The 2016 legislative session began on January 12 and ended on March 11. As you can see from the information in this column, it was an active session for FSAWWA and its advocates in Tallahassee.

Christopher Pettit, regulatory chair; Krystal Azzarella, legislative chair; and Lisa Wilson-Davis, vice-chair of the FSAWWA Utility Council, have prepared this summary of bills that are of interest to the water sector.

During the 2016 legislative session 1506 general bills and 35 local bills were filed; of those, 229 general bills and 23 local bills passed both chambers. To compare, last year’s session saw 1,498 general and 76 local bills filed; of those, 188 general bills and 39 local bills were passed by both chambers.

There were 120 bills that had potential impact on water utilities in some way. The Utility Council was very active in developing statewide approaches to legislation impacting water utilities. The following is an analysis of some of the bills that passed, along with highlights of some bills and issues that failed. Of the bills that failed, it is likely that some version of them will be introduced in the next session. Also, as a result of the Council’s efforts, there are three opportunities to develop future legislation/policies in which member engagement is paramount.

Bills That Passed

FY 2016-17 General Appropriations Act (HB 5001)

Overall, the Legislature agreed on an $82.35 billion dollar budget containing more than $557 million in tax relief measures. Compared to the fiscal year 2015-16 budget, this represents a $3.65 billion increase. Gov. Rick Scott ultimately vetoed more than $256 million in projects, for a final state budget of just under $80 billion. The budget provides for $30.3 billion in general revenue spending, $25.2 billion in state trust fund spending, and $26.9 billion in federal trust fund allocations.

Unfortunately, the $30 million for alternative water supply projects that was included in the initial House budget was not accepted by the Senate, nor was it included in the final budget. This means that the five water management districts (WMDs) will only have their already budgeted amounts available for cooperative funding.

SB 552 Omnibus Water Policy

This is a “mega” bill that includes many provisions impacting water utilities throughout the state, including:

Springs

The bill contains extensive provisions related to Florida’s springs, starting with a requirement to designate springsheds, called priority focus areas, for each spring defined as an Outstanding Florida Spring (OFS) no later than July 1, 2018. The bill sets deadlines for implementation of existing water quality and water supply regulations within the priority focus areas.

For water quality, each OFS must begin the assessment for impairment by July 1, 2016, and the assessment must be complete by July 1, 2018. For OFSs with existing nutrient total maximum daily loads (TMDLs), the bill requires initiation of basin management action plans (BMAPs) by July 1, 2016, and adoption of the BMAPs within two years.

For water supply, each OFS must begin the assessment for impairment by July 1, 2016, and the assessment must be complete by July 1, 2018. For OFSs with existing nutrient total maximum daily loads (TMDLs), the bill requires initiation of basin management action plans (BMAPs) by July 1, 2016, and adoption of the BMAPs within two years.

Local governments have responsibilities to adopt fertilizer ordinances within a priority focus area by July 1, 2017, and in some cases, develop a septic tank remediation plan. It also prohibits certain activities within priority focus areas, including new septic tanks on lots smaller than 1 acre. For water supply, OFSs needing minimum flows and levels (MFLs) are required to have them by July 1, 2017, or adopt them by emergency rule after that date. Any necessary recovery or prevention strategy must be adopted at the same time as the MFL.

Central Florida Water Initiative

The bill codifies much of the results and practices to date of the Central Florida Water Initiative (CFWI) and also requires that it develop uniform water management regulations within its region, including a uniform definition of “harmful to the water resources.” The definition bears watching as it may result in the development of similar definitions statewide.

Everglades

The bill revises the law related to permitting in the northern Everglades by generally making those statutes consistent with current law elsewhere in the state regulating water quality.

Water Supply Plans

The bill makes some adjustments designed to make water supply plans more useful. It requires updating a water supply plan for any new recovery strategies or when a consumptive use permit (CUP) application is denied to protect an MFL. Water supply plans must only include projects that are technically and financially feasible, describe the projects designed to achieve MFLs, and provide the amount of water to be made available for consumptive uses and natural systems.

Regulatory Changes

This bill makes a number of adjustments to the existing regulatory structures for CUPS, including a requirement that recovery/prevention strategies for MFLs must be set at the same time as the MFL. The bill also prohibits WMDs from reducing CUP allocations due to successful water conservation during the term of the permit and allows WMDs to offer permit extensions as an incentive for water conservation. Also, WMDs are prohibited from reducing agricultural CUP allocations during the term of the permit due to weather events, diseases, crop changes, and market conditions, among other things. The Florida Department of Environmental Protection (FDEP) is directed to undertake reclassification of surface water bodies that are currently Class III (fishable/swimmable) that are being utilized for public water supply to protect drinking water treatment plants. Finally, in the event of competing CUP applications, where neither is a renewal, the WMD must give priority to the user closest to the source.

Other Issues

There are other changes in this bill, including a requirement for the monitoring of water usage of wells greater than 100,000 gal per day (gpd) or using an 8-in. or larger pipe, and requiring WMDs to consider preferred water supply sources for users for whom development of new supplies is not technically or financially feasible. A provision also directs the Office of Economic and Demographic Research to perform an annual assessment on water supply, water quality, and land management expenditures, and projections of expenditures to help determine whether adequate water is available for all consumptive uses and natural systems.

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HB 589 Environmental Control
This was the environmental regulatory bill for the 2016 session and contained the repeal of Section 373.245, Florida Statutes, that was sought by the Utility Council to eliminate the statutory authority for adjacent consumptive use permittees to undertake a cause of action seeking damages in instances where the WMD had already reviewed the purported violations and found no basis for them.

HB 1025 Public Records/Security of Utility Agency Technology
Another priority of the Council, HB 1025 creates a public-records exemption for certain types of information regarding the cybersecurity measures of public utilities. The types of information that are exempted include:
- Information related to the cybersecurity measures and technologies employed by a utility owned or operated by a local government.

HB 525 Small Community Sewer Construction Assistance Act
On behalf of small utility members, the Council was active on HB 525. The bill expands the current definition of a “financially disadvantaged small community” to include counties and Chapter 189 special districts in the definition as long as they meet the existing requirement of a population of less than 10,000. The FDEP has stated in State Revolving Fund rulemaking that there may be flexibility in grants that are allocated under the act for small communities that are part of larger wastewater systems, as long as the systems are segregated from the rest of the system.

SB 124 Public-Private Partnerships
This bill implements several of the recommendations of the Public-Private Partnerships (P3) Task Force that was created in 2013 to develop a uniform set of guidelines for improving the P3 review process.

SB 126 Public Records and Private Meetings
This public records exemption bill is the companion to SB 124 and addresses P3 agreements as they relate to transparency and public records. The bill provides that unsolicited bids for P3s are exempt from public-records requirements until the agency provides notice of its intended decision. If the agency reissues a solicitation, the bid remains exempt until such time as the agency makes its final decision or withdraws the solicitation. In either case, the bid cannot remain exempt for more than 90 days after the agency has rejected all bids for the projects detailed in the unsolicited bid. Recordings of a closed meeting to discuss the unsolicited bid and any records generated from it are also exempt from public records until the underlying exemption expires.

HB 273 Public Records
This bill makes three substantive changes to the public-records law in response to previous legislation that made contractors responsible as public-records custodians for those contracts that were being undertaken on behalf of government agencies:
- The bill requires that all requests for public records be made through the public agency, not the contractor.
- The bill requires contracts for services to include a statement in large, bold font informing the contractor of the name and phone number of the public agency’s records custodian in order to fulfill the contractor’s constitutional duty to pro-
vide public records relating to the contract by redirecting queries to the public custodian’s office. All agencies are required to revise their contracts to include these provisions by Oct. 1, 2016.

 Courts are required to award attorney’s fees to a plaintiff in a public-records case.

HB 347 Utility Cost Containment Bonds
This bill creates an alternative method for financing the costs of certain utility projects using utility cost containment bonds. These bonds are issued by an authority (such as the Florida Governmental Utility Authority) on behalf of a local agency that owns and operates a publicly owned utility that provides public utility services, including water, wastewater, electric, or stormwater. The bonds may receive a lower interest rate because payment is secured by a pledge of the utility project. The primary utility project property is the utility project charge, which is imposed on customers and based on estimates of water, wastewater, electric, or stormwater service usage, to ensure timely payment of all financing costs with respect to utility cost containment bonds.

SB 416 Location of Utilities
This is a compromise bill that resulted from the utility relocation debate during the 2015 legislation session. The bill makes a utility liable for relocation costs only if its lines are located across, under, upon, or within the right of way, not alongside it, as it does in an easement. Furthermore, it limits the ability of local governments to license or otherwise regulate utility lines, except those that are located on, over, under, or within the right of way. The bill also requires that, if a utility is lawfully located within an existing and valid utility easement granted by recorded plat, regardless of whether such land was subsequently acquired by the authority, the authority must bear the net cost of the utility work required to eliminate an unreasonable interference.

HB 561 Organizational Structure of the Florida Department of Environmental Protection
This bill makes the following changes to FDEP’s organizational structure:

- Removes the Office of Chief of Staff, Office of General Counsel, Office of Inspector General, Office of External Affairs, Office of Legislative Affairs, Office of Intergovernmental Programs, Office of Greenways and Trails, and Office of Emergency Response.
- Establishes the Office of Secretary and allows the secretary to establish offices within divisions or within the Office of Secretary to promote the efficient and effective operation of FDEP.
- Allows the secretary to appoint a general counsel and entrusts the counsel with responsibility for all FDEP legal matters.
- Requires that offices and districts be headed by managers and divisions be headed by directors.
- Exempts office/district managers and divisional directors from the career service system and includes them in the senior management service.
- Adds the Division of Water Restoration Assistance as a division within FDEP.

HB 989 Implementation of the Water and Land Amendment
This bill requires that funds from the Land Acquisition Trust Fund (LATF-Amendment 1 funding) be utilized for specific purposes. Of the funds remaining after the payment of certain debt service obligations, the Legislature must appropriate a minimum of 25 percent of the fund or $200 million, whichever is less, for Everglades projects that implement the Comprehensive Everglades Restoration Plan (CERP), including the Central Everglades Planning Project, the long-term plan, and the Northern Everglades and Estuaries Protection Program. Funding is also dedicated for springs ($75 million) and Lake Apopka ($5 million).

Bills/Concepts that Failed

HB 1075 State Lands
Although this bill eventually passed and was signed by the governor, the original language of the bill would have deleted a prohibition on using Florida Forever (Amendment 1) funds for water resource development. Had the original language remained in the bill, it would have created an additional source of funding for alternative water supply and regional projects that would benefit the environmental and water resources of a given area.

HB 1069/SB 1204 Water Resources
These bills contained the three Council priorities for the 2016 session. Although the bills failed to move through the Legislature, two of the three priorities were realized and Section 373.245, Florida Statutes, was repealed as part of the environmental control bill (HB 589). Also, to address Council member issues regarding utility line relocations on state roadways and in coordination with the Council, the Florida Department of Transportation (FDOT) will be initiating a work group to undertake a feasibility study regarding utility relocation on state roadways. The third priority that failed would have eliminated Florida Land and Water Adjudicatory Commission

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(FLAWAC), governor, and Cabinet review of WMDs and FDEP final orders.

HB 181/SB 598 State Contracting
These bills would have prohibited state agencies and political subdivisions that contract for public works projects from imposing certain conditions on contractors and subcontractors. Contractors and their representatives have advocated for a version of this bill the last two years, so it is likely to resurface during the 2017 session.

SB 1220 Public Records
The bill, among other things, would have provided that a court must assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if it determines that the:
- Agency unlawfully refused to permit the public record to be inspected or copied.
- Complainant provided written notice identifying the public record request to the agency’s custodian of public records at least five days before filing the civil action, except as provided in the bill.

Opportunities for FSAWWA Member Engagement
Florida Department of Transportation Utility Relocation Work Group
As discussed, this a direct result of Utility Council efforts. The FDOT has agreed to institute a study group of utility and transportation representatives to undertake a feasibility study regarding the coordination and funding of utility relocations that are required as a result of FDOT projects. This has the potential to result in better communication between local governments and the FDOT regarding the coordination of road and utility projects, as well as the likelihood of FDOT shoudering some of the load for relocation of utilities as a result of its projects.

Florida Department of Environmental Protection Reuse Work Group
Sen. Wilton Simpson has indicated a desire to file legislation dealing with reclaimed water in the coming session. It must be recognized that there are marked differences in the proper time, place, and manner for the utilization of reclaimed water in different geographic areas of the state. In order to understand these differences, the Office of Water Policy has constituted a reclaimed water work group consisting of representatives from the FSAWWA Utility Council, Florida Water Environmental Association Utility Council, agriculture, Department of Health (DOH), FDEP, FDOT, WMDs, mining interests, and consultants. The goal is to develop recommendations to deliver to Sen. Simpson regarding possible legislative concepts.

Office of Economic and Demographic Research Water Project Study
An additional requirement of the Omnibus Water Policy Bill is for the Office of Economic and Demographic Research to undertake a study of the resources expended and projects undertaken for water, alternative water supply, stormwater, and restoration projects. This is part of an effort to tie water project and alternative water supply funding to something resembling the five-year planning process undertaken by FDOT. The Council has been asked to assist with the study, and local government (utility) participation will be key to ensure the quality of the research undertaken. It’s anticipated that the results of the study will lead to changes in the regional water supply planning process and the way in which projects are prioritized on a regional and state level.