



LEGISLATIVE OVERVIEW AND PROJECTIONS FOR THE 2017 LEGISLATIVE SESSION

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Published: March 31, 2017

Introduction

Each year in Tallahassee, there are unique conditions or issues that shape that year's legislative priorities. And, 2017 is no different. With redistricting and term limits, there is a new wave of legislators in Tallahassee, including 66 new House members, and 20 new Senators. This has empowered Senate President, Joe Negron, and Speaker of the House, Richard Corcoran. The most notable dynamic in the 2017 Florida Legislative Session is the conflict between Governor Rick Scott and Speaker Corcoran. Governor Scott and Speaker Corcoran have different priorities, and that is evident in the policies they are promoting this year. As a result, we are expecting that the legislative session may not end on May 5th, but rather one or more special sessions may be convened. Presently, there are 2,956 bills filed with both chambers, which is almost 1,200 more than last year due. The increase is largely due to the new House rules discussed later herein. We expect somewhere between 200 to 300 bills to pass, which is consistent with the average number each year.

The conflict between the Governor and Speaker of the House initially began with Speaker Corcoran's proposal to eliminate Enterprise Florida and significantly reduce funding and authority for Visit Florida, two programs focused on attracting businesses and tourists to Florida. Governor Scott has come out strongly against cuts to these programs, and has traveled around the state to rally support for the two programs. The Governor is proposing \$85 Million for these programs, which the House Speaker has referred to as "corporate welfare". The Senate has not expressed support for the cuts, and a bill is moving through the Senate that would create a fund for investment in business incubators and research.

The divide has grown to include gambling and gaming issues, and has now roped in the Senate. The House proposes to restrict any further expansion of gambling in the state, and seeks to cement the Seminole Gaming Compact with no further expansion of tribal or pari-mutuel gambling. However, the Senate has proposed a much broader expansion of gambling, which legalizes Fantasy Sports in Florida. So far, the Governor has not come out on either side of this issue. Coming to an

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agreement on the Seminole Compact, and the scope of gambling in Florida, may require its own special legislative session.

Senate President Negron has made his legislative priorities Everglades and Lake Okeechobee Restoration, mostly in the form of land acquisition south of the Lake, and investment in the state university system. On the issue of state universities, Senate President Negron has proposed creating scholarships, implementing university performance standards, requiring timely student graduation, and vast infrastructure improvements.

Another overriding issue impacting this year's legislative session are the new House Rules, which govern appropriations and lobbying activities. With the goal to improve transparency for special projects, the new House Rules prohibit all recurring projects, and mandate that each individual appropriation request be filed separately as a stand-alone bill. As of Mid-March, there were approximately 1,205 member projects totaling almost \$2.6 Billion. As to lobbying, all lobbyists must register for each issue and each bill they are communicating with a member of the House, and not just merely identifying the client they represent. The House created a website to help manage all of the registrations.

2017 State Budget

One of the biggest hurdles each year is developing and agreeing on a budget. And, this year may be especially difficult, as the Governor's proposed budget and the legislature's proposed budget do not agree on the first step to creating a budget - the forecasted revenue - which is unusual. The Governor is proposing a \$83.5 Billion budget. The legislature is predicting \$2 Billion less in revenue than the Governor. This discrepancy will need to be worked out before a final budget can be approved.

Another uncertainty in the budget involves approximately \$28-\$29 Billion that goes to Medicaid, which provides 4 million Florida residents with health care. Currently, 60% of the state's Medicaid system is covered by federal funds through the Affordable Care Act. So almost 1/3rd of the budget could be at issue if the federal government changes how it supplements the state's Medicaid programs. With the American Health Care Act not passing, it appears that this money has been preserved -- for now.

Another important budgeting issue involves the Land Acquisition Trust Fund (LATF). This year, the LATF revenue estimate includes \$814 million, with \$168 million being used as debt service. Last year, HB 989 allocated specific minimums for LATF expenditures that affect funding in this year's budget. With the LATF revenue estimate for 2017, \$200 million would be available for Everglades Restoration, \$50 million for springs restoration, and \$5 million for Lake Apopka restoration. The Governor's budget for the LATF includes \$360 million in water quality spending, which includes springs restoration, septic tank conversions, and everglades restoration projects.

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The trend for LATF funds has been for more revenue to go to agency operations, including salaries and other day-to-day activities, rather than strictly for land acquisition and preservation. As you may remember, the residents of the state overwhelmingly approved Amendment 1 to the State Constitution in 2014. Amendment 1 requires state officials to set aside 33 percent of revenue from real estate “documentary stamp” taxes to protect Florida’s environmentally sensitive areas for 20 years through land purchase and restoration of conservation lands. In 2016, the revenue from doc stamps totaled more than \$740 million. There is an ongoing lawsuit filed by numerous environmental and public interest groups challenging the state agencies’ use of Amendment 1 funds. The plaintiffs assert that use of LATF funds for agency operations violates the intent of Amendment 1.

Bills Pending in Florida Legislature in 2017

SB 10 – Water Resources

SB 10 is Senate President Negrón’s signature bill. This bill mandates a shift in the focus and direction of the state’s major land acquisition programs from land acquisition for conservation purposes, toward water supply development. SB 10, coined the “Coast-to-Coast Water Resources Program,” redirects a total of \$3.3 billion dollars in bonding authority from the Florida Forever program to finance the costs of acquiring and improving land for water resource protection and development, including the purchase \$1.2 billion of land in the Everglades Agricultural Area (EAA), south of Lake Okeechobee. The 60,000 acres, with a total storage capacity of 360,000 acre-feet, would be utilized for the construction of a water reservoir (Reservoir Project) to reduce damaging discharges from Lake Okeechobee to the St. Lucie and Caloosahatchee estuaries.

The bill establishes a timetable of three land acquisition options for the Reservoir Project:

1. **Option A** requires the South Florida Water Management District (SFWMD), to seek proposals from “willing sellers of property” within the EAA. The bill mandates a minimum purchase price of a \$7,400 per acre average, and prohibits the SFWMD from using eminent domain to acquire land for the Reservoir Project. Additionally, the SFWMD is required to give “preferential consideration” to the hiring of agricultural workers displaced by the Reservoir Project. The SFWMD has until December 31, 2017, to acquire the land under Option A.
2. **Option B** involves the state exercising its option to buy more than 100,000 acres from U.S. Sugar for the Reservoir Project, which was originally negotiated in 2009. The SFWMD has until November 30, 2018, to acquire the land under Option B.
3. **Option C** increases the annual minimum distribution required under Legacy Florida for Everglades restoration projects is increased by 5% or \$50 million. The bill applies this

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increase to the Comprehensive Everglades Restoration Program (CERP), which would then include the Reservoir Project as a component.

The bill states the SFWMD is required to follow applicable federal and state law to obtain federal credit under the CERP. If the Reservoir Project receives Congressional authorization, the bill requires the SFWMD to seek federal credits towards the state's share of funding the land acquisition and construction of the Reservoir Project. It also requires the SFWMD to request that the U.S. Army Corps of Engineers pursue the reevaluation of the Lake Okechobee Regulation Schedule "as expeditiously as possible."

Additionally, the bill mandates new annual payments from the LATF to the St. Johns River Water Management District to restore the St. Johns River and Keystone Heights Lakes; the Florida Keys for water quality issues; and for water quality treatment in the Indian River Lagoon and Caloosahatchee estuaries.

The bill creates a water storage facility revolving loan fund to provide funding to local governments and water supply entities for the development and construction of water storage facilities. The stated goal of the fund is to increase the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems. The Water Protection and Sustainability Program Trust Fund would back the new revolving loan fund.

SB 10 also establishes a water reuse grant program which requires the Florida Department of Environmental Protection (FDEP) to use dedicated funding to assist wastewater treatment facilities in expanding their capacity to make reclaimed water available for reuse. The FDEP is authorized to provide grants for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, and treatment designed to expand the facility's capacity to make reclaimed water available for reuse.

Passing the bill is a top priority for Senate President Negrón. Opponents of the bill criticize its shift away from land acquisition and conservation practices and its appropriation of the Florida Forever program. Critics argue that the bill is contrary to the spirit and intent of the LATF. Presently, many residents of EAA farm communities oppose the bill, as they have expressed concern about taking roughly 12% of the EAA out of production.

CS/HB 17 – Local Regulation Preemption

This very controversial bill creates a new section 163.20 in the Statutes that covers regulation of businesses, professions, and occupations preempted to the state. The bill would prohibit a local government from adopting or imposing a new regulation on a business, profession, or occupation unless the regulation is expressly authorized by general law. Those local governments impacted by this new bill include counties, municipalities, special district, and school districts. Any

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regulations prior to January 1, 2017, unless authorized by general law, would expire on January 1, 2020. Local governments have strongly objected to HB 17 as a threat to their home rule authority. A revisions to the bill is being drafted that would exclude adult oriented businesses, alcohol, and nuisances from the preemption. There has not been any movement on the related Senate bill.

SB 996 – Administrative Proceedings

The bill would ease the standard for an award of attorney’s fees for third party challenges in administrative proceedings, including environmental resource permits and comprehensive plan challenges. If a third party does not prevail, or withdraws its Petition more than 30 days after initiation, the administrative law judge will order attorney’s fees and costs up to \$50,000 upon request. This bill has received significant opposition from public interest and environmental groups that feel that this bill would hinder public participation in the administrative process. The bill has started to gain some traction in the Senate, after the related bill in the House, HB 997, was postponed due to opposition.

SB 442/HB 451 – Advanced Well Stimulation Treatment

These bills prohibit all fracking and other advanced well stimulation in the State for oil and natural gas. Well stimulation includes all stages of well injection of fluids into a rock formation. Any local government regulation of fracking would be preempted to the State. Importantly, the bill excludes techniques used for routine well cleanout work, well maintenance, or removal of formation damage due to drilling or production; or acidizing techniques used to maintain or restore the natural permeability of the formation near the wellbore.

SB 532 – Public Notification of Pollution Releases

This bill is in response to last year’s Mosaic Sinkhole incident. That incident prompted Governor Scott to issue an Executive Order in September 2016, which resulted in the FDEP drafting Rule 62-4.161, F.A.C. That Rule was later struck down in a December, 2016, administrative hearing by Administrative Law Judge Bram D.E. Canter. ALJ Canter held in a Final Order that the Rule was, “an invalid exercise of delegated legislative authority”, and that only the state Legislature can enact a change in how the public is notified regarding pollution.

The Legislature took the advice from the ALJ, and filed SB 532. This bill authorizes the FDEP to publish a list of substances that present “an immediate and substantial risk” to public health, safety, or welfare. In the event there is a release of one of these substances, the operator must provide notice to FDEP within 24 hours, including details of the location or the release and any migration of the substance. FDEP must then update a website with information on the release within 24

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hours of receiving notice. The operator will be assessed a fine of up to \$10,000 per day for failing to timely provide the required notice.

SB 816/HB 1211 – Central and Southern Florida Project for Flood Control

This bill is aimed at providing greater authority for South Florida Water Management District over regulatory releases from Lake Okeechobee and restoration of the Herbert Hoover Dike project. It directs the SFWMD to assume control over the Dike rehabilitation, with the goal to add 2 feet of water storage, and limiting the discharge of water until the lake level reaches 19 feet. It further proposes \$1 Billion for Dike restoration from Florida Forever bonds.

CS/SB 596 – Utilities

This bill creates the “Advanced Wireless Infrastructure Deployment Act”, which prohibits certain local governments from prohibiting, regulating, or charging for the collocation of small wireless facilities in public rights-of-way under certain circumstances. The local governments must approve the use of their rights-of-way for small wireless communication infrastructure unless it does not meet the local government’s “uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons” or historic preservation requirements. This excludes consideration and application of zoning, land use, and aesthetic ordinances and of any other source of public safety protections. The bill does not authorize a person to collocate small wireless facilities on a privately owned utility pole, a utility pole owned by an electric cooperative, a privately owned wireless support structure, or other private property without the consent of the property owner. The Florida League of Cities and Association of Counties has come out strongly opposed to this bill.

HB 1351 / SB 90 – Renewable Energy Source Devices

This bill is the legislature’s efforts to implement Amendment 4 approved by voters in 2016. Collectively, these bills expand the property tax exemption for renewable energy devices from residential to include commercial properties. Also, it creates a new tax exemption for renewable energy devices from the tangible personal property tax. These new exemptions expire December 31, 2037. Under the bills, any company that installs rooftop solar would be required to file more than 20 financial disclosures relating to their business practices, calculate a customer’s energy savings based on future, not past, energy rates, follow new codes and standards, and face new penalties for violations. In addition, the Florida Public Service Commission would have authority to impose new rules related to solar safety and performance. The solar industry argues that implementing these bills will inject barriers that are contrary to the pro-solar attitude Florida voters had when they passed Amendment 4.

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SB 456 – Public Utilities

Exempts from definition of “public utility” an entity that produces solar power on its own property, and even if that entity sells power to others users located on the property, so long as the total power generated is less than 2.5 megawatts. The result of this definition exemption is to remove low level solar power producers from Public Service Commission jurisdiction.

HB 413 / SB 1300 – Water Oversight and Planning

Creates a State Water Oversight Board, which will address water supply planning, water quality restoration, flood protection and flood plain management, and natural system protection and restoration. The Oversight Board will include 15 members representing agency, industry and environmental groups.

SB 464 / HB 181 – Natural Hazards

This bill will require state agencies to work together to address sea level rise and other “natural hazards”, which include coastal flooding, drought, saltwater intrusion, wildfires, and inland flooding. These agencies would form a Natural Hazards Interagency Workgroup to coordinate their efforts to address these issues, to be headed by the Director of the Division of Emergency Management. The Workgroup would prepare an annual report on Florida’s hazard mitigation plan and regulations adopted to implement the plan. HB 181 was passed by the House, and SB 464 is set to be heard by its fourth committee.

SB 422 / HB 719 – Municipal Conversion of Independent Special Districts

These bills are a direct response to the incorporation of the City of Westlake in central Palm Beach County, which was incorporated in 2015 with a population of five (5) people by converting from an independent special district. These bills would require a special district seeking to become a municipality to meet the same population requirements to incorporate as would apply if it was not a special district.

SB 162 / HB 93 – Disposable Plastic Bags

This bill creates a pilot program for municipalities that desire to regulate or ban use of plastic bags. To qualify, the municipality must have a population of less than 100,000 and located on the coast.

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Any municipality that implements such a regulation or ban must then produce a report on the effectiveness of the pilot program.

SB 419 / SB 1036 – Mangrove Trimming

These bills authorize home owners with less than five (5) acres to obtain a permit from FDEP to trim mangroves by 70 percent or less if those mangroves were originally planted on the property. The home owner must demonstrate that the new mangroves have created a mangrove habitat along the shoreline.

HB 285 – Onsite Sewage Treatment and Disposal System Inspections

In Florida, one of the systems utilized to treat domestic wastewater is an onsite sewage treatment and disposal system, commonly referred to as a septic tank. This bill would mandate septic tank inspections similar to home and pool inspections at the time of sale within basins of impaired waterbodies. The inspection must be completed within one year before the sale of the home. Various professionals would be authorized to conduct the inspection, including septic tank contractors, engineers, and certified health professionals.

SB 198 / HB 861 – Environmental Regulation Commission

These bills follow from activities last year, when the Environmental Regulation Commission (ERC) approved certain human health criteria rules with two seats open on the ERC. The bills would require open seats be filled by the Governor within 90 days of the opening. Also, it would require a supermajority for rules involving air pollution, water quality standards, water use, hazardous substance notifications, air quality and emission standards, and ground and drinking water classes.

CS/CS/SB 80 – Public Records

This bill revises the circumstances under which a court may award attorney's fees and costs when a governmental entity subject to Chapter 119 is found to have violated the public records laws. It is in response to a proliferation of public records lawsuits throughout the state. Currently, the law states that the Court must award attorney's fees if the governmental entity unlawfully refused access to the public records, even though the public agency ultimately provided the requested records. With this bill, if the court determines that a plaintiff requested records or filed the enforcement action based on an improper purpose, the court must award reasonable costs and attorney fees against the plaintiff. An improper purpose is one in which a person requests records mainly to harass an agency, cause a violation of the public records law, or for frivolous purpose.

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SB 80 requires that the record requester direct his records request to the agency's custodian of public records, so long as the agency posts the contact information for the custodian in the agency's primary administrative building. The bill also requires a 5-day period after making the public record request before filing a public records lawsuit. SB 80 was passed by the Senate, and is in Messages with the House to address differences with the similar CS/HB 163.

LATF Funding Bills

SB 234 / HB 847 - \$35 Million to SJRWMD for restoration of St. Johns River. Funds can be used for land acquisition, land management and public access improvements.

SB 982 - \$30 Million for restoration of the Indian River Lagoon system. These funds would be split evenly between SJRWMD and SFWMD.

SB 874 / HB 551 - \$20 Million of LATF funds to offset costs to property owners for retrofitting septic tanks that are determined to contribute nutrients to Indian River Lagoon, the Caloosahatchee River, or St. Lucie River estuaries. Requires a remediation plan, with FDEP proposing a priority ranking for septic systems to award the LATF funds.

HB 663 - \$100 Million of LATF for FDEP to implement water supply or water resource development projects identified in a recovery or prevention plan or a regional water supply plan, or water restoration projects identified in a basin management action plan.