

2012 ENVIRONMENTAL AND LAND USE LAW ANNUAL UPDATE
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LEGISLATIVE UPDATE & 2013 FORECAST

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I. ENVIRONMENTAL

A. Bills That Passed.

1. Environmental Permit Streamlining (CS/CS/CS/CS/HB 503)

CS/CS/CS/CS/HB 503 contains a number of provisions designed to expedite and streamline the permitting process. Here are some of the key provisions:

Reduces ERP Processing Time. The time allowed for environmental resource permit (ERP) application processing is reduced from 90 to 60 days, and is measured from receipt of the application or from the submission of the last item of timely requested additional material.

Restricts Local Conditions. Local governments may no longer refuse to issue or process development approvals based on the requirement that other state and federal permits (like ERP or Corps permits) must be first obtained. But they may include a permit condition that all other applicable state and federal permits must be obtained before commencement of the development. Confusion regarding this provision initially prompted FEMA to raise concerns about this bill.

Restricts ERP conditions. Likewise, a state agency may not condition ERP approval on securing a permit from another state, federal or local agency.

Coastal Construction Permits. DEP may issue coastal construction permits in advance of receipt of ESA incidental take approvals for the project, assuming construction activities do not occur before incidental take approval is granted.

Creates New General ERP. The bill establishes a general ERP for construction and alteration of stormwater management systems serving upland projects less than 10 acres in size. Construction is authorized so long as a self certification is provided to DEP specifying the site meets the prescribed criteria.

Expands Self Certification. The bill authorizes expanded DEP and WMD self certification for general permits and certain exemptions, and it encourages the expansion of such programs.

Expands Expedited Permitting. The bill extends expedited permitting benefits to include “commercial or industrial development projects that will be occupied by businesses” that collectively or individually create 50 jobs. Similarly, DEP and the water management districts must include intermodal logistic centers within the class of facilities entitled to expedited wetland resource and ERP processing.

Expanded SPGP or RGPs. The bill directs DEP to coordinate with the Corps to seek an expanded state programmatic general permit or a series of regional general permits.

Extends Building Permits and ERPs. Another opportunity is provided to qualify for the additional two-year permit extension enacted in 2011. In particular, the bill provides that any building permit and any ERP that has an expiration date from January 1, 2012, through January 1, 2014, is extended and renewed for a period of two years after its previously-scheduled date of expiration. The holder of the permit or other authorization that is eligible for the two-year extension must notify the authorizing agency in writing by December 31, 2012 (the prior deadline was December 31, 2011), identifying the specific authorization for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization.

No Payment Required for Extension. In addition, the holder of a valid permit or other authorization is not required to make a payment to the authorizing agency for use of an extension granted in 2011 or by this bill. This provision applies retroactively and is effective as of June 2, 2011.

Extends Terms for Solid Waste Permits. The terms for certain permits for solid waste management facilities also are extended. A permit for a solid waste management facility that is designed with a leachate control system may be issued for a term of 20 years (instead of 10 years), and a permit for a facility that does not have a leachate control system may be renewed for a term of up to 10 years (instead of five years), provided certain conditions are met

Raises LSSI Score. The DEP priority ranking score is raised from 10 to 29 for sites eligible for the “low scored site initiative,” a voluntary program enacted in 2010.

Authorizes Zones of Discharge. Zones of discharge to groundwater are authorized for “existing installations” to the property boundary and vertically to specifically designated aquifers. Exceedances of certain limits within the zone are not a basis for liability.

The effective date of this bill was July 1, 2012; Chapter [2012-205](#)

2. Statewide Environmental Resource Permit (HB 7003)

The state Environmental Resource Permit (ERP) permitting process is administered by the five water management districts and DEP, depending upon the type of project involved. Each of the water management districts and DEP have adopted rules that establish the procedures and the requirements and conditions for permit issuance. These separate rules have resulted in some inconsistencies among the ERP programs.

HB 7003 seeks to remedy this by requiring DEP, in consultation with the water management districts, to adopt statewide ERP rules by October 1, 2012. The rules are to govern the construction, alteration, operation, maintenance, repair, abandonment and removal of stormwater management systems, dams, reservoirs, appurtenant works, or works. The rules are to provide for statewide, consistent regulation of the activities, relying primarily on the existing rules of the DEP and the water management districts in effect immediately prior to the effective date of the bill. DEP is authorized to reconcile differences and conflicts to achieve a consistent statewide approach and to account for different physical or natural characteristics and also to implement additional permit streamlining measures.

Once adopted, these statewide rules may be implemented by the water management districts without further rulemaking. The DEP adopted rules are considered to also be rules of the water management districts. Local government programs that have received delegation of ERP permitting must implement these rules without modification. The bill, however, does not prohibit the local governments from adopting more stringent programs. The existing ERP rules will remain in effect until the revised rules are adopted.

The effective date of this bill was July 1 2012; Chapter [2012-094](#)

3. Mitigation Banking (HB 599)

HB 599 was initially filed as a simple bill dealing with mitigation banking, but in the final days of the Regular Session became this year's "transportation train."

Current mitigation banking law authorizes both private and public mitigation banks. In additions, public agencies such as the water management districts (WMD) are allowed to sell mitigation credits off of land that had been purchased by a WMD for environmental preservation purposes. Further, FDOT was basically required to purchase mitigation credits for its project impacts from such public agencies if credits were available. The new law now provides FDOT with the discretion to choose between public and private mitigation banks and levels the playing field so that FDOT can make the most economical use of public funds and private mitigation bankers can compete with public agencies involved in mitigation banking. *The effective date of this bill was July 1, 2012; Chapter [2012-174](#)*

4. Summary Hearing/ Deepwater Ports (HB 599 and SB 1998)

HB 599 and SB 1998, another lengthy bill dealing with transportation, each include a section that provides that a challenge to a consolidated ERP or any associated variance or any sovereign submerged lands authorization proposed or issued by DEP in connection with the state's deepwater ports must be conducted pursuant to an expedited summary hearing process. The summary hearing must be conducted within 30 days after any party requests it, regardless of whether the other parties agree. DEP must issue a final order within 45 working days after receipt of the administrative law judge's recommended order. The bills also provide that the summary hearing provisions apply to pending administrative proceedings. *The effective date of Section 80 of HB 599 is upon becoming law; Chapter [2012-174](#); the effective of SB 1998 was July 1, 2012; Chapter [2012-128](#)*

5. Florida Climate Protection Act (HB 4001)

Former Governor Charlie Crist signed a series of executive orders addressing climate change. Executive Order 07-127 established greenhouse gas reduction targets for Florida and mandated that the DEP develop a rule for reducing greenhouse gas emissions from electric utilities to certain target levels over time. DEP initiated rulemaking later in 2007 and requested legislative authority to implement a market-based trading program for the control of greenhouse gas emissions. HB 7135 was enacted in 2008, and provided for the establishment of a cap and trade regulatory program to include greenhouse gas emissions from electric utilities. This legislation provided that the cap and trade rules could not become effective until ratified by the

Legislature. HB 4001 repeals the cap and trade program. *The effective date of this bill was July 1, 2012; Chapter [2012-089](#)*

B. Bills That Died

1. Contamination Notification (SB 866)

Once again, a measure was filed to expand the list of those who will receive notification of a contaminated site from DEP and the circumstances under which such notice must be provided. The Senate bill was never heard. No similar legislation was filed in the House.

II. LAND USE

A. Bills That Passed

1. Developments of Regional Impact (CS/CS/HB 979)

CS/CS/HB 979 makes technical changes relating to the Developments of Regional Impact (DRI) law. The bill clarifies that comprehensive plan amendments that are part of a DRI are subject to the state coordinated review process. The bill also restricts comments from the regional planning councils to only the review of statutes, rules and ordinances applicable to the proposed development. DRIs still must be consistent with an adopted strategic regional policy plan and consistent with standards required by the water management district. The bill exempts certain DRIs for developments defined as "qualified target industry business" under an exemption agreement with the Department of Economic Opportunity (DEO).

CS/CS/HB 979 also contains an "agricultural enclave" provision. An owner of agricultural property over 500 acres but less than 640 acres that is surrounded at least 95 percent by land designated as industrial, commercial or residential may apply for a comprehensive plan amendment and be presumed not to be urban sprawl. The agricultural enclave exemption does not apply to lands within the Everglades Protection Area. *The effective date of this bill was July 1, 2012; Chapter [2012-075](#)*

2. Growth Management Glitch (HB 7081)

HB 7081 provides the following:

- a. It resolves several technical glitches from the 2011 Growth Management Act.
- b. The Yankeetown grandfather provision that allows cities that included referenda in their charter in the event of certain proposed comprehensive plan changes to preserve the grandfather provision.
- c. Military base commander comments on compatible land uses are defined as advisory. However, they must be considered by a local government contemplating comprehensive plan amendments.

- d. Criteria for development of population projections that are realistic for purposes adopting future land use amendments are included.
- e. There is no longer any state oversight of school board interlocal agreements with local governments.
- f. Expedited processing of comprehensive plan amendments rescinding optional concurrency is required. Rescission of optional concurrency is not subject to state review.
- g. Comprehensive plan amendment review by the state is to be expedited; a local government must submit proposed comprehensive plan amendments within ten (10) working days after an initial public hearing.

The legislation contains a procedure for development order rescission for certain DRI development orders. *The effective date of this bill was April 6, 2012; Chapter [2012-099](#)*

3. Urban Infill and Redevelopment (HB 4003)

HB 4003 eliminates the "Urban Infill Redevelopment Assistance Grant Program," a program that has received no legislative appropriations since 2001. Local governments may continue to designate areas as urban infill for purposes of local or federal incentive programs or for tax increment financing options. *The effective date of this bill was July 1, 2012; Chapter [2012-090](#)*

III. STATE LANDS AND BEACH MANAGEMENT

A. Bills That Passed

1. The Dennis L. Jones Beach and Shore Preservation Act (HB 691)

HB 691 does the following:

- a. Reasonable assurance for a permit application is provided if competent substantial evidence based on plans, studies and expertise that accounts for reasonable expected natural variables in beach and shore processes is submitted.
- b. Beach protection permits may be issued prior to issuance of a federal incidental take permit under the Endangered Species Act.
- c. DEP rules for mixing zone and anti-degradation standards must recognize that beach nourishment is "in the public interest".
- d. Beach/inlet management guidelines are not enforceable by the DEP unless adopted as a rule.

- e. The legislation directs that permit processing be streamlined.
- f. Any joint coastal permit must allow two maintenance/spoil disposal events or a period of 15 years whichever is longer.
- g. A permit exemption pursuant to Section 403.813 is provided for beach nourishment exploratory and geophysical activities.

The effective date of this bill was July 1, 2012 Chapter [2012-065](#)

2. Sovereign Submerged Lands (HB 13)

HB 13 authorizes the Board of Trustees of the Internal Improvement Trust Fund to lease sovereignty submerged land for multifamily residential docks and piers without requiring lease fees. The bill provides for a maximum of 10-year lease term. It also requires inspections at least once every 10 years to insure compliance. *The effective date of this bill was July 1, 2012; Chapter [2012-202](#)*

B. Bill That Was Vetoed

1. Conservation of Wildlife (HB 1117)

This somewhat amazing piece of legislation authorized the owner of a zoo or aquarium to request and receive the right to use state lands to conduct “enhanced research and husbandry, reproductive biology, endocrinology, nutrition, genetics, behavioral health and the ecology of “ungulates and avians.” One can only marvel at the creativity of this legislation.

C. Bills That Died

1. Drilling on State Lands (SB 1158/HB 695)

These measures would have authorized the Board of Trustees of the Internal Improvement Trust Fund (i.e., the Governor and Cabinet) to enter into a public-private partnership with business entity to develop oil & gas resources on certain onshore state lands (the Blackwater River State Forest) under specified conditions.

2. Ban on Oil Exploration (HJR 23/SJR 90)

HJR 90 and SJR 90 proposed an amendment to the Florida Constitution to prohibit exploration, drilling, extraction and production of oil beneath Florida waters between the mean high-water line and the seaward limit of Florida's boundaries. Neither measure was heard in any committee.

3. OHWM/Sovereign Submerged Lands (HB 1103/SB 1362)

These bills proposed to codify Florida Supreme Court decisions defining the ordinary high water mark in navigable, non-tidal water bodies. The legislation would have codified the holdings in Tilden v. Smith, 113 So. 708 (Fla. 1927) and Martin v. Busch, 112 So.

274 (Fla. 1927). These cases define 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.”

IV. WATER RESOURCES

A. Bills That Passed

1. Numeric Nutrient Criteria (HB 7051)

HB 7051 exempts DEP's proposed numeric nutrient criteria rules from legislative ratification and directs DEP to submit the rules to the EPA for review within 30 days.

As a result of legislation enacted in 2010, rules with more than a million dollar impact may not become effective until ratified by the Legislature. As a practical matter, this means that many amendments to DEP rules must be ratified by the Legislature prior to taking effect. This includes the amendments to water quality standards and regulations contained in Chapters 62-302 and 62-303, Florida Administrative Code, which were adopted in December, 2011 by the Environmental Regulation Commission (ERC) for phosphorus and nitrogen standards (nutrients) in Florida waters.

Rules generally may not be submitted for legislative ratification until adopted, and in this case, these rules were the subject of a pending rule challenge that likely would not be resolved until after the end of the 2012 Regular Session. Accordingly, in order to facilitate review of the rules prior to a deadline established in a pending court case, the new law now exempts the rules as approved by the ERC from legislative ratification and directs that DEP submit the rules to EPA for review within 30 days. *The effective date of this bill was February 16, 2012; Chapter [2012-003](#)*

2. Reclaimed Water (HB 639)

This legislation specifically defines reclaimed water as an alternative water supply pursuant to Section 373.250, Florida Statutes. The legislation specifically states that a water management district may not require a permit for the use of reclaimed water. But water management districts may condition the use of reclaimed water if it is proposed to be mixed with surface or ground waters. Additionally:

- a. Water management districts may require the use of reclaimed water in lieu of other water supply sources but, a district may not specify any user to whom a utility must distribute reclaimed water;
- b. By October 1, 2012, water management districts are to engage in rulemaking to develop criteria for:
 - (1) impact offsets; and
 - (2) Substitution credits.

Basically this program appears to be aimed at a system of recognition that the use of reclaimed water reduces demand upon traditional water supplies such as aquifers. The credit or impact offset criteria would seem to allow the water management districts to then allow increased withdrawals from traditional sources by permitted users. *The effective date of this bill was July 1, 2012; Chapter [2012-150](#)*

3. Septic Tank Inspections (CS/CS/CS/HB 1263)

CS/CS/CS/HB 1263, a lengthy bill dealing with the reorganization of the Department of Health, repeals the onsite sewage treatment and disposal system evaluation program. In its place, the bill authorizes an optional model program that imposes minimal requirements and only mandates repairs where a septic tank completely fails.

The bill requires local governments with a first magnitude spring to adopt by ordinance a local inspection program that cannot be more restrictive than outlined in the bill. It limits the stringency of criteria that may be included in local inspection programs and explicitly prohibits point of sale inspection requirements. The bill grandfathers existing county or municipal septic tank programs established before July 1, 2011, provided that the program does not include a point of sale requirement (except that Duval County's point of sale inspection program is grandfathered).

The measure provides that a permit issued by the Department of Health for the installation, modification or repair of a septic system transfers with title to the property and further provides that title is not encumbered when transferred if new permit requirements are in place at time of transfer. The bill allows system owners to choose the least costly remedial measure to resolve a system failure, and otherwise does not require repairs for problems that do not result in total failure. Finally, the legislation retains the ban on the land application of septage that becomes effective in 2016. *The effective date of this bill was April 27, 2012; Chapter [2012-184](#)*

4. Stormwater Taxes and Assessments (HB 1197)

This legislation is primarily a potpourri of agricultural law changes such as defining a "farm" to include commercial beekeeping, authorizing winemaking operations of 5 acres or more to qualify as a "Certified Florida Farm Winery" (Yummy!) and repealing an awful law that prohibited anyone from painting their animals or fowl day glow orange or any other artificial color. But, the new law also replaces the word "county" with "governmental entity" so as to prohibit a local government (city, county or special district) from charging an assessment or tax for stormwater management on a bona fide farm operation lands. There is an exemption for water control districts and special districts created for water management purposes. *The effective date of this bill was July 1, 2012; Chapter [2012-83](#)*

5. Water Management Districts (SB 1986)

In 2011, the Legislature passed a variety of measures that placed harsh strictures upon water management district budgets and required extensive oversight by the Legislature and Governor. This year however, the Legislature presumably determined that those oversight

measures were an over reaction. To that end, SB 1986 loosened legislative and gubernatorial oversight of water management district budgeting. Specifically:

- a. As of January 15 each year a water management district's preliminary budget must be submitted to the President of the Senate and Speaker of the House along with a justification for budget items.
- b. The Legislature may review and comment on the preliminary budget by March 1 of each year.
- c. If the Legislature comments on a preliminary budget the Water Management District must respond to the comments by March 15. If no legislative response is received by July 1, a water management district may proceed to final budgeting.
- d. Budget amendments by a water management district of \$1,000,000 or more must be approved by the Governor's Office.
- e. The Legislative Budget Commission may reject:
 - (1) water management district land purchases greater than \$10,000,000;
 - (2) Cumulative land purchases during a fiscal year greater than \$50,000,000;
 - (3) Any debt issuance after July 1, 2012;
 - (4) Certain program expenditures by a district greater than 15% of the District's total budget;
 - (5) Budget variances within a budget greater than 25% of the district's total budget.

The effective date of this bill was April 27, 2012; Chapter [2012-126](#)

6. Water Storage and Water Quality Permit (HB 1389)

This bill encourages public private partnerships for water storage on agricultural lands.

The legislation also creates an 18-person study commission on investor owned utilities (IOU) for both water and wastewater. The members of the committee are the usual suspects. The direction to the committee is to study the following:

- a. Small IOUs and economies of scale;

- b. Loans to small IOUs;
- c. Tax incentives for small IOUs;
- d. The impact on IOU customers whenever a small IOU buys another IOU;
- e. The impact on IOU customers of IOU use of resellers.

The Committee report is to be presented to the Governor, Speaker of the House and President of the Senate by February 15, 2013. *The effective date of this bill was July 1, 2012; Chapter [2012-187](#)*

B. Bills That Died

1. Consumptive Use Permitting (SB 1178/HB 7045)

The legislation provides:

- a. Water management districts would be required to submit to the Department of Environmental Protection (DEP) an annual priority list and schedule identifying proposed water reservations and listed water bodies that may be affected by activities in an adjacent water management district for which development of a water reservation or minimum flow and level may be appropriate.
- b. A process is created for DEP to adopt a reservation or minimum flow and level for recovery or prevention strategy for application in a water management district; and
- c. Alternative water supply development projects are eligible for consumptive use permits for at least 30 years.

2. Repeal of Land Application of Septage Ban (SB 558/HB 115)

These bills would have repealed the prohibition on the land application of septage from septic tank pumpouts that goes into effect on January 1, 2016.

3. Water Management Districts (SB 560/HB 157)

These bills would have authorized water management districts to enter into inter-agency agreements for resource study and management for impacts to water resources that cross water management district boundaries. Currently the water management districts do not have that authority. The legislation would have also authorized the water management districts to adopt an adjoining water management district's reservations, minimum flows and levels and recovery or prevention strategies without undertaking rulemaking.

V. MISCELLANEOUS BILLS OF INTEREST

A. Bills That Passed

1. APA/Administrative Authority (HB 7055)

During the 2012 Regular Session, the Florida Legislature enacted several measures amending the Florida Administrative Procedure Act (APA).

CS/HB 7055 is the legislative response to the Florida Supreme Court's decision in *Whiley v. Scott* that Governor Rick Scott “impermissibly suspended agency rulemaking to the extent that Executive Orders 11-01 and 11-72 include a requirement that the Office of Fiscal Accountability and Regulatory Reform (OFARR) must first permit an agency to engage in the rulemaking which has been delegated by the Florida Legislature.”¹ The bill affirms that Executive Orders 11-01 and 11-72² are consistent with state law, and it provides express legislative authorization for the direction and supervision by elected officials over the exercise of administrative authority by appointees of those officials. *The effective date of this bill was July 1, 2012; Chapter [2012-116](#)*

2. APA/Repeal of Unused Rulemaking Authority and Rules (HB 7029)

Repeal of Unused Statutory Rulemaking Authority. CS/HB 7029 repeals or revises over 50 statutory provisions authorizing rulemaking, including statutes that are no longer necessary or for other reasons have never been used. In addition, the bill directs the Office of Statutory Revision to include duplicative, redundant, or unused statutory rulemaking authority among its recommended repeals in revisers bill recommendations. Rulemaking authority is considered unused if the provision has been in effect for more than 5 years and no rule has been promulgated in reliance thereon during that time.

Nullification and Repeal of Administrative Rules. HB 7029 also amends the APA to provide that the repeal of a substantive statute also acts to repeal the administrative rules adopted to implement that statute, to the extent the rule implements the repealed statute. A rule is nullified if the only provisions of law it implemented subsequently are repealed. The repeal of one or more provisions of law implemented by a rule, but not all statutes implemented by the rule, requires an agency to publish a notice of rule development, stating which parts of the rule are nullified by the new act. In other instances when the repeal of a statute creates uncertainty about the continued enforceability of a rule, the Department of State (DOS) is to use the summary removal process described below. In all cases, DOS is directed to remove such rules from the Florida Administrative Code as of the effective date of the law repealing the specific law implemented.

¹ 36 Fla. L. Weekly S 451 (Fla. Aug. 16, 2011).

² Both of these executive orders have been superseded; Executive Order 11-72 expressly supersedes Executive Order 11-01, and Executive Order 11-211 expressly supersedes Executive Order 11-72.

HB 7029 also creates a summary removal process to repeal published rules that DOS identifies, as part of the continuous revision system authorized by s. 120.55, that may be no longer in full force and effect. This process includes notice to and review by the affected agency (or the Governor, where no agency may be identified). If DOS is advised that the rule is no longer in effect or receives no timely response from the agency, DOS is to provide notice of such and that the rule will be repealed summarily and removed from the FAC. An objection to the summary repeal must be filed as a petition challenging a proposed rule within 21 days of publication of notice in the *Florida Administrative Weekly* (renamed the *Florida Administrative Register* by HB 541).

HB 7029 also provides for the nullification and repeal of 270 existing rules that are no longer needed or for which the specific law implemented has been repealed. These include 165 rules of five separate water management districts identified as a result of reviews conducted by the districts and OFFAR that found these rules are outdated or otherwise unnecessary for effective program function.

The repealed rules also include another 105 "orphan rules" for which the adopting agency was abolished, the grant of rulemaking authority repealed, or the specific law implemented was repealed. *The effective date of this bill was May 27, 2012; Chapter [2012-031](#)*

3. APA/Florida Administrative Register (HB 541)

HB 541 revises provisions in the APA with respect to the Florida Administrative Code and the Florida Administrative Weekly. The bill provides that the online version of the Florida Administrative Code is the official version for the state, and that DOS is no longer required to publish a printed version. In addition, the bill changes the name of the *Florida Administrative Weekly* to the *Florida Administrative Register*. The online version of the *Florida Administrative Register* is the official version. *The effective date of this bill is October 1, 2012; Chapter [2012-063](#)*

4. APA/New Duties for Rules Ombudsman (HB 7043)

CS/HB 7043 amends the APA by transferring to the rules ombudsman in the Executive Office of the Governor certain rulemaking duties previously performed by the Small Business Regulatory Advisory Council and the Department of Economic Opportunity. *The effective date of this bill is July 1, 2012; Chapter [2012-027](#)*

5. APA/Summary Hearing for Deepwater Ports (SB 1998 and HB 599)

Section 42 of SB 1998 and Section 80 of HB 599, provide that, notwithstanding s. 120.569 or s. 120.57, a challenge to a consolidated environmental resource permit or any associated variance or any sovereign submerged lands authorization proposed or issued by DEP in connection with the state's deepwater ports shall be conducted pursuant to the summary hearing provisions of s. 120.574. The summary proceeding must be conducted within 30 days after a party files a motion for a summary hearing, regardless of whether the parties agree to the summary proceeding, and the administrative law judge's decision shall be in the form of a recommended order and does not constitute final agency action of the department. DEP must

issue the final order within 45 working days after receipt of the administrative law judge's recommended order. The summary hearing provisions apply to pending administrative proceedings.³ *The effective date of SB 1998 was July 1, 2012; Chapter [2012-128](#); the effective of Section 80 of HB 599 was April 27, 2012; Chapter [2012-174](#)*

6. Energy (HB 7117)

Relevant provisions include:

- a. An amendment to Section 163.08, Florida Statutes, that provides that a "separate legal entity" created by cooperating local general purpose governments may qualify to operate a property assessed clean energy (PACE) program.
- b. The provisions of law establishing the local government infrastructure surtax are liberalized to allow loans, grants and rebates to residential and commercial properties for energy efficient improvements.
- c. Finally, tax exemptions are authorized for certain renewable energy technologies and equipment.

The effective date of this bill was July 1, 2012; Chapter [2012-117](#)

B. Bills That Died

1. Fertilizer Application (SB 604/HB 421)

This legislation should probably be known as the Local Government/Fertilizer Industry Application War. The legislation provides that persons certified for urban landscape commercial fertilizer application by the Department of Agriculture and Consumer Services must follow best management practices established by the Department. Further, applicators are exempt from local government ordinances that address fertilization of urban lawns and landscapes. The bill died in committee in both houses. This bill is similar to a measure filed in 2011, so look for this measure to be considered again in 2013.

2. Public Meetings (CS/CS/CS/SB 206/CS/CS/HB 355)

These bills would have established a "right to speak" and would have required local and state boards to provide members of the public a reasonable opportunity to be heard on items of significant interest at or before meetings where official action is taken. The bills appear to be a response to the court's decision in *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659 (Fla. 1st DCA 2010).

³ It appears there were such pending administrative proceedings at DOAH involving challenges to a consolidated notice of intent to issue certain approvals that would authorize the widening and deepening of several portions of the Miami Harbor channels and turning basins. See DOAH Case Nos. 11-6242, -6243 and -6244.

3. SLAPP Suits (SB 1876/HB 1367)

SB 1876 would have prohibited a governmental entity or an applicant for a plan amendment or development order from filing so-called SLAPP suits ("Strategic Lawsuit Against Public Participation") because such person or entity had participated in the comprehensive planning process. This bill appears to have been filed in response to an appellate court decision that assessed fees against certain interest groups that had filed an appeal from the approval of a comprehensive plan amendment.⁴

HB 1367 was not limited to land use matters and would have expanded the current prohibition against the filing of SLAPP suits to private individuals and businesses. Currently, the prohibition applies only to governmental entities.

⁴ Martin County Conservation, et al v. Martin County, 73 So 3 856 (Fla. 1st DCA 2011) (on motion for rehearing), *jurisdiction accepted by* Martin County Conservation Alliance, et al v. Martin County, et al, Case No.SC11-2455 (jurisdiction accepted on May 11, 2012).

2013 LEGISLATIVE FORECAST

Budget
Conservation of Wildlife
Consumptive Use Permitting
Contamination Notification
Drilling on State Lands
Expanded State Programmatic General Permit
Expedited Permitting / Local Approvals?
FEMA Clarification re HB 503?
Fertilizer Application
Landfill Siting Restrictions
Local ERP Delegation?
Minimum Flows and Levels (MFLs)
More Permit Extensions?
NIMBYs: Legislation by Anecdote
Ocean Outfalls
Oil Exploration Ban
Ordinary High Water Mark
Proportionate Share/Transportation Concurrency
Public Meetings
Recycling Reporting
Regulatory Reform
Repeal of Ban on Land Application of Septage
Strategic Lawsuits Against Public Participation (SLAPP Suits)
Stormwater
Solid Waste (C&D Closure Accounts)
Trading of Water Quality Credits

PROPOSED CONSTITUTIONAL AMENDMENTS 2012

- Amendment 1: Health Care Services
Amendment 2: Veterans Disabled Due to Combat Injury; Homestead Property Tax Discount
Amendment 3: State Government Revenue Limitation
Amendment 4: Property Tax Limitations; Property Value Decline; Reduction for Non-homestead Assessment Increases; Delay of Scheduled Repeal
Amendment 5: State Courts
Amendment 6: Prohibition on Public Funding of Abortions; Construction of Abortion Rights
Amendment 7: Religious Freedom

ADDED BY 2012 LEGISLATURE

- Amendment 8: Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder
Amendment 9: Tangible Personal Property Tax Exemption
Amendment 10: Additional Homestead Exemption; Low-Income Seniors Who Maintain Long-Term Residency on Property; Equal to Assessed Value
Amendment 11: Appointment of Student Body President to Board of Governors of The State University System