

# Florida Specifier

Practical Information For Environmental Professionals

*No, the sky is not falling:*

## Recent session will impact water policy, growth management but state programs will remain vigorous

By R. DUKE WOODSON, ROBERT M. RHODES AND KAMALA E. CORBETT

Those who follow Florida water policy and growth management issues are probably aware that the 2011 Florida Legislature adopted new laws, now approved by Gov. Rick Scott, which change the 35-year-old water management district budgeting process and 25-year-old growth management regulations.

The amendments to the water management district budgeting process are found in SB 2142 and the changes to the Growth Management Act are found in HB 7207.

These changes will undoubtedly affect water policy and new development in Florida for years to come, but will likely fall far short of recent commentary describing the legislature as having “killed growth management.”

Water management districts have been described as “thoroughly eviscerated” with the state Department of Community Affairs described as “gutted” and “skinned alive.” Despite these gruesome descriptions, growth management will live to see another day and water policy changes are likely to be insignificant.

The five water management districts in Florida are the lead agencies in developing, regulating and protecting the state’s water resources. Since the districts have been able to assess ad valorem taxes to support their programs, they have largely been immune to budget cut-backs seen by state and local governments.

The districts, without direct control by either the governor or the legislature, have been able to expand their programs and increase their number of employees over the years without fear of interference. Many of these new programs, in fact, were to be implemented by the legislature itself.

The budget reduction climate finally resulted in rain on the district’s glorious

parade of the past 35 years with the passage of SB 2142. This legislation establishes caps for ad valorem taxes to be levied by each of the five districts and represents a reduction in ad valorem revenue for the St. Johns River Water Management District of approximately 26 percent from the fiscal year 2010-2011 budget; a 32 percent reduction for the South Florida Water Management District; and a 36 percent reduction for the Southwest Florida Water Management District. The Northwest Florida and Suwannee River water management districts also were given a cap but the reductions for these agencies were much smaller.

The new legislation also requires an annual review by the legislature of a preliminary budget for each district and for the legislature to set the maximum amount of ad valorem revenue to be raised by each district. This is a significant change from the past practice of districts where the budget was reviewed by the governor but not the legislature, usually with no comment or revision.

The true effect of these budget reductions on water policy remains to be seen as each district will be developing a budget for FY 2011-2012 through the summer and into September. One can expect significant staff and program reductions, but is it reasonable to assume that water policy itself will be significantly affected?

The 2011 legislature did not change any of the mandates for programs to be implemented by the water management districts or any of the legislation governing them. The water resource and water supply programs of the districts are arguably their most important programs so it may be that other programs such as wetland protection, land acquisition and management, and flood control will be impacted most by the budget cuts.

Water supply issues are also addressed in growth management regulations, pri-

marily the local comprehensive plans required by Chapter 163, Florida Statutes. The Growth Management Act Amendments in Chapter HB 7207 changed the tone of the statutes as well as the content.

The original 1985 Local Government Comprehensive Planning and Land Development Regulation Act has now been named the Community Planning Act. The intent has been revised to establish and implement comprehensive planning to “guide and manage” future development rather than the 1985 language of “guide and control.”

In addition to the tone of the statute, the role of the state in overseeing local planning has changed to narrow the focus of review to “protecting the functions of important state resources and facilities.” In addition to this reduction in the scope of review, there are procedural changes in the law that reduce the types of local plan amendments that must be reviewed by the state and which shorten the time for state review.

None of these changes affect the parts of the statute that affect water supply and wastewater treatment. Local governments are still required to have comprehensive plans. Although certain elements are no longer mandatory, such as transportation and schools, local governments must still have an element that addresses potable water, groundwater recharge and wastewater disposal as well as “water supply sources necessary to meet and achieve existing and projected water use demand.”

There was no change to the mandatory capital improvement element with its annual review of the adequacy of public facilities including addressing “existing public facility deficiencies,” “public facility costs,” and “schedule of capital improvements.” Each of these issues must continue to be addressed for existing and planned water and waste-

water treatment plants.

A future land use element for each local comprehensive plan is still required, with a map that shows “existing and planned public potable water wells, cones of influence, and well head protection areas.” Alternate water supply projects identified in the water management district regional water supply plan must also be addressed in each local comprehensive plan.

The conservation element is also still required, which requires addressing, among other things, the protection of natural resources including “water, water wells and standards to conserve and protect” protected water resources, natural groundwater recharge areas, well head protection areas and surface water if used as a source of public water supply.

Most importantly, perhaps, concurrency still applies to wastewater treatment, solid waste, drainage and potable water supply, even if it no longer

applies to transportation and schools. Thus, the developer of a new project must still demonstrate to a local government there is adequate capacity to serve the new project.

Many commentators have questioned whether local governments are capable of performing this review and have suggested the most important function of the Department of Community Affairs in the past was to make sure that local governments held developers to a stringent standard for concurrency.

With the changes adopted in HB 7207, the successor to DCA, the Division of Community Development within the Department of Economic Opportunity, must still review comprehensive plans to determine whether “important state resources and facilities will be adversely impacted.”

One would think that the state’s water supply and surface water bodies would meet that definition and that state review

of local plans will remain vigorous.

*R. Duke Woodson is a partner with Foley & Lardner LLP and heads the firm’s Real Estate Practice in Orlando. He can be reached at [dwoodson@foley.com](mailto:dwoodson@foley.com). Robert M. Rhodes is of counsel to Foley & Lardner LLP in Jacksonville. He is a past chair of the Florida Bar Environmental and Land Use Law and Administrative Law Sections and currently chairs the Northeast Florida Regional Council’s Regional Community Institute. Rhodes can be contacted at [rrhodes@foley.com](mailto:rrhodes@foley.com). Kamala E. Corbett is an associate with Foley & Lardner LLP in Tampa. She can be contacted at [kcorbett@foley.com](mailto:kcorbett@foley.com).*

*This article, originally appearing in the July, 2011, issue of the Florida Specifier, was reprinted with permission from the publisher. Copyright 2011 by National Technical Communications Co., Inc. All rights reserved.*