particular watershed or waterbody slated for a project.
3. Section 373.037, F.S. is created to authorize pilot programs for alternative water supply in the South Florida Water Management District (SFWMD), Southwest Florida Water Management District (SWFWMD) and the St. John's River Water Management District (SJRWMD) for "restricted allocation areas" for which existing water supply sources are not adequate to supply water for all existing and future reasonable beneficial uses. "Restricted allocations areas" include the Central Florida Water Initiative Area, the Lower East Coast Regional Water Supply Planning Area, The Southern Water Use Caution Area, and the Upper East Coast Regional Water Supply Planning Area. The new law includes a vast amount of technical detail, encourages public/private projects to store water on private lands and authorizes each water management district to match up to 50% of the cost of a project with local governments and private entities.
4. Section 373.042, F.S. If minimum flows and minimum water levels for an Outstanding Florida Spring (A first magnitude spring plus 6 others) has not been adopted, a water management district or DEP must use its emergency rulemaking authority to adopt minimum flows and levels no later than July, 2017 except Northwest Florida Water Management District which has until July 1, 2026. The districts or DEP must also adopt recovery or prevention strategies for those springs not achieving minimum flows and levels or are projected to fall below minimum flows and levels within the next 20 years.
5. Section 373.0465 F.S. creates the Central Florida Water Initiative for the purpose of developing alternative water supplies to the Floridan Aquifer within central Florida. The "Central Florida Water Initiative Area" ("Area") includes all of Orange Osceola, Polk, Seminole Counties and southern Lake County. Historically water supply within the Area has come primarily from the Floridan Aquifer. The Area overlaps the boundaries of SFWMD, SJRWMD and SWFWMD. The districts in cooperation with DEP and the Department of Agriculture and Consumer Services ("DACS") have determined that the Florida Aquifer is at or near its sustainable limit for water supply. The new law authorizes

a collaborative effort by the agencies to develop alternative water supply sources and recovery and prevention strategies for the aquifer. DEP will develop a single set of rules and definitions for water supply within the Area by December 31, 2016.

6. Section 373.219, F.S. directs DEP to develop uniform rules for permit issuance for Outstanding Florida Springs to prevent harmful withdrawals of water resources.
7. Section 373.227, F. S. is intended to incentivize water conservation. If actual water use is less than the permitted volume, no reduction in the authorized amount may occur during the duration of a permit.
8. Section 373.4595, F.S. The Northern Everglades and Estuaries Protection Program has been substantially revamped and now includes extensive new water quality and water quantity requirements for the Lake Okeechobee Watershed Protection Program (“Program”), the Caloosahatchee River Watershed Protection Program and St. Lucie River Watershed Protection Program. Generally speaking, the Lake Okeechobee Watershed Protection Program includes the Lake Okeechobee Watershed Protection Plan (which includes the Lake Okeechobee Watershed Construction Project), the Lake Okeechobee Basin Management Action Plan, the Lake Okeechobee Exotic Species Control Program, and the Lake Okeechobee Internal Phosphorous Management Plan. Have you got that? Beginning March 1, 2020 and every 5 years thereafter, the SFWMD must update the Plan to ensure consistency with the adopted Lake BMAP. Other requirements include:
 - A. Within 5 years of adoption of the Lake BMAP, DEP will conduct an evaluation of the Lake Watershed Construction Project and modify the Construction Project accordingly.
 - B. The adopted Lake BMAP will the watershed phosphorous control component of the Construction Project.
 - C. The Lake BMAP must include 5, 10, 15 and 20 year measurable milestones for Project Implementation.
 - D. DEP will develop Total Maximum Daily Loads (TMDLs) for the Lake Watershed.
 - E. The development of agricultural and non-agricultural “best management practices” (“BMPs”)
9. The watershed protection programs for the Caloosahatchee River and St. Lucie River Watersheds are very similar to the Lake Program.
10. Section 373.705, F.S. The district budget adoption provisions of Chapter 373, F.S. must now include the budgets for regionally significant projects that prevent or limit adverse resource impacts or support new water supply.
11. Section 373.801, F. S. The Florida Springs and Aquifer Protection Act is created. Significant aspects of the new act are:

- A. A definition of the term “Outstanding Florida Spring” to include all first magnitude springs and De Leon, Peacock, Poe, Rock, Wekiva and Gemini Springs.
- B. DEP in cooperation with the water management districts will delineate priority focus areas that include impaired springs.
- C. The development of minimum flows and level rules for all Outstanding Florida Springs.
- D. Recovery and prevention strategies for impaired springs.
- E. Five, 10 and 15 year milestones for agencies to determine whether minimum flows and levels have been achieved.
- F. By, July 1, 2016, DEP must initiate an impairment assessment of springs for which an assessment has not been conducted.
- G. New wastewater treatment facilities, other than advanced waste treatment facilities, hazardous waste treatment facilities and agriculture that does not employ BMPs would be prohibited in impaired spring springsheds.

12. Section 403.067, F. S. By July 1, 2017, DEP in cooperation with the water management districts and DACS will initiate rulemaking to enforce adopted TMDLs and BMAPs.

The act became effective July 1, 2016; Chapter No. [2016-1](#)

WATER/WASTEWATER (CS/CS/CS HB 491). This bill relates primarily to Public Service Commission (PSC) regulation of private water and wastewater utilities. The bill provides:

1. Any person reselling water service to his tenants for a fee that doesn’t exceed the actual purchase price of the water plus 9 percent is exempt from PSC regulation.
2. The PSC may authorize a utility to create a reserve fund for infrastructure repair and replacement and include the cost in the utility rate structure.
3. Certain specified expenses such as charges imposed by local or state governments for licensing, permitting, inspections etc., fees for electrical power or ad valorem taxes may be approved by the PSC for inclusion in the rate structure.
4. Rate case expenses may be recovered over a 4 year period under certain circumstances such as third party challenges or Public Counsel Intervention.
5. The PSC may, on its own or based on complaints of customers, review water quality as related to secondary drinking water standards or review waste water service for odor, noise, aerosol drift or lighting.

The Act became effective July 1, 2016; Chapter No. [2016-226](#)

OTHER

BILLS THAT PASSED

ADMINISTRATIVE PROCEDURE ACT (HB 183). After previous attempts -- including a veto last year -- the Legislature passed a measure designed to protect regulated persons from an agency's use of an invalid or unadopted rule in enforcement, licensing or other administrative proceedings. Among other things, the bill creates a new legal defense and allows a collateral rule challenge to such proceedings. The bill also requires agencies to publish a list of rules that, if violated, would constitute minor violations. In addition, the bill expedites administrative hearings related to temporary special events permits.

New Legal Defenses: HB 183 permits a person challenging an agency action involving disputed issues of material fact to contemporaneously allege a defense that the agency's rule was an invalid exercise of delegated legislative authority or that the agency's statement was an unadopted rule. Effectively, the amendment allows a party to bring a rule challenge that can be applied retroactively to the specific case.

Authorizes Collateral Rule Challenges: HB 183 directly impacts the ruling in *United Wisconsin Life Insurance Co. v. Florida Department Insurance Regulation*. That case started as an enforcement proceeding. While the proceeding was pending, the insurance company brought a separate section 120.56(4), Florida Statutes, action to challenge certain agency statements as nonrule policy. The administrative law judge concluded, and the First District Court of Appeal affirmed, that a petitioner "has no right to pursue a separate, collateral challenge to an alleged nonrule policy where an adequate remedy exists through a section 120.57 proceeding." HB 183 expressly allows a petitioner to bring separate section 120.56 and section 120.57 actions. One potential benefit to bringing a collateral rule challenge pursuant to section 120.56 is that the administrative law judge issues a final order (as opposed to a recommended order) in such cases.

Minor Violations: HB 183 also requires that, by July 1, 2017, all agencies must review and publish a list of all rules that the agency has designated as rules the violation of which would be a minor violation under section 120.695, Florida Statutes. A violation of a rule should be a minor violation if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. The agency's first response to a rule designated as a minor violation is limited to a notification by the agency. The notification must identify the specific rule that is being violated, provide information on how to comply with the rule, and specify a reasonable time for the person to comply with the rule. The notice of noncompliance may *not* be accompanied by a fine or other disciplinary penalty.

Expedited Hearings for Special Event Permits: Finally, a new provision was added that requires an expedited administrative hearing for challenges to special event permits issued for submerged land leases. These special event permits are issued DEP for the installation of temporary structures, including docks, moorings, pilings, and access walkways, on sovereign submerged lands solely for the purpose of facilitating boat shows and displays in, or adjacent to, established marinas or government-owned upland property. The legislation amends section 403.8141, Florida Statutes, to provide that, upon the filing of a motion after a permit is challenged, a

summary proceeding must be conducted within 30 days, regardless of whether the parties agree to the summary proceeding. This expedited procedure reduces the likelihood that a challenger can run out the clock on a temporary event.

For a more detailed summary of HB 183, see the [June 2016 issue of the newsletter](#) of the Administrative Law Section of The Florida Bar .

The act became effective July 1, 2016; Chapter No. [2016-116](#)

APA/SERC (HB 981). In 2010, the Legislature significantly amended the rulemaking process related to statements of estimated regulatory costs (SERC). A SERC must be prepared during promulgation of agency rules that are expected to affect small businesses or have an economic impact in excess of \$1 million over the first five years after the rule is effective. The bill clarifies that if any provision of a rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within five years after full implementation of such provision.

The act became effective July 1, 2016; Chapter No. [2016-232](#)

PUBLIC CORRUPTION (HB 7071). This bill defines “governmental entity” and “public contractor” for purposes of public corruption laws. It also changes the *mens rea* requirement for certain public corruption crimes from “corruptly” to “knowingly and intentionally.”

The act shall take effect October 1, 2016; Chapter No. [2016-151](#)

PUBLIC RECORDS/CONTRACTORS (HB 273). Prior to the passage of HB 273, private contractors who acted on behalf of a public agency were required to comply with the public records law in the same manner as a public agency. This bill makes changes to the law regarding provisions in a contract for services, possession of public records at the end of a contract for services, and liability in public records lawsuits.

The bill repeals the requirement that each contract for services require the contractor to transfer its public records to the agency upon termination of the contract. Instead, the contract must address whether the contractor will retain the public records or transfer the public records to the agency upon completion of the contract. This bill requires contracts for services between a public agency and a contractor that are amended or entered into on or after July 1, 2016, to include the following provisions:

1. A statement informing the contractor of the contact information of the public agency’s custodian of public records and instructing the contractor to contact the public agency’s records custodian concerning any questions the contractor may have regarding the contractor’s duties to provide public records relating to the contract;
2. Terms requiring a contractor to comply with a public agency’s request for a copy of a public record or to permit inspection of a public record;

3. Terms requiring a contractor to prevent disclosure of confidential or exempt information while the contractor has custody of a public record; and
4. Terms requiring a contractor to comply with all applicable public records requirements if the contractor retains public records after the contract for services is completed.

The bill requires a request for public records relating to a contract for services to be made directly to the agency. If the public agency determines that it does not possess the records, it must immediately notify the contractor, and the contractor must provide the records or allow access to the records within a reasonable time. A contractor who fails to provide the records to the agency within a reasonable time may be subject to certain penalties.

The bill provides that if a civil action is filed against a contractor to compel production of public records, the court must assess and award against the contractor the reasonable costs of enforcement, including attorney's fees, if:

1. The court determines that a contractor unlawfully refused to comply with the public records request within a reasonable time; and
2. The plaintiff provided written notice of the public records request to the public agency and the contractor at least eight business days before the civil action.

The bill specifies that a contractor who complies with the public records request within eight business days after the notice is sent is not liable for the reasonable costs of enforcement.

This act became effective March 8, 2016, Chapter No. [2016-20](#)

BILLS THAT DIED

APA/RULEMAKING AUTHORIZATION REPEAL/SUNSET (HB 953/SB 1150). This proposed legislation would have created a four-year sunset review process for agencies' rulemaking authority. The bill was designed to give the Legislature the ability to review all grants of rulemaking authority currently in effect and any grants of rulemaking authority in the future. If a grant of rulemaking authority was not reauthorized by the Legislature, such authority would be suspended. During the suspension of rulemaking authority, any rules lawfully adopted remained in effect. Additionally, proposed rules could be adopted during the suspension of rulemaking authority, but they would not become effective until ratified by the Legislature. The bill also allowed the Governor to issue a declaration of public necessity to delay any suspension of rulemaking authority for 90 days to allow the Legislature to convene and reauthorize necessary rulemaking.

LOBBYIST DISCLOSURE (HB 593/SB 686). These measures would have required each house of the Legislature to expand their reporting requirements for lobbyists. Among other things, the bills contained provisions that would require lobbying firms to file a monthly report with a detailed listing of the lobbying firm's lobbying activities, including an itemized list of the bills and amendments with identifying numbers. The House bill passed the House, but died in the

Senate. The House Speaker-Designate has announced that he intends to ask the House to adopt rules containing similar reporting requirements.

PUBLIC RECORDS/AWARD OF ATTORNEY'S FEES IN PUBLIC RECORDS ENFORCEMENT

ACTIONS (HB 1021/SB 1220); Under current law, if a court finds that an agency unlawfully refused access to a public record, it *must* order the agency to pay for the requestor's reasonable costs of enforcement, including reasonable attorney's fees. HB 1021 and SB 1220 would have made this permissive, so that a court *may* award reasonable costs, including attorney's fees, to the complainant if the court determines the agency unlawfully refused to provide a public record. However, the court would no longer have been required to do so. A compromise measure passed the Senate, but died in the House.