

Summary of 2020 Legislation affecting Local Public Works

A summary of the 2020 Florida Legislative Session prepared by the Florida Association of Counties is available at https://www.fl-counties.com/sites/default/files/2020-03/FACLegReport2020_Mar24.pdf. The following excerpt from this summary highlights bills that affect local public works organizations. FACERS provided comments and recommendations to FAC staff during the session for several of these bills. The complete text of these bills and final disposition of all bills can be found at: <https://www.flsenate.gov/Session/Bills/2020?chamber=both&searchOnlyCurrentVersion=True&isIncludeAmendments=False&isFirstReference=True&citationType=FL%20Statutes&pageNumber=1>.

Bills reviewed by FACERS

Local Government Construction Bill Passes

HB 279—Local Government Public Construction Works by Representative David Smith was considered on the House Floor. The bill was amended to make technical changes and removed a requirement that the report be submitted to the Auditor General and instead allows the report be made available to the Auditor General. The bill passed 114-1. A companion legislation, SB 504 (Local Government Public Construction Works) by Senator Perry, was substituted on the Senate Floor for HB 279. The bill passed 36-1 and now heads to the Governor for final approval.

FACERS did not support.

Continuing Contracts Legislation Passes

SB 506—Public Procurement of Services by Senator Perry was substituted on the Senate Floor for HB 441 (Public Procurement of Services) by Representative DiCeglie. The bill revises the maximum dollar amount for continuing contracts for construction projects under the Consultants' Competitive Negotiation Act (CCNA) from \$2 million to \$4 million, while study activity is raised from \$200,000 to \$500,000. The bill passed 40-0 and now heads to the Governor for final approval.

FACERS supported.

Occupational Deregulation Sunset Legislation Passes House, Fails this Session

HB 707—Legislative Review of Occupational Regulations by Representative Renner passed the House but stalled in Senate committee. The bill establishes a schedule for systematic review of the costs and benefits of occupational regulatory programs to determine whether to allow the program to expire, renew without modifications, renew with modifications, or provide for other appropriate actions. Any occupational regulatory program that expires through scheduled repeal may not be subsequently regulated by a local government. The regulation of any occupation repealed by this act is preempted to the state unless local regulation of such occupation is expressly authorized by law and provides for a schedule of repeal for occupational regulatory programs. A companion legislation, SB 1124 (Legislative Review of Occupational Regulations) by Senator Diaz, stalled with two committee stops remaining.

FACERS objected to sunset of licenses for engineers and surveyors.

Mid-Block Crosswalk Replacement Fails

HB 1371—Traffic and Pedestrian Safety by Representative Fine was considered on the House Floor. The bill:

- Allows yellow rectangular rapid flash beacons (RRFBs) to be used on a road if there are no more than two lanes and a speed limit of 35 mph or less.
- Yellow RRFBs must be removed by 10/1/24 and can be retrofitted with legally acceptable equipment
- FDOT must submit a request by 10/1/20 to the Federal government to allow yellow RRFBs to be replaced by red RRFBs. If approved, all yellow RRFBs must be replaced with red RRFBs within 12 months of federal authorization
- Before the installation of a pedestrian crosswalk, a Florida licensed professional engineer must conduct a traffic engineering study
- Requires a pedestrian-facing sign containing language stating duties applicable to the pedestrian at each crosswalk.

FACERS did not support.

Growth Management Bill Passes without 2/3rds Threshold HB 203—

Growth Management by Representative McClain was substituted for SB 410 (Growth Management) by Senator Perry and considered on the House and Senate Floors. The bill requires local governments to include a private property rights component in its comprehensive plan. The bill also requires that preference for technical assistance funding be given to counties with populations less than 200,000 when determining whether they have appropriate land uses and natural resource protections in relation to a multi-use corridor interchange. The bill was amended to additionally:

- Require all municipal comprehensive plans “effective,” as opposed to “adopted,” after 1/1/19, to incorporate development orders existing before the plan’s effective date.
- Provide that in a county with a population of less than 750,000, a county charter provision or comprehensive plan goal, objective, or policy adopted after 1/1/20, may not impose a limitation on lands within a municipality unless the municipality, by referendum or local ordinance, adopts and imposes the provision, goal, objective, or policy.
- Allow a party, or its successor in interest, to amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement.
- Require counties and cities to process utility permit applications for the use of the public ROW within the timeframes currently applicable to permit applications submitted by communications services providers.
- Allow a DRI agreement previously classified as or officially determined to be essentially built out, and entered into on or before 4/6/18, to be amended to authorize the developer to exchange approved land uses.

• The bill was also amended on the floor to include a provision: Except as otherwise provided in s.171.205, a municipality may not annex an area within another municipal jurisdiction without the other municipality’s consent

The bill passed 71-43 on the House Floor and passed the Senate 23-16 failing to meet the 2/3rds threshold for legislation that has an unfunded state mandate. The bill now heads to the Governor for signature or veto.

FACERS objected to the provision requiring all permits to be processed in the same timetable as communications service providers.

Other bills that may affect Local Public Works Organizations and Operations

Retainage Legislation Passes

HB 101—Public Construction by Representative Andrade passed the Legislature. The bill reduces the cap amount of payment retainage by local government entities for construction contracts from 10% to 5%. The bill also removes any provisions relating to the lowering of retainage to 5% at 50% completion as the cap has already been lowered from the start of the contract. The bill passed 40-0. and now heads to the Governor for final approval.

Rural Broadband Access Legislation Passes **FAC SUPPORTED**

HB 969 (Rural Broadband Access) by Representative Drake and passed the Legislature and now heads to the Governor for final approval. The bill designates DEO as the lead state entity to facilitate the expansion of broadband and establish the Florida Office of Broadband within the Division of Community Development. The bill encourages expansion of broadband services in underserved areas defined as an area where there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 10 megabits per second downstream and at least 1 megabit per second upstream. The house bill also includes an appropriation up to \$5 million annually for projects that assist in the development of broadband infrastructure within or adjacent to a multiuse corridor including priority to projects located in a RAO. FAC supports enhancing programs to increase funding for rural infrastructure, job growth, and workforce development policies and efforts to reduce the digital divide and expand internet access to underserved areas through industry partnerships and collaboration with local stakeholders.

Impact Fees Legislation Passes

SB 1066—Impact Fees by Senator Gruters was considered on the Senate and House Floor. The bill makes several changes to impact fees including:

- Prohibits the application of a new or increased impact fee to pending permit applications unless the result is to reduce the total impact fees or mitigation costs imposed on the applicant.
- Provides that impact fee credits are assignable and transferable at any time after establishment within the same impact fee zone or impact fee district, or an adjoining zone or district within the same local jurisdiction, provided that the development receives a benefit from the improvement or contribution.

The bill passed unanimously, 40-0. A companion legislation, HB 637 (Impact Fees) by Representative DiCeglie, was substituted on the House Floor for SB 1066 and amended. The bill passed 81-37 and went back to the Senate in Messages. The amended SB 1066 removed a provision that authorizes local governments with charters that contain provisions providing for school capacity to require contributions related to public education that are used to mitigate impacts not otherwise funded by impact fees or other exactions related to public education facilities, under certain circumstances.

Local Government Recycling Contract Legislation Passes

SB 326—Environmental Regulation by Senator Perry was substituted on the Senate Floor for its companion legislation, HB 73—Environmental Regulation by Representative Overdorf. The bill requires counties and cities to address the contamination of recyclable material in contracts entered into for the collection, transport and processing of residential recycling materials. The bills apply to contracts executed or renewed after 10/1/2020. The bill passed 40-0. and now heads to the Governor for final approval.

E-Bike Legislation Passes

HB 971—Electric Bicycles by Representative Michael Grant was considered on the House Floor. The bill defines electric bicycles as well as the different classes of electric bikes, distinguishes electric bikes from mopeds and motorcycles, and expressly allows local jurisdictions to regulate electric bikes via ordinance. The bill further clarifies that e-bike riders have the same rights as regular cyclists and not held to the same insurance and license requirements of a motorized vehicle. The bill passed unanimously, 118-0. A companion legislation, SB 1148 (Electric Bicycles) by Senator Brandes, was substituted on the House Floor for HB 971. The bill passed 39-0 and now heads to the Governor for final approval.

Environmental Enforcement Bill Passes

HB 1091—Environmental Enforcement by Representative Fine was considered on the House Floor. The bill increases fines against any discharge of raw sewage and various environmental violations into waterways by 50 percent. The bill passed unanimously, 106-0. A companion legislation, SB 1450 (Environmental Enforcement) by Senator Gruters was substituted for HB 1091 and amended. The bill was amended to include the substance of SB 150 (Sanitary Sewer Laterals) which encourages counties and municipalities to establish a sanitary sewer lateral inspection program by 7/1/2022. The bill also requires a seller of real property to disclose any known defects in the property's sanitary sewer lateral to a prospective purchaser. The bill was taken up in House Messages and passed 115-0. The bill now heads to the Governor for final approval.

Required Sea Level Rise Study for Public Construction Passes

HB 579—Public Financing of Construction Projects by Representative Aloupis was substituted on the House Floor for SB 178 (Public Financing of Construction Projects) by Senator Rodriguez. The bill requires future public construction projects to take sea level rise into account by conducting a sea level impact projection study. The bill passed unanimously and now heads to the Governor for final approval

Essential State Infrastructure Bill Passes

HB 7099—Essential State Infrastructure by Representative Ingoglia was substituted on the House Floor for SB 7018 (Essential State Infrastructure), formerly Electric Vehicle Charging Station Infrastructure, by Senator Lee. The bill requires the Public Service Commission (PSC), in coordination with the DOT and the DACS Office of Energy, to develop and recommend a plan for the development of electric vehicle charging station infrastructure along the State Highway System by 7/1/2021. The bill extends expedited review timelines for all utility permits the right-of-way and would deem approved any permit pending after the review period. Currently, expedited timeframe and “deemed approved” clause are only applicable for permits for communications service providers. The bill also amends Section 704.06 to prohibit conservation easements on land traditionally used for agriculture from limiting the ability of the owner of the land from negotiating the use of the land for any public or private linear facility as well as allowing reasonable compensation for the diminution of value of the interest in the conservation easement as the only remedy available to the holder of the conservation easement. The bill passed the House 97-19 and now heads to the Governor for final approval.

Water Package Passes

Senate SB 712—Water Quality Improvements by Senator Mayfield was considered on the House Floor, while the companion legislation, HB 1343 (Environmental Resource Management) by Representative Payne, was laid on the table. The bill passed the House unanimously, 118-0, and now heads to the Governor for final approval. The bill contains the following provisions: • By 12/31 DOH and DEP to

submit legislative recommendations on transfer of the Onsite Sewage Program • Additional requirements to the Water Management District annual report to include any projects to connect onsite sewage treatment and disposal systems (OSTDS) to central sewerage systems and convert OSTDS to enhanced nutrient-reducing onsite sewage treatment and disposal systems • DEP and water management districts to conduct a bottled water study by 6/30/21 including a review of consumptive use permits impacting springs as well as the direct and indirect economic benefits to local communities • By 1/1/21 DEP and the water management districts shall initiate rulemaking to update the stormwater design and operation regulations, including updates to the Environmental Resource Permit Applicant's Handbook • DEP to fast-track approval process of no longer than 6 months to meet the requirements of TMDLs in reducing enhanced nutrients in onsite sewage treatment and disposal systems • DEP shall adopt rules relating to the location of OSTDS, including establishing setback distances, to prevent groundwater contamination and surface water contamination and to preserve the public health. The rulemaking process for such rules must be completed by 7/1/22 • OSTDS Technical Advisory Committee to provide recommendations to increase the availability of enhanced nutrient-reducing systems in the marketplace • Establishes a real-time water quality monitoring program to assist in the restoration, preservation, and enhancement of impaired water bodies and coastal resources • By 12/31/20 DEP shall initiate rule revisions based on the recommendations of the Potable Reuse Commission's 2020 report "Advancing Potable Reuse in Florida: Framework for the Implementation of Potable Reuse in Florida." This also deems reclaimed water as a water source for public water supply systems. • By 7/1/21 DEP in coordination with local governments shall submit a report to the legislature evaluating the costs of wastewater projects identified in the BMAPs and provide an assessment of the water quality monitoring being conducted for each BMAP implementing a nutrient TMDL • Wastewater grant program established (subject to appropriation) – projects to convert septic systems to sewer are prioritized; 50% local match required, but can be waived by the department for projects located within rural areas of opportunity • DEP to adopt rules for biosolids management • DEP to submit a report identifying sanitary sewer overflows from wastewater treatment facilities • Prohibits local governments from recognizing or granting any legal right to a plant, animal, body of water, or any other part of the natural environment that is not a person or political subdivision; or from granting a person or political subdivision any specific rights relating to the natural environment