

Florida Specifier

Practical Information For Environmental Professionals

2010 Florida Legislature likely to consider state-wide water issues

By R. DUKE WOODSON

While the 2010 Florida Legislature will likely spend most of its session dealing with serious budget issues, some focused attention will also be paid to water policy and permitting. The state's water resources law has not been comprehensively reviewed by the Legislature since it was enacted in 1972, but that does not stop them from tinkering with statutory provisions in Chapter 373 each session.

This year, the Legislature is expected to initiate an extensive review of water policies and issues including organization, authority and decision-making processes of water management districts, water quality and quantity policies, and the possible creation of a statewide board to oversee water resources issues and the water management districts.

There are a few areas that will almost certainly receive attention. We will see a strong push for additional protection for freshwater springs and restoration of watersheds. Also, we can expect a review of the current policy of allowing transfer of water between water management districts and the "local sources first" policy that requires local governments to exhaust their own water resources before crossing county boundaries for additional water supply. And, the amendments to Chapter 373 in the water resources bill put in place after last

year's session, which altered the procedure for review of water management district permit applications, will be reviewed.

The bottom line: while many water issues will be considered, it is highly unlikely that substantive legislation will be enacted this year. The real outcome will be some sort of study commission or state review and a report to the 2011 session.

The most probable issues to be discussed include a review of alternatives to the U.S. Environmental Protection Agency's establishment of numeric nutrient criteria for Florida's inland and coastal waters. The draft EPA standards are designed to protect public health, the tourist economy and property rights, but usurp the Florida Department of Environmental Protection's historic role in regulating water quality. There is strong opposition to EPA's involvement in this issue, and the Legislature will be pushed to implement an alternative to allow DEP to reassert control.

An issue, which has been discussed for several years, is legislation to strengthen regulatory authority to protect Florida freshwater springs. There is evidence that many of these springs have been experiencing deteriorating water quality. Environmental organizations in Florida will encourage the Legislature to implement stronger legislation to protect the springs.

Another issue sure to be discussed is a fix to last year's provision in Senate Bill 2080, which delegated the authority to Water

Management District executive directors and staff to approve water use permits without involvement by the appointed governing boards.

While this provision in S.B. 2080 was designed to streamline the permitting process, water use permit applications have been put in a difficult position when district staff has recommended approval of permit applications for less than the requested allocation.

Under the new law, the only procedural alternative in this situation is a request for an administrative hearing at great cost to the applicant. Applicants have instead requested staff recommend applications for denial in order to have the opportunity to be heard by the governing board.

This year will be another interesting year for water policy issues in the Florida Legislature with plenty of discussion of a variety of issues affecting water supply and use. But it remains to be seen whether any of this discussion will result in the implementation of new statutory guidance or whether the issues will be deferred for another legislative year.

Duke Woodson is a partner at the law firm of Foley & Lardner LLP, heading up the firm's real estate practice in Orlando. He can be reached at dwoodson@foley.com.

Copyright 2010 by National Technical Communications Co., Inc. All rights reserved.