# MEMORANDUM

**FROM:** Burt L. Saunders

**DATE:** January 22, 2016

**SUBJECT:** Lee County Legislative Update for the Week Ending January 22, 2016

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## INDEX

# I. Environmental/Land Acquisition

## SB 552 – Relating to Environmental Resources – 2016

*Companion Bill – HB 7005 – Relating to Environmental Resources*

SB 552 was referred to the following Committees:

1. Environmental Preservation and Conservation
   Heard 11/4/2015; favorable vote with CS
2. Appropriations
   Heard 11/19/2015; favorable vote with CS

**This bill has been passed by the House and Senate and approved by the Governor on January 21, 2016.**

***Summary:***

SB 552:

- Creates the Florida Springs and Aquifer Protection Act to provide for the protection and restoration of Outstanding Florida Springs (OFSs);
- Codifies the Central Florida Water Initiative (CFWI) and ensures that the appropriate governmental entities continue to develop and implement uniform water supply planning, consumptive use permitting, and resource protection programs for the Central Florida Water Initiative;
- Updates and restructures the Northern Everglades and Estuaries Protection Program (NEEPP) to reflect and build upon the Department of Environmental Protection's (DEP) completion of basin management action plans (BMAPs) for Lake Okeechobee, the Caloosahatchee River and Estuary, and the St. Lucie River and Estuary, and the Department of Agriculture and Consumer Services' (DACS) implementation of best management practices (BMPs);
- Modifies water supply and resource planning and processes to make them more stringent;
- Requires the Office of Economic and Demographic Research to conduct an annual assessment of water resources and conservation lands;
- Requires the DEP to publish an online, publicly accessible database of conservation lands on which public access is compatible with conservation and recreation purposes;
- Requires the DEP to conduct a feasibility study for creating and maintaining a web-based, interactive map of the state's waterbodies as well as regulatory information about each waterbody;
- Creates a pilot program for alternative water supply in restricted allocation areas and a pilot program for innovative nutrient and sediment reduction and conservation; and
- Revises certain considerations for water resource permits.

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**SB 1052 – Relating to Environmental Control - 2016**

SB 1052 was referred to the following Committees:

1. Environmental Preservation and Conservation
   Heard 1/20/16; favorable vote with CS
2. Appropriation Subcommittee on general Government
   Not yet on Committee Agenda
3. Appropriations
   Not yet on Committee Agenda

***Summary:***

SB 1052:

- Provides incentives for water conservation by limiting the conditions under which a water management district (WMD) may lower allocations in consumptive use permits (CUPs), and directs the WMDs to adopt rules providing water conservation incentives, including limited permit extensions;
- Revises the number of letters required to provide proof of the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells from two letters to one letter;
- Revises certain membership qualifications for the Harris Chain of Lakes Restoration Council and authorizes the Lake County legislative delegation to waive membership qualifications based on good cause;
- Requires the WMDs to promote expanded cost-share criteria for additional conservation practices;
- Exempts constructed clay settling areas at phosphate mines from rate of reclamation requirements where its beneficial use has been extended;
- Requires the DEP adopt by rule a surface water classification to protect surface waters used for treated potable water supply and to add treated potable waters supply as a designated use of surface water segments in certain circumstances;
- Allows land set-asides and land use modifications not otherwise required by state law or permit to be used to generate credits for water quality credit trading;
- Modifies the prohibition against granting variances that would result in the provision or requirement being less stringent than federal law. It authorizes moderating provisions or requirements under state law, subject to any necessary approval by the U.S. Environmental Protection Agency;
- Revises prerequisites for the institution of flow control ordinances by local governments;
- Provides that local governments may not implement flow control ordinances that would direct solid waste to a landfill gas-to-energy system of facility; and
- Provides for an appropriation for fiscal year 2016-2017 of $2,339,764 from the Solid Waste Management Trust Fund for the closure and long-term care of solid waste management facilities.

***Effect of Proposed Changes:***

**Section 1** amends s. 373.227, F.S., to:

- Prohibit modification of a CUP allocation during the permit term if documented conservation measures beyond those required in the CUP, including best management practices, result in decreased water use, and require WMDs to adopt rules providing water conservation incentives, which may include limited permit extensions; and
- Prohibit the reduction of permitted water use authorized by a CUP for agricultural irrigation during the term of the CUP if actual water use is less than permitted use due to weather, crop disease, nursery stock availability, market conditions, or changes in crop type.

**Section 2** amends s. 373.323, F.S., to change the number of letters attesting to the length of time an applicant wishing to take the water well contractor licensure examination has been engaged in the business of the construction, repair, or abandonment of water wells. The bill requires a letter from a water well contractor or a letter from a water well inspector employed by a governmental agency, rather than letters from both.

**Section 3** amends s. 373.467, F.S., to revise the membership requirements for the Harris Chain of Lakes Restoration Council. One member must be a person with experience in environmental science or regulation, rather than an environmental engineer. It requires an attorney and an engineer, rather than individuals that have training in either discipline. It also clarifies that the two members, who are residents of the county, are not required to meet any of the other requirements of membership to be appointed to the council. As the statute is currently written, it appears those two members are prohibited from meeting any of the other requirements for membership. The bill provides that the Lake County legislative delegation may waive the qualifications for membership on a case-by-case basis for good cause. The bill provides that resignation by a council member, or removal of a council member for failure to attend three consecutive meetings without an excuse approved by the chair of the committee results in a vacancy on the council.

**Section 4** amends s. 373.705, F.S., to require the WMDs to promote expanded cost-share criteria for additional conservation practices, such as soil and moisture sensors and other irrigation improvements, water-saving equipment, and water-saving household fixtures, and software technologies that can achieve verifiable water conservation by providing water use information to utility customers.

**Section 5** amends s. 378.209, F.S., to exempt constructed clay settling areas from rate of reclamation requirements if the beneficial use of the area has been extended.

**Section 6** amends s. 403.061, F.S., to require the DEP to adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply. Waters classified under this section must have the same water quality criteria as that for Class III waters. This new classification will allow utilities to withdraw water for potable use from a waterbody classified as Class II or III, so long as it does not require significant alteration of permitted treatment processes or prevent compliance with applicable state drinking water standards. Regardless, this classification or the inclusion of treated water supply as a designated use of a surface water does

not prevent a surface water used for treated potable water supply from being reclassified as water designated for potable water supply (Class I).

**Section 7** amends s. 403.067, F.S., to allow the DEP to authorize the generation of credits for water quality credit trading for land set-asides and land-use modifications, including constructed wetlands and other water quality improvement projects, which reduce nutrient loads into nutrient-impaired surface waters. The DEP provides that it already has this authority and has adopted rules that allow such trades.

**Section 8** amends s. 403.201, F.S., to modify the prohibition against granting a variance that would result in the provision or requirement being less stringent than federal law. The bill authorizes moderating provisions or requirements, subject to any necessary approval by the United States Environmental Protection Agency.

**Section 9** amends s. 403.713, F.S., to provide that a local government may only institute a flow control ordinance after it owns, and actively uses, a resource recovery facility and the local government proves the necessity of instituting flow control to ensure sufficient materials for that facility. The bill also provides that a flow control ordinance does not limit the ability of other entities and districts to contract for waste management services.

The bill also specifies that landfill gas-to-energy systems or facilities are not a resource recovery facility for purposes of exercising flow control authority, meaning that flow control ordinances may not be enacted that require waste to be sent to a landfill gas-to-energy system or facility.

**Section 10** amends s. 403.861, F.S., to require the DEP to establish rules concerning the use of surface waters for treated potable public water supply.

The bill provides that when a construction permit is issued to construct a new public water system drinking water treatment facility to provide potable water using a surface water of the state that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the DEP must add treated potable water supply as a designated use of the surface water segment.

The bill provides that for existing public water system drinking water treatment facilities that use a surface water of the state as a treated potable water supply, and the surface water classification does not include potable water as a designated use, the DEP shall add treated potable water supply as a designated use of the surface water segment.

**Section 11** reenacts s. 373.414(17), F.S., due to changes made by the bill.

**Section 12** provides an appropriation for the 2016-2017 fiscal year of $2,339,764 in nonrecurring funds to the DEP from the Solid Waste Management Trust Fund for the closing and long-term care of solid waste management facilities. The DEP provides that it has requested $1,000,000 for fiscal year 2016-2017 for similar closure activities.

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**HB 1075 – Relating to State Lands – 2016**

*Companion Bill: SB 1290 – Relating to State Lands*

HB 1075 was referred to the following Committees:

1. Agriculture & Natural Resources Subcommittee
   Heard 1/20/16; favorable vote
2. Agriculture & Natural Resources Appropriations Subcommittee
   Heard 1/20/16; favorable vote
3. State Affairs Committee
   Not yet on Committee Agenda

***Summary:***

The bill addresses a number of issues relating to acquiring, managing, and disposing of state lands, including:

- Combining the acquisition procedures for all state lands into one section of law;
- Requiring conservation lands to be managed for conservation and recreation purposes, rather than for the purpose for which they were acquired;
- Authorizing the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to require that managing entities release their interest in state-owned lands or surplus such lands when the managing entity is not meeting its short term goals;
- Combining the disposition procedures for all state lands into one section of law;
- Directing land managers, as part of their every 10-year management plan update, to identify conservation lands that could be disposed of in fee simple or with the state retaining a permanent conservation easement;
- Requiring the Division of State Lands (DSL), at least every 10 years, to review all Board of Trustee-titled conservation lands, along with lands identified in any updated land management plan, to determine if any are no longer needed for conservation purposes and can be disposed of in fee simple or with the state retaining a permanent conservation easement;
- Requiring DSL, at least every 10 years, to review all Board of Trustee-titled nonconservation lands and recommend to the Board of Trustees whether the lands should be retained or disposed of;
- Providing an exchange process that allows a person who owns land contiguous to Board of Trustees-titled land to submit a request to DSL to exchange all or a portion of the state-owned land, with the state retaining a permanent conservation easement, for a permanent conservation easement over all or a portion of the contiguous privately owned land;
- Amending the definition of "water resource development project" to include construction of treatment, transmission, or distribution facilities;
- Authorizing minimal secondary non-water dependent uses that are related to a water-dependent use over sovereign submerged lands;

- Requiring ARC to give priority to proposed projects under the Florida Forever Program that can be acquired in less than fee and projects that contribute to improving springs or groundwater;
- Requiring the Department of Environmental Protection (DEP) to add federally owned conservation lands; lands on which the federal government holds a conservation easement; and all lands on which the state holds a conservation easement to the SOLARIS state lands data base by July 1, 2018;
- Requiring each county and city to submit to DEP, by July 1, 2018, a list of all conservation lands owned by the local government and lands on which the local government holds a permanent conservation easement. Financially disadvantaged small communities have until July 1, 2019, to submit the same information; and
- Directing DEP to complete a study by January 1, 2018, regarding the technical and economic feasibility of including privately owned conservation lands in a public lands inventory.

The bill has a negative fiscal impact on DEP, an indeterminate negative fiscal impact on local governments, and no fiscal impact on the private sector.

***Effect of the Proposed Changes:***

The bill relocates and consolidates the acquisition provisions contained in chapters 253 and 259, F.S., into one statute, by amending s. 253.025, F.S., and repealing 259.041, F.S. Although consolidated, the procedures remain largely the same. The bill:

- Combines language from subsections 253.025(1) and 259.041(1), F.S., to require the Board of Trustees to follow the procedures in 253.025, F.S., when acquiring property. In addition to being able to waive the procedures in statute for federally mandated procedures when using federal funds, the Board of Trustees will be able to waive all procedures, except the ones in subsections (4), (11), and (22), for all lands, not just conservation lands as allowed currently;
- Moves language from subsections 253.025(9) and 259.041(1), F.S., to 253.025(1), F.S., to indicate that all lands acquired pursuant to s. 253.025, F.S., will vest in the Board of Trustees, unless otherwise provided by law;
- Moves the rulemaking authority for acquisition of conservation lands from subsection 259.041(2), F.S., to subsection 253.025(3), F.S. Now the rules for the acquisition of all lands must include the procedures previously required only for conservation lands;
- Moves the acquisition requirements in subsection 259.041(3), F.S., for real property acquired for purposes described in chapter 259, F.S. (conservation lands), chapter 260, F.S. (Greenways and Trails), and chapter 375, F.S. (Outdoor Recreation and Conservation Lands) to subsection 73 Section 259.041(15), F.S. 253.025(4), F.S. Now the procedures will apply to lands acquired under chapter 253, F.S., for these purposes. Further, the language is changed to indicate that the acquiring agency must justify why acquisition of Florida Forever lands is in the public interest. This change is consistent with current law;
- Combines the appraisal procedures from subsections 253.025(6) and 259.041(7), F.S., into subsection 253.025(8), F.S. The bill:
  - Changes “division” to “department” or “board” where appropriate;
  - Changes the reference to the Department of Business and Professional Regulation

(DBPR) to the DACS to recognize that land surveyors are regulated by DACS rather than DBPR;

- o Authorizes a third appraisal for all lands if two appraisals for property valued over $1 million differ significantly. This procedure is already allowed in rule 18-1.006, F.A.C.;
- o Authorizes DSL to prepare an appraisal for property valued under $100,000 for all lands, not just conservation lands;
- o Requires the acquiring agency to pay for appraisal fees and associated costs for all lands. Currently, acquiring agencies are not expressly required to pay "associated costs" for nonconservation lands;
- o Eliminates the Board of Trustees' ability to designate a qualified fee appraiser organization to perform appraisal for the state because "fee appraiser organizations" no longer exist;
- o Prohibits the fee appraiser and review appraiser from acting in any manner that may be construed as negotiating with the owner of a parcel proposed for acquisition. This prohibition currently only exists in the acquisition procedures for conservation lands;
- o Combines the public records exemption for appraisals from paragraphs 253.025(6)(f) and 259.041(7)(f), F.S., into paragraph 253.025(8)(f), F.S. DEP may disclose the appraisal report to the private land owner when acquiring alternatives to fee simple interest for all lands, not just conservation lands, if it determines disclosing the report will bring the acquisition to closure. The bill alters the definition of "nonprofit organization" to only require their purpose to include preservation of natural resources when the nonprofit is helping acquire conservations lands;

- Moves language from paragraph 259.041(8)(b), F.S., to paragraph 253.025(9)(b), F.S. The bill provides a more extensive list of real estate services the Board of Trustees may utilize for all lands, not just conservation lands. The bill also authorizes, rather than requires, DEP to hire outside counsel to perform acquisition closings if it cannot conduct the same activity in 15 days or less;
- Moves language from paragraph 259.041(1)(c), F.S., to paragraph 253.025(10)(c), F.S. Now, the maximum value of all land to be purchased, not just conservation land, approved by the Board of Trustees may not increase or decrease as a result of a change in zoning, permitted land use, or changes in market forces that occur within one year after DEP or the Board of Trustees approves a contract for purchase;
- Moves the authorization to use eminent domain to acquire conservation lands in certain situations from subsection 259.041(14), F.S., to subsection 253.025(11), F.S. To authorize eminent domain procedures, the bill requires a vote of at least three of the Board of Trustees members rather than a majority vote;
- Amends subsection 253.025(16), F.S., to change "department" to "Department of Agriculture and Consumer Services" to avoid confusion over acquisition and disposition of forest lands;
- Moves the authorization to immediately acquire conservation lands in certain situations from subsection 259.041(15), F.S., to subsection 253.025(22), F.S.;

- Moves subsection 259.041(17), F.S., to subsection 253.025(23), F.S., to authorize the Board of Trustees to use the acquisition procedures of a WMD when acquiring any land jointly with that WMD, not just conservation land; and
- Adds subsection 253.025(24), F.S., to define "project" to mean a Florida Forever project selected pursuant to chapter 259, F.S., when used in s. 253.025, F.S. The changes to s. 253.025, F.S., may require amendments to chapter 18-1, F.A.C.

The bill repeals s. 259.02, F.S., which authorized issuing bonds to acquire environmentally endangered lands and outdoor recreation lands. These programs are complete.

The bill repeals subsection 259.1052(6) and (7), F.S., to remove outdated provisions relating to the acquisition of the Babcock Ranch.

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# II. Local Government Affairs

**SB 742 - Relating to Certificates of Public Convenience and Necessity for Life Support or Air Ambulance Services – 2016**

*Companion Bill: HB 517 – Relating to Certificates of Public Convenience and Necessity for Life Support or Air Ambulance Services*

SB 742 was referred to the following committees:

1. Health Policy
   Heard 12/1/2015; favorable vote
2. Community Affairs
   Heard 1/11/16; favorable vote with CS
3. Judiciary
   Heard 1/20/16; favorable with CS
4. Fiscal Policy
   Not yet on Committee Agenda

***Summary:***

SB 742 amends s. 401.25, F.S., to require, rather than allow, counties to adopt ordinances for reasonable standards for the issuance of certificates of public convenience and necessity(COPCN) for the provision of basic or advanced life support services or air ambulance services. The bill details certain standards that must be included in such an ordinance and also creates a specific appeals process for applicants whose COPCNs are denied by a county.

County ordinances regarding COPCNs vary in detail from county to county. Of the counties surveyed, 12 all ordinances detail specific application requirements, typically including forms required to be filed with the county, and application review criteria. The application review criteria typically require that applications be sent to each municipality within the county and the

municipalities to make recommendations on the application. Such recommendations must be taken into account when deciding to grant or deny the COPCN. The amount of detail required to be filed with a COPCN application also varies from county to county, but generally includes proof that the applicant has all necessary licenses as well as meets all state criteria for the provision of ALS or BLS services. Also included in such ordinances were revocation criteria, responsibilities conveyed on the holder of a COPCN, and a ban on the sale or reassignment of COPCNs. Additionally, the length of time that a COPCN lasts before it expires varies. For example, in Volusia County COPCNs expire after two years, in Broward County after three years, and in Miami-Dade County the COPCNs last until they are revoked. Currently, if a COPCN is denied, there is no specific process for appeal detailed in the Florida statutes. As such, it is likely that any appeals of COPCN denials would be filed with the circuit court with jurisdiction over the county that denied the COPCN.

***Effect of Proposed Changes:***

SB 742 amends s. 401.25, F.S., to require, rather than allow, each county to adopt ordinances for the issuances of COPCNs for the provision of basic or advanced life support services or air ambulance services. The bill details that such ordinances must include standards regarding trained personnel staffing, equipment, and response times to life support calls. Additionally, when developing standards for COPCNs, the bill adds the requirement that the counties consider the recommendations of independent special fire control districts within their jurisdiction.

The bill creates an appeals process specific to COPCN denials. If a COPCN is denied, the bill allows the applicant to appeal the decision by filing a writ of certiorari with the circuit court that has jurisdiction over the county. The bill requires that the county grant the applicant's COPCN if the court record in the proceeding shows that the applicant will provide a level of service superior to that of the current county provider, as measured by the county standards, at equal or lower cost.

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**HB 593 - Relating to Government Accountability - 2016**

*Companion Bill: SB 686 – Relating to Government Accountability*

HB 593 was referred to the following Committees:

1. Government Operations Subcommittee
   Heard 1/20/2016; temporarily postponed
   Rescheduled for 1/26/2016 @ 9:00 a.m.
2. Appropriations Committee
   Not yet on Committee Agenda
3. State Affairs Committee
   Not yet on Committee Agenda

***Summary:***

Various statutes ensure government accountability of state and local governments. The bill makes various changes to some of these statutes. In part, the bill:

- Specifies that the Governor or Commissioner of Education, or designee, may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements;
- Defines terms;
- Applies certain ethics standards and post-employment lobbying restrictions to certain corporations created or housed within the Department of Economic Opportunity;
- Applies the conflicting contractual relationship ban to include contracts held by a business entity in which a public officer or public employee holds a controlling interest or that he or she manages;
- Requires each agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, local governmental entities, charter schools, school districts, Florida College System institutions, and state universities to establish and maintain internal controls;
- Revises criminal provisions relating to bribery, misuse of public office, unlawful compensation or reward for official behavior, official misconduct, and bid tampering to replace the "corrupt intent" mens rea requirement with a "knowingly and intentionally" mens rea requirement;
- Requires all elected municipal officers to file a full and public disclosure of their financial interests;
- Adds school district to the list of governmental entities who may withhold salary-related payments for failure to timely file disclosure of financial interests;
- Expands the types of governmental entities subject to lobbyist registration requirements;
- Requires counties, municipalities, and special districts to maintain certain budget documents on their websites for specified timeframes;
- Requires a unit of government to investigate and take action to recover prohibited compensation, specifies methods of recovery and liability for violations, provides a reward structure to those reporting prohibited compensation, and exempts from the prohibition specified bonuses and severance pay;
- Revises the monthly financial statement requirements for water management districts;
- Revises the composition of an audit committee;
- Prohibits certain officers, members, or directors from representing a person or entity before Enterprise Florida, Inc., and its divisions and corporations, and the Florida Development Finance Corporation;
- Requires completion of an annual financial audit of the Florida Virtual School;
- Requires a district school board, Florida College System board of trustees, or university board of trustees to respond to audit recommendations under certain circumstances; and
- Prohibits a board or commission from requiring a member of the public to provide an advance written copy of his or her testimony or comments as a precondition of being given the opportunity to be heard.

The bill may have an indeterminate fiscal impact on the state, local governments, and the private sector.

***Effect of Proposed Changes:***

The bill specifies that its intent is to prevent fraud, waste, and abuse and to safeguard government resources. It also provides that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property.

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**HB 1039 - Relating to Babcock Ranch Community Independent Special District, Charlotte and Lee Counties - 2016**

HB 1039 was referred to the following Committees:

1. Local Government Affairs Subcommittee
   Heard 1/19/2016; favorable vote
2. Finance & Tax Committee
   Not yet on Committee Agenda
3. Local & Federal Affairs Committee
   Not yet on Committee Agenda

***Summary:***

The Babcock Ranch Community Special District (District) is an independent district located in Charlotte County. This bill will expand the borders of the District to include seven parcels in Lee County, increasing the overall size of the District from approximately 13,630 acres to approximately 17,787 acres. The bill also makes conforming changes to the enabling act to reflect that the District will now be located in both Lee and Charlotte Counties. The bill updates statutory references to Chapter 189, F.S. Finally, the bill changes a provision regarding the District's public facilities report to indicate that the counties may, instead of shall, rely on that report when preparing or amending their comprehensive plan.

The bill provides that sections 6 and 7 shall take effect upon the bill becoming law.

Section 7 provides for the remaining sections of the bill, and the inclusion of property in Lee County, to be approved by a majority of qualified landowners within the existing district and within the seven parcels proposed for addition at a landowners' meeting to be held within 90 days from the effective date of the act.

Section 7 reiterates the provisions in the present charter that the District's authority to levy ad valorem taxes and issue general obligation bonds shall take effect only after approval by a majority of qualified electors in the District at a referendum to be conducted only after all

members of the District's governing board themselves are qualified District voters elected by the other voters in the District.

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**SB 348 – Relating to Vacation Rentals – 2016**

*Companion Bill: HB 4045 – Relating to Vacation Rentals*

SB 348 was referred to the following Committees:

1. Regulated Industries
   Not yet on Committee Agenda
2. Community Affairs
   Not yet on Committee Agenda
3. Rules
   Not yet on Committee Agenda

***Summary:***

SB 342 revises the permitted scope of local laws, ordinances, and regulations with respect to vacation rentals; provides an exemption for subsequent amendments of certain provisions of existing local laws, ordinances, and regulations adopted on or before a specified date.

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**SB 1322 – Relating to Juvenile Detention Costs – 2016**

*Companion Bill: HB 1279 – Relating to Juvenile Detention Costs*

SB 1322 has been referred to the following Committees:

1. Appropriations Subcommittee on Criminal and Civil Justice
   Not yet on Committee Agenda
2. Appropriations
   Not yet on Committee Agenda
3. Rules
   Not yet on Committee Agenda

***Summary:***

SB 1322 revises the annual contributions by certain counties for the costs of detention care for juveniles; requires the state to pay all costs of detention care for juveniles residing out of state and for certain post-disposition detention care; deletes a requirement that the Department of Revenue and the counties provide certain technical assistance to the Department of Juvenile Justice.

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# III. Public Records

**SB 320 - Relating to Public Records/Medical Technicians or Paramedics Personal Identifying Information - 2016**

*Companion Bill: HB 391 – Relating to Public Records/Emergency Medical Technicians or Paramedics*

SB 320 was referred to the following Committees:

1. Health Policy
   Heard 10/20/15; favorable vote
2. Governmental Oversight and Accountability
   Heard 11/17/2015; favorable vote
3. Rules
   Heard 12/3/2015; favorable vote

Jan. 21, 2016 – Passed in the Senate

***Summary:***

SB 320 amends s. 119.071, F.S., to exempt certain personal identifying information of any current or former emergency medical technician (EMT) or paramedic certified under ch. 401, F.S., and of his or her spouse and children. The bill requires that the EMT or paramedic must have made a reasonable effort to protect such information from being accessible through other public means for such information to qualify for the exemption.

The bill states that it is a public necessity to protect such information as EMTs and paramedics are public safety officers who often deal with violent, angry, or mentally unstable individuals and the release of the exempted information could place an EMT or paramedic in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to his or her encounter with the EMT or paramedic.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2021, unless reenacted by the Legislature.

A two-thirds vote of each house is required for the passage of the bill.

***Effect of Proposed Changes:***

SB 320 amends s. 119.071, F.S., to exempt the home address, telephone number, and date of birth of any current or former emergency medical technician (EMT) or paramedic certified under ch. 401, F.S., and of his or her spouse and children. The bill also exempts the EMT's or paramedic's photograph, his or her spouse's and children's places of employment, and the names and locations of any schools or day care facilities attended by his or her children. The bill requires that the EMT or paramedic must have made a reasonable effort to protect such

information from being accessible through other public means for such information to qualify for the exemption.

The bill states that it is a public necessity to protect such information as EMTs and paramedics are public safety officers who often deal with violent, angry, or mentally unstable individuals and the release of the exempted information could place an EMT or paramedic in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to his or her encounter with the EMT or paramedic.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be automatically repealed on Oct. 2, 2021, unless reenacted by the Legislature.

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**HB 1021 - Relating to Award of Attorney Fees in Public Records Enforcement Actions – 2016**

*Companion Bill: SB 1220 – Relating to Public Records*

HB 1021 was referred to the following Committees:

1. Government Operations Subcommittee
   Heard 1/20/2016; favorable vote
2. Government Operations Appropriations Subcommittee
   Not yet on Committee Agenda
3. State Affairs Committee
   Not yet on Committee Agenda

***Summary:***

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

If an agency unlawfully fails to provide a public record, the person making the public records request may sue to have the request enforced. Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is considered a legal consequence that is independent of the public records request.

Once an enforcement action has been filed, an agency, or a contractor acting on behalf of an agency, can be held liable for attorney fees even after the agency has produced the requested records. The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial. Granting attorney fees also makes it more likely that public agencies will comply with public records laws and deter improper denials of requests. If the court finds that the agency unlawfully refused access to a public record, the

court must order the agency to pay for the requestor's reasonable costs of enforcement, including reasonable attorney fees.

The bill amends current law to provide that in a public records enforcement lawsuit, a court may, but is not required to, award reasonable enforcement costs, including attorney fees, to the complainant if the court determines the agency unlawfully refused to provide a public record. To be awarded such costs, the bill also requires a complainant to provide written notice of the public records request to the agency's records custodian at least 5 business days before filing the lawsuit.

The bill may have a negative fiscal impact on the private sector and a positive fiscal impact on the state and local governments.

***Effect of Proposed Changes:***

The bill amends current law to provide that in a public records enforcement lawsuit, a court may, but is not required to, award reasonable enforcement costs, including attorney fees, to the complainant if the court determines the agency unlawfully refused to provide a public record. To be awarded such costs, the bill also requires a complainant to provide written notice of the public records request to the agency's records custodian at least 5 business days before filing the lawsuit. It is not clear whether the intent of providing notice of a failure to comply with a public records request is to cure further legal action.

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# IV. Tax Reform

**HB 1203 – Relating to Tourist Development Taxes – 2016**

*Companion Bill: SB 1520 – Relating to Tourist Development Taxes*

HB 1203 was referred to the following Committees:

1. Economic Development & Tourism Subcommittee
   Scheduled to be heard 1/25/2016 @ 2:30 p.m.
2. Finance & Tax Committee
   Not yet on Committee Agenda
3. Economic Affairs Committee
   Not yet on Committee Agenda

***Summary:***

The Local Option Tourist Development Act authorizes counties to levy tourist development taxes on transient rentals of living quarters or accommodations, such as hotel stays. The bill authorizes coastal counties with populations less than 225,000 and at least nine municipalities to

use revenues from the existing tourist development tax to fund beach safety personnel and lifeguard operational activities in areas with public access.

The bill has no fiscal impact on state or local government revenues.

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# V. Transportation

## HB 509 - Relating to Transportation Network Companies – 2016

HB 509 was referred to the following Committees:

1. Highway & Waterway Safety Subcommittee
   Heard 12/2/2015; favorable vote with CS
2. Economic Affairs Committee
   Heard 1/13/2016; favorable vote with CS

1/22/16 Placed on Special Order Calendar, 1/26/16

***Summary:***

The bill preempts to the state the regulation of Transportation Network Companies (TNCs) and creates a regulatory framework for the operation of TNCs. Specifically, the bill:

- Defines "transportation network company" as an entity granted a permit under s. 316.680, F.S., to operate in this state using a digital network or software application service to connect passengers to TNC service provided by drivers. A TNC is not deemed to own, control, operate, or mange the vehicles used by drivers; is not deemed to control or mange drivers; and is not a taxicab association or for-hire vehicle owner. A TNC does not include an individual, corporation, partnership, sole proprietorship, or other entity arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization. The bill also provides other definitions related to TNCs.
- Provides that a TNC is not a common carrier and does not provide taxi or for-hire vehicle service.
- Provides that a TNC driver is not required to register his or her vehicle as a commercial vehicle or for-hire vehicle.
- Provides that a person must obtain a permit from the Department of Highway Safety and Motor Vehicles (DHSMV) to operate as a TNC.
- Provides an annual permit fee for TNCs in the amount of $5,000, paid to DHSMV.
- Requires TNCs charging fares to disclose the fare calculation, to provide passengers with applicable rates being charged, and an option to receive an estimated fare.
- Requires an electronic receipt to be provided to TNC passengers within a reasonable period of time.

- Requires the identification of TNC vehicles and drivers by license plate and picture of the driver.
- Provides minimum TNC and driver insurance requirements and provides for certain insurance related disclosures.
- Provides that TNC drivers are independent contractors if certain conditions are met and TNCs are not required to provide workers' compensation coverage for independent contractors.
- Requires TNCs to have a zero tolerance policy for illegal drug or alcohol use.
- Provides minimum requirements for TNC drivers, including a criminal background check and a driving history report.
- Requires vehicles used to provide TNC service to meet the safety and emissions requirements of the state where the vehicle is registered.
- Prohibits certain conduct from TNC drivers such as accepting street hails or cash payments.
- Prohibits TNCs from discriminating against drivers and requires them to develop policies on nondiscrimination and accessibility.
- Requires TNCs to maintain certain records for a minimum period of time.
- Prohibits local governments from imposing taxes or licenses on TNCs relating to the provision of TNC service.

The bill also revises financial responsibility requirements for for-hire passenger transportation vehicles and eliminates the self-insurance authorization for motor vehicles, and a separate self-insurance authorization for large operators of for-hire passenger vehicles.

The bill has an indeterminate, but positive, fiscal impact on DHSMV. The bill has a potential negative fiscal impact on local governments currently collecting fees from TNCs. There may be a fiscal impact on the private sector for those required to purchase motor vehicle insurance that currently self-insure. However, the impact is indeterminate, but is expected to be negative on those entities that currently self-insure.

The bill has an effective date of July 1, 2016.

***Effect of Proposed Changes:***

The bill creates s. 316.830, F.S., relating to transportation network companies. The bill preempts the permitting and regulation of TNCs to the state. Additionally, the bill creates a regulatory framework governing the operation of TNCs in the state.

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# VI. Utilities

## SB 416 – Relating to Location of Utilities – 2016

*Companion Bill: HB 461 – Relating to Location of Utilities*

SB 416 was referred to the following Committees:

1. Community Affairs
   Heard 10/20/2015; favorable vote with CS
2. Transportation
   Heard 11/4/2015; favorable vote

3. Fiscal Policy
   Heard 11/19/2015; favorable vote

11/11/15 Placed on Senate Calendar, Second Reading

***Summary:***

SB 416 addresses the responsibility for the cost of relocating utility facilities in a public easement. Easements dedicated to the public for utilities are typically located along existing road or highway rights-of-way and are available for use by a variety of utility providers. The bill revises the responsibility to bear relocation costs from the utility owner to the state or local government requiring the facilities to be relocated if the utility owner is authorized by a state or common law or state or local agreement to place facilities in the public rights-of-way, effectively shifting such costs currently borne by the utility and its users to taxpayers. Under the bill, the owner of a utility that requires relocation will be liable for relocation costs only if their lines and facilities are across, on or "within" the right-of-way, rather than "along" any right-of-way.

Additionally, the bill prohibits a municipality or county from requiring utilities to resubmit proprietary maps of facilities if the facilities have previously been subject to a permit.

According to the Florida Department of Transportation (DOT), CS/CS/SB 896, a similar bill from 2015, was expected to have an indeterminate negative fiscal impact on state expenditures relating to the cost of utility relocation on state roads. To the extent funds are expended for such relocations, projects currently planned in the Work Program may need to be adjusted.

The bill, like CS/CS/SB 896 from 2015, is also expected to have an indeterminate negative fiscal impact on local governments that may now be responsible for the cost of utility relocations.

***Effect of Proposed Changes:***

**Section 1** amends s. 125.42, F.S., relating to licenses for water, sewage, gas, power, telephone, other public utilities, and television lines. The bill reduces a county's authority to grant licenses for lines to only locations under, on, over, across, or within the right-of-way limits of a county highway or public road, as opposed to "under, on, over, across and along" such highways or roads. Specifically, the bill provides that the authority of a county to grant a license to construct, maintain, repair, operate, or remove, within the unincorporated areas of the county, lines for the transmission of water, sewage, gas, power, telephone, other public utilities, television lines, and other communications services is limited to those lines located within the right-of-way limits of any county roads or highways. Accordingly, this change narrows a county's ability to grant

licenses to construct such lines within a public easement, running along a road or highway but not within the actual right-of-way.

The bill also makes a conforming change, substituting a reference to ss. 337.403(1)(d) through (i), F.S., with ss. 337.403(1)(d) through (j), F.S., to correspond with the new exception set forth in Section 3 of the bill.

**Section 2** amends s. 337.401, F.S., relating to rules or regulations concerning specified structures within public roads or rail corridors. The bill reduces the ability of defined government authorities to grant licenses to only locations "across, on, or within" the right-of-way limits of a county highway or public road, as opposed to "along, across, or on" such highways or roads. Specifically, the bill narrows the authority of DOT and local governmental entities to prescribe and enforce rules or regulations related to the placing and maintaining of a utility to only across, on, or within the right-of-way limits of any public road or publicly owned rail corridors. By changing the language to "right-of-way," the bill reduces the authority of DOT and local governments to prescribe and enforce rules and regulations regarding the placement and maintenance of utilities within a public easement. The bill also changes the expression "other structures referred to as a utility" to mean those structures referred to in ss. 337.401-337.404, F.S., instead of just those found in s. 337.401, F.S.

Additionally, the bill prohibits municipalities or counties exercising authority over a utility from requiring the utility to provide proprietary maps of facilities if the facilities have previously been subject to a permit from the authority; and separately prohibits municipalities or counties from requiring providers of communication services to provide proprietary maps of such facilities.

**Section 3** amends s. 337.403, F.S., relating to alleviating an interference that a utility causes to a public road or publicly owned rail corridor. The bill limits the responsibility of utility providers to pay for relocating their lines and facilities under certain circumstances and requires defined governmental authorities to pay for such relocation. Specifically, the bill establishes that the utility is not required to bear relocation costs if a governmental authority requires relocation:

- For any purpose other than unreasonable interference with the safe continuous use, maintenance, improvement, extension, or expansion of a public road or publicly owned rail corridor, and the utility owner is authorized by state or common law or state or local agreement to place facilities in the public rights-of-way; or as a condition or result of a project by a different entity unless the relocation would otherwise be required in connection with a transportation improvement identified in the authority's capital improvement schedule and scheduled for construction within 5 years; and
- Where the utility is located upon, under, over or within the right-of-way limits of the road or rail corridor, rather than upon, under, over, or along the road or rail corridor; or where a utility is located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the governmental authority, by dedication, transfer of fee, or otherwise.

The bill further specifies that the rights of the holder of any private railroad right-of-way are not impaired and that the holder of such private railroad right-of-way is not obligated to bear the

relocation cost in the railroad right-of-way, subject to any agreement between the holder of the private railroad right-of-way and a utility that otherwise allocates such relocation cost.

The bill also provides that a lawful permit or contract entered into between an authority and a utility before October 1, 2015, is not affected. Furthermore, the bill provides that if an authority is required to bear the cost of relocating a utility, the authority is required to pay the entire expense properly attributable to such work after deducting any increase in the value of a new facility and any salvage value derived from an old facility.

These changes overturn the results reached by the Second DCA in Lee County Electric Cooperative, Inc. v. City of Cape Coral, which held that the cost of relocating utilities from a public easement in the absence of a permit or other agreement is the responsibility of the utility owner. Under the bill, if a utility is located in a public easement and no permit or agreement is in place to address relocation, the state or local government will be required to pay relocation costs because the utility is located along a public right-of-way.

The provisions extend beyond the issue before the court in the Lee County case. For example, current law defers to private property rights by requiring the state or local government to pay for relocation when a utility is located on a private easement, i.e., on property for which the utility has paid for the right to use or occupy. The bill's provisions seemingly extend private property rights to public property by requiring the governmental entity to pay for utility relocation even when the governmental entity has purchased a public easement, i.e., property dedicated to the public in general, not to any specific utility owner, effectively bestowing a compensable property right to private users of a public easement, even when such users were granted the right to use the public property without compensation.

**Section 4** provides that the Legislature finds that the bill fulfills an important state interest by clarifying a utility's responsibility for relocation of its facilities.

**Section 5** provides that the act shall take effect upon becoming a law.

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# VII. Waste Management

## SB 1192 – Relating to Waste Management – 2016

*Companion Bill: HB 1387 – Relating to Waste Management*

SB 1192 was referred to the following Committees:

1. Environmental Preservation and Conservation
   Not yet on Committee Agenda
2. Appropriations Subcommittee on General Government
   Not yet on Committee Agenda

3. Fiscal Policy
Not yet on Committee Agenda

***Summary:***

SB 1192 provides that the weight limits for certain solid waste or recyclable collection vehicles are suspended under certain circumstances; requires local governments providing certain solid waste collection, disposal, or recycling services outside their jurisdiction to remit certain fees and taxes to the Solid Waste Management Trust Fund; requires local governments to file a report by a specified date with the Division of Waste Management in the Department of Environmental Protection, subject to certain requirements.

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**SB 922 – Relating to Solid Waste Management – 2016**

SB 922 was referred to the following Committees:

1. Environmental Preservation and Conservation
Heard 1/20/2016; favorable vote
2. Appropriations Subcommittee on General Government
Not yet on Committee Agenda
3. Appropriations
Not yet on Committee Agenda

***Summary:***

SB 922:

- Establishes a waste tire abatement program and provides for funding of the program;
- Deletes the waste tire grant program and authorizes the small county consolidated grant program to provide grants for waste tire abatement;
- Recreates and modifies provisions related to the solid waste landfill closure account;
- Provides authority to the Department of Environmental Protection (DEP) to use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed for completing landfill closure and long-term care when the amount available under an insurance policy or other financial assurance mechanism is not sufficient;
- Expands the authority of DEP to provide funding for the closure and long-term care of solid waste management facilities;
- Expands the types of financial assurances permittees may provide for closure and long-term care of solid waste management facilities; and
- Authorizes funds to be used for closure and long-term care of waste management facilities that are not required to have an operating permit.

***Effect of Proposed Changes:***

**Section 1** amends s. 403.709, F.S., to allow up to five percent of the 37 percent of funds from the SWMTF designated for the solid waste management grant program to be used for a waste tire abatement program.

The bill revises the solid waste landfill closure account to authorize DEP to provide funding for the closing and long-term care of a solid waste management facility. If DEP contracts with a third party, the bill expands DEP's authority by:

- Authorizing DEP to use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if the facility was not required to obtain a permit to operate from DEP. This serves to increase the number of facilities that DEP may provide funding for cleanup; and
- Allowing DEP to use funds from the solid waste landfill closure account when the permittee provided an acceptable alternative form of sufficiently documented financial assurance, for closing and long-term care of a solid waste management facility. This would also increase the number of facilities that DEP may provide funding for cleanup.

The bill provides that funds received from other parties, rather than just an insurer, for reimbursing the costs of closing or long-term care of a facility are to be deposited in the solid waste landfill closure account.

The bill provides that if the funds available under an insurance policy or an alternative form of financial assurance are insufficient or otherwise inaccessible to perform or complete the closing or long-term care of a facility, DEP may use funds from the solid waste landfill closure account to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities. This will expand the circumstances under which DEP may expend funds for closure and long-term care.

**Section 2** amends s. 403.7095, F.S., to remove provisions establishing the waste tire grant program.

The bill expands the allowable uses of funds from the small county consolidated grant program by adding waste tire abatement to the list of programs that may be supported by the grant program.

It also removes an obsolete provision that expired July 1, 2015, directing DEP to award $3,000,000 in grants equally to counties with populations of fewer than 100,000 for waste tire and litter prevention, recycling education, and general solid waste programs.

**Sections 3 and 4** reenact ss. 403.413 and 403.7032, F.S., due to changes made by the bill.

**Section 5** provides an effective date of July 1, 2016.