

FLERA LEGISLATIVE UPDATE MARCH 25, 2010

by Rick Tschantz, EPC General Counsel

SB 550 - Land Conservation. Senate Bill CS 550 by Senator Constantine is an omnibus water bill. Among other things, it has detailed Onsite Sewage Treatment and Disposal Systems (OSTDS or septic tanks) amendments that may have substantial local implications. The committee substitute (CS) on line #3608 states that local governments can require a person to connect to the central sewer system if the local government gives 30-days notice of availability of service. The key section impacting local governments is the creation of “responsible management entities” (RME) by January 2015 that are charged with evaluating septic tanks within their jurisdiction and administering a rule-based program to regulate septic tanks. Additionally, the CS states that the DEP is required to implement a springshed protection rule and local governments may have to implement nitrogen reduction measurements to assist the DEP. *03/23/10 SENATE CS by Environmental Preservation and Conservation, may have to go to Governmental Oversight and Accountability; General Government Appropriations; and Rules*

HB 1445 – Fertilizer. This bill would add additional conditions to the existing law mainly to make it more difficult to pass a more stringent fertilizer rule than the DEP model. Among other things, HB 1445, sponsored by Rep. Nelson, requires that if a local government wants to adopt a more stringent fertilizer ordinance/rule, the local government must do the following: 1) Implement a comprehensive program to address nonpoint source nutrient pollution; 2) Convene a workgroup of diverse parties (e.g. – local government representative, agricultural representative, retail representative, DEP representative, etc.) that must conduct a review and provide a report that addresses the economic and technical feasibility of enforcing the proposed additional or more stringent standards”; 3) Include in the public record the scientifically documented vulnerability of the waters to nutrient enrichment; 4) Finally, if two or more entities (IFAS, DACS, or DEP) question the scientific basis of the proposed standards, the local government must address those concerns “to the maximum extent practicable.” *03/19/10 Now in Natural Resources Appropriations*

SB 2546 – Fertilizer & Agriculture. Sponsored by Senator Baker, this bill contains most of the concepts of items - one and three in the above description of HB 1445. SB 2546 also mandates that all local governments adopt, at minimum, the DEP model by January 1, 2011, or within 6 months of an impaired water being listed. The bill also pre-empts local governments from regulating open burning of yard trash or land-clearing debris without the Division’s approval and delegation. This is a form of local pre-emption, but with the ability to seek State delegation. *03/04/10 SENATE Referred to Environmental Preservation and Conservation; Agriculture; Community Affairs; and General Government Appropriations*

SB 2348 - Relating to DACS & Fertilizer. SB 2348 is an omnibus agricultural bill. Among other things it has a fertilizer glitch bill and has language authorizing the burning of agricultural materials. As with other fertilizer glitch bills (see HB 1445 and SB 2546), it would require a local government to show that it has implemented a comprehensive program to address nonpoint source nutrient pollution. If the government can show that the comprehensive program is not enough to address the nutrient problems, then it may pursue a stricter rule. The local government must include in the public record the scientifically documented vulnerability of the waters to nutrient enrichment. The bill also creates an opening burning pre-emption, but provides that a county or municipality may exercise the FDACS Division of Forestry’s authority, if delegated, to issue authorizations for the burning of yard trash or debris from land-clearing operations. *03/04/10 S Referred to Agriculture; Community Affairs; Health Regulation; General Government Appropriations.*

HB 1509 - Relating to Economic Development. HB 1509 initially was very similar to the omnibus jobs bill in SB 1752 and included language requiring local governments to seek State wetlands (ERP) delegation or lose their local program. A recent committee substitute has drastically revised the bill and it currently has no environmental provisions, just economic. *Now in Finance & Tax Council [Bill not in packet]*

SB 1752 - Relating to Economic Development. Senate Bill 1752, the “jobs bill” proposes to “streamline” certain aspects of the environmental regulatory process. The bill makes sweeping policy changes that prevent local governments from implementing mandated Clean Water Act requirements in their jurisdictions. This bill requires even the most complicated environmental permit applications to be approved or denied within 30 days after receipt, as opposed to the current 90 days. It approves permits by default after 30 days and it applies to both state and local environmental permits. Requires local governments to apply for State delegation of the ERP program by June 2011 or be prohibited from implementing a local wetland regulatory program. Creates a DEP general permit for the construction of a surface water management system of 40 acres or less, without any agency action, if the application is signed and sealed by the applicant’s professional engineer. *3/22/10 SENATE 2nd reading; 03/25/10 SENATE Placed on Special Order Calendar*

SB 2238 - Mitigation Banking. The bill would add to the language of §373.4135, requiring that state agency rules relating to wetland mitigation plans “provide a preference for the use of mitigation banks . . . consistent with CFR § 332.3(b) (2).” Second, the bill adds a section (d) to the statute that mandates the DEP “provide a process for obtaining a formal assessment determination of land for potential mitigation bank establishment pursuant to UMAM.” *03/02/10 SENATE Introduced, referred to Environmental Preservation and Conservation; Community Affairs; General Government Appropriations*

SB 2592 - Petroleum Contamination Site Cleanup. SB 2529 is proposed by Senator Baker. It takes away the use of IPTF funding for clean-up of sites that are proposed to be paved over for DOT roadways. It also takes away the use of IPTF funding for secondary containment of underground storage tanks (UST). Most disconcerting, it makes more petroleum contaminated sites eligible for natural attenuation, as opposed to physical clean-up, assuming studies show the plume has not migrated off-site and the plume must be stable or shrinking. *03/23/10 SENATE Favorable by Environmental Preservation and Conservation; still assigned to go to Transportation; Community Affairs; General Government Appropriations*

HB 7103 - Agriculture (see also SB 2074 – identical). Formerly known as Proposed Committee Bill ANR 10-08, this bill pre-empts local governments from wetland regulation on agricultural property, but it also has a grandfathering provision for pre-July 2003 wetland programs. This bill also has stormwater fee amendments and an agriculture fence provision that exempts local government regulation and fees for a fence installation. This agricultural bill allows for additional materials to be open-burned by agricultural operations which impacts air quality. *HB 7103 - 03/12/10 HOUSE Referred to Natural Resources Appropriations (CGHC); General Government Policy. SB 2074 is moving quicker than the House Bill – SB 2074 is now in Banking and Insurance*

HB 7171 (fka PCB ANR 10-11) - Stormwater Rule. This bill requires the DEP to develop a statewide stormwater rule by July 2011. The PCB pre-empted local government stormwater programs that are less stringent than the proposed state-wide stormwater quality rule, however, the filed version HB 7171 appears to pre-empt all local governments from having stormwater rules once the DEP adopts its statewide stormwater rule. *Now in General Government Policy Council on Monday, March 22, 2010.*

Inland Protection Trust Fund. FLERA members should encourage Legislators to seek full funding for the Inland Protection Trust Fund (which supports the Petroleum Cleanup Program). Historically, the program has been funded in the low \$200M to the mid \$100M range, but in the 2009 session the Legislature only allocated \$10M. They also used a \$90M bond to keep the program afloat, but this decrease in funding delays petroleum contamination clean-up and threatens groundwater quality. **[no supporting document in this packet]**