



**South Florida Water Management District
Regulatory Peer Review Forum
June 14, 2013
B-1 2B Bridge Conference Room
2:00 pm – 4:00 pm**

Summary

Attendees:

Dan Clark	Renzo Moscar
Dan Beatty	Gerry Ward
Jay Foy	Tony Waterhouse - SFWMD
Fred Roth	Sharon Trost – SFWMD
Howard Searcy	Beth Colavecchio - SFWMD
Terry Horan	Anita Bain - SFWMD
Steve Sarley	Aaron Stanton
Irene Quincy	Rebecca Elliott - SFWMD
Ken Todd	Craig Kidwell
Susan Martin – SFWMD	Peggy Yancer - Scribe

1. Opening Remarks – Sharon Trost

- Sharon opened forum and introduced Ernie Barnett (Interim Executive Director) who delivered an overview of legislative efforts during the 2013 session in Tallahassee

2. Ernie Barnett – Legislative Update

- The Florida Legislature approved \$85 million for Everglades restoration
 - \$10.4 million – corporate levy
 - \$17 million – restoration strategies
 - \$35 million – CERP
 - \$4.4 million – Alligator Alley (Everglades restoration)
- All SFWMD board members appointments have been confirmed



- Substantive legislation approved:
 - HB 765 – Everglades Restoration
 - SB244 – MFL's across water district boundaries
 - SB 364 – 30 year consumptive use permits
 - SB 444 – Ocean Outfall
 - SB 934 – Requirement for development of SWERP and urban re-development
 - HB 999 – Regulation Reform Bill (well drilling permitting)
- Ernie opened the floor for a question and answer session. He will provide copies of his notes from the 2013 legislative session to the forum members.

3. Ken Todd – Mandatory Operable Gates for Large Developments

- Ken re-introduced this topic from the December 2012 forum (following TS Isaac flooding)
 - A committee to explore the merits for a rule change requiring adequate and operable gates for storm water drainage in large developments
 - Sharon will discuss the issue internally and advise Ken

4. Next meeting date/other topics/adjournment

The meeting was adjourned at 4:00 pm.

*The next meeting will be held on September 6, 2013 at 9:00 am in the Richard Rogers Conference Room.

2013 LEGISLATIVE ANALYSIS



**Compiled by
South Florida Water
Management District**

PREFACE

The Office of Counsel, in cooperation with Ernie Barnett, Interim Executive Director, is pleased to provide the 2013 State Legislative Analysis. This review is a client information service intended to provide an overview of the 2013 legislation that may be of interest to District staff or the Governing Board. As of the date of this document, some of the bills included have not been signed by the Governor or otherwise become law. We will continue to monitor actions on these bills and advise you of any bills that do not become law.

This review is not intended as legal advice. Any questions concerning the impact of the bills reviewed should be directed to the attorney that reviewed the bill so that they may assist you in applying the law to a specific set of facts and circumstances. If you have additional questions about these or other bills, please do not hesitate to contact me.

For additional information, Ernie Barnett, our Interim Executive Director, will be able to provide information such as legislative intent and legislative committee analyses on particular bills and information on appropriations matters. You will also be able to obtain additional information such as the text of specific bills at the State's Online Sunshine website, located at www.leg.state.fl.us

This document is posted on the Office of Counsel's page on the District's IWEB. Please do not hesitate to contact me (x6976) or Joyce Rader (x6259) with any recommendations for improving this information service.



General Counsel
Carolyn S. Ansay

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Title of Legislation:

SB 244 – Priority Water Body List

Attorneys Providing Review:

**Jennifer Bokankowitz,
Beth Lewis,
Beth Ross**

I. Summary of Bill

Section 1

Presently, section 373.042, Florida Statutes, requires the water management districts (WMD), on an annual basis, to submit to the Department of Environmental Protection (DEP) a priority list and schedule for the establishment of minimum flows and levels (MFL). Existing law also requires the water management districts to identify the water bodies for which it will undertake a peer review of the proposed MFL.

This bill expands the scope of the annual MFL priority list to include water reservations proposed to be established by a WMD. It also requires a WMD to identify listed water bodies that have the potential to be affected by withdrawals in an adjacent district for which the DEP adoption of a reservation or MFL may be appropriate. In the event the DEP engages in development of such an MFL or reservation, a WMD shall provide technical information and staff support for the rule development. The bill further requires that reservations and MFLs as well as any MFL recovery or prevention strategies adopted by the DEP must be adopted by rule. Once the DEP adopts the rule and strategy, a WMD shall apply the reservation, MFL, or recovery / prevention strategy without the WMD having to undertake additional rulemaking.

Section 2

Section 373.046, Florida Statutes, provides authority to execute interagency agreements addressing a variety of topics affecting water resources of the state. The bill creates a new subsection authorizing designation of a single WMD to conduct all or part of the applicable resource management responsibilities under Chapter 373, Florida Statutes, except regulatory responsibilities subject to the existing subsection (6), if the geographic area of a resource management activity, study, or project crosses WMD boundaries. Hence, it will now be possible for WMDs to execute an agreement designating one WMD to address the broader scope of water resource management functions. The broader scope enables WMDs to, for example, engage in water supply planning, technical studies, or even provide funding for water supply development projects when benefits accrue to the funding WMD.

Section 3

A new subsection is added to section 373.171, Florida Statutes, concerning rulemaking. Specifically, the new subsection states cooperative funding programs are not subject to the rulemaking requirements of Chapter 120, Florida Statutes. However, in the event an approved funding program affects the substantial interests of a party, then the right to commence a section 120.569, Florida Statutes, administrative hearing is preserved.

Section 4

The bill amends existing subsection (3) of section 373.709, Florida Statutes, to delete the reference to the Southwest Florida Water Management District. The effect of this deletion is to require all water management districts to jointly develop the water supply development component of the water supply plan with any regional water supply authorities in its jurisdiction.

This law becomes effective on July 1, 2013.

II. District Analysis

This bill has the potential to impact the District in several ways. First, the District is required to include reservations in the annual priority water body list. The District has, for many years, included this information for informational purposes. This change now gives the DEP the ability to approve the District's choice of water reservations in addition to its choice of MFLs. See 373.042(2), Fla. Stat. The District must also be mindful of the neighboring WMDs' annual priority water body lists and be aware whether that WMD requests the DEP to adopt an MFL or reservation. In such an event, the District may be required to provide the DEP with staffing and, ultimately, would need to implement the DEP MFL and its associated prevention or recovery strategy, or implement a water reservation. Moreover, the District is now authorized to execute an agreement with a neighboring WMD designating one WMD as responsible for water resource management responsibilities.

Section 373.709(1), Florida Statutes, lists various stakeholders and entities the WMD shall coordinate and cooperate with during the water supply planning process. Such entities include local governments, regional water supply authorities, and multijurisdictional entities. This bill places emphasis on regional water supply authorities, requiring WMDs to jointly develop the water supply development component of a regional water supply plan that affects supply served by a regional authority with that authority.

III. District Action / Rulemaking

The Water Resources Division must include reservations in the annual priority water body list. Since this is in accordance with existing practice, no impact to the District's resources is expected. It is recommended that Staff track the annual priority water body lists of the St. Johns River and Southwest Florida Water Management Districts to determine whether or not a request is made to the DEP to adopt an MFL or water reservation. The District should consider providing staffing to the DEP in these cases, since the District will be required to apply the water reservation or MFL and any associated prevention or recovery strategy. When appropriate, the Water Resources Division may recommend execution of an agreement addressing water resource management. Given the broad scope of this authority, many topics could be addressed such as water supply planning and project funding. In the event a regional water supply authority is created within the District, then staff must coordinate with the authority to develop the water supply development component of the District's water supply plan.

Presently, the bill's language does not require this joint development for multijurisdictional water supply entities; however, it is advisable to closely coordinate with such entities. An example of such an entity is the Water Cooperative of Central Florida, which was not created pursuant to section 373.713, Florida Statutes. In order to substantially fulfill this new statutory requirement, it is advisable to coordinate with this entity as the regional water supply plan's water supply development component is developed.

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Title of Legislation:

SB 948 – Water Supply

Attorneys Providing Review:

**Jennifer Bokankowitz,
Elizabeth Ross**

I. Summary of Bill

This bill gives new authority to the Florida Department of Agriculture and Consumer Services (FDACS) by providing for an increased role in water supply planning for agriculture.

Section 1 amends section 373.701, Florida Statutes, to include additional stakeholders the water management districts (WMDs) should coordinate with to meet the water supply needs of the region. In addition to cities and counties, the WMD should work with private utilities, landowners, water consumers, and FDACS.

Section 2 amends section 373.703, Florida Statutes, to include self-suppliers (i.e., permittees) among the list of entities the WMD must engage with during the water supply planning process. The WMDs must also plan to meet the water supply needs of self-suppliers. Finally, the WMDs may enter into contracts with self-suppliers in order to carry out its powers.

Section 3 requires WMDs to coordinate and cooperate with FDACS during the water supply planning process. The WMDs shall include agricultural demand projections in the water supply plan. Such data must be based on the best available data. The WMDs shall consider data indicative of future water supply demands provided by FDACS as well as data submitted by local governments, if the data and analysis support the local government's comprehensive plan. The WMDs may deviate from the data provided by FDACS. However, the reasons for the deviation shall be set forth in the plan as well as the original data.

Section 4 updates statutory cross references to reflect the new Section 5 provisions.

Section 5 is the heart of this bill as it creates a new section 570.085(2), Florida Statutes, which authorizes FDACS to establish an agricultural water supply planning program. This section clearly delineates FDACS's responsibility. To dovetail with WMD water supply planning efforts, FDACS must use a 20-year planning horizon. FDACS shall provide the following data to all of the WMDs:

- Crop types;

- Historic, current, and future estimates of irrigated acreage broken down by crop type, including the methods and assumptions used to generate the spatial acreage estimates;
- Allocation coefficients for each crop for use in calculating demands; and,
- An evaluation of significant uncertainties affecting agriculture which may necessitate developing a range of projection.

FDACS is directed to consult the agricultural industry, University of Florida's Institute for Agricultural Sciences, the Department of Environmental Protection, the WMDs, National Agricultural Statistics Services, and the United States Geological Survey in its development of agricultural water supply needs. Additionally, FDACS must coordinate with each WMD to establish a schedule for provision of the required data to the WMDs, thereby enabling the WMDs to have the FDACS data available when quantifying agricultural demand projections for the water supply plan updates.

This law becomes effective on July 1, 2013.

II. District Analysis

Prior to this bill, FDACS did not have a formal role or mandate to participate in water supply planning. However, the South Florida Water Management District (District) has historically worked with FDACS and other agricultural stakeholders, such as permittees, the Florida Farm Bureau, and Florida Fruit and Vegetable Association, when engaging in water supply planning. Because the District routinely involves self-suppliers and FDACS in its water supply planning process, the bill should not have a large impact on the District.

The District is in the process of updating its Kissimmee Basin water supply plan, in conjunction with the Central Florida Water Initiative. The District will continue to consult with FDACS, self-suppliers, and industry representatives in gathering and developing the best available data for agricultural projections and water demand estimates.

III. District Action / Rulemaking

Given the District's current practice of cooperating with FDACS, self-suppliers, and agricultural representatives, the District does not need to take any additional actions to implement the bill. The Water Supply Bureau is responsible for developing the District's regional water supply plans.

Title of Legislation:

**HB 999 – Environmental
Regulation**

Attorney Providing Review:

**Jennifer Bokankowitz,
Susan Martin,
Elizabeth Ross,**

I. Summary of Bill

The Department of Environmental Protection (DEP) may adopt rules incentivizing electronic submissions. Prior to this statute, there was no statutory authority for DEP/water management district incentives.

Additional provisions are established for leases and fees to use sovereign submerged lands which will be administered by DEP. Rules adopted by DEP for local government for mooring fields are limited to 100 vessels.

Section 9 amends existing section 373.233, Florida Statutes, which provides criteria for resolving competition between two or more consumptive use permit applications for allocation of water that is inadequate for both or all. This statute is amended to clarify when consumptive use permit applications may be considered competing in relation to the section 120.60, Florida Statute, determination of application completeness. Specifically, the bill adds a prerequisite that the water management district or department also has deemed the applications complete. When these circumstances are met, the water management district has the right to approve or modify the application that best serves the public interest.

Section 10 amends existing section 373.236, Florida Statutes, regarding consumptive use permit duration, to add language addressing seawater desalination plants. The new language provides the water management districts may not reduce an existing permitted allocation of water when the permittee plans future construction of a seawater desalination plant not funded by the water management district or when such water becomes available. The amendment also assures existing water management district authority to modify a consumptive use permit in accordance with Chapter 373, Florida Statutes, is preserved.

Section 11 amends existing section 373.246, Florida Statutes, concerning declarations of water shortage. The existing law requires the governing board to notify each permittee by regular mail of any change in the permit condition or suspension of the right to use water due to the shortage. The amendment provides, in the alternative, for electronic notice to be sent to the permittees when a water shortage is declared.

Section 12 of the bill deals with water well permitting and water well licensure requirements. Section 373.308, Florida Statutes, was amended. The intent of the amendment is to prohibit local governmental entities from imposing additional fees and construction requirements on the construction, abandonment, or repair of water wells. However, local governments acting pursuant to a delegation agreement are not subject to the provision.

Section 13 of the bill covers the licensure of water well contractors. The amendment to section 373.323, Florida Statutes, clarifies that the licensure of water well contractors shall be done by the water management districts.

Section 14 modifies exemptions in Part IV of Chapter 373, Florida Statutes, to include construction, alteration, operation or maintenance of wholly owned, man-made excavated farm ponds constructed entirely in uplands. However, alteration or maintenance may not involve work to connect the farm pond to or expand the pond into wetlands or other surface waters. The exemption does not apply to a farm pond greater than 15 acres with an average depth greater than 15 feet, or which is less than 50 feet from any wetlands.

A permit may not be required for a wetland created solely by “unauthorized flooding or interference with the natural flow of surface water caused by an unaffiliated adjoining landowner.” A request to qualify for the exemption must be made within 7 years of the unauthorized flooding or unauthorized interference. A written confirmation of the qualification for the exemption from DEP or a water management district is necessary before work begins.

Projects to construct interstate natural gas pipelines are eligible for expedited permitting.

For water pollution operation permits, DEP may not use the results from a field procedure or laboratory method to make a finding or determine facility compliance unless the method used has been adopted by rule or noticed and adopted by DEP order, pursuant to a DEP rule. Additional requirements for field procedures and laboratory method are set forth.

This law becomes effective on July 1, 2013.

II. District Analysis

The provision for incentives for electronic submissions cannot be utilized by the District unless DEP delegates authority to the District.

Exemptions pursuant to Part IV are slightly expanded. The exemption for unauthorized flooding or interference with natural flows is expected to have very limited applicability.

The bill's changes concerning competing consumptive use permit applications impact existing Basis of Review criteria. In summary, the bill amends the statute to not trigger a competition scenario until the applications are also complete and on a 90 day clock to agency action. The District's existing criteria triggers the competition statute when staff identifies that the proposed uses exceed supply availability. In this manner permit applications pending at the same time, prior to being deemed complete, are considered competing. Moreover, the existing criteria provides that once a competing application is determined complete, then that application will not be considered to compete with later filed applications. A good faith responsibility to complete pending, competing applications is also stated. The effect of the statutory change is to ensure agency action will occur, due to the Chapter 120, Florida Statutes, 90 day clock. Taking agency action on a competing application will, obviously, invite the other potentially competing applicant(s) to file petitions for administrative hearing. Hence, the statute shifts competing application scenarios from staff requesting information from all applicants regarding the competition and thereby encouraging the applicants to resolve the situation between themselves, to the agency deciding which use best serves the public interest and administrative challenge.

When a water shortage is declared, the District notifies all permittees of the water shortage order and associated restrictions. These orders frequently are, over the duration of a shortage event, modified. Hence, the noticing process can be extensive. This amendment provides a cost-saving alternative to regular mail notification. Additionally, a time saving is possible since delivery of water shortage notification via email occurs immediately. This could be particularly significant when a water shortage emergency, with immediately effective restrictions, is declared.

Sections 12 & 13: Generally, statutes apply prospectively. Florida disfavors the retroactive application of statutes. Bates v. State, 750 So. 2d 6, 10 (Fla. 1999). In order for the statute to apply retroactively, there must be a clear legislative intent to preempt and supersede existing local government ordinances (see, e.g., section 373.217, Florida Statutes). Such language is missing from the amendments to sections 373.308 and 373.323, Florida Statutes. Therefore, local governments that presently have ordinances that duplicate or impose additional requirements on water well construction or water well contractors may retain such ordinances. The amendments will serve to prevent local governments from passing new ordinances or amending existing ordinances.

III. District Action / Rulemaking

No District rulemaking or action under Part IV is required.

Rulemaking to conform the existing Basis of Review criteria 1.3.2 concerning competing applications should be considered.

Due to the potential for cost and time savings, the District should evaluate existing consumptive use permittee contact information and consider requiring email contact information as a part of future permit applications. Evaluating existing permittee data now will help implement an electronic notification of water shortage process when a shortage event occurs. It would be optimal to identify all permittees with email addresses and those without so the District has the opportunity to efficiently implement electronic notification, if it so chooses. Going forward, the District should consider requiring permit applicants to provide email contact information to further enable electronic notification. Additionally, when the District amends its Water Shortage Plan, Chapter 40E-21, Florida Administrative Code, an amendment reflecting the potential for electronic notification of a water shortage declaration should be added to rules 40E-21.291 and 40E-21.391, Florida Administrative Code. In the meantime, the District may implement electronic noticing in accordance with the statute.

The District does not need to take any actions to implement the amendments to sections 373.308 and 373.323, Florida Statutes. The Water Use Bureau implements the water well permitting program, the water well contractor licensing program, and oversees the delegated agencies' implementation of the water well permitting program.

Title of Legislation:

**SB 1808 – Numeric Nutrient
Criteria**

Attorney Providing Review:

Susan Martin

I. Summary of Bill

This bill enunciates the Department of Environmental Protection's (DEP) duties with respect to numeric nutrient criteria.

DEP is to implement sections 403.067 and 403.088, Florida Statutes, in flowing waters consistent with narrative criterion and in-stream numeric interpretation adopted by DEP in streams, canals and other conveyances and nutrient water quality standards for downstream waters.

The loading of nutrients to downstream waters from a stream, canal or other conveyance shall be limited to provide for the attainment and maintenance of water quality standards in downstream water. Provisions are set forth on how DEP shall implement its authority and interpret the criterion.

Compliance with an allocation under section 403.067(6), Florida Statutes, or a best management action plan shall constitute reasonable assurances that the discharge does not cause or contribute to a violation of downstream nutrient water quality standards.

DEP may implement its adopted nutrient standards utilizing the document "Implementation of Florida's Numeric Nutrient Standards."

When the United States Environmental Protection Agency withdraws nutrient criteria in Florida, then rule 62-302.531(9), Florida Administrative Code, shall be repealed.

Any estuary criteria adopted in 2013 is exempt from ratification. DEP shall adopt numeric criterion for remaining estuaries and establish narrative chlorophyll a interpretations for non-estuarine coastal waters by December 1, 2014. The total nitrogen, total phosphorus, and chlorophyll in estuaries and non-estuarine coastal waters shall be the current conditions of unimpaired water, accounting for climatic and hydrologic cycles, until numeric criterion is established by rule or final order.

This law became effective on May 30, 2013.

II. District Analysis

This statute will be implemented by DEP. The District is a partner with DEP in the protection of water quality and has been supportive of DEP's numeric nutrient rulemaking, even participating in the formal administrative hearing in support of DEP's numeric nutrient rules.

According to Secretary Vinyard, this legislation combined with new state rules, form the foundation of a state-federal agreement that enables a focused, state led solution to protecting Florida waters. It is the key to ending litigation and allowing the state to implement better protection of our waterways. These measurable nutrient criteria will result in cleaner water for Florida.

III. District Action / Rulemaking

No District action or rulemaking is required.

Title of Legislation:

**HB 7065 – Everglades
Improvement and Management**

Attorney Providing Review:

Kirk L. Burns

I. Summary of Bill

The bill amends multiple provisions of the Everglades Forever Act (EFA), section 373.4592, Florida Statutes, including the following:

a) incorporates the District's Restoration Strategies (the \$880 million expansion of existing stormwater treatment areas (STAs) designed to achieve the phosphorus criterion in discharges to the Everglades by 2028) into the definition of the Long-Term Plan, thereby mandating the implementation of Restoration Strategies and allowing funding with the 0.1 mill levied within the Okeechobee Basin (paragraphs 373.4592(2)(j) and .4592(4)(d) and .4592(4)(a));

b) mandates a use attainability analysis after completion of the projects (paragraph 373.4592(4)(h)); and

c) extends the existing \$25 per acre agricultural privilege tax through 2026, (reduced to \$20 per acre from 2027-2029, \$15 per acre from 2030-2035, and \$10 per acre), and authorizing its use for implementation of the Long-Term Plan, as amended, as well as operation and maintenance and research (subparagraph 373.4592(6)(c)6.).

This law became effective on May 28, 2013 except for Section 2 regarding appropriations which becomes effective on July 1, 2013.

II. District Analysis

The bill provides partial funding of Restoration Strategies as required by National Pollutant Discharge Elimination System (NPDES) and EFA permits and consent orders.

III. District Action / Rulemaking

The District is required to implement the District's Restoration Strategies and to conduct a use attainability analysis after completion of all projects and improvements.

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Title of Legislation:

SB 2 – Ethics Reform

Attorney Providing Review:

Derek C. Brown

I. Summary of Bill

This bill is an omnibus ethics reform package containing numerous significant changes to the statutory Code of Ethics for Public Officers and Employees within Chapter 112, Florida Statutes. Topics covered include: dual public employment for elected officials, revolving door for members of the legislature, ethics training for constitutional officers, blind trusts for public officers, voting conflicts, financial disclosure, gifts and honoraria, executive branch lobbying, complaint procedures, and the collection of Florida Commission on Ethics fines.

In particular, awareness of the procedural requirements related to employment decisions for current or prospective employees who also hold elective office is emphasized under newly created section 112.3125, Florida Statutes.

Additionally, qualified blind trusts are made available to alleviate conflicts of interests and voting conflicts when such trusts follow very detailed statutory requirements under newly created section 112.31425, Florida Statutes.

The bill also provides more detailed definitions for “principal by whom retained” and “special private gain” in the context of voting conflicts and allows for less detailed disclosure of conflicts where specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys under amended section 112.3143, Florida Statutes.

Another portion of the bill substantially addresses disclosures of financial interests under amended and newly created subsections of section 112.3144, Florida Statutes. These subsections allow for greater leniency in the correcting of erroneous disclosures of financial interests and contain a stated purpose that an error or omission is immaterial, inconsequential, or de minimis if the original filing provided sufficient information for the public to identify potential conflicts of interest.

In a related topic, the fines levied for failure to timely file disclosures of financial interests may be withheld from any salary-related payment from a public employer, be subject to a garnishment action against a private employer, or referred to a collection agency under newly created section 112.31455, Florida Statutes.

Under amended section 112.3148, Florida Statutes, relating to the reporting and prohibition on solicitation of gifts from vendors by individuals filing disclosures of financial interests and by procurement employees, the definition of a procurement employee was amended and a new definition was created for the term vendor. The definition of vendor is a business entity doing business directly with an agency.

Also related to gifts, section 112.31485, Florida Statutes, was created to prohibit gifts being solicited or knowingly accepted from a political committee by a reporting individual or procurement employee or their parents, spouse, child or sibling.

Penalties for violations of the ethics code contained in Chapter 112, Florida Statutes, remain the same but the Commission on Ethics was given the authority to dismiss any complaint should it determine that the violation is de minimis based on several factors, including, if the violation was attributable to inadvertent or unintentional error, the interests of the public were protected despite the violation, or the violation was not material in nature.

This law became effective on May 1, 2013.

II. District Analysis

This bill will have no fiscal impact on the District as it specifically pertains to ethical standards required of the District Governing Board and District employees.

However, the statutory provisions specifically highlighted in the above summary will require greater attention and training for both the District Governing Board and District staff.

III. District Action / Rulemaking

The District Office of Counsel will incorporate the statutory changes of the bill into the Ethics, Sunshine and Public Records training sessions for both the District's Governing Board and District employees and continue to provide detailed assistance in the application of Chapter 112, Florida Statutes, to questions posed by the District Governing Board and District staff.

Title of Legislation:

SB 50 – Citizen Input at Public Meetings

Attorney Providing Review:

Frank S. Bartolone

I. Summary of Bill

This bill requires that members of the public be given a reasonable opportunity to be heard on a “proposition” **before** a board or commission of a state agency or local government. Such opportunity does not have to occur at the same meeting at which the board or commission takes official action if certain requirements are met. The bill excludes specified meetings and acts from the “right to speak” requirement.

The bill specifies that the section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. It authorizes a board or commission to adopt certain reasonable rules or policies governing the opportunity to be heard. If a board or commission adopts such rules or policies and thereafter complies with them, it is deemed to be acting in compliance with the section.

The bill authorizes a circuit court to issue injunctions for the purpose of enforcing the section upon the filing of an application for such injunction by any citizen of Florida. If an action is filed against a board or commission to enforce the provisions of the section and the court determines that the board or commission violated the section, the bill requires the court to assess reasonable attorney fees against the appropriate state agency or local government board or commission. However, the bill also authorizes the court to assess reasonable attorney fees against the individual filing the action if the court finds that the action was filed in bad faith or was frivolous. The bill excludes specified public officers from its attorney fee provisions. A court is required by the bill to assess reasonable attorney fees if a board or commission appeals a court order finding that such board or commission violated the section and the order is affirmed.

The bill provides that any action taken by a board or commission that is found to be in violation of the section is not void as a result of such violation.

The law becomes effective on October 1, 2013.

II. District Analysis

The bill does not define the term “proposition,” but does identify certain actions such as approval of minutes and ceremonial proclamations that

are not subject to the requirement. Compliance with this bill will require the District to revisit its existing practices regarding public input at Governing Board, WRAC and any other meetings of boards or commissions. It may be necessary to appoint an individual who regularly attends meetings to insure that the rules are evenly enforced. In many jurisdictions, if the chairman does not perform this function, the clerk of the entity acts in that capacity.

III. District Action / Rulemaking

As authorized by the bill, a policy should be drafted by the Governing Board Operations staff and submitted to the Governing Board for consideration prior to October 1, 2013.

Title of Legislation:

HB 85 – Public-private Partnerships

Attorney Providing Review:

Frank Mendez

I. Summary of Bill

Public-private partnerships are contractual agreements formed between public entities and private sector entities that allow for greater private sector participation in the delivery and financing of public building and infrastructure projects.

The bill authorizes public-private partnerships to contract for public service work with not-for-profit-organizations. This bill creates an alternative procurement process and requirements for public-private partnerships to facilitate the construction of public-purpose projects, and creates a Public Facilities and Infrastructure Act Guidelines Task Force to make recommendations guidelines for the Legislature to consider for public-private partnerships to foster uniformity across the state. The bill specifies the requirements for such partnerships, which include provisions that require responsible public entities to provide notice of unsolicited proposals, conduct independent analyses of proposed partnerships, notify other affected local jurisdictions, and enter into interim and comprehensive agreements for qualifying projects. The bill authorizes responsible public entities to approve a qualifying project if there is a need for or benefit derived from the project, the estimated cost of the project is reasonable, and the private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project. The bill also authorizes the use of public-private partnerships for purposes of county road projects. It permits counties to receive or solicit proposals and enter into agreements with private entities to construct, extend, or improve a county road if it is in the best interest of the public.

This bill amends section 255.60, Florida Statutes, by authorizing certain public entities to contract for public service works with not-for-profit organizations.

The bill revises eligibility and contract requirements for not-for-profit organizations contracting with certain public entities. It creates section 287.05712, Florida Statutes, which provides definitions and provides legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose.

The bill creates a task force to establish specified guidelines and procurement procedures and other requirements for the approval of the public-private project. The legislation also provides for notice to affected local jurisdictions and for interim and comprehensive agreements between a public and a private entity.

The bill allows the public entity to charge application and other user fees resulting from the administrative expense of the procurement process; provides for financing sources for certain projects by a private entity; provides powers and duties of private entities; provides for expiration or termination of agreements; provides for the applicability of sovereign immunity for public entities with respect to qualified projects; provides for construction of the act; creates section 336.71, Florida Statutes, which authorizes counties to enter into public-private partnership agreements to construct, extend, or improve county roads; provides requirements and limitations for such agreements; provides procurement procedures; requiring a fee for certain proposals; amends section 348.754, Florida Statutes; revises the limit on terms for leases that the Orlando-Orange County Expressway Authority may enter;

This bill becomes effective on July 1, 2013.

II. District Analysis

The bill allows the District the discretion to accept unsolicited proposals and to solicit for public-private partnerships. This bill provides a mechanism for a private entity to approach the District with unsolicited proposals or for the District to solicit proposals that may be privately financed. It allows for guidelines and procedures to be followed in reviewing the proposals. The bill allows the District to charge a fee to cover the costs of processing, reviewing, and evaluating the proposals. There must be a comprehensive agreement once the proposal has been selected which includes the delivery of performance and payment bonds, the maintenance of a policy of public liability insurance, as well as the rights and obligations of each party. The private entity can obtain private funding for the project. The bill allows the District to finance the project.

III. District Action / Rulemaking

If the District decides to use public-private partnerships to contract for public projects then the District may amend its Procurement Policy to guide the procurement process and selection of proposals from private entities.

Title of Legislation:

**HB 179 – Eminent Domain
Deposits**

Attorney Providing Review:

Edward Artau

I. Summary of Bill

This bill amends section 74.051, Florida Statutes, with regard to who is entitled to receive interest earned on eminent domain (condemnation) deposits. Chapter 74, Florida Statutes, allows condemning authorities to acquire title and possession of real property before eminent domain proceedings have concluded through a process referred to as a "quick take." To accomplish this, a condemning authority must deposit a good faith estimate of the value of the property being condemned, based on a valid appraisal after the entry of an Order of Taking, with the Clerk of the Circuit Court. Section 74.051, Florida Statutes, authorizes the Clerk to invest such deposits in interest earning accounts, and if so invested, 90 percent of the interest earned on this deposit was paid to the condemning authority. This bill amends the recipient of the interest on such deposits, if invested in an interest bearing account by the Clerk. Instead, 90 percent of interest earned will be paid to the ultimate owner of the deposit, which may be the property owner or any of the property owner's lienholders.

This law becomes effective on July 1, 2013.

II. District Analysis

This amendment will not have any significant effect on the District condemnation actions. The District has earned very little, if any, interest on "quick take" deposits because either the Clerk of the Court does not invest such deposits in interest bearing accounts, or the deposited funds do not earn any significant interest because the property owner withdraws the funds shortly after they are deposited by the District.

III. District Action / Rulemaking

No District action is required.

Title of Legislation:

**SB 186 – Personal Jurisdiction
of the Courts**

Attorney Providing Review:

Frank Mendez

I. Summary of Bill

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional Due Process Clause of the Fourteenth Amendment. The test for determining whether a court may assert personal jurisdiction over a nonresident is whether the nonresident has “minimum contacts” in the forum so that commencing a proceeding against that individual does “not offend traditional notions of fair play and justice.”

This bill amends section 48.193, Florida Statutes; providing that a person submits to the jurisdiction of the courts of this state by entering into a contract that specifies that the law of this state governs the contract and that the person agrees to submit to the jurisdiction of the courts of this state; providing that penalties or fines imposed by agencies of other states are not enforceable in certain circumstances.

Article IV, clause 1 of the United States Constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other state.” This bill amends section 55.502, Florida Statutes, by revising the definition of the term “foreign judgment” for purposes of the Florida Enforcement of Foreign Judgments Act. The bill amends section 684.0002, Florida Statutes, by clarifying the circumstances under which an arbitration is international. The bill creates section 684.0049, Florida Statutes; providing that the initiation of arbitration in this state, or the making of a written agreement to arbitrate which provides for arbitration in this state, constitutes a consent to exercise in personam jurisdiction by the courts of this state.

This law becomes effective on July 1, 2013.

II. District Analysis

Most if not all of the District contracts provide for jurisdiction in Palm Beach County.

III. District Action / Rulemaking

No District action required.

Title of Legislation:

**HB 203 – Agricultural Lands
and Practices Act**

Attorneys Providing Review:

**Frank Bartolone,
Susan Martin,
Elizabeth D. Ross,
Andrew R. Ross**

I. Summary of Bill

The Agricultural Lands and Practices Act was originally adopted in 2003 and is codified in section 163.3162, Florida Statutes. Among other provisions, the existing law prohibited counties from adopting or enforcing duplicative ordinances and other regulations that restrict activities of a bona fide farm operation, if the activity is already regulated by: (1) best management practices; (2) interim measures or regulations adopted by any one of several state agencies, including the District, as a part of a statewide or regional program; or (3) any one of several federal agencies.

This bill expands the scope of the Agricultural Lands and Practices Act to affect the authority of “governmental entities,” not just counties, and adds a new paragraph prohibiting governmental entities from charging a fee for stormwater management on bona fide farms, if the activity is regulated by one of the above listed agencies or mechanisms. Importantly, the bill defines “governmental entities” to exclude water management districts from its definition. Hence, the ability of the District to assess fees, such as permit fees, is preserved. The bill also defines “bona fide agricultural purposes” and amends the Florida Building Code to link an exemption for nonresidential farm buildings, fences, and signs to being located on bona fide agricultural lands.

This law becomes effective on July 1, 2013.

II. District Analysis

Due to the exclusion of water management districts from the definition of “governmental entities,” the bill does not impact the District.

III. District Action / Rulemaking

No District action is required.

Title of Legislation:

SB 230 – State Flag Etiquette

Attorney Providing Review:

Frank S. Bartolone

I. Summary of Bill

SB 230 requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

The bill also provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

This law becomes effective on July 1, 2013.

II. District Analysis

This bill does not impose any requirements on the District.

III. District Action / Rulemaking

The District should monitor the actions of the Governor to determine when the protocol required by the bill is adopted and should put in place its own practices to insure compliance with the protocol.

Title of Legislation:

**HB 267 – Property Liens and
Conveyances**

Attorney Providing Review:

Andrew Ross

I. Summary of Bill

Section 2 of this bill adds a subsection (3) to section 695.01, Florida Statutes, which provides that in order for a lien by a governmental entity for a fine or penalty to effectively attach to real property, a notice of lien must be recorded in the county in which the property is located, and the recorded notice of lien must contain the name of the owner of record, a description or address of the property, and the tax or parcel identification number applicable as of the date of recording.

This law becomes effective on October 1, 2013.

II. District Analysis

To the extent the District is authorized to lien property to secure penalties and fines, the requirements of this statute must be followed for the lien to effectively attach to real property.

III. District Action / Rulemaking

No District action is required.

Title of Legislation: **HB 269 – Building Construction**

Attorney Providing Review: **Frank Mendez**

I. Summary of Bill

Currently the state collects data on energy consumption and cost on state-owned facilities and metered state-leased facilities of 5,000 net square feet or more in order to measure the effectiveness of the state energy management plan and the effectiveness of the energy management program of each of the state agencies. In the past the District has followed this by entering into contracts in order to retrofit its facilities in order to make them energy efficient.

The bill also requires that a site plan be maintained at the worksite as an electronic copy and it requires that a copy be open to inspection by certain officials. In addition the legislation makes changes to the minimum HVAC energy efficiency ratings.

This law becomes effective on July 1, 2013.

II. District Analysis

The changes to the building energy-efficiency rating systems are applicable to the District. Although much of this bill does not apply to the District, the requirement that a site plan be maintained at the worksite as an electronic copy and that a copy be open to inspection by certain officials does apply to the District.

III. District Action / Rulemaking

The District needs to require in its scopes of work that the changes to the building energy-efficiency rating system be incorporated in the plans and specifications provided by its contractors and to ensure that an electronic copy of the site plan is maintained at the work site.

The District Engineering and Construction Bureau needs to be aware of the changes to the building energy-efficiency rating system in order to be able to review design and plans provided to the District by its contractors.

Title of Legislation:

**HB 357 – Manufacturing
Development**

Attorneys Providing Review:

**Jennifer Bokankowitz,
Susan Martin,
Elizabeth D. Ross**

I. Summary of Bill

This bill creates the Manufacturing Competitive Act. This purpose of this act is to identify a manufacturing-specific coordinated development approval process. Section 1 sets forth the definitions applicable to the act. The Department of Environmental Protection and water management districts are identified as a “participating agency.” The term “state development approval” includes consumptive use permits (CUPs), environmental resource permits (ERPs), surface water management permits, and other permits the District issues.

Section 2 allows local governments to adopt an ordinance establishing a local manufacturing development program through which the local government may grant master development approval for specific sites. The Department of Economic Opportunity (DEO) must draft a model ordinance for the establishment of the local manufacturing program. The bill specifies the minimum elements the model ordinance must contain. Local governments are not required to use the model ordinance. However, their adopted ordinance must be consistent with the model ordinance.

Section 3 sets forth a variety of requirements which local governments must meet when adopting a local manufacturing development program.

Section 4 provides for a coordinated approval process with participating agencies when a manufacturer is attempting to obtain various state permits, including ERPs and CUPs. The DEO shall coordinate the process. When a manufacturer submits an application to the District, the manufacturer must provide proof that it is located in a local government that has a local manufacturing development program. At the request of the manufacturer, the DEO shall convene a meeting with participating agencies. However, the DEO is not required to mediate between the participating agencies and the manufacturer. Nor will the DEO be a party to any Chapter 120, Florida Statutes, permit challenge.

Importantly, the bill also shortens the participating agencies’ application review timeframes. If a request for additional information (RAI) is necessary, it must be sent within 20 days of the application filing date. If a

second RAI is necessary, it must be sent within 10 days of the manufacturer's response to the first RAI. The agency must take final action within 60 days of deeming the application complete, unless this time period is waived or tolled by an administrative hearing.

If the permit will be denied, the participating agency must notify DEO. DEO shall hold an informal meeting to facilitate a resolution. If a permit challenge is initiated, the manufacturer may demand an expedited hearing. The administrative law judge must hold the hearing within 30 days. Continuances must be agreed to by all parties.

Section 5 requires DEO to develop materials that identify each local government with a manufacturing development program. Enterprise Florida, Inc. and other state agencies may distribute this material to new, expanding, or relocating businesses.

This law becomes effective on July 1, 2013.

II. District Analysis

The District must comply with the reduced permitting timeframes for qualifying projects. Also, expedited hearings are allowed.

III. District Action / Rulemaking

No District action or rulemaking is required. Going forward, it will be helpful for permitting staff to periodically check the DEO's website for the purpose of determining whether or not a local government within the District's jurisdiction has adopted a local manufacturing development ordinance. In this manner, timely processing of the applications can be assured. The Water Use, Environmental Resource, and Everglades Regulation Bureaus and the Right of Way Section will be responsible for reviewing qualifying permits.

Title of Legislation:

**SB 364 - Alternative Water
Supply**

Attorneys Providing Review:

**Jennifer Bokankowitz,
Elizabeth D. Ross**

I. Summary of Bill

Section 373.236, Florida Statutes, governs the duration of consumptive use permits. Prior to the passage of this bill, the statute provided several provisions authorizing consumptive use permit durations longer than the typical 20 years. For example, existing subsection (4) authorizes permits to be issued with up to a 50-year duration where necessary for the retirement of bonds. Specifically regarding alternative water supply permits, existing subsection (5) requires the water management districts (WMDs) to issue permits of at least 20 years. Subsection (5) also allows for the extension of the permitted duration “for such additional time as is required for the retirement of bonds, not including any refunding or refinancing of such bonds.”

This statute is amended to further address the duration of alternative water supply consumptive use permits. First, the bill amends section 373.236, Florida Statutes, to clarify alternative water supply permits issued for 20 years are also subject to providing reasonable assurance that the conditions of the permit will be met for this duration. Additionally, as to permits issued after July 1, 2013, the bill requires issuance of 30-year permits to users that develop alternative water sources, provide sufficient data to assure conditions for permit issuance will be met for the permit duration, and meet additional requirements and procedures. Specifically, the bill provides that the permitted duration may be extended if the permittee issues bonds to finance the project, finishes construction of the project, and requests the extension. These actions must be done within seven years of permit issuance. If the permittee meets these requirements, the WMD must extend the duration to the bond retirement date or 30 years after construction completion, whichever is later. However, the duration may not be extended by more than seven years from the original permit expiration date. In sum, if the conditions are met, a permittee can obtain a 37-year duration permit.

This law becomes effective on July 1, 2013.

II. District Analysis

The District has, in accordance with existing section 373.236, Florida Statutes, issued permits with durations of greater than 20 years. The bill

provides additional detail concerning the circumstances and maximum duration of alternative water supply consumptive use permits. The circumstances occur after a permit is issued. Presumably, an applicant would not apply under the provisions of section 373.236(5)(b), Florida Statutes, unless the applicant anticipated qualifying for the extension. Given this scenario, it is worthwhile to discuss the associated procedures.

III. District Action / Rulemaking

The District does not need to undertake any action in order to implement the provisions of the bill. The Water Use Bureau is responsible for administering the water use permitting program in compliance with the bill.

Title of Legislation:

**SB 444 – Domestic Wastewater
Discharged through Ocean
Outfalls**

Attorney Providing Review:

Carlyn H. Kowalsky

I. Summary of Bill

The existing law was passed in 2008 amending section 403.086, Florida Statutes, and requires wastewater utilities in Palm Beach, Broward, and Miami-Dade counties to develop plans to reduce wastewater discharges through ocean outfalls by December, 2025. The new law modifies the way wastewater volumes are calculated for compliance with the law. It also amends the requirements for the utility's detailed plan describing the technical, environmental, and economic feasibility of options to reduce the volume of wastewater discharged through Ocean outfalls.

This law becomes effective on July 1, 2013.

II. District Analysis

The new law allows additional flexibility for utilities to meet the objective of reducing ocean outfall discharges and requires additional details in a utility's reuse plan including the amount of offset to potable water supplies and other factors contained in the District's Lower East Coast Regional Water Supply Plan.

III. District Action / Rulemaking

The law requires the District to evaluate the new law and provide a report to the legislature by February 15, 2015, identifying if any adjustments to the law are needed.

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Title of Legislation:

**SB 530 – Revised Florida
Arbitration Code**

Attorney Providing Review:

Edward Artau

I. Summary of Bill

In general, this bill repeals sections 682.16, 682.17, 682.18, 682.21, and 682.22, Florida Statutes, and amends sections 682.01, 682.02, 682.03, 682.04, 682.05, 682.06, 682.07, 682.08, 682.09, 682.10, 682.11, 682.12, 682.13, 682.14, 682.15, 682.19, 682.20, 440.1926, 489.1402, and 731.401, Florida Statutes., by instead creating the Revised Florida Arbitration Code (RFAC) based on the 2000 revision of the Uniform Arbitration Act, as approved by the National Conference of Commissioners on Uniform State Laws. The original Florida Arbitration Code (FAC) was passed in 1957 and subsequently revised in 1967. Since 1967, the FAC had only undergone minor revisions. The RFAC subsumes the FAC and incorporates provisions that were not included in the FAC, including the ability of arbitrators to issue provisional remedies, such as injunctive or equitable relief, and other remedies including punitive damages and attorney's fees and costs if authorized by law; incorporates challenges based on notice; provisions for the consolidation of separate arbitration proceedings; required conflict disclosures by arbitrators; immunity of arbitrators; revisions to provisions relating to the issuance, service, and enforcement of subpoenas, protective orders, and depositions; and other substantive and procedural changes to the FAC. The RFAC provides a more detailed framework for arbitration conducted under Florida law.

This law becomes effective on July 1, 2013.

II. District Analysis

The RFAC provides for applicability of the revised act prospectively for agreements to arbitrate made on or after the effective date of the RFAC (July 1, 2013). It also applies retroactively if all parties agree to apply the revised act. The RFAC does not affect an action or proceeding commenced or right accrued before its effective date, July 1, 2013. Beginning July 1, 2016, an agreement to arbitrate will be subject to the Revised Florida Arbitration Act. Therefore, if any contract is entered into by the District containing an arbitration clause on or after July 1, 2013, it will be subject to the more detailed framework of the RFAC. Any District contracts existing prior to July 1, 2013, will only be subject to the RFAC if all parties agree to apply the revised act, until July 1, 2016, when all agreements to arbitrate will be subject to the RFAC.

III. District Action / Rulemaking

The Procurement Department and other District staff involved in the negotiation of contracts should become familiar with the more detailed framework of the RFAC in contemplating any contractual provisions containing an arbitration clause. The applicability of the RFAC should also be taken into consideration at the time of any other amendments, revisions, renewals, or extensions of existing contracts.

Title of Legislation:

SB 592 – Writs of Garnishment

Attorney Providing Review:

Edward Artau

I. Summary of Bill

In general, this bill repeals section 222.12, Florida Statutes, and amends section 77.041, Florida Statutes, to extend the time that a creditor has to object to a debtor's claim of exemption from a writ of garnishment. Currently, a creditor has to file an objection with the court within 3 business days after the debtor hand-delivers an exemption claim. The period is 8 business days if the debtor mails the exemption claim. The bill extends these periods to 8 business days after hand-delivery and 14 business days after mailing. The bill requires a debtor to deliver a form claiming an exemption from garnishment and requesting a hearing to either the creditor or the creditor's attorney and either the garnishee or the garnishee's attorney at the addresses listed on the Writ of Garnishment. The bill also modifies the statutory form used for claiming an exemption from garnishment under section 77.041(1), Florida Statutes. The modified form includes a requirement for certification under oath and penalty of perjury that the debtor delivered the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief.

This law will become effective on July 1, 2013.

II. District Analysis

From time to time, District engages in collection of judgments entered in its favor or finds itself in the role of garnishee for one of its employees or persons entitled to payment from the District. As either a creditor or garnishee, the District will benefit from the additional procedural requirements and time periods provided by this bill.

III. District Action / Rulemaking

No District action is required.

Title of Legislation:

HB 655 – Employment Benefits

Attorney Providing Review:

Derek C. Brown

I. Summary of Bill

This bill creates a state preemption of the regulation of employment benefits thereby preventing political subdivisions from establishing, mandating, or otherwise requiring an employer to pay a minimum wage, other than a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law.

The bill does not limit the authority of a political subdivision to establish a minimum wage or to provide employment benefits to employees of the political subdivision. The bill also does not limit the authority in relation to employees of an employer contracting or sub-contracting with the political subdivision.

This law becomes effective on July 1, 2013.

II. District Analysis

This bill will have no impact on the District as the District does not regulate private employers in the field of employment benefits.

III. District Action / Rulemaking

No District action is required.

Title of Legislation:

HB 713 – Water Quality Credit Trading

Attorney Providing Review:

Susan Martin

I. Summary of Bill

In accordance with rules to be adopted, the Department of Environmental Protection (DEP) may allow water quality credit trading by point or non-point sources in adopted basin management action plans (BMAPs) and other pollution control programs under local, state, or federal authority. Participation is voluntary. Entities participating must report prices to DEP, how the price was determined, and any state funding received. DEP may not participate in the establishment of prices.

Previously, BMAPs could allow point or non-point sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load to trade water quality credits in a pilot program in the lower St. Johns River Basin. This bill eliminates the geographic limitation to the lower St. Johns River Basin and eliminates the pilot project limitation.

This bill is expanded to include not just BMAPs, but also other pollution control programs under local, state or federal authority.

This law becomes effective on July 1, 2013.

II. District Analysis

Formerly, there was no opportunity for water quality credit trading within the District, only the lower St. Johns River Basin. This bill allows for water quality credit trading within the geographic regions of the District for qualifying water quality projects after rules are adopted by DEP.

III. District Action / Rulemaking

Rulemaking will be necessary by DEP. It is anticipated that the District will participate in the rulemaking.

Title of Legislation:

**HB 731 – Public Records -
Personal Information**

Attorney Providing Review:

Derek C. Brown

I. Summary of Bill

This bill expands an existing public records exemption for certain personal identification and location information for current or former specified law enforcement personnel, assistant state attorneys, state attorneys, statewide prosecutors, and assistant statewide prosecutors and their spouses and children to also protect the names of such spouses and children.

This law becomes effective on October 1, 2013.

II. District Analysis

This bill will have no direct impact on the District.

III. District Action / Rulemaking

District Office of Counsel will coordinate with the District Public Records Office and Human Resources Bureau to ensure the proper application of this exemption from public records production.

Title of Legislation:

**HB 934 – Stormwater
Management**

Attorney Providing Review:

Susan Martin

I. Summary of Bill

The bill requires the Department of Environmental Protection (DEP), in coordination with the water management districts, to add a provision to the statewide environmental permitting rules providing for a conceptual permit for a municipality or county that creates a stormwater management master plan for urban infill and redevelopment areas or community redevelopment areas under Chapter 163, Florida Statutes. After approval by DEP or the water management district, the master plan will become part of the conceptual permit. Rules must also provide for a general permit for construction and operation of urban redevelopment projects that are consistent with the conceptual permit.

The permit must not conflict with the requirements of a federally approved program pursuant to section 403.0885, Florida Statutes, a total maximum daily load or basin management action plan. Discharges from the system must not cause or contribute to a violation of the water quality standards, which must be established by demonstrating a net improvement in water quality discharged, on the date the conceptual application is approved.

The conceptual approval shall not expire for 20 years and must include a renewal option. Provisions which must be contained in the conceptual approval are set forth.

The conceptual approval must describe the rate and volume of stormwater discharges and contain provisions for the use of stormwater best management practices. Operation and maintenance must be pursuant to section 373.416, Florida Statutes. Rules have been promulgated by DEP and the water management districts applying section 373.416, Florida Statutes.

This law becomes effective on July 1, 2013.

II. District Analysis

This will reduce regulatory burdens on local governments, while at the same time assuring a net improvement in water quality.

III. District Action / Rulemaking

Proposed Florida Administrative Code rule 62-330.450, in the proposed statewide environmental resource permit rules, is designed to address the requirements of this legislation.

Title of Legislation:

HB 935 – Florida False Claims Act

Attorney Providing Review:

Edward Artau

I. Summary of Bill

In general, this bill amends the Florida False Claims Act (FFCA). The FFCA authorizes civil actions against persons who file false claims for payment by the state. The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages. The bill expands the applicability of the FFCA to state agencies, subdivisions and instrumentalities; designates the Department of Legal Affairs or the Department of Financial Services, when applicable, as the state entities charged with pursuing false claims; grants the Department of Legal Affairs the ability to issue subpoenas; provides a civil penalty up to \$1 million (limited to \$100,000 as applicable to natural persons) for altering, destroying, concealing, or removing evidence; allows the state to pursue a false claims action through an administrative remedy; precludes a private false claims action where the underlying facts were publicly disclosed; provides that no action may be brought more than three years after material facts were known or reasonably should have been known to the Department of Legal Affairs or the Department of Financial Services, when applicable; allows the Department of Legal Affairs or the Department of Financial Services, when applicable, to amend a complaint or file its own complaint if it intervenes in an existing action; and estops a defendant who has plead guilty or nolo contendere in a criminal action from denying underlying facts that would support a false claims action.

This law becomes effective on July 1, 2013.

II. District Analysis

This amendment makes the FFCA applicable to the District. It provides certain remedies should someone knowingly make a false or fraudulent claim or demand for money owed against the District, or should someone knowingly withhold the District's money or property. Claims are defined under the FFCA as any request or demand, whether under a contract or otherwise, for money or property, presented to any employee, officer, or agent of the state governmental entity or its contractor or other recipient, if the governmental entity has provided any portion of the money or property, or will reimburse the contractor or other recipient. Therefore, the FFCA is also applicable to the District's contractors on any of its projects.

III. District Action / Rulemaking

The Procurement Department and other District staff responsible for payment of claims should be aware of the applicability of the FFCA and its available remedies.

Title of Legislation:

**HB 1075 – Public Records -
Agency Investigations**

Attorney Providing Review:

Derek C. Brown

I. Summary of Bill

This bill creates an additional exemption from inspection or copying of public records for complaints of misconduct filed with an agency against an agency employee and agency investigations related thereto. The exemption is in effect until the agency has concluded the investigation with a finding to either proceed or not proceed with disciplinary action.

This law becomes effective on July 1, 2013.

II. District Analysis

This bill will have no direct impact on the District but will allow the District to further the legislative intent to limit disclosure of information obtained during an internal investigation conducted by the District thereby not inhibiting voluntary participation of employees in the investigation.

III. District Action / Rulemaking

District Office of Counsel will coordinate with the District Public Records Office and Human Resources Bureau to ensure the proper application of this exemption from public records production.

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Title of Legislation:

**HB 1309 – Governmental
Accountability**

Attorney Providing Review:

Frank Mendez

I. Summary of Bill

The bill requires public agency contracts for services performed on behalf of the agency to contain contract provisions requiring that the contractor comply with public records laws, including that they provide the public with access to public records on the same terms and conditions that the public agency would provide the records. If a contractor does not comply with a public records request, the public agency must enforce the contract provisions in accordance with the contract. Further the contractor must transfer, at no cost to the public agency, all public records in possession of the contractor upon termination of the contract.

Further the bill requires that the contractor keep from public records disclosure all public records that are exempt.

The bill creates a requirement that grant agreements funded with federal or state assistance include additional provisions such as a provision specifying financial consequences if the recipient fails to perform the minimum level of service required by the agreement. The agreements must also designate a grant manager who will reconcile and verify all funds received against all of the funds expended. Any grant manager responsible for contracts in excess of \$100,000 must complete training to become a certified grant manger. This portion of the bill is effective December 1, 2014.

Except for section 2 of the bill, this bill becomes effective on July 1, 2013. Section 2 becomes effective on December 1, 2014.

II. District Analysis

The bill includes in the definition of government entity a multi- purpose special district. This is relevant because arguably much of Chapter 287, Florida Statutes, may now apply to the District. In addition the District needs to ensure that our contracts have the required language regarding public records laws, especially the language that the contractor must transfer, at no cost to the public agency all public records in possession of the contractor upon termination of the contract.

III. District Action / Rulemaking

Procurement and Office of Counsel will need to review our current contracts to ensure that the newly applicable provisions of Chapter 287, Florida Statutes, are complied with. In addition our current contracts should include a provision that the contractor must transfer, at no cost to the District, all public records in possession of the contractor upon termination of the contract.

Title of Legislation:

SB 1500 – State Budget

Persons Providing Review:

**Ernie Barnett, Assistant
Executive Director –
Everglades and Water
Resources,
Frank S. Bartolone, Office of
Counsel**

I. Summary of Bill

The passed budget includes several items of interest to the District. Some of the funds are directly appropriated to the District; other funds are directed to other agencies.

- \$10,600,000 – Water Management Lands Trust Fund (includes payments for debt service and \$4 million for Corbett Levee)
- \$4,400,000 -- Everglades (Alligator Alley Tolls; FDOT to District)
- \$70,000,000 – Everglades Restoration
 - \$32,000,000 Restoration Strategies
 - \$35,000,000 CERP/Northern Everglades
 - \$3,000,000 DACS Northern Everglades BMPs
- \$ 59,475,000 for all water projects (although some was vetoed) - The following several projects are located within the District boundaries:

Bonita Springs - Oak Creek Restoration - Sediment & Exotic Plant Removal	250,000
Doral - Canal Bank Stabilization	1,000,000
Glades County – Wastewater Improvements.....	350,000
Key Largo - Wastewater Treatment Construction Collection System	1,000,000
LaBelle - Wastewater Recycle Project.....	1,812,500
Marathon - Utility Operation and Phase One Wastewater Treatment Plant Improvements	1,000,000
Miami Lakes - West Lake Drainage Improvements	300,000
Moore Haven - Stormwater Conveyance and Improvements.....	150,000
Okeechobee - Stormwater Retrofit Project	250,000
Okeechobee - Wastewater Improvements.....	300,000
Okeechobee - Pine Ridge Park Utility System Improvements.....	300,000
Opa-Locka - Sewer Lift System Rehabilitation.....	390,000
Opa-Locka - Burlington Canal Dredging and Side Slope Restoration	700,000

Palm Beach County - Lake Worth Lagoon Monastery Artificial Reef MacArthur State Park Islands	150,000
Palm Beach County - Loxahatchee River Preservation Initiative	1,300,000
Pembroke Park - Stormwater Retrofit & Water Quality Project	200,000
Sunrise - Twin Lakes Sub-Basin Drainage Improvements.....	250,000

II. District Analysis

These appropriations are available to be used by the District and its partners to address water resources issues as directed by the legislature. It will be necessary to analyze the final bill as approved by the Governor. In past years, some of the local water projects have been vetoed.

III. District Action / Rulemaking

District staff should take appropriate actions necessary to insure receipt of the funds directly appropriated for District use for the purposes that the legislature has established.

Title of Legislation:

**SB 1594 – Guaranteed Energy,
Water, and Wastewater
Performance Savings
Contracting Act**

Attorney Providing Review:

Frank Mendez

I. Summary of Bill

The State of Florida in an effort to reduce the amount of energy and water consumed and wastewater in its facilities introduced legislation allowing an agency to contract with a guaranteed energy, water, and wastewater performance savings contractor to find ways to reduce the amount of energy consumed. The majority of the bill is specific to the administration of the program by the Department of Management Services (DMS).

Further the bill authorizes certain alterations to be included in a performance contract and to be supervised by the savings contractor.

This law becomes effective on July 1, 2013.

II. District Analysis

No impact to the District other than the contractor can now obtain third party financing and the District can pay the lender directly. The District has entered into contracts with an energy savings contractor. The changes allow the District or any other agency to pay a lender of an installation construction loan in installments for a period not to exceed 20 years.

III. District Action/Rulemaking

No District action required.

Title of Legislation:

SB 1806 – Total Maximum Daily Loads

Attorney Providing Review:

Susan Martin

I. Summary of Bill

The Department of Environmental Protection (DEP) is currently authorized to adopt a rule pertaining to Total Maximum Daily Loads (TMDL) calculations and allocations. Under this bill, these rules are not subject to the requirement for legislative ratification pursuant to the provisions of section 120.541(3), Florida Statutes

This law becomes effective on July 1, 2013.

II. District Analysis

The TMDL process is within the jurisdiction of DEP. The District participates in and supports this process.

III. District Action / Rulemaking

No district action or rulemaking is required.

Title of Legislation:

SB 1810 – Florida Retirement System

Attorney Providing Review:

Derek C. Brown

I. Summary of Bill

The bill sets the employer-paid contribution rates for the Florida Retirement System (FRS) and the Retiree Health Insurance Subsidy (HIS) program.

The employer-paid contribution rates to pay the normal costs and amortization of the unfunded actuarial liability of the FRS are increased.

Of particular note, the required employer retirement contribution rates for unfunded actuarial liabilities will be substantially increased. For the Regular Class, the rate went from 0.49% in 2012 to 2.19% effective July 1, 2013. For the Senior Management Service Class, the rate went from 0.32% in 2012 to 12.27% effective July 1, 2013. For DROP, the rates went from 0.00% in 2012 to 7.01% effective July 1, 2013.

In addition, the employer-paid contribution for the HIS program is increased from 1.11 percent of the employer's payroll to 1.20 percent of the employer's payroll.

This law becomes effective on July 1, 2013.

II. District Analysis

This bill will have direct and immediate fiscal impact on the District in excess of two million dollars (\$2,000,000) of increased contributions per year under the new rates.

III. District Action / Rulemaking

The District Budget Bureau will continue to account for these increased rates as similar rates have been projected under existing section 121.71, Florida Statutes. The increased contributions will take effect on July 1, 2013.

Title of Legislation:

**HB 5401 – Transparency in
Government Spending**

Attorney Providing Review:

Frank Mendez

I. Summary of Bill

This bill amends Chapter 215, Florida Statutes, the Transparency Florida Act, which requires fiscal information to be made publicly available on the state's website. Specifically the legislation requires the Executive Office of the Governor (EOG), in consultation with the appropriations committees of the House of Representatives and Senate, to establish and maintain a single website that will provide access to all other websites required by the Act. This website provides information relating to the approved operating budget for each branch of state government and state agencies. Finally the website will provide information relating to the fiscal planning for the state.

This law becomes effective on July 1, 2013.

II. District Analysis

This bill requires that the District input information relating to each appropriation. Specifically, within 30 calendar days after executing a contract, each agency must post the names of the contracting parties, the total amount of the contract, the procurement method, the term of the contract, the type of services or commodities purchased, the deliverables and the price of each deliverable, the payments made to the contractor. If a competitive solicitation was not used to procure the goods or services, the justification of such action, including citation to a statutory exemption or exception from competition must be provided. The law also provides exemptions from these posting requirements in the case of confidential or exempt information

III. District Action / Rulemaking

The Procurement Department should take the necessary steps to enter the required information 30 days after the contract is executed.

Title of Legislation:

HB 7015 – Testimony by Experts Basis of Opinion Testimony by Experts

Attorney Providing Review:

Keith Williams

I. Summary of Bill

The bill amends sections 90.702 and 90.704 of the Florida Evidence Code, which regulates introduction of expert witness opinion testimony in criminal and civil actions in Florida, to pattern it after Rules 702 and 703 of the Federal Rules of Evidence. Under current Florida law, the rule for admissibility of expert witness opinion testimony is based on the standard set forth in Frye v. U.S., 293 F. 1013 (D.C. Cir. 1923). Under that standard, the basic test for admissibility of expert opinion testimony is whether such opinions are based on “generally accepted” scientific principles. The Federal Circuit Court’s holding in Frye was overturned by the more recent United States Supreme Court decision in Daubert .v Merrill-Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and further refined by subsequent United States Supreme Court rulings in General Electric v. Joiner, 522 U.S. 136 (1997) and Kumho Tire, Co., Ltd. v. Carmichel, 526 U.S. 137 (1999). The bill intends to expressly replace and supersede the Frye standard for admissibility of expert witness opinions with those more closely aligned with Daubert. Under the new evidence statute, “general acceptance” of the scientific principles underlying the expert’s opinion is but one factor of many to be considered by the court to determine admissibility of expert opinion testimony. Other factors to be considered include, but are not limited to:

- a) Novelty of theory or technique underlying the testimony;
- b) Testing of theory or technique;
- c) Publication and peer review of scientific theory;
- d) Error rate of scientific technique that is basis of testimony;
- e) Identification of standards within a relevant scientific community for operation of a theory or technique; and
- f) An express determination of a particular degree of acceptance within the relevant scientific community.

The legislative intent is to prohibit courts of this state from relying upon pure opinion testimony (presumably that which is unsupported by underlying facts and/or inapplicable to the facts of the case).

The bill’s new sections require that expert opinion testimony be:

- a) Based on sufficient facts or data (new section 90.702(1), Florida Statutes);

- b) The product of reliable principles and methods (new section 90.702(2), Florida Statutes); and
- c) Reliably applied by the witness to the facts of the case, based on those reliable principles and methods (new section 90.702(3), Florida Statutes).

The bill also further clarifies the standards to be followed by the courts where an expert may disclose facts and data reasonably relied upon in forming his or her opinion where such facts and data would otherwise be inadmissible as hearsay (new portion of section 90.704, Florida Statutes).

This law becomes effective on July 1, 2013.

II. District Analysis

No one part of this bill expressly pertains to the District; the potential admissibility of expert witness opinion testimony proffered on behalf of the District may be affected. Expert opinion testimony by District employees or contractors may be ruled inadmissible as evidence by the court if the above standards are not met. The admissibility of such evidence is determined by the court after weighing the several factors outlined above. If, after applying the above factors, the court determines that the tests and procedures forming the basis of the opinion are suitably reliable to permit admission of the opinion into evidence, the expert's opinions are evaluated by the trier of fact based on their credibility or weight. The expert may be allowed to disclose otherwise inadmissible hearsay if it includes facts or data reasonably relied upon by other experts in the field when forming an opinion, provided the same are not overly prejudicial.

III. District Action / Rulemaking

The District should ensure sufficient data collection, testing, and peer review to support any expert opinion testimony. The District should also ensure proper application of scientific tests or procedures, novel or otherwise, to the facts of the case when providing expert opinion testimony.

Affected departments may include Office of Counsel, Operations, Maintenance & Construction Division, Regulation Division, Hydrologic & Environmental Systems Modeling, Water Resources Division, Office of Everglades Policy & Coordination.

Title of Legislation:

HB 7017 – Terms of Courts

Attorney Providing Review:

Keith Williams

I. Summary of Bill

This bill amends and repeals several statutes to remove references in Florida Statutes that establish “terms” of court in Florida’s jurisdictions. The bill enacts new section 43.43, Florida Statutes, which states that the terms for all Florida courts shall be established by the Florida Supreme Court, which may authorize the district courts of appeal and the circuit courts to establish their own terms and may dispense with the terms of court.

The bill also enacts new section 43.44, Florida Statutes, which provides a 120 day period in which Florida district courts of appeal may reconsider, revise, reform, or modify its own opinions and orders for the purpose of making the same accord with law and justice. The remainder of the bill conforms other statutory provisions to changes made in the act.

This law becomes effective on January 1, 2014.

II. District Analysis

There are no significant problems or issues for the District identified by this bill.

III. District Action / Rulemaking

No action is required on behalf of the District.

Title of Legislation:

**HB 7087 – Department of
Agriculture and Consumer
Services**

Attorney Providing Review:

Doug MacLaughlin

I. Summary of Bill

This is a bill relating to the Department of Agriculture and Consumer Services (FDACS). It addresses items related to the management of the Babcock Ranch acquisition in Charlotte and Lee County; issues related to mosquito control, pesticide management, livestock hauling, open burning, and fertilizer analysis; establishment of the Division of Food, Nutrition and Wellness; providing for hunting on state forest lands; and clarifications regarding operation of the Florida Agricultural Museum.

Section 10 of the bill directs FDACS to enter into a memorandum of agreement with the Fish and Wildlife Conservation Commission to develop Best Management Practices (BMPs) for fish and wildlife conservation. Notwithstanding other provisions of law, the implementation of the BMPs adopted pursuant to this bill is voluntary, and an agency may not adopt or enforce any rule regarding the BMPs (presumably only agricultural BMPs for wildlife) on land classified as agricultural land pursuant to section 193.461, Florida Statutes.

The bill becomes effective upon becoming law.

II. District Analysis

If interpreted broadly, the prohibition against other agencies from adopting or enforcing agricultural BMPs could be a problem. The regulatory BMP program under the Everglades Forever Act, section 373.4592, Florida Statutes, is a key factor in achieving water quality goals in the Everglades. BMPs for water quality protection are also used in the Environmental Resource Permit regulatory program. A narrower interpretation that the prohibition only applies to enforcing BMPs limited to wildlife conservation, and not water quality protection, needs to be used by the District.

III. District Action / Rulemaking

The District does not need to take any actions to implement the law.

Title of Legislation:

**HB 7145 – Public Records -
Employment Discrimination
Complaints**

Attorney Providing Review:

Derek C. Brown

I. Summary of Bill

This bill reenacts the public records exemption for employment discrimination complaints and related records. The Open Government Sunset Review Act requires the legislature to review each public records or public meetings exemption five years after its initial enactment or subsequent expansion. If the legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Specifically, all complaints and other records in the custody of an agency that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with certain hiring and employment practices are exempt from public records disclosure requirements.

The exemption also provides that when the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from public records disclosure requirements.

This law shall become effective on October 1, 2013.

II. District Analysis

This bill will have no impact on the District as it merely reenacts an existing public records exemption.

III. District Action / Rulemaking

District Office of Counsel will coordinate with the District Public Records Office and Human Resources Bureau to ensure the proper application of this exemption from public records production.

Title of Legislation:

HB 7157 – Total Maximum Daily Loads for Impaired Water Bodies

Attorney Providing Review

Doug MacLaughlin

I. Summary of Bill

This bill ratifies the adoption of several rules adopted by the Department of Environmental Protection (DEP) establishing Total Daily Maximum Loads (TMDLs) for pollutants for several water bodies, and a state-wide TMDL for mercury-impaired water bodies within the state. Such legislative ratification is necessary under section 120.541(3), Florida Statutes, since DEP determined that implementing each of these rules would have a specific adverse economic impact, or would increase regulatory costs, more than \$1 million over the first 5 years each rule was in effect.

This bill becomes effective upon becoming law.

II. District Analysis

The TMDL rule that was ratified that has an impact on the District is the state-wide TMDL for mercury-impaired water bodies (the other TMDLs are for water bodies outside the District). This rule establishes a wasteload allocation for mercury for National Pollutant Discharge Elimination System (NPDES) permit holders, and a load allocation for nonpoint sources. District projects such as stormwater treatment areas (STAs) must meet NPDES criteria and are subject to these water quality criteria.

III. District Action / Rulemaking

The District does not need to take any actions to implement the law.

Title of Legislation:

SB 4 – Public Records - Ethics Investigations

Attorney Providing Review:

Derek C. Brown

I. Summary of Bill

This bill amends section 112.324, Florida Statutes, relating to public records exemptions for records held by the Florida Commission on Ethics or local governments. The exemptions include written referrals for violations of the statutory Code of Ethics contained in Chapter 112, Florida Statutes, and records relating to such referrals and records relating to any preliminary investigation of such referrals.

This law became effective on May 1, 2013.

II. District Analysis

This bill will have no impact on the District as it specifically pertains to public records exemptions for records held by the Florida Commission on Ethics or local governments that have established an investigatory process to enforce more stringent standards under Chapter 112, Florida Statutes.

By Governing Board policy, the District has more stringent ethical standards than Chapter 112 but the District has not established a formalized investigatory process for such matters. Therefore, the public records exemption created in the amended section 112.324, Florida Statutes, is not applicable to any records held by the District.

III. District Action / Rulemaking

No District action is required.

Title of Legislation:

**SB 212 – Fish and Wildlife
Conservation Trust Funds**

Attorney Providing Review:

Derek C. Brown

I. Summary of Bill

This bill renames the Fish and Wildlife Habitat Program as the Land Acquisition Trust Fund. In addition, the Save the Manatee Trust Fund and the Invasive Plant Control Trust Fund are created. All three funds are to be administered by the Fish and Wildlife Conservation Commission.

This law becomes effective on July 1, 2013.

II. District Analysis

This bill will have no direct impact on the District.

III. District Action / Rulemaking

No District action is required.

Title of Legislation:

Annexations / Special Districts

Attorney Providing Review:

N/A

The following bills relate to annexations, water control (298) districts and other special districts. While the particular subject matter of these bills may not be directly applicable to the District, they may have some relevance or interest to project managers and/or land managers. Staff that has a particular interest in one of these bills may contact Office of Counsel for further review.

Bill No.	Location	Subject
855	Palm Beach County	South Indian River Water Control District - authorizes construction of improvements on SIRWCD property for recreational purposes on land within the SIRWCD lying east of the District's C-18 Canal.
977	St. Lucie County	St. Lucie County Mosquito Control District - revises the boundaries of the district.
979	St. Lucie County	Fort Pierce Farms Water Control District - amends, codifies, and repeals all special acts and court decrees to create a single, unified charter; provides the district's boundaries, a maximum annual maintenance tax, and a lifespan lasting until 2111.
981	St. Lucie County	North St. Lucie River Water Control District - amends, codifies, and repeals all special acts and court decrees to create a single, unified charter; provides a legal description for the district's boundaries, a status statement, and minimum charter requirements: the purpose of the district; the powers, functions and duties of the district; the methods for establishing the district; the method for amending the district charter; the membership and organization of the district board; the maximum compensation for a board member; the administrative duties of the board; applicable financial disclosure, noticing and reporting requirements; the procedures for conducting district elections; the methods for financing the district; the method for collecting fees; and district planning requirements.
1171	St. Lucie County and Martin County	Revises provisions for temporary distributions from Martin County to St. Lucie County of tax and assessment revenue resulting from a change in boundaries in 2012.

1271	Hendry County	Central County Water Control District - revises the boundaries of the district.
1281	Hendry County / Lee County	East County Water Control District - authorizes the district to finance, plan, construct, and operate street lights and sidewalks in Lee County; provides that the district may levy non-ad valorem tax assessments on a per-project basis.
1287	Osceola County / Orange County / Polk County	Tohopekaliga Water Authority - grants the appointing bodies the option to appoint the authority's current chair, who has served since 2003, for an additional 3-year term.
1403	Monroe County	Key Largo Wastewater Treatment District - amends the district's charter to revise the procedures relating to board vacancies; requires the annual adjustment of governing board members' compensation.