

Legislative Wrapup - 2016 Session

The 2016 session is over and, as usual, most of our activity was defense. We were able to stop some bad bills altogether and to ameliorate some of the worst parts of others. The biggest issues of session were stopping the fracking bills, making some (though not enough) improvements to the Water bill and the State Lands bill, getting the tax exemption for solar on the ballot, stopping the anti-Clean Power Plan bills, and the budget. There were many other issues the Club weighed in on as shown below. The wrap-up is organized in this order: Wins, Losses, and the Budget.

Remember, legislators are now in campaign mode – they will never be more receptive to speaking to constituents about important issues than for the next seven months. This is the perfect time to educate them and to get their commitment to achieve environmental goals! They want your vote.

Wins:

Fracking bills

HB 191 by Rep. Ray Rodrigues / SB 318 by Sen. Richter Regulation of Oil and Gas

Sierra Club Florida, activists from around the state, and an array of environmental organizations including the Conservancy for Southwest Florida, Food and Water Watch, ReThink Energy, the League of Women voters, outworked the fossil fuel industry and were rewarded with the defeat of the Senate bill in the Appropriations committee on a 9 Yes – 10 No vote which killed the bill for the year. Five Republican Senators joined the five Democrats on the committee to defeat the bill. HB 191 had passed the full House 73-45 with seven Republicans joining the Democrats in opposition.

The bill would have preempted all regulation of oil and gas exploration, production, storage, and transportation to the state and would have voided the local ordinances banning it in local jurisdictions. The legislation purported to regulate fracking, but in fact limited any regulation and permitting to the process least likely to be used in Florida. The weak disclosure requirements and the study would have been limited to “high-pressure well stimulation” and would not have included the acid-matrix stimulation process used in Florida.

Families, businesses, medical personnel, and first responders would be unable to find out what chemicals were used for fracking and injected through their drinking water aquifer.

The bill will likely be back next session and the battle now shifts to the counties and cities where ordinances banning fracking are already being adopted. Over 75% of the population of the state is represented by a local government that has adopted a resolution urging a statewide ban on fracking – and they are now moving to establish bans as well.

While we were able to kill the bad fracking bills, we were unable to get even a single committee hearing for five separate bills that would have banned fracking in Florida:

- HB 19 Well Stimulation Treatments by Rep. Jenne
- SB 166 Oil and Natural Gas Production or Recovery by Sen. Soto
- HJR 453 Well Stimulation by Rep. Javier Rodriguez (constitutional amendment)
- SJR 358 Hydraulic Fracturing by Sen. Ring (constitutional amendment)
- SM 688 Ban on Well Stimulation or Resource Extraction by Sen. Sobel

On to next year!

Solar Tax Exemption Amendment

Renewable Energy Source Devices - SJR 170/ SB 172 by Sen. Brandes and HJR 193/ HB 195 by Rep. Ray Rodrigues

The passage of Senate Joint Resolution 170 and House Joint Resolution 193 will put a constitutional amendment on the ballot to amend Florida's constitution to make it possible to exempt properties from real estate or tangible property taxes on all renewable energy source devices such as solar panels. Currently, thanks to a constitutional amendment adopted by voters in 2008 and an implementing bill passed in 2013, residential properties enjoy this exemption now. This year's ballot issue would extend the exemption to nonresidential properties as well.

The reason for the two types of exemption are addressed in the Senate bill analysis:

"A renewable energy source device may be installed on real property through two alternative methods of ownership: the property owner may purchase and install the device, in which case it becomes a part of the real property and subject to ad valorem tax, or the property owner may lease the device from another person, with it remaining separate and distinct property from the real property and subject to tangible personal property tax. ... This bill proposes amendments to the State Constitution to prevent the application of taxes to a renewable energy source device with either type of ownership."

If adopted by 60% or more of the voters on August 30, 2016 (primary day for state offices) the amendment will make it possible for the legislature to pass a law exempting solar and other renewable energy source devices from ad valorem taxes for 20 years.

The bills were originally filed to make the exemption effective on the adoption of the amendment by the voters, but it was amended to mirror the language used in the 2008 exemption for residential properties' solar and renewable energy source devices – making the exemption dependent on the legislature passing a law to make it happen. In part, this was done to remove the 'fiscal note' – part of the required analysis of a bill that says how much it will cost. By removing the surety that the amendment would be implemented, the cost became indeterminate and was no longer an impediment to its passage. At the same time, advocates for providing incentives for investments in solar energy will have to work hard to get a bill passed. Utilities are strongly opposed to competition from solar energy.

Also, the vote on the constitutional amendment was moved from Tuesday, November 8, 2016, the date of the General (presidential) election, to the Primary Election day for State Offices three months earlier on August 30. It will be important to get people out to the polls to support this amendment, especially after the electric utilities succeeded in preventing the 'Solar Choice' amendment from getting sufficient signatures by introducing their own amendment which is now before the Supreme Court where it has been challenged on the grounds that it is designed to mislead voters.

Building Code

The Building Code bills, HB 535 by Rep. Eagle and SB 704 by Sen. Hutson addressed many subjects from the number of fire elevators needed in high rises to who could work on HVAC systems in apartment complexes. Sierra Club Florida engaged on one section of the bill that would have prevented Florida from keeping pace with the rest of the nation on energy efficiency testing. Section 29 of the bill would have kept Florida stuck with the 2010 code instead of moving to the 2014 code and would have prohibited requiring a "blower door test" to know how much air leaks in or out of a building and therefore, what size the AC should be which is important for both energy use and humidity control, and whether it is an energy efficient building or not.

Moving to the new code and keeping the blower door test is a win for consumers and the environment. It was necessary to compromise with the homebuilders who had opposed moving to the new code by phasing in the

effective date of the 2014 code and the blower door test. The new code becomes effective in July 2017 and only construction permitted after that date will have to pass the blower door test. Sierra Club Florida worked with lobbyists for SACE, the Florida Association for Insurance Reform and a blower door testing provider to get this win.

Land Application of Septage

SB 658 by Sen. Evers and HB 851 by Rep. Drake – Onsite Sewage Treatment and Disposal Systems would have finally repealed the prohibition of land application of septage (the stuff they pump out of septic tanks.) Rep. Drake's HB 851 passed the full House, but the Senate bill was never heard in its first committee (Thanks to Sen. Dean, Chairman of Senate Environmental Protection and Conservation!) and the bills died. There were attempts to insert amendments to delay the effective date of the prohibition, but they failed as well.

The prohibition was originally passed in Sen. Constantine's 2010 water bill. (Former Sen. Constantine is now a Seminole County Commissioner.) The bill gave pumpout operators and owners of septic tanks five and a half years to prepare for the prohibition to take effect. Unfortunately, their main efforts were directed at repealing the prohibition instead of preparing for it. Sierra Club, Audubon, and Conservancy for Southwest Florida have been working on the issue for the last five years.

Septic tank companies and small counties complain that the prohibition of land application as a way to get rid of septage will increase costs for their customers and residents, but there was no willingness to take responsibility for the costs imposed on the public due to pollution entering our waters. The majority of land application sites permitted by the Dept. of Health are in the springs protection zone – in a karstic area of the state.

Anti-Clean Power Plan bills

Sierra Club Florida and the Southern Alliance for Clean Energy successfully opposed HB 639 by Rep. Manny Diaz and SB 838 by Sen. Evers. The bills titled Carbon Dioxide Emissions from Existing Stationary Sources would have prevented Florida from meeting its obligations under President Obama's Clean Power Plan. It's said that 'politics makes strange bedfellows' and this was an example. Some of our allies included the electrical utilities who want the Florida to have the flexibility provided by creating a State Implementation Plan (SIP) that allows the state to figure out how it will meet its reduced emission goals. Had the bills passed, the federal government would have imposed a Federal Implementation Plan without input from the state.

HB 639 passed its first committee but died in the second and SB 838 was not heard in its first committee.

Clay Settling Areas

Sierra Club Florida was able to get clarifying language for land reclamation schedules and fines related to clay settling areas used in phosphate mining. The issue was this: One of the methods used in mining phosphate is to separate the mined material with water. The phosphate is removed and the remaining mud is left to settle in a 'clay settling area'. Miners proposed to re-use the same settling area by transporting the slurry from other parts of the mine rather than establishing a new one in each new area. While this reduces the overall footprint of settling areas, it ran afoul of the required deadlines for land reclamation because the settling area is not reclaimed at the same time as the rest of the area it is -located in.

HB 589 Environmental Control by Rep. Pigman and SB 1052 by Sen. Hays were amended to make it clear that the reclamation deadlines and the fines imposed for not meeting the schedule come into effect as soon as the clay settling area is no longer being used to service other parts of the mine.

Panther Penalties

A close reading of the FWC bill, HB 7013, which categorized violations of FWC regulations and organized their associated penalties into four tiers revealed that the penalty for killing a Florida Panther would have been reduced because repeat offenders would no longer be subject to enhanced penalties. A simple call to the FWC resulted in a quick amendment to bring the penalties back in line for killing a Florida Panther. They should all be this easy! (Thanks to the FWC for their quick response.)

Keys Stewardship Act

Sierra worked with 1000 Friends of Florida and the lobbyists for Monroe County to get amendments to HB 447 by Rep. Raschein and SB 770 by Sen. Simpson to make it clear that the funds provided through the local government infrastructure tax would not be used to expand US 1 to reduce evacuation times and thereby allow additional development, but that they would be used to prevent property rights claims resulting from limitations imposed by the designation of an area of critical state concern. The bill now includes a specific prohibition on purchasing land to expand roadways to reduce evacuation times.

Language that would have allowed Everglades Restoration bonds funds to be used for reverse osmosis was removed from the bill. Stormwater and canal restoration will be eligible for water quality purposes. The bill also provides for at least \$5 million from Florida Forever for land acquisition within the Florida Keys Area of Critical State Concern for ten years starting in 2017.

\$5 million will come from general revenue this year to be spent in various categories including “constructing sewage collection, treatment, and disposal facilities; implementing stormwater collection and treatment systems; canal restoration and muck remediation projects; and projects that protect and enhance water supply in the Florida Keys Area of Critical State Concern and the City of Key West Area of Critical State Concern or, for the purposes of land acquisition within the Florida Keys Area of Critical Concern as authorized pursuant to s. 259.045, Florida Statutes, with increased priority given to those acquisitions that achieve a combination of conservation goals, including protecting Florida's water resources and natural groundwater recharge.”

Organizational Structure of DEP

HB 561 by Rep. Combee and SB 400 by Sen. Hays started out as bills that would have given the Secretary of the Department the ability to establish or eliminate all the divisions and offices of DEP. That would have included the division of State Parks. The final version of the bill leaves all of the divisions intact and adds a new one: the Division of Water Restoration Assistance. Sierra worked with Audubon and other environmental groups to get this bill amended.

Gainesville Regional Utility

HB 1355 by Rep. Perry was a local bill that called for the establishment of an unaccountable appointed board to run the utility. Local government input would be limited to appointing members of the board. They would not be able to remove board members except for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, permanent inability to perform official duties, or conviction of a felony or misdemeanor.

This bill would render the newly created Utility Advisory Board moot since the UAB would not be allowed to advise the new governance board.

The Gainesville City Commission and the Alachua County Commission both voted unanimously to oppose HB 1355 and Sierra Club Florida joined their lobbyists in opposing the bill. Still, the legislature passed the bill and sent it to Governor Scott... who vetoed it on the grounds that:

“...the bill provides compensation for each of the five appointed members of the Authority of up to \$18,000 annually and allows salaries to be adjusted each year based on the Consumer Price Index. Across Florida, hundreds of appointees serve on boards with critical governance and regulatory responsibilities for which the appointees are not compensated. The success of similar utility authorities that do not compensate board members demonstrates that qualified individuals will answer the call to serve the public, without consideration of a taxpayer supported payment.”

Had Gov. Scott not vetoed the bill there would have had to be a referendum on whether to amend the Charter of the City of Gainesville to create the Gainesville Regional Utilities Authority as the governing board of Gainesville Regional Utilities.

Losses

State Lands

Despite the best efforts of Sierra Club Florida staff and volunteers the State Lands bill passed both chambers and has been sent to the Governor. This is a disappointing outcome for the volunteers who lobbied their legislators to stop a key provision eliminating the requirement that conservation land management plans be consistent with the purposes for which the lands were acquired. Instead, the bill requires only that the plans be compatible with “conservation, recreation, or both.” Using the broad categories of “conservation” and “recreation” grants DEP significant discretion and may lead to incompatible uses such as grazing, timbering, hunting, and off road vehicle trails.

Club members will have to stay vigilant for news of land management plan updates in their area and keep a sharp eye on proposals for inappropriate activities on conservation lands, particularly in our state parks.

The legislation - HB 1075 by Rep. Caldwell and SB 1290 by Sen. Simpson - contained multiple controversial issues when it was filed. While Sierra Club Florida opposed the final version of the bill, it was far better when it passed than when it started. The bill is particularly important because its policies will affect land held by the State of Florida including 3,146,040 acres of conservation land, 800,000 acres of which are state parks.

The issues in the bill fell into four categories:

- using Amendment 1 funds for construction of infrastructure,
- surplus lands,
- exchanging state land in return for permanent conservation easements on privately-held contiguous land and on the state land with the potential loss of public access, and
- changing the management of land from the current requirement that it be consistent with the purpose for which it was purchased to being compatible with conservation or recreational purposes.

Representatives of the environmental community met with the sponsors and staff and were able to arrive at mutually agreeable language on some issues. The sponsors agreed to strike the section of the bill that would have allowed the use of Amendment 1 funds for “construction of treatment, transmission, or distribution facilities.”

The sponsors also agreed to clarify that when land management plans are updated, only lands that might be suitable for surplus would have to be identified as such instead of the original language that required lands be identified for consideration for surplus in every plan update. Finally, the section of the bill that would have required conservation land to be considered for surplus if it had not met its short-term goals (2 years)

was changed to bring the acquisition and restoration council (ARC) into the process to look at whether the goals were appropriate, whether the managing entity should be changed, or if surplusing should be considered.

The section of the bill dealing with the exchange of state land in return for permanent conservation easements on both the state land and contiguous private property also saw some improvements: the exchange had to result in a net-positive conservation benefit and the ARC was again brought into the process and required to make recommendations. However, neither Sierra Club Florida nor the Conservancy for Southwest Florida were able to get an explicit requirement that the ARC recommendation include consideration of whether the exchange was a net-positive conservation benefit. We were also unable to get state parks and preserves exempted from the land exchange section – a particular concern because of the potential loss of public access.

Styrofoam Preemption

The Dept. of Agriculture and Consumer Services bills, HB 7007 by the House Agriculture and Natural Resources Subcommittee and SB 1010 by Sen. Montford, started out as fairly innocuous bills dealing with a number of DACS's issues. But HB 7007 was amended in committee to preempt the regulation of polystyrene (Styrofoam) to the Department for all entities under chapter 500. South Florida cities, Surf Rider, and Sierra tried to push back the date of the preemption to April 1, 2016 which would have allowed Coral Gables to retain the ordinance it passed earlier this year and Orange County would have had the time to complete its referendum process – there have already been two public hearings and the election was already scheduled.

The bill allows local jurisdictions to regulate the use of Styrofoam by individuals or temporary vendors on public property or entities in a contractual relationship with the local government. But restaurants, convenience stores, and supermarkets will be able to keep on using Styrofoam even if the community objects. The cities in South Florida whose ordinances predate Jan. 1, 2016 will be able to keep their bans or regulations.

Water Bill

SB 552 by Sen. Dean and HB 7005 by Rep. Caldwell Environmental Resources was the first legislation passed in this year's session. While Sierra Club and our allies were able to get some necessary changes into the bill, it largely ignores any requirement for water conservation and relies on the use of Basin Management Action Plans (BMAPs) and Best Management Practices (BMPs) to achieve water quality goals.

The bill is the culmination of three years of work that started with Sen. Dean's promising SB 1576 of 2014, the "Florida Springs and Aquifer Protection Act." 1576 was passed by the full Senate, but the House passed nothing and the bill died. In 2015 both chambers moved legislation that turned over considerable responsibility for water quality protection to the Department of Agriculture and Consumer Services and required any demand for water to be accommodated by taxpayer funded water supply instead of modifying Comprehensive Use Permits or requiring water conservation. The legislation died when the House adjourned three days early.

This year's bill is an improvement on last year's version – in particular, DEP is back in charge of water quality instead of DACS. There are also provisions requiring inspection and evaluation of BMPs and this year's budget includes funding for DACS staff to do the inspections. However, the issue of septic tanks in the primary focus areas of springs, loopholes allowing the withdrawal of groundwater to go unreported, and the lack of meaningful water conservation requirements meant Sierra had to oppose the bill in its final form.

Disposable Plastic Bags

SB 306 by Sen. Bullard passed its first committee of reference but was never heard in its second. HB 143 by Rep. Richardson was not heard in committee so the categorical preemption of regulation of plastic bags remains in effect. SB 306 / HB 143 would have created a pilot program where coastal communities with fewer than 100,000 residents could have regulated or banned disposable plastic bags through June 30, 2019 as long as the ordinance did not include any new taxes or fees. Communities that implemented such a pilot program would have been required to submit a report to both the governing body of the municipality and to DEP. This is the second year the Senate version of the bill has passed its first committee. The challenge for next year will be getting the House bill heard in committee.

Good bills that were never heard in committee

Bears

HB 1055 and SB 1096 by Rep. Pafford and Sen. Soto would have established a “bear-resistant garbage container account” from which counties and cities could have borrowed funds to purchase bear-resistant containers for distribution to residents. The bills would also have prohibited issuing permits to harvest saw palmetto berries on state lands identified as black bear habitat and would have required burn schedules to be adjusted for the regrowth of vegetation that provides food for bears.

SB 1674 by Sen. Sachs would have prohibited placing bear attracting garbage in outdoor receptacles in high human-bear conflict areas unless the receptacle was bear-resistant.

Electric Vehicles

Sen. Soto agreed to amend his bill for Electric Vehicles to match the goals of Drive Electric Florida including a sales tax exemption and reasonable provisions for charging infrastructure, including in multi-unit dwellings. The bill was not heard in committee.

Climate Change

HB 1223 by Rep. Jacobs and SB 1544 by Sen. Clemens, Weather Impacts, would have created an interagency workgroup to share information on current and potential impacts of weather events in the state that would have included extreme heat, drought, sea-level change, high tides, storm surge, saltwater intrusion, stormwater runoff, and flooding. The workgroup would have been required to create a uniform vulnerability assessment based on current scientific literature and to issue an annual report to be delivered to the Governor, the Speaker of the House, and the President of the Senate. The reports would also be posted on the Division of Emergency Management’s website.

Budget

Notes:

- The budget for 2016-17 totals \$82.3 billion and devotes \$1.5 billion to DEP (1.89%). DEP staff was cut by 41 positions from last year. Since the 2010-11 fiscal year, DEP staffing has fallen from 3551 to the current 2933.5 for a 17.4% reduction.
- Energy – The Office of Energy in DACS is allocated a total of \$24 million. Almost \$14 million in a new line item goes to the Bio-Fuel Infrastructure Partnership (almost completely funded by the US Dept. of Agriculture) and \$6 million goes to the Natural Gas Fleet Vehicle Rebate Program (funded from General Revenue (sales tax)), same as last year’s 2015-16 budget. There are no rebates for energy efficient appliances as was the case in the past.

- The FWC budget includes \$500,000 under 'Nuisance Wildlife Control' from the State Game Trust Fund that may be distributed to counties or local governments to cost-share the purchase of bear-resistant garbage containers. At least 60 percent of those funds shall go to counties or local governments having an ordinance in place focused on resolving issues associated with bear attractants and garbage

The budget adopted by the legislature can be seen at this

link:http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=er_GAA.pdf&DocumentType=Bill&BillNumber=5001&Session=2016

Amendment 1 funding in Millions:

Thanks to Florida Conservation Voters for the budget spreadsheet. Some totals may not add up due to rounding.

Debt Service - \$175.7M

- Line 1535 \$150 M
 - From LATF
 - To Florida Forever bonds debt service
- Line 1589 \$25.7M
 - From LATF
 - To Save Our Everglades bonds debt service

Everglades Restoration - \$215.2M

- Line 1590 \$132 M
 - 100M from Save Our Everglades TF and 32M from LATF
 - 100M to CERP and 32M to Restoration Strategies Regional Water Quality Plan (10 year commitment)
- Line 1590A 55.1 (\$56M including non LATF funding)
 - 1.7M from GR and 55.1M from LATF
 - At least 47.8M to NEEPP and up to 9M to relieve discharges to Caloosahatchee and St. Lucie Rivers and estuaries
- Line 1588 \$27.7M
 - From LATF
 - To SFWMD for land acquisition
 - Lake Hicpochee N. Hydrologic Enhancement Project
 - Picayune Strand Restoration Project
 - Biscayne Bay Coastal Wetlands Project
- Line 1585 \$0.35 M (\$350,000)
 - From LATF
 - To Lake O Basin – operations

Springs - \$50M

- Line 1600 \$50 M
 - From LATF
 - To land acquisition to protect springs and for capital projects that protect the quality and quantity of water that flow from springs. DEP, in conjunction with DACS, is to report by Dec. 1, 2016 on the status of TMDLs, BMAPs, MFLs, recovery or prevention strategies, and implementation of BMPs for all first magnitude and other significant springs.

Beaches – \$21.2 M (\$32.5 total including non LATF funding)

- Line 1602 \$21.2M from LATF and \$11.4 M from GR
- To Beach Management Funding Assistance Program – Beach Restoration and Nourishment projects 1- 9 and 11-17

Historic Preservation - \$2M (\$2.4M including non LATF funding)

- Line 3071 \$0.5M from LATF
- To Historic properties maintenance
- Line 3073
- \$1.5 M from LATF
- \$0.118 M from Federal Grants TF
- \$0.27 M from GR
- To entirety of ranked list of Small Matching Grants on Dept. of State website

Land Acquisition - \$60.5 M

- Line 1533 – 50.1M
- From Florida Forever TF (which is funded by a transfer from LATF)
- To:
 - \$35M – to DACS - for Rural and Family Lands permanent conservation easements
 - The remainder, \$15.1 M for Florida Forever - to be used for approved priority ARC list projects or water resource development projects
- Line 1534 - \$10M
- From Florida Forever TF
- To Florida Communities Trust
- Line 1698A - \$0.4M (\$13.4M including non LATF funding)
- \$ 400,000 from LATF
- \$10M from GR
- \$3M from Federal Grants TF
- To Florida Recreation Development Assistance Program to provide recreational opportunities for individuals with disabilities

Land Management - \$137.1M (includes subtraction of Governor's veto of line 1379B)

There are a large number of categories under this heading. Land management includes parks, invasive species, enhanced wildlife management, and some restoration projects.

The agencies received:

- DACS - \$10.9
- DEP - \$52.2M – includes \$18.8M for state parks
- FWC - \$73.8M

Salaries and related expenses – Operations \$191.3M

Again, there are a large number of categories. Agencies received:

- DACS - \$63.2M
- DEP - \$88.4M
- DOS - \$7.2MT
- FWC - \$32.4M

Nutrient Reduction and Water Storage \$30.4M (\$41.8M including non LATF funding)

- Line 1344

- \$24.2 M from LATF
- \$ 1.4M from General Inspection TF
- \$10M from General Revenue
- For Agricultural BMPs
 - Line 1586
- \$5M from LATF
- For Dispersed water storage
 - Line 1623A
- \$1.2M from LATF
- For TMDLs

Regulatory/pollution control – \$16.5M

- Line 1345A
- \$15M From LATF
- For Okeechobee Agricultural Restoration Projects
 - Line 1581
- \$1.5M from LATF
- To NFWMD to establish MFLs

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