AGENDA

1. Introductions

2. Utility Council Business
   a. September 5, 2012 meeting minutes
   b. Financial Report
   c. Membership/Recruitment

3. 2013 Legislative Session – Edgar Fernandez/Frank Bernardino
   a. Legislative Issues
   b. Whitepapers

4. Regulatory Issues – Lisa Wilson-Davis/Frank Bernardino
   a. CUPcon
   b. Chapter 62-40, F.A.C. Revisions
   c. Other Issues

5. Legislative Day 2013 in Tallahassee - Edgar Fernandez/Frank Bernardino

6. Schedule for 2013

7. Other Issues

8. Adjourn
<table>
<thead>
<tr>
<th>Name</th>
<th>Agency</th>
<th>Telephone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patty DiPietro</td>
<td>Lee County Utilities</td>
<td>839-533-8554</td>
<td><a href="mailto:dipierpme@ee.gov.com">dipierpme@ee.gov.com</a></td>
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<td>Suzanne Goss</td>
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<td>904 642-3855</td>
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<td>Lisa Krentz</td>
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<td><a href="mailto:cmcginness@anna.org">cmcginness@anna.org</a></td>
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</tr>
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</table>
# FSAWWA Utility Council Meeting

**November 27, 2012**  
**2:00 PM - 4:00 PM**  
Rosen Shingle Creek - Wekiwa Meeting Room  
9939 Universal Blvd., Orlando, Florida 32819

<table>
<thead>
<tr>
<th>Name</th>
<th>Agency</th>
<th>Telephone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rick Ratcliffe</td>
<td>CHAIR FSAWWA</td>
<td>813-330-4020</td>
<td><a href="mailto:rratcliffe@acero.com">rratcliffe@acero.com</a></td>
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<tr>
<td>Frank Bernardino</td>
<td>Asriel Consulting</td>
<td>561/718-7233</td>
<td><a href="mailto:frankc@asrielflorida.com">frankc@asrielflorida.com</a></td>
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<td>Carl Larrabee</td>
<td>SJRWMD</td>
<td>386-329-4222</td>
<td><a href="mailto:clarrabee@sjrwmd.com">clarrabee@sjrwmd.com</a></td>
</tr>
<tr>
<td></td>
<td>2012 Budget</td>
<td>2012 Year To-Date [1]</td>
<td>2012 Projected</td>
</tr>
<tr>
<td>------------------------</td>
<td>-------------</td>
<td>-----------------------</td>
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</tr>
<tr>
<td><strong>Fund Balance [Jan. 1]</strong></td>
<td>$90,900</td>
<td>$93,628</td>
<td>$93,628</td>
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<tr>
<td><strong>Revenue</strong></td>
<td></td>
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<tr>
<td>Membership Dues</td>
<td>$90,000</td>
<td>$46,200</td>
<td>$66,000</td>
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<tr>
<td>Drinking Water Day Sponsorship</td>
<td>$5,000</td>
<td>0</td>
<td>0</td>
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<td><strong>subtotal</strong></td>
<td>$95,000</td>
<td>$46,200</td>
<td>$66,000</td>
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<td><strong>Expenses</strong></td>
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<tr>
<td>Consultants</td>
<td>($115,000)</td>
<td>($62,017)</td>
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<td>Drinking Water Day</td>
<td>($3,500)</td>
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<tr>
<td>ALF Water Forum</td>
<td></td>
<td></td>
<td>($2,500)</td>
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<tr>
<td>AWWA Fly-in</td>
<td>($1,000)</td>
<td>($919)</td>
<td>($919)</td>
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<tr>
<td>Marketing</td>
<td>($1,000)</td>
<td>($630)</td>
<td>($1,000)</td>
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<td>Meetings</td>
<td>($2,500)</td>
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<td>Miscellaneous/Contingencies</td>
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<td>($80)</td>
<td>($100)</td>
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<td><strong>subtotal</strong></td>
<td>($130,500)</td>
<td>($63,645)</td>
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<td><strong>Net for Year</strong></td>
<td>($35,500)</td>
<td>($17,445)</td>
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<td><strong>Fund Balance [Dec. 31]</strong></td>
<td>$55,400</td>
<td>$76,183</td>
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<td><strong>Membership</strong></td>
<td></td>
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<td></td>
<td></td>
<td>60</td>
<td>70</td>
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Welcome/Introductions

Pat Lehman started the meeting at 2 PM with introductions

Approval of Meeting Minutes

- Motion to approve - Edgar Fernandez
- Second - Suzanne Goss
- Motion Passes

Financial Report – The 2013 budget will be voted on November 28, 2012 during the annual meeting. The goal is to bring in 10 new utilities.

Rep. Ray Pilon will be chairing the Agriculture and Natural Resources Committee. He is sitting on five (5) committees this legislative session.

Legislative Committee Update - Edgar Fernandez

The Legislative Committee put together a work plan that included the white papers to be used for discussion. They also visited other UCs throughout the state to discuss the possible legislative issues.

Utility Council members discussed each of the White Papers and voted on each one as to whether or not members wanted the Utility Council Legislative Committee to support and monitor each of the issues. (Refer to 2013 Legislative & Regulatory Issues Workbook attached)

<table>
<thead>
<tr>
<th>Water Infrastructure Funding</th>
<th>Motion</th>
<th>Second</th>
<th>Favor/Nays</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a</td>
<td>Edgar Fernandez</td>
<td>Lisa Wilson Davis</td>
<td>Passes</td>
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</table>

<table>
<thead>
<tr>
<th>Ocean Outfalls (continue to support)</th>
<th>Motion</th>
<th>Second</th>
<th>Favor/Nays</th>
</tr>
</thead>
<tbody>
<tr>
<td>1b</td>
<td>Edgar Fernandez</td>
<td>Rob Teagarden</td>
<td>Passes</td>
</tr>
<tr>
<td>1c Minimum Flows and Levels (monitor and oppose any other language against this language)</td>
<td>Motion</td>
<td>Second</td>
<td>Favor/Nays</td>
</tr>
<tr>
<td>----------------------------------</td>
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<tr>
<td>Motion</td>
<td>Second</td>
<td>Favor/Nays</td>
<td></td>
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<tr>
<td>Suzanne Goss</td>
<td>Brian Wheeler</td>
<td>Passes</td>
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<thead>
<tr>
<th>1d Public Private Partnerships (change from support to monitor)</th>
<th>Motion</th>
<th>Second</th>
<th>Favor/Nays</th>
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<tbody>
<tr>
<td>Motion</td>
<td>Second</td>
<td>Favor/Nays</td>
<td></td>
</tr>
<tr>
<td>Suzanne Goss</td>
<td>Lisa Wilson Davis</td>
<td>Passes</td>
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<thead>
<tr>
<th>1e 30 Year CUPs (looking for a sponsor and continue to support)</th>
<th>Motion</th>
<th>Second</th>
<th>Favor/Nays</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion</td>
<td>Second</td>
<td>Favor/Nays</td>
<td></td>
</tr>
<tr>
<td>Pat Lehman</td>
<td>Jacqueline Torbert</td>
<td>Passes</td>
<td></td>
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<thead>
<tr>
<th>1f Private Utilities Study Commission (monitor)</th>
<th>Motion</th>
<th>Second</th>
<th>Favor/Nays</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion</td>
<td>Second</td>
<td>Favor/Nays</td>
<td></td>
</tr>
<tr>
<td>Frank Bernardino</td>
<td>Edgar Fernandez</td>
<td>Passes</td>
<td></td>
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</tbody>
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<thead>
<tr>
<th>1g Utility Employee Safety (continue to support and monitor to get it added to another policy)</th>
<th>Motion</th>
<th>Second</th>
<th>Favor/Nays</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion</td>
<td>Second</td>
<td>Favor/Nays</td>
<td></td>
</tr>
<tr>
<td>Edgar Fernandez</td>
<td>Lisa Wilson Davis</td>
<td>Passes</td>
<td></td>
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<table>
<thead>
<tr>
<th>1h Affordability of Regulatory Requirements (for future planning and informational purposes)</th>
<th>Motion</th>
<th>Second</th>
<th>Favor/Nays</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion</td>
<td>Second</td>
<td>Favor/Nays</td>
<td></td>
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<tr>
<td>N/A</td>
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<tr>
<th>1i FLOW Legislation (oppose and actively engage members to persuade FLOW/Dean to not take this up)</th>
<th>Motion</th>
<th>Second</th>
<th>Favor/Nays</th>
</tr>
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<tbody>
<tr>
<td>Motion</td>
<td>Second</td>
<td>Favor/Nays</td>
<td></td>
</tr>
<tr>
<td>Edgar Fernandez</td>
<td>Suzanne Goss</td>
<td>Passes</td>
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Regulatory Issues – Lisa Wilson-Davis/Edgar Fernandez

Lisa wants to get the regulatory committee back going and is looking for volunteers for the committee. The UC needs to also start putting more emphasis on regulations as more regulatory issues are starting to affect utilities.

a. Fire Flow Regulations – Lisa Wilson Davis – There are two positions; 1) we have exemptions and 2) utilities need to start designing their systems to meet the rule. Frank Bernardino is getting a lot of feedback wanting to change the legislative language. The Fire Marshall’s main office in Tallahassee is reluctant to make changes. UC should stay on top of this. Your local Fire Marshall can exempt it. Utilities should be aware of this issue and look into it with their individual Fire Marshall.

b. Water Conservation – Brian Wheeler – FDEP backed off on the proposed water conservation language, but the CUPCON language will continue. The reason they backed off was due to the language regarding benchmarking and whether or not that would be a local number or a state-wide number. Right now the only language that stayed was if you could show conservation that you could possibly get an extended permit. They wanted to eliminate the language to be able to move the CUPCON bill during the 2013 legislative session; they felt the conservation language would bog down the bill.

c. DEP CUPCON Legislation – Lee Killinger – Simple tweaks that need to be made, needs to emphasize that we want to extend permit length and sees language that implies to regulate reuse. Lisa has some language and wants the UC to submit to FDEP.

d. Irrigation for Edible Crops with Reclaimed Water – Lisa Wilson David – Issue that was presented last year. An effort to amend the reuse bill. More of a regulatory fix, not a legislative fix. Would benefit homeowners who have a garden.

e. Aquifer Storage and Recovery Regulation – FWEA

f. Human Health Based Criteria Development – FWEA

g. DEP Groundwater Rule – Lisa Wilson Davis – FDEP will be having workshops and the main part of this rule is regarding the 4-log removal

h. Updates to 62-699 – Lisa Wilson Davis – The period to make comments regarding this rule to FDEP have ended, but the majority of the changes were just clerical updates and some additional criteria changes for operational staffing.

i. Other Issues
Legislative Day 2013 in Tallahassee – Frank Bernardino

Legislation will be in committee the first three weeks of February. UC wants to meet with the legislators during committee weeks, either February 11th or 18th. UC is going to meet the night before and then will go to the Capitol the following morning. Want to do everything at the Capitol.

Adjourn

Motion – Pat Lehman

Second – Patty DiPiero

Motion passes Meeting adjourned at 4:30 PM
Utility Council Meeting
Rosen Shingle Creek Hotel- Wekiwa 7
Orlando, FL
November 27, 2012 @ 2:00 p.m.

2013 Legislative & Regulatory Issues Agenda

1. 2013 Legislative Session Introduction -- Edgar Fernandez
   a. Water Infrastructure Funding -- Frank Bernardino
   b. Ocean Outfalls - Edgar Fernandez
   c. Minimum Flows and Levels -- Suzanne Goss
   d. Public Private Partnerships -- Frank Bernardino
   e. 30 Year CUPs -- Patrick Lehman
   f. Private Utilities Study Commission -- Lee Killinger
   g. Utility Employee Safety - Suzanne Goss
   h. Affordability of Regulatory Requirements - Suzanne Goss
   i. FLOW Legislation -- Lee Killinger
   j. Other Issues

2. Regulatory Issues -- Lisa Wilson-Davis / Edgar Fernandez
   a. Fire Flow Regulations -- Lisa Wilson-Davis
   b. Water Conservation -- Brian Wheeler
   c. DEP CUPCON Legislation (if applicable) -- Lee Killinger
   d. Irrigation of Edible Crops with Reclaimed Water -- Lisa Wilson-Davis
   e. Aquifer Storage and Recovery Regulation (ASR) -- FWEA
   f. Human Health Based Criteria Development -- FWEA
   g. Other Issues

3. Legislative Day 2013 in Tallahassee - Frank Bernardino

4. Other Issues

5. Adjourn
2013 Legislative & Regulatory Issues

Table of Contents

1. Water Infrastructure Funding
2. Ocean Outfalls
3. Minimum Flows and Levels
4. Public Private Partnerships
5. 30 Year CUPs
6. Private Utilities Study Commission
7. Utility Employee Safety
8. Affordability of Regulatory Requirements
9. Fire Flow Regulations
10. Water Conservation
11. DEP CUPCON
12. Irrigation of Edible Crops with Reclaimed Water
13. FLOW Legislation
FSAWWA Legislative Committee Issue Paper

TITLE: Water Infrastructure Funding

PREPARED BY: Frank Bernardino

PROponent: Florida Water Advocates (FWA) and the Florida Water Alliance.

ISSUE SUMMARY: In 2005, as a result of visionary leadership in the Florida Legislature and concerted efforts of allied groups, the Legislature passed, and the Governor signed, SB 444, which provided a dedicated revenue source for water protection and sustainability. That bill provided $100 million dollars a year on a recurring basis for:
- the State’s Total Maximum Daily Load (or TMDL) pollution elimination program;
- the development of new water supply projects;
- the restoration of our wetlands and other water dependent natural areas; and
- the treatment and disposal of wastewater in poor communities.

Despite the significant funding called for in the bill, the total represented less than 1% of the State’s total budget- a small price to pay for the State’s water security. Unfortunately, when faced with dramatic shortfalls in revenues the past several years, the Legislature chose to disproportionately reduce water funding in the state budget compared to other public funding areas. The cuts were opposed by an unprecedented, broad-based coalition including well-known and well-connected representatives from local government, utilities, business, environment, and agriculture, who worked collectively to educate legislators on the state’s pressing water needs and preserve critical funding for water projects. Despite that group’s best efforts, however, the funding was eliminated from the FY 2009/2010 budget. To date, this much-needed funding has not been restored. Moreover, the water resource challenges which need to be addressed by such funding have multiplied exponentially.

Florida Water Advocates is an organization established in 2010 comprised exclusively of volunteers with extensive experience and expertise in water resource issues and challenges who seek to enhance Florida’s primary public resource – water – by promoting dedicated public sector funding and private investment in water infrastructure in Florida.

FWA has actively engaged legislative leadership in pursuit of this goal to enhance Florida’s water resources and their development, including:

1) Creation of a statewide program for:
   a. Regional and local water resource and water supply project development; and
   b. Water quality protection and treatment of impaired waters, and

2) Legislation promoting public–private partnerships for the funding of water and wastewater infrastructure.
IMPACT TO AWWA MEMBERS: As documented in the AWWA report, “Buried No Longer” the needs for water infrastructure funding in Florida is in the billions of dollars. The establishment of a state funding program would not only provide much needed assistance to local governments, but significantly stimulate (jobs) a significant sector of the states’ economy which supports and provides services associated with the financing, design and construction of water infrastructure projects.

RECOMMENDATION TO LEGISLATIVE COMMITTEE: SUPPORT on-going efforts by FWA to promote the passage of legislation that enhances regional and local financial capacity to address water resource and water supply development by funding of the Water Protection and Sustainability Program for alternative water supply development, water quality protection and development, and comprehensive water supply infrastructure needs.

POTENTIAL ALLIES (if any): Florida League of Cities, FAC, AIF, the Florida Chamber, DEP, DACS, the WMD’s, the environmental community, among others.

POTENTIAL OPPONENTS (if any): Depending upon the funding source that is identified, organizations opposed to increased taxation might oppose the legislation.
373.019 Definitions.—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the term:

(29) “Water supply development project” means a project intended to meet the water needs of the citizens of Florida, the environment, agriculture, and industry, including, but not limited to, a project to create alternative water supplies as defined in 373.019(1), the planning, design, construction, expansion, repair, upgrading, operation, and maintenance of public or private facilities for water collection, storage, production, treatment, transmission, reuse, or distribution for sale, resale, or end use, and projects to implement or achieve conservation.

373.707 Alternative Water supply development.—

(1) The purpose of this section is to encourage cooperation in, and provide for the development of water supplies and to provide for alternative water supply development.

(a) Demands on natural supplies of fresh water to meet the needs of a rapidly growing population and the needs of the environment, agriculture, industry, and mining will continue to increase.

(b) There is a need for the development of alternative water supplies for Florida to sustain its economic growth, economic viability, and natural resources.

(c) Cooperative efforts between municipalities, counties, special districts, water management districts, and the Department of Environmental Protection are mandatory in order to meet the water needs of rapidly urbanizing areas in a manner that will supply adequate and dependable supplies of water where needed and minimize waste and service interruptions without resulting in adverse effects upon the areas from which such water is withdrawn. Such efforts should use all practical means of obtaining and distributing water, including, but not limited to, withdrawals of surface water and groundwater, reuse, and desalinization, as well as the expansion, replacement, repair, and upgrading of the State’s drinking water infrastructure and will necessitate not only cooperation but also well-coordinated activities. Municipalities, counties, and special districts are encouraged to create regional water supply authorities as authorized in s. 373.713 or multijurisdictional water supply entities.

(d) Alternative—water supply development must receive priority funding attention to increase the available supplies of water to meet all existing
and future reasonable-beneficial uses and to benefit the natural systems.

(e) Cooperation between counties, municipalities, regional water supply authorities, multijurisdictional water supply entities, special districts, and publicly owned and privately owned water utilities in the development of countywide and multicountywide alternative water supply projects will allow for necessary economies of scale and efficiencies to be achieved in order to accelerate the development of new, dependable, and sustainable alternative water supplies.

(f) It is in the public interest that county, municipal, industrial, agricultural, and other public and private water users; the Department of Environmental Protection; and the water management districts cooperate and work together in the development of alternative water supplies to avoid the adverse effects of competition for limited supplies of water. Public moneys or services provided to private entities for alternative water supply development may constitute public purposes that also are in the public interest.

(2)(a) Sufficient water must be available for all existing and future reasonable-beneficial uses and the natural systems, and the adverse effects of competition for water supplies must be avoided.

(b) Water supply development including and alternative water supply development must be conducted in coordination with water management district regional water supply planning.

(c) Expansion, replacement, repair, and upgrading of water supply infrastructure must also be conducted in with an understanding of, and to complement, to the extent practicable, water management district regional water supply planning and water supply development.

(d) Funding for the development of alternative water supplies shall be a shared responsibility of water suppliers and users, the State of Florida, and the water management districts, with water suppliers and users having the primary responsibility and the State of Florida and the water management districts being responsible for providing funding assistance.

(e) Funding for the expansion, replacement, repair, and upgrading of water supply infrastructure shall continue to be the primary responsibility of water suppliers and users with the State of Florida and the water management districts providing funding assistance.

(3) The primary roles of the water management districts in water resource development as it relates to supporting alternative water supply development are:
(a) The formulation and implementation of regional water resource management strategies that support alternative water supply development;

(b) The collection and evaluation of surface water and groundwater data to be used for a planning level assessment of the feasibility of alternative water supply development projects;

(c) The construction, operation, and maintenance of major public works facilities for flood control, surface and underground water storage, and groundwater recharge augmentation to support alternative water supply development;

(d) Planning for alternative water supply development as provided in regional water supply plans in coordination with local governments, regional water supply authorities, multijurisdictional water supply entities, special districts, and publicly owned and privately owned water utilities and self-suppliers;

(e) The formulation and implementation of structural and nonstructural programs to protect and manage water resources in support of alternative water supply projects; and

(f) The provision of technical and financial assistance to local governments and publicly owned and privately owned water utilities for alternative water supply development projects as well as for the expansion, replacement, repair, and upgrading of water supply infrastructure.

(4) The primary roles of local government, regional water supply authorities, multijurisdictional water supply entities, special districts, and publicly owned and privately owned water utilities in alternative water supply development shall be:

(a) The planning, design, construction, operation, and maintenance of alternative water supply development projects;

(b) The formulation and implementation of alternative water supply development strategies and programs;

(c) The planning, design, construction, operation, and maintenance of facilities to collect, divert, produce, treat, transmit, and distribute water for sale, resale, or end use; and

(d) The coordination of alternative water supply development activities with the appropriate water management district having jurisdiction over the activity.

(5) Nothing in this section shall be construed to preclude the various special
districts, municipalities, and counties from continuing to operate existing water production and transmission facilities or to enter into cooperative agreements with other special districts, municipalities, and counties for the purpose of meeting their respective needs for dependable and adequate supplies of water; however, the obtaining of water through such operations shall not be done in a manner that results in adverse effects upon the areas from which such water is withdrawn.

(6)(a) The statewide funds provided pursuant to the Water Protection and Sustainability Program serve to supplement existing water management district or basin board funding for alternative water supply development assistance and should not result in a reduction of such funding. Therefore, the water management districts shall include in the annual tentative and adopted budget submittals required under this chapter the amount of funds allocated for water resource development that supports alternative water supply development and the funds allocated for alternative the water supply development projects selected for inclusion in the Water Protection and Sustainability Program. It shall be the goal of each water management district and basin boards that the combined funds allocated annually for these purposes be, at a minimum, the equivalent of 100 percent of the state funding provided to the water management district for alternative water supply development. If this goal is not achieved, the water management district shall provide in the budget submittal an explanation of the reasons or constraints that prevent this goal from being met, an explanation of how the goal will be met in future years, and affirmation of match is required during the budget review process as established under s. 373.536(5). The Suwannee River Water Management District and the Northwest Florida Water Management District shall not be required to meet the match requirements of this paragraph; however, they shall try to achieve the match requirement to the greatest extent practicable.

(b) State funds from the Water Protection and Sustainability Program created in s. 403.890 shall be made available for financial assistance for the project construction costs of alternative water supply development projects selected by a water management district governing board for inclusion in the program.

(c) The water management districts shall not impose conditions for the allocation or distribution of funds from the water protection and sustainability program when evaluating or issuing permits for the use of water under part II of chapter 373.

(7) The water management district shall implement its responsibilities as expeditiously as possible in areas subject to regional water supply plans. Each district’s governing board shall include in its annual budget the amount needed for the fiscal year to assist in implementing alternative water supply development projects.
(8)(a) The water management districts and the state shall share a percentage of revenues with water providers and users, including local governments, water, wastewater, and reuse utilities, municipal, special district, industrial, and agricultural water users, and other public and private water users, to be used to supplement other funding sources in the development of alternative water supplies and conservation projects that result in quantifiable water savings.

(b) Beginning in the 2005-2006 2013-2014 fiscal year, the state shall annually provide a portion of those revenues deposited into the Water Protection and Sustainability Program Trust Fund for the purpose of providing funding assistance for the development of alternative water supplies and conservation projects that result in quantifiable water savings pursuant to the Water Protection and Sustainability Program. At the beginning of each fiscal year, beginning with the 2005-2006 2013-2014 fiscal year, such revenues shall be distributed by the department into the alternative water supply trust fund accounts created by each district for the purpose of alternative water supply development under the following funding formula:

1. Thirty percent to the South Florida Water Management District;
2. Twenty-five percent to the Southwest Florida Water Management District;
3. Twenty-five percent to the St. Johns River Water Management District;
4. Ten percent to the Suwannee River Water Management District; and
5. Ten percent to the Northwest Florida Water Management District.

(c) The financial assistance for alternative water supply development projects allocated in each district’s budget as required in subsection (6) shall be combined with the state funds and used to assist in funding the project construction costs of alternative water supply development projects and the project costs of conservation projects that result in quantifiable water savings selected by the governing board. If the district has not completed any regional water supply plan, or the regional water supply plan does not identify the need for any alternative water supply development projects, funds deposited in that district’s trust fund may be used for water resource development projects, including, but not limited to, springs protection.

(d) All projects submitted to the governing board for consideration shall reflect the total capital cost for implementation. The costs shall be segregated pursuant to the categories described in the definition of capital costs.

(e) Applicants for projects that may receive funding assistance pursuant to the Water Protection and Sustainability Program shall, at a minimum, be required to pay 60 percent of the project’s construction costs. The water management districts may, at their discretion, totally or partially waive this requirement for
projects sponsored by financially disadvantaged small local governments as defined in former s. 403.886(6). For purposes of this section, the term "financially disadvantaged small local government" means a municipality having a population of 15,000 or less, a county having a population of 75,000 or less, according to the latest decennial census and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce, or a county in an area designated by the Governor as a rural area of critical economic concern pursuant to s. 288.0656. The water management districts or basin boards may, at their discretion, use ad valorem or federal revenues to assist a project applicant in meeting the requirements of this paragraph.

(f) The governing boards shall determine those water supply development projects that will be selected for financial assistance. The governing boards may establish factors to determine project funding; however, significant weight shall be given to the following factors:

1. Whether the project provides substantial environmental or public health benefits by preventing or limiting adverse water resource impacts.

2. Whether the project prevents or limits adverse water resource impacts.

3. 2. Whether the project reduces competition for water supplies.

3. 3. Whether the project brings about replacement of traditional sources in order to help implement a minimum flow or level or a reservation.

3. 4. Whether the project will be implemented by a consumptive use permittee that has achieved the targets contained in a goal-based water conservation program approved pursuant to s. 373.227.

3. 5. The quantity of water supplied by the project as compared to its cost.

3. 6. Projects in which the construction and delivery to end users of reuse water is a major component.

3. 7. Whether the project will be implemented by a multijurisdictional water supply entity or regional water supply authority.

3. 8. Whether the project implements reuse that assists in the elimination of domestic wastewater ocean outfalls as provided in s. 403.086(9).

3. 9. Whether the county or municipality, or the multiple counties or municipalities, in which the project is located has implemented a high-water recharge protection tax assessment program as provided in s. 193.625.

3. 10. Whether the project is a conservation or infrastructure project that results in quantifiable water savings.

(g) Additional factors to be considered in determining project funding shall include:

1. Whether the project is part of a plan to implement two or more alternative water supply development projects, all of which will be operated to produce water at a uniform rate for the participants in a multijurisdictional water supply entity or regional water supply authority.
2. The percentage of project costs to be funded by the water supplier or
water user.

3. Whether the project proposal includes sufficient preliminary planning and
engineering to demonstrate that the project can reasonably be implemented
within the timeframes provided in the regional water supply plan.

4. Whether the project is a subsequent phase of an alternative water supply
project that is underway.

5. Whether and in what percentage a local government or local government
utility is transferring water supply system revenues to the local government
general fund in excess of reimbursements for services received from the general
fund, including direct and indirect costs and legitimate payments in lieu of taxes.

(h) After conducting one or more meetings to solicit public input on eligible
projects, including input from those entities identified pursuant to s.
373.709(2)(a)3.d. for implementation of alternative water supply development
projects, the governing board of each water management district shall select
projects for funding assistance based upon the criteria set forth in paragraphs (f)
and (g). The governing board may select a project identified or listed as an
alternative water supply development project in the regional water supply plan, or
allocate up to 20 percent of the funding for alternative water supply development
projects that are not identified or listed in the regional water supply plan but are
consistent with the goals of the plan.

(i) Without diminishing amounts available through other means described in
this paragraph, the governing boards are encouraged to consider establishing
revolving loan funds to expand the total funds available to accomplish the
objectives of this section. A revolving loan fund created under this paragraph
must be a nonlapsing fund from which the water management district may make
loans with interest rates below prevailing market rates to public or private entities
for the purposes described in this section. The governing board may adopt
resolutions to establish revolving loan funds which must specify the details of the
administration of the fund, the procedures for applying for loans from the fund,
the criteria for awarding loans from the fund, the initial capitalization of the fund,
and the goals for future capitalization of the fund in subsequent budget years.
Revolving loan funds created under this paragraph must be used to expand the
total sums and sources of cooperative funding available for the development of
alternative water supplies. The Legislature does not intend for the creation of
revolving loan funds to supplant or otherwise reduce existing sources or amounts
of funds currently available through other means.

(j) For each utility that receives financial assistance from the state or a
water management district for an alternative water supply project, the water
management district shall require the appropriate rate-setting authority to develop
rate structures for water customers in the service area of the funded utility that
will:

1. Promote the conservation of water; and
2. Promote the use of water from alternative water supplies.

(f) The governing boards shall establish a process for the disbursal of revenues pursuant to this subsection.

(k) All revenues made available pursuant to this subsection must be encumbered annually by the governing board when it approves projects sufficient to expend the available revenues.

(m) This subsection is not subject to the rulemaking requirements of chapter 120.

(n) By March 1 of each year, as part of the consolidated annual report required by s. 373.036(7), each water management district shall submit a report on the disbursal of all budgeted amounts pursuant to this section. Such report shall describe all alternative water supply development projects funded as well as the quantity of new water to be created as a result of such projects and shall account separately for any other moneys provided through grants, matching grants, revolving loans, and the use of district lands or facilities to implement regional water supply plans.

(e) The Florida Public Service Commission shall allow entities under its jurisdiction constructing or participating in constructing facilities that provide alternative water supplies to recover their full, prudently incurred cost of constructing such facilities through their rate structure. If construction of a facility or participation in construction is pursuant to or in furtherance of a regional water supply plan, the cost shall be deemed to be prudently incurred. Every component of an alternative water supply facility constructed by an investor-owned utility shall be recovered in current rates. Any state or water management district cost share is not subject to the recovery provisions allowed in this paragraph.

(9) Funding assistance provided by the water management districts for a water reuse system may include the following conditions for that project if a water management district determines that such conditions will encourage water use efficiency:

(a) Metering of reclaimed water use for residential irrigation, agricultural irrigation, industrial uses, except for electric utilities as defined in s. 366.02(2), landscape irrigation, golf-course irrigation, irrigation of other public-access areas, commercial and institutional uses such as toilet flushing, and transfers to other reclaimed-water utilities;
(b) Implementation of reclaimed water rate structures based on actual use of reclaimed water for the reuse activities listed in paragraph (a);

(c) Implementation of education programs to inform the public about water issues, water conservation, and the importance and proper use of reclaimed water;

(d) Development of location data for key reuse facilities.

403.890 Water Protection and Sustainability Program.—Revenues deposited into or appropriated to the Water Protection and Sustainability Program Trust Fund shall be distributed by the Department of Environmental Protection in the following manner:

(1) Sixty-five Fifty percent to the Department of Environmental Protection for the implementation of an alternative water supply development program as provided in s. 373.707.

(2) Twenty-two and five-tenths Thirty five percent for the implementation of best management practices and capital project expenditures necessary for the implementation of the goals of the total maximum daily load program established in s. 403.067 and for funding projects pursuant to ss. 373.451-373.4591 or surface water restoration activities. Of these funds, eighty percent (80%) shall be transferred to the Department of Environmental Protection Water Quality Assurance Trust Fund to address water quality impacts associated with nonagricultural nonpoint sources. Sixteen and sixty-seven hundredths Twenty percent of these funds shall be transferred to the Department of Agriculture and Consumer Services General Inspection Trust Fund to address water quality impacts associated with agricultural nonpoint sources. These funds shall be used for research, development, demonstration, and implementation of the total maximum daily load program under s. 403.067, suitable best management practices or other measures used to achieve water quality standards in surface waters and water segments identified pursuant to s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. Implementation of best management practices and other measures may include cost-share grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement. The Department of Environmental Protection and the Department of Agriculture and Consumer Services may adopt rules governing the distribution of funds for implementation of capital projects, best management practices, and other measures. These funds shall not be used to abrogate the financial responsibility of those point and nonpoint sources that have contributed to the degradation of water or land areas. Increased priority
shall be given by the department and the water management district governing boards to those projects that have secured a cost-sharing agreement allocating responsibility for the cleanup of point and nonpoint sources.

(3) Twelve-and-five-tenths Ten percent to the Department of Environmental Protection for the Disadvantaged Small Community Wastewater Grant Program as provided in s. 403.1838. (DEP to suggest language to address whether unused funds could be made available to utilities or communities outside the parameters of the program in 403.1838).

(4) Five percent to the Department of Environmental Protection for distribution to the water management districts for projects related to research or implementation regarding minimum flows and levels and for projects to address or protect against effects of sea level rise, including protection, retrofitting, or hardening of water control structures or projects to stem or reduce salt water intrusion into potential sources of drinking water under the following funding formula:

- a. Thirty percent to the South Florida Water Management District;
- b. Twenty-five percent to the Southwest Florida Water Management District;
- c. Twenty-five percent to the St. Johns River Water Management District;
- d. Ten percent to the Suwannee River Water Management District; and
- e. Ten percent to the Northwest Florida Water Management District.

(5) (4) On June 30, 2015, and every 24 months thereafter, the Department of Environmental Protection shall request the return of all unencumbered funds distributed pursuant to this section. These funds shall be deposited into the Water Protection and Sustainability Program Trust Fund and redistributed pursuant to the provisions of this section.
FSAWWA Legislative Committee Issue Paper

TITLE: Ocean Outfall

PREPARED BY: Edgar G. Fernandez

PROONENT: City of Boca Raton, Broward, Hollywood and Miami Dade County

ISSUE SUMMARY:

Broward County (1975: 100 MGD), Miami-Dade County (1950’s and 70’s: 196 MGD) and the City of Hollywood (1969) operate existing outfalls, all of which have been permitted by DEP and in cases where the outfall extends to federal waters, by EPA. The plants have consistently operated in compliance with all of the permit conditions, and inspections are done on a regular basis.

In 2008 legislation was approved requiring discontinuation of the use of 6 ocean outfalls in southeast Florida for the disposal of treated. The twin objectives of this legislation were to reduce nutrient loadings to the environment and to achieve more efficient use of water to meet water supply needs. Specifically, the bill requires the local governments to:

- Reduce nitrogen and phosphorus nutrient levels by requiring utilities disposing wastewater through an ocean outfall to meet advanced wastewater treatment and management requirements or its equivalent by December 31, 2018.

- Expand wastewater reuse in South Florida by allowing backup discharges through an ocean outfall after 2025 if the permitted utility has constructed a “functioning reuse system” that reuses 60% of the ocean outfall’s average actual flows between 2003 and 2007.

- Close ocean outfalls operating in South Florida by 2025, except for allowable backup discharges.

Despite this requirement, over the years, the National Oceanic and Atmospheric Administration (NOAA) and other entities have completed scientific studies without finding any environmental or public health problems attributed to the operation of South Florida’s ocean outfalls.

Proposed Key Changes:

- Authorize utilities to comply with the outfall reuse requirements by providing reuse anywhere within their service area or by contracting with other utilities in southeast Florida when such reuse can be achieved more cost-effectively.
Authorize continued use of the outfalls to manage peak flow conditions, allowing a maximum discharge of 5% of annual baseline flows, thereby reducing capital cost of compliance by approximately one third.

**IMPACT TO AWWA MEMBERS:**

**Benefits:**

**Reuse Expansion:**
Changes the definition of a “functioning reuse system” to allow utilities the option to apply the 60% reuse requirement to the utility’s entire wastewater flows instead of just the ocean outfall flows and to contract with other utilities within Miami-Dade, Broward, and Palm Beach counties to achieve the reuse requirement. This will enable the affected utilities to achieve the reuse requirement more cost-effectively than currently provided in the law. The coastal locations of the outfall facilities limit reuse opportunities in close proximity to the plants, and in many cases the wastewater being treated at these plants is quite salty, requiring higher levels of treatment to make the reclaimed water useable. In addition, substantial reductions in water demands have occurred throughout the region since 2008, reducing the need for reclaimed water to meet present and projected water supply demands.

**Peak Flow Discharge Allowance:**
Allows up to 5% of the utility’s cumulative average annual flows (measured on a 5-year rolling average) to be discharged through the ocean outfall after 2025 in order to effectively manage peak flows. Peak flows typically occur because of excessive rainfall (e.g., a major storms or prolonged rainfall events). Although not occurring often, peak flows can, through infiltration of water into the collection system, result in 2 to 3 times more wastewater flows than normal. Today, these peak flows are disposed through the ocean outfalls or deepwell injection facilities. Without the 5% peak flow allowance for when the outfalls are closed after 2025, the four utilities would have to construct additional facilities to treat and dispose of these high flows. Building such facilities is very expensive given that they will only occasionally be used.

**Cost Savings from Peak Flow Allowance** — Costs savings for Broward County, Miami-Dade County and the City of Hollywood from the 5% peak flow allowance are as follows:

**Broward County** - $300 Million from not having to construct filters, 4-6 disposal wells, and pumps. This is based on continuing to discharge peak flows at current treatment levels (as allowed in the bill) through the outfalls after 2025. The County will also see annual operating savings for these facilities in the range of $5-6 million.

**Miami-Dade County** - $820 Million also from filters that do not need to be built, disposal wells that do not need to be built, and pumps that are not needed if the peak flows (that receive current levels of treatment) can continue to be discharged through the outfalls. Annual
operating costs for these facilities would likely be in the range of $5 or $6 million dollars per year.

City of Hollywood – $162 Million based on not having to build additional deep injection wells (with high level disinfection) to dispose of peak flows.

RECOMMENDATION TO LEGISLATIVE COMMITTEE: MONITOR and SUPPORT


A bill to be entitled
An act relating to domestic wastewater discharged
through ocean outfalls; amending s. 403.086, F.S.;
postponing the dates by which domestic wastewater
facilities must meet more stringent treatment and
management requirements; providing exceptions;
revising the definition of the term "functioning reuse
system"; changing the term "facility's actual flow on
an annual basis" to "baseline flow"; revising plan
requirements for the elimination of ocean outfalls;
providing that certain utilities that shared a common
ocean outfall on a specified date are individually
responsible for meeting the reuse requirement;
authorizing those utilities to enter into binding
agreements to share or transfer responsibility for
meeting reuse requirements; revising provisions
authorizing the backup discharge of domestic
wastewater through ocean outfalls; requiring a holder
of a department permit authorizing the discharge of
domestic wastewater through an ocean outfall to submit
certain information; requiring the Department of
Environmental Protection, the South Florida Water
Management District, and affected utilities to
consider certain information for the purpose of
adjusting reuse requirements; requiring the department
to submit a report to the Legislature; providing an
effective date.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) of section 403.086, Florida Statutes, is amended to read:

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(9) The Legislature finds that the discharge of domestic wastewater through ocean outfalls wastes valuable water supplies that should be reclaimed for beneficial purposes to meet public and natural systems demands. The Legislature also finds that discharge of domestic wastewater through ocean outfalls compromises the coastal environment, quality of life, and local economies that depend on those resources. The Legislature declares that more stringent treatment and management requirements for such domestic wastewater and the subsequent, timely elimination of ocean outfalls as a primary means of domestic wastewater discharge are in the public interest.

(a) The construction of new ocean outfalls for domestic wastewater discharge and the expansion of existing ocean outfalls for this purpose, along with associated pumping and piping systems, are prohibited. Each domestic wastewater ocean outfall shall be limited to the discharge capacity specified in the department permit authorizing the outfall in effect on July 1, 2008, which discharge capacity shall not be increased. Maintenance of existing, department-authorized domestic wastewater ocean outfalls and associated pumping and piping systems is allowed, subject to the requirements of this section. The department is directed to work with the United States...
Environmental Protection Agency to ensure that the requirements of this subsection are implemented consistently for all domestic wastewater facilities in Florida which discharge through ocean outfalls.

(b) The discharge of domestic wastewater through ocean outfalls must meet advanced wastewater treatment and management requirements by December 31, 2020 or later than December 31, 2018. For purposes of this subsection, the term "advanced wastewater treatment and management requirements" means the advanced waste treatment requirements set forth in subsection (4), a reduction in outfall baseline loadings of total nitrogen and total phosphorus which is equivalent to that which would be achieved by the advanced waste treatment requirements in subsection (4), or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008, and December 31, 2025, which is equivalent to that which would be achieved if the advanced waste treatment requirements in subsection (4) were fully implemented beginning December 31, 2020 and continued through December 31, 2025. The department shall establish the average baseline loadings of total nitrogen and total phosphorus for each outfall using monitoring data available for calendar years 2003 through 2007 and shall establish required loading reductions based on this baseline. The baseline loadings and required loading reductions of total nitrogen and total phosphorus shall be expressed as an average annual daily loading value. The advanced wastewater treatment and management requirements of this paragraph are shall be.
deemed to be met for any domestic wastewater facility discharging through an ocean outfall on July 1, 2008, which has installed by no later than December 31, 2018, a fully operational reuse system comprising 100 percent of the facility's annual average daily flow for reuse activities authorized by the department.

(c)1. Each utility that had a permit for a domestic wastewater facility that discharged discharges through an ocean outfall on July 1, 2008, must shall install a functioning reuse system by no later than December 31, 2025. For purposes of this subsection, a "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of the facility's baseline actual flow or, for utilities operating more than one facility, 60 percent of the utility's entire wastewater system flow on an annual basis on December 31, 2025. Reuse may be on an annual basis for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the department. For purposes of this subsection, the term "baseline flow" "facility's actual flow on an annual basis" means the annual average flow of domestic wastewater discharging through the facility's ocean outfall, as determined by the department, using monitoring data available for calendar years 2003 through 2007.

2. Flows diverted from facilities to other facilities that provide 100 percent reuse of the diverted flows before prior to December 31, 2025, are shall be considered to contribute to

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meeting the 60-percent reuse requirement. For utilities
operating more than one outfall, the reuse requirement may be
apportioned between the met if the combined actual reuse
flows from facilities served by the outfalls is at least 60
percent of the sum of the total actual flows from the
facilities, including flows diverted to other facilities for 100
percent reuse before prior to December 31, 2025. Utilities that
shared a common ocean outfall for the discharge of domestic
wastewater on July 1, 2008, regardless of which utility operates
the ocean outfall, are individually responsible for meeting the
reuse requirement and may enter into binding agreements to share
or transfer such responsibility among the utilities. If in the
event treatment in addition to the advanced wastewater treatment
and management requirements described in paragraph (b) is needed
in order to support a functioning reuse system, the such
treatment must shall be fully operational by no later than
December 31, 2025.

(d) The discharge of domestic wastewater through ocean
outfalls is prohibited after December 31, 2025, except as a
backup discharge that is part of a functioning reuse system or
other wastewater management system authorized by the department
as provided for in paragraph (c). Except as otherwise provided
in this subsection, a backup discharge may occur only during
periods of reduced demand for reclaimed water in the reuse
system, such as periods of wet weather, or as the result of peak
flows from other wastewater management systems, and must shall
comply with the advanced wastewater treatment and management
requirements of paragraph (b). Peak flow backup discharges from
other wastewater management systems may not cumulatively exceed
5 percent of a facility's baseline flow, measured as a 5-year
rolling average, and are subject to applicable secondary waste
treatment and water-quality-based effluent limitations specified
in department rules. When in compliance with the effluent
limitations, the peak flow backup discharges shall be deemed to
meet the advanced wastewater treatment and management
requirements of this subsection.

(e) The holder of a department permit authorizing the
discharge of domestic wastewater through an ocean outfall as of
July 1, 2008, shall submit the following to the secretary of the
department the following:

1. A detailed plan to meet the requirements of this
subsection, including the identification of the technical,
environmental, and economic feasibility of various reuse
options; the identification of all land acquisition and
facilities necessary to provide for reuse of the domestic
wastewater; an analysis of the costs to meet the requirements,
including the level of treatment necessary to satisfy state
water quality requirements and local water quality
considerations and a cost comparison of reuse using flows from
ocean outfalls and flows from other domestic wastewater sources;
and a financing plan for meeting the requirements, including
identifying any actions necessary to implement the financing
plan, such as bond issuance or other borrowing, assessments,
rate increases, fees, other charges, or other financing
mechanisms. The plan must evaluate reuse demand in the context
of future regional water supply demands, the availability of
traditional water supplies, the need for development of
alternative water supplies, the degree to which various reuse
options offset potable water supplies, and other factors
considered in the South Florida Water Management District's
Lower East Coast Regional Water Supply Plan. The plan must shall
include a detailed schedule for the completion of all necessary
actions and shall be accompanied by supporting data and other
documentation. The plan must shall be submitted by October 1,
2014 no later than July 1, 2013.

2. By July 1, 2018 No later than July 1, 2016, an update
of the plan required in subparagraph 1, documenting any
refinements or changes in the costs, actions, or financing
necessary to eliminate the ocean outfall discharge in accordance
with this subsection or a written statement that the plan is
current and accurate.

(f) By December 31, 2009, and by December 31 every 5 years
thereafter, the holder of a department permit authorizing the
discharge of domestic wastewater through an ocean outfall shall
submit to the secretary of the department a report summarizing
the actions accomplished to date and the actions remaining and
proposed to meet the requirements of this subsection, including
progress toward meeting the specific deadlines set forth in
paragraphs (b) through (e). The report shall include the
detailed schedule for and status of the evaluation of reuse and
disposal options, preparation of preliminary design reports,
preparation and submittal of permit applications, construction
initiation, construction progress milestones, construction
completion, initiation of operation, and continuing operation

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and maintenance.

(g) No later than July 1, 2010, and by July 1 every 5
years thereafter, the department shall submit a report to the
Governor, the President of the Senate, and the Speaker of the
House of Representatives on the implementation of this
subsection. The report shall summarize progress to date,
including the increased amount of reclaimed water provided and
potable water offsets achieved, and identify any obstacles to
continued progress, including all instances of substantial
noncompliance.

(h) By February 1, 2012, the department shall submit a
report to the Governor and Legislature detailing the results and
recommendations from phases 1 through 3 of its ongoing study on
reclaimed water use.

(i) The renewal of each permit that authorizes the
discharge of domestic wastewater through an ocean outfall as of
July 1, 2008, shall be accompanied by an order in accordance
with s. 403.088(2)(e) and (f) which establishes an enforceable
compliance schedule consistent with the requirements of this
subsection.

(j) An entity that diverts wastewater flow from a
receiving facility that discharges domestic wastewater through
an ocean outfall must meet the 60-percent reuse requirement of
paragraph (c). Reuse by the diverting entity of the diverted
flows shall be credited to the diverting entity. The diverted
flow shall also be correspondingly deducted from the receiving
facility's baseline actual flow on an annual basis from which
the required reuse is calculated pursuant to paragraph (c), and
the receiving facility's reuse requirement shall be recalculated accordingly.

The department, the South Florida Water Management District, and the affected utilities must consider the information in the detailed plan under paragraph (e) for the purpose of adjusting, as necessary, the reuse requirements of this subsection. The department shall submit a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the requirements of this subsection.

Section 2. This act shall take effect July 1, 2012.
TITLE: Minimum Flows and Levels

PREPARED BY: Suzanne Goss

PROPOSENENT: Legislation will be introduced in the 2013 Legislative Session with the support of various groups.

ISSUE SUMMARY: Under current law, the state of Florida has regulatory authority over the consumptive use of water, primarily through the Consumptive Use Permitting program. This program is implemented by the water management districts (WMDs) under the general supervision of the Florida Department of Environmental Protection (FDEP). Current law grants the FDEP and WMDs broad authority to issue consumptive use permits and adopt standards for protection of the water resource. One of the standards often used for water resource protection are minimum flows or levels (MFLs), which are defined as those flows or levels at which further withdrawals would be significantly harmful to the water resources or ecology of the area. The law allows FDEP or WMDs to establish MFLs based on a priority list and schedule, which is updated annually by the WMD and approved by FDEP. When the flow or level of water in a water body is below, or is projected to fall within 20 years below an established MFL, the FDEP or WMD, as part of the regional water supply plan, shall expeditiously implement a recovery or prevention strategy.

The MFL program has generally been considered a success. However, there have been a number of criticisms of the program both real and perceived. Two of those criticisms will probably lead to proposed legislation in 2013. First, although the WMDs have adopted several hundred MFLs encompassing most waters of statewide significance such as the Floridan aquifer in south-central Florida, the Everglades and the St. Johns, Peace and Caloosahatchee Rivers, some groups believe the WMDs have not done enough to protect the water resource and criticize the WMDs for not adopting MFLs for locally significant water bodies. These groups are calling for legislatively mandated MFLs or in one case a statewide Floridan aquifer MFL. Second, the attainment of MFLs established within one WMD can be impacted by permitted withdrawals in neighboring WMDs. Consequently, some groups have called for the mandatory application of MFLs across district boundaries.

Bills that may be introduced in 2013, include the following:

1) Legislation requiring establishment of a statewide MFL for the Floridan aquifer may be proposed by a north Florida coalition of eight counties (Columbia, Dixie, Gilchrist, Levy, Madison, Hamilton, Alachua and Bradford) known as Florida Leaders Organized for Water (FLOW). The bill would establish a statewide minimum level in the Floridan aquifer based on actual water levels measured in 1980 and mandate the attainment of
this MFL by 2023 through aggressive conservation, reuse, alternative water supply development and reductions in permitted use.

2) Legislation requiring the establishment of MFLs for specific water bodies and the imposition of a moratorium on new, modified or renewed consumptive use permits until the new MFLs are adopted may be proposed by the Ichetucknee Springs Working Group and its allies. This group finalized a restoration plan in August 2012 calling for the Legislature to require all WMDs to establish sustainable groundwater yields and mandate that water use permits only be issued when MFLs are established for priority waters.

3) Representative Porter has announced plans to introduce legislation similar to a 2012 bill sponsored by her and Senator Dean requiring WMDs to apply MFLs adopted in neighboring districts, when reviewing new, modified or renewed consumptive use permit applications within their boundaries.

IMPACT TO FSAWWA MEMBERS:

1. The proposed laws are unnecessary. The WMDs and FDEP are doing a good job with the limited financial and technical resources available to establish MFLs on a priority basis for the most important water bodies in the state of Florida. The water resources in areas without MFLs are adequately protected by general consumptive use permit standards that prevent harm to the water resource. Finally, once an MFL is established, if its determined the water body is currently below or within 20 years will be below the MFL, a recovery/prevention strategy will be simultaneously adopted to ensure attainment of the MFL as soon as practicable.

2. Establishment of a statewide Floridan aquifer MFL based on 1980 conditions or any other single level will adversely impact the ability of utilities to meet the public water supply needs of their customers. First, water levels vary geographically too greatly to justify a single statewide MFL. Second, an MFL based on 1980 conditions would require a drastic reduction in permitted use for most public suppliers, agriculture and industry in most parts of the state and would restrict use of the Floridan aquifer as an alternative water supply source in south Florida. Finally, any MFL adopted by the Legislature for political reasons rather than good science could result in the unnecessary and prohibitively expensive development of alternative water supply sources without a corresponding benefit to the environment.

3. Implementation of MFLs adopted by statute would significantly impact other utility and local government functions and diminish resources available to meet other critical public needs. For example, the latest version of the FLOW bill would compel local governments to require that all new or replacement construction meet the criteria contained in Section 373.227 and 373.228 within 10 years, require all utilities to achieve 50% reuse within 12 years and 100% reuse within 20 years, mandate all injection well
permit holders meet surface water quality standards within 3 years, oblige state agencies and local governments to identify, acquire and restore all recharge areas specified pursuant to Sections 373.085 and 373.087, Florida Statutes within 10 years and develop alternative water supplies within 7 years. These would constitute unfunded mandates requiring the unplanned expenditure of tens of billions of dollars by taxpayers and utility customers.

4. Allowing a WMD to establish MFLs that automatically apply in neighboring WMDs will lead to unnecessary conflict and potential litigation. Existing law already allows WMDs to cooperatively develop MFLs and recovery/prevention strategies as evidenced by the simultaneous adoption of the same withdrawal standard and strategy by the South Florida Water Management District (SFWMD), the Southwest Florida Water Management District (SWFWMD) and the St. Johns River Water Management District (SJRWMD) in the Central Florida Coordination Area in 2008. Under the proposed law, a WMD Governing Board will have little or no discretion, when enforcing the MFLs adopted by a neighboring WMD and groups opposed to growth and development will utilize this situation to call for the reduction of permitted water use by utilities. Also, utilities will not have as much influence over the adoption of MFLs and recovery/prevention strategies. Under the current law, all MFLs and strategies must be adopted by the local WMD Governing Board, which is more responsive to utility concerns than a neighboring WMD Governing Board or even FDEP. Finally, the proposed law would require utilities to monitor the adoption of MFLs in neighboring WMDs in addition to the establishment of MFLs and recovery/prevention strategy in their local WMD.

RECOMMENDATION TO LEGISLATIVE COMMITTEE: OPPOSE any legislation that would impose a statewide MFL, prohibit the issuance of new, modified or renewed consumptive use permits until MFLs are adopted for locally significant water bodies or require unfunded mandates to achieve compliance with MFLs. Continue to MONITOR and work with groups interested in resolving issues should similar legislation be introduced requiring the cross-district application of MFLs.

POTENTIAL ALLIES (if any): Cities and counties concerned about the unnecessary and prohibitively expensive development of alternative water supply sources without a corresponding benefit to the environment, industrial/commercial water users, agricultural interests, FDEP, SFWMD, SJRWMD and SWFWMD.

POTENTIAL OPPONENTS (if any): Environmental Organizations (NGOs), cities and counties concerned about cross-district MFLs and locally significant water bodies and Suwannee River Water Management District.
A bill to be entitled
An act relating to water management districts;
amending s. 373.042, F.S.; requiring water management
districts to include certain reservations and water
bodies in priority lists and schedules; providing for
the adoption of certain reservations and minimum flows
and levels by the Department of Environmental
Protection; requiring water management districts to
apply, without adopting by rule, reservations, minimum
flows and levels, and recovery and prevention
strategies adopted by the department; amending s.
373.046, F.S.; authorizing water management districts
to enter into interagency agreements for resource
management activities under specified conditions;
providing applicability; amending s. 373.605, F.S.;
authorizing water management districts to provide
group insurance for employees of other water
management districts; removing obsolete provisions;
amending s. 373.709, F.S., relating to regional water
supply planning; removing a reference to the Southwest
Florida Water Management District; requiring a
regional water supply authority and the applicable
water management district to jointly develop the water
supply component of the regional water supply plan;
amending s. 373.171, F.S.; exempting cooperative
funding programs from certain rulemaking requirements;
providing an effective date.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (4) and (5) of section 373.042, Florida Statutes, are redesignated as subsections (5) and (6), respectively, a new subsection (4) is added to that section, and subsection (2) of that section is amended, to read:

373.042 Minimum flows and levels.—

(2) By November 15, 1997, and annually thereafter, each water management district shall submit to the department for review and approval a priority list and schedule for the establishment of minimum flows and levels for surface watercourses, aquifers, and surface waters within the district. The priority list and schedule shall also identify those listed water bodies for which the district will voluntarily undertake independent scientific peer review; any reservations proposed by the district to be established pursuant to s. 373.223(4); and those listed water bodies that have the potential to be affected by withdrawals in an adjacent district for which department adoption of a reservation pursuant to s. 373.223(4) or a minimum flow or level pursuant to subsection (1) may be appropriate. By March 1, 2006, and annually thereafter, each water management district shall include its approved priority list and schedule in the consolidated annual report required by s. 373.036(7). The priority list shall be based upon the importance of the waters to the state or region and the existence of or potential for significant harm to the water resources or ecology of the state or region, and shall include those waters which are experiencing or may reasonably be expected to experience adverse impacts.
Each water management district's priority list and schedule shall include all first magnitude springs, and all second magnitude springs within state or federally owned lands purchased for conservation purposes. The specific schedule for establishment of spring minimum flows and levels shall be commensurate with the existing or potential threat to spring flow from consumptive uses. Springs within the Suwannee River Water Management District, or second magnitude springs in other areas of the state, need not be included on the priority list if the water management district submits a report to the Department of Environmental Protection demonstrating that adverse impacts are not now occurring nor are reasonably expected to occur from consumptive uses during the next 20 years. The priority list and schedule shall not be subject to any proceeding pursuant to chapter 120. Except as provided in subsection (3), the development of a priority list and compliance with the schedule for the establishment of minimum flows and levels pursuant to this subsection shall satisfy the requirements of subsection (1).

(4) A water management district shall provide the department with technical information and staff support for the development of a reservation, minimum flow or level, or recovery or prevention strategy to be adopted by rule by the department. A reservation, minimum flow or level, or recovery or prevention strategy adopted by rule by the department shall be applied by the water management districts without adoption of such reservation, minimum flow or level, or recovery or prevention strategy by rule.
Section 2. Subsection (7) is added to section 373.046, Florida Statutes, to read:

373.046 Interagency agreements.—

(7) If the geographic area of a resource management activity, study, or project crosses water management district boundaries, the affected districts may designate a single affected district to conduct all or part of the applicable resource management responsibilities under this chapter, with the exception of those regulatory responsibilities that are subject to subsection (6). If funding assistance is provided to a resource management activity, study, or project, the district providing the funding must ensure that some or all of the benefits accrue to the funding district. This subsection does not impair any interagency agreement in effect on July 1, 2012.

Section 3. Section 373.605, Florida Statutes, is amended to read:

373.605 Group insurance for water management districts.—

(1) The governing board of any water management district may hereby authorize and empower the district to provide group insurance for its employees in the same manner and with the same provisions and limitations authorized for other public employees by ss. 112.08, 112.09, 112.10, 112.11, and 112.14.

(2) The governing board of a water management district may provide group insurance for its employees and the employees of another water management district in the same manner and with the same provisions and limitations authorized for other public employees by ss. 112.08, 112.09, 112.10, 112.11, and 112.14.

(2) Any and all insurance agreements in effect as of
October 1, 1974, which conform to the provisions of this section
are hereby ratified.

Section 4. Subsection (3) of section 373.709, Florida
Statutes, is amended to read:

373.709 Regional water supply planning.—

(3) The water supply development component of a regional
water supply plan which deals with or affects public utilities
and public water supply for those areas served by a regional
water supply authority and its member governments within the
boundary of the Southwest Florida Water Management District
shall be developed jointly by the authority and the applicable
water management district. In areas not served by regional water
supply authorities, or other multijurisdictional water supply
entities, and where opportunities exist to meet water supply
needs more efficiently through multijurisdictional projects
identified pursuant to paragraph (2)(a), water management
districts are directed to assist in developing
multijurisdictional approaches to water supply project
development jointly with affected water utilities, special
districts, and local governments.

Section 5. Subsection (5) is added to section 373.171,
Florida Statutes, to read:

373.171 Rules.—

(5) Cooperative funding programs are not subject to the
rulemaking requirements of chapter 120. However, any portion of
an approved program which affects the substantial interests of a
party is subject to s. 120.569.

Section 6. This act shall take effect July 1, 2012.
FSAWWA Legislative Committee Issue Paper

TITLE: Public Private Partnership Legislation

PREPARED BY: Frank Bernardino

PROPOSENT (s): Associated Builders and Contractors of Florida & Florida Water Advocates.

ISSUE SUMMARY: Public-private partnerships are contractual agreements formed between a public entity and a private sector entity that allow for greater private sector participation in the delivery and financing of public buildings and infrastructure projects. Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.

In 2012, companion bills (HB 337 & SB 576), modeled after similar legislation passed by other states. The bills would have created the Florida Public-Private Partnership Act to facilitate public-private partnerships to construct public-purpose projects. Although the House bill was passed with an overwhelming vote, the measure died in the Senate.

Among the principle reasons cited for the refusal to pass the bill were:
1) The proposed option the legislation would have given to local governments to not adhere to CCNA, and
2) On-going concerns regarding the diverse state controlled services which would have been impacted by the proposed measure, including education, healthcare and corrections. Of greatest concern was language which would have permitted private sector entities to submit proposals to “operate” public facilities in these and other governments services arenas.

Currently a number of interest groups are working to narrow the scope of the legislation considered in 2012 and re-introduce the measure.

IMPACT TO AWWA MEMBERS: The bill would provide AWWA’s public and private sector members with the opportunity to explore new and creative was to procure and deliver services associated with the financing, design, construction and operation of water infrastructure projects. As proposed the legislation is optional (non-mandatory) consequently government entities will always have the ability to decline proposals should they not be consistent with their procurement policies and procedures.

RECOMMENDATION TO LEGISLATIVE COMMITTEE: SUPPORT legislation which provides local government with additional tools for the implementation of water and waste water infrastructure projects.
POTENTIAL ALLIES (If any): AIF, the Florida Chamber and other trade associations.

POTENTIAL OPPONENTS (If any): The states' labor unions will continue to oppose the legislation as long as it applies to services other than water and waste water programs.
A bill to be entitled
An act relating to public-private partnerships;
creating s. 287.05712, F.S.; providing definitions;
providing legislative findings and intent relating to
the construction or improvement by private entities of
facilities used predominantly for a public purpose;
providing procurement procedures; providing
requirements for project approval; providing project
qualifications and process; providing for notice to
affected local jurisdictions; providing for
comprehensive agreements between a public and a
private entity; providing for use fees; providing for
financing sources for certain projects by a private
entity; providing powers and duties for private
entities; providing for expiration or termination of
agreements; providing for the applicability of
sovereign immunity for public entities with respect to
qualified projects; providing for construction of the
act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 287.05712, Florida Statutes, is created
to read:

287.05712 Public-private partnerships.—
(1) DEFINITIONS.—As used in this section, the term:
(a) "Affected local jurisdiction" means a county,
municipality, or special district in which all or a portion of a
qualifying project is located.

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(b) "Develop" means to plan, design, finance, lease, acquire, install, construct, or expand.

(c) "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

(d) "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project.

(e) "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.

(f) "Operate" means to finance, maintain, improve, equip, modify, or repair.

(g) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public-benefit corporation, nonprofit entity, or other private business entity.

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, power-generating facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used
or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity.

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; or

3. A water, wastewater, or surface water management facility or other related infrastructure.

(j) "Responsible public entity" means a county, municipality, school board, or university, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

(k) "Revenues" means the income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, a public entity, or an agency or instrumentality thereof in aid of the qualifying project.

(1) "Service contract" means a contract entered into between a public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the...
36-00062-13

construction or upgrade of the facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective
acquisition, design, construction, improvement, renovation,
expansion, equipping, maintenance, operation, implementation, or
installation of public projects, including educational
facilities, transportation facilities, water or wastewater
management facilities and infrastructure, technology
infrastructure, roads, highways, bridges, and other public
infrastructure and government facilities within the state which
serve a public need and purpose, and that such public need may
not be wholly satisfied by existing procurement methods.

2. There are inadequate resources to develop new
educational facilities, transportation facilities, water or
wastewater management facilities and infrastructure, technology
infrastructure, roads, highways, bridges, and other public
infrastructure and government facilities for the benefit of
residents of this state, and that a public-private partnership
has demonstrated that it can meet the needs by improving the
schedule for delivery, lowering the cost, and providing other
benefits to the public.

3. There are state and federal tax incentives that promote
partnerships between public and private entities to develop and
operate qualifying projects.

4. A procurement under this section serves the public
purpose of this section if such action facilitates the timely
development or operation of a qualifying project.

(b) It is the intent of the Legislature to encourage
investment in the state by private entities, to facilitate
36-00062-13

various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

(3) PROCUREMENT PROCEDURES.—A responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrade, operation, ownership, or financing of facilities.

(a) The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section. The fee must be sufficient to pay the costs of evaluating the proposal. The responsible public entity may engage the services of a private consultant to assist in the evaluation.

(b) The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal, the public entity shall publish notice in the Florida Administrative Weekly and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept for 21 days after the initial date of publication other proposals for the same project. A copy of the notice must be mailed to each local government in the affected area. The scope of the proposal may be publicized for the purpose of soliciting competing proposals; however, the

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financial terms of the proposal may not be disclosed until the
terms of all competing bids are simultaneously disclosed in
accordance with the applicable law governing procurement
procedures for the qualifying project.

(c) A responsible public entity that is a school board may
enter into a comprehensive agreement only with the approval of
the local governing body.

(d) Before approval, the responsible public entity must
determine that the proposed project:

1. Is in the public’s best interest;

2. Is for a facility that is owned by the responsible
   public entity or for a facility for which ownership will be
   conveyed to the responsible public entity;

3. Has adequate safeguards in place to ensure that
   additional costs or service disruptions are not imposed on the
   public in the event of material default or cancellation of the
   agreement by the responsible public entity;

4. Has adequate safeguards in place to ensure that the
   responsible public entity or the private entity has the
   opportunity to add capacity to the proposed project or other
   facilities serving similar predominantly public purposes; and

5. Will be owned by the responsible public entity upon
   completion or termination of the agreement and upon payment of
   the amounts financed.

(e) Before signing any comprehensive agreement, the
responsible public entity must consider a reasonable finance
plan that is consistent with subsection (9), the project cost,
revenues by source, available financing, major assumptions,
internal rate of return on private investments, if any
36-00062-13

governmental funds are assumed in order to deliver a cost-
feasible project, and a total cash-flow analysis beginning with
the implementation of the project and extending for the term of
the agreement.

(f) In considering an unsolicited proposal, the responsible
public entity may require from the private entity an investment-
grade technical study prepared by a nationally recognized expert
who is accepted by national bond rating agencies. In evaluating
the technical study, the responsible public entity may rely upon
internal staff reports prepared by personnel familiar with the
operation of similar facilities or the advice of external
advisors or consultants having relevant experience.

(4) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal
from a private entity for approval of a qualifying project must
be accompanied by the following material and information, unless
waived by the responsible public entity:

(a) A description of the qualifying project, including the
conceptual design of the facilities or a conceptual plan for the
provision of services, and a schedule for the initiation and
completion of the qualifying project.

(b) A description of the method by which the private entity
proposes to secure any necessary property interests that are
required for the qualifying project.

(c) A description of the private entity’s general plans for
financing the qualifying project, including the sources of the
private entity's funds and identification of any dedicated
revenue source or proposed debt or equity investment on behalf
of the private entity.

(d) The name and address of a person who may be contacted

Page 7 of 18
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for further information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.

(f) Any additional material or information that the responsible public entity reasonably requests.

(5) PROJECT QUALIFICATION AND PROCESS.--

(a) The private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional architectural, engineering, and contracting services for traditional procurement projects.

(b) The responsible public entity must:

1. Ensure that provisions are made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. Ensure that provisions are made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity

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shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, and finance plans. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the public entity is not satisfied with the results of the negotiations, the public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a governmental facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:
1. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.
2. The estimated cost of the qualifying project is reasonable in relation to similar facilities.
3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.
   (f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.
   (g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend the commencement date.
   (h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.
   (6) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—
   (a) The responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project.
   (b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in
writing any comments to the responsible public entity and
indicate whether the facility is incompatible with the local
comprehensive plan, the local infrastructure development plan,
the capital improvements budget, or other governmental spending
plan. The responsible public entity shall consider the comments
of the affected local jurisdiction before entering into a
comprehensive agreement with a private entity. If an affected
local jurisdiction fails to respond to the responsible public
entity within the time provided in this paragraph, the
nonresponse is deemed an acknowledgement by the affected local
jurisdiction that the qualifying project is compatible with the
local comprehensive plan, the local infrastructure development
plan, the capital improvements budget, or other governmental
spending plan.

(7) COMPREHENSIVE AGREEMENT.—
(a) Before developing or operating the qualifying project,
the private entity must enter into a comprehensive agreement
with the responsible public entity. The comprehensive agreement
must provide for:

1. The delivery of performance and payment bonds, letters
of credit, or other security acceptable to the responsible
public entity in connection with the development or operation of
the qualifying project in the form and amount satisfactory to
the responsible public entity. For the components of the
qualifying project which involve construction, the form and
amount of the bonds must comply with s. 255.05.

2. The review of the plans and specifications for the
qualifying project by the responsible public entity and, if the
plans and specifications conform to standards acceptable to the
responsible public entity, the approval by the responsible
public entity. This subparagraph does not require the private
entity to complete the design of the qualifying project before
the execution of the comprehensive agreement.

3. The inspection of the qualifying project by the
responsible public entity to ensure that the private entity's
activities are acceptable to the public entity in accordance
with the comprehensive agreement.

4. The maintenance of a policy of public liability
insurance, a copy of which must be filed with the responsible
public entity and accompanied by proofs of coverage, or self-
insurance, each in the form and amount satisfactory to the
responsible public entity and reasonably sufficient to ensure
coverage of tort liability to the public and employees and to
enable the continued operation of the qualifying project.

5. The monitoring by the responsible public entity of the
maintenance practices to be performed by the private entity to
ensure that the qualifying project is properly maintained.

6. The periodic filing by the private entity of the
appropriate financial statements that pertain to the qualifying
project.

7. The procedures that govern the rights and
responsibilities of the responsible public entity and the
private entity in the course of the construction and operation
of the qualifying project and in the event of the termination of
the comprehensive agreement or a material default by the private
entity. The procedures must include conditions that govern the
assumption of the duties and responsibilities of the private
entity by an entity that funded, in whole or part, the
qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. The fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.

9. The duties of the private entity, including the terms and conditions that the responsible public entity determine serve the public purpose of this section.

(b) The comprehensive agreement may include:
1. An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.

3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the

Page 13 of 18

CODING: Words struck are deletions; words underlined are additions.
qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use.

(b) FEES.—An agreement entered into pursuant to this section may authorize the private entity to impose fees for the use of the facility. The following provisions apply to the agreement:

(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships.

(b) The public-private partnership agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.

(c) The responsible public entity may lease existing fee-for-use facilities through a public-private partnership agreement.

(d) Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

(9) FINANCING.—

(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.
(b) The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this section.

(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(5) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity’s facility to liens in violation of s. 11.066(5), or secure financing by the responsible public entity with a pledge of security interest, and any such provisions are void.

(d) A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, and the required payment obligation must be appropriated before other noncontractual obligations of the responsible public entity.

(10) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

(a) The private entity shall:

1. Develop or operate the qualifying project in a manner
that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement.

2. Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement.

3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity.

4. Comply with the comprehensive agreement and any lease or service contract.

(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity’s rules, procedures, and standards for facilities; and any other conditions that the responsible public entity determines to be in the public’s best interest and that are included in the comprehensive agreement.

(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.

(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity’s ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.
(11) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(12) SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but
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not limited to, interconnection of the qualifying project with
any other infrastructure or project. A county or municipality in
which a qualifying project is located possesses sovereign
immunity with respect to the project, including, but not limited
to, its design, construction, and operation.

(13) CONSTRUCTION.—This section shall be liberally
construed to effectuate the purposes of this section.
(a) This section does not limit any state agency or
political subdivision of the state in the acquisition, design,
or construction of a public project pursuant to other statutory
authority.
(b) Except as otherwise provided in this section, this
section does not amend existing laws by granting additional
powers to, or further restricting, a local governmental entity
from regulating and entering into cooperative arrangements with
the private sector for the planning, construction, or operation
of a facility.
(c) This section does not waive any requirement of s.
287.055.

Section 2. This act shall take effect July 1, 2013.
TITLE: Consumptive Use Permits for Development of Alternative Water Supplies

PREPARED BY: Patrick Lehman

PROPOSED: Formerly the House Select Committee on Water Policy [HB 7045 & SB 1178 in 2012 Legislature; did not pass]

ISSUE SUMMARY: HB 7045 and SB 1178 proposed in 2012 provided for permits approved by the state after July 1, 2012, for the development of alternative water supplies be granted for a term of at least 30 years if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit, and that, if within 7 years after permit is granted, the permittee issues bonds to finance the project, completes construction of the project, and requests an extension of the permit duration, the permit must be extended to expire upon the retirement of such bonds or 30 years after the date construction of the project is complete, whichever occur later.

Public water utilities are faced with the arduous task of developing alternative water supplies, leaving the traditional groundwater sources for other users including the agriculture and industry which are financially constrained to be competitive in a global market. The development of large scale public works projects to develop alternative water supplies to assure a long term supply that is reliable, sustainable and affordable are typically financed through revenue bonds issued for a 30-year term.

In today’s financial market any uncertainty can raise a ‘red flag’ which can impact bond rating and in-turn result in higher interest rates increasing debt service for a utility and higher rates to its ratepayers. Issuance of consumptive use permits for the term of the revenue bonds would provide the surety of long term water supply and dispel the risk due to uncertainty to bond rating agencies regarding regulatory issues and potential obstacles to permit renewal during the term of the debt.

IMPACT TO AWWA MEMBERS: Reduced interest rate on long term debt.

RECOMMENDATION TO LEGISLATIVE COMMITTEE: SUPPORT

POTENTIAL ALLIES (If any): Association of Counties, League of Cities

POTENTIAL OPPONENTS (If any): Environmental Community
A bill to be entitled
An act relating to consumptive use permits for
development of alternative water supplies; amending s.
373.236, F.S.; specifying conditions for issuance of
permits; providing for issuance, extension, and review
of permits approved after a certain date; providing
applicability; providing construction; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 373.236, Florida
Statutes, is amended to read:
373.236 Duration of permits; compliance reports.-
(5)(a) Permits approved for the development of alternative
water supplies shall be granted for a term of at least 20 years
if there is sufficient data to provide reasonable assurance that
the conditions for permit issuance will be met for the duration
of the permit. However, if the permittee issues bonds for the
construction of the project, upon request of the permittee prior
to the expiration of the permit, the permit shall be
extended for such additional time as is required for the
retirement of bonds, not including any refunding or refinancing
of such bonds, if provided that the governing board determines
that the use will continue to meet the conditions for the
issuance of the permit. Such a permit is subject to compliance
reports under subsection (4).
(b)1. Permits approved after July 1, 2012, for the
development of alternative water supplies shall be granted for a
term of at least 30 years if there is sufficient data to provide
reasonable assurance that the conditions for permit issuance
will be met for the duration of the permit. If, within 7 years
after a permit is granted, the permittee issues bonds to finance
the project, completes construction of the project, and requests
an extension of the permit duration, the permit shall be
extended to expire upon the retirement of such bonds or 30 years
after the date construction of the project is complete,
whichever occurs later. However, a permit's duration may not be
extended by more than 7 years beyond the permit's original
expiration date. A 7-year permit extension, as described in this
subparagraph, shall be applicable to any 30-year permit for the
development of alternative water supplies granted between June
1, 2011, and July 1, 2012.

2. Permits issued under this paragraph are subject to
compliance reports under subsection (4). However, if the
permittee demonstrates that bonds issued to finance the project
are outstanding, the quantity of alternative water allocated in
the permit may not be reduced during a compliance report review
unless a reduction is needed to address unanticipated harm to
water resources or to existing legal uses present when the
permit was issued. A reduction required by an applicable water
shortage order shall apply to permits issued under this
paragraph.

3. Permits issued under this paragraph may not authorize
the use of nonbrackish groundwater supplies or nonalternative
water supplies.

CODING: Words stricken are deletions; words underlined are additions.
(c) Entities that wish to develop alternative water supplies may apply for a permit under paragraph (a) or paragraph (b).

Section 2. This act shall take effect July 1, 2012.
FSAWWA Legislative Committee Issue Paper

TITLE: Investor-Owned Water and Wastewater Utility Study Committee

PREPARED BY: Lee Killinger

PROPOerer: TBD

ISSUE SUMMARY: The last day of session HB 1389, a bill regarding water management districts, was amended to include provisions of HB 1379 and SB 1244 relating to the rates charged by private utilities for water and wastewater services.

The amendment created a new study committee, the Study Committee on Investor-Owned Water & Wastewater Utility Systems. The committee will have the following voting members:

- One Senator appointed by the President of the Senate.
- One Representative appointed by the Speaker of the House of Representatives.
- Two representatives of Class A investor-owned water or wastewater utilities appointed by the Governor.
- One representative of a Class B investor-owned water or wastewater utility, appointed by the Governor.
- One representative of a Class C investor-owned water or wastewater utility appointed by the Governor.
- One customer of a Class A investor-owned water or wastewater utility appointed by the Governor.
- One customer of a Class B or C investor-owned water or wastewater utility appointed by the Governor.
- One representative of a water management district appointed by the Governor.
- One representative of the Florida Section of the American Water Works Association appointed by the Governor.
- One representative of the Florida Rural Water Association appointed by the Governor.
• One representative of a water or wastewater system owned or operated by a municipal or county government appointed by the Governor.

• One representative of a governmental authority that was created pursuant to chapter 163, Florida Statutes appointed by the Governor.

• The chair of a county commission that regulates investor-owned water or wastewater utility systems appointed by the Governor.

• One representative of a county health department appointed by the Governor.

The three remaining, nonvoting members are:

• The chair of the Public Service Commission, or a commissioner designated by the chair of the PSC, who shall serve as chair of the committee.

• The Secretary of Environmental Protection or his or her designee.

• The Public Counsel or his or her designee.

The focus of their study will address the following issues:

• The ability of a small investor-owned water and wastewater to achieve economies of scale when purchasing equipment, commodities, or services.

• The availability of low interest loans to small, privately-owned water or wastewater utilities.

• Any tax incentives or exemptions, temporary or permanent, which are available to small water or wastewater utilities.

• The impact on customer rates if a utility purchases an existing water or wastewater system.

• The impact on customer rates of a utility providing service through use of a reseller.

• Other issues that the committee identifies during its investigation.

The committee will be required to meet at least four times at a time and place of the chairman's choosing. At least two of the meetings will have to take place in an area centrally located to utility whose customers have seen a significant rise in the utility rates so that the public may be able to redress their concerns. The PSC will provide logistical support to this committee, with monies for its maintenance to be provided by the Public Service Regulatory Trust Fund. Members will not be paid for their participation, but may be reimbursed for all travel expenses and reasonable expenditures tied to the committee.
On August 10, the Governor appointed the following individuals to the Committee:


- Keith A. Burge, 40, of Lake Wales, is the director of utility operations for Gold Coast Utility Corp. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

- Patrick C. Flynn, 57, of Longwood, is a regional director with Utilities Inc. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

- John Frame, 71, of Lady Lake, is a retired director of information technology for the Goodyear Tire and Rubber Company. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

- Gary D. Fries, 66, of Auburndale, is the utilities director for Polk County. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

- Commissioner Scarlet P. Frisina, 33, of Lake City, is chair of the Columbia County Board of County Commissioners. She is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

- Donna R. Gregory, 59, of The Villages, is the administrator for the Lake County Health Department. She is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

- Henry “Bobby” Lue, 54, of Tampa, is the utility services program chief for the Southwest Florida Water Management District. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

- Commissioner Jack V. Mariano, 52, of Bayonet Point, is a member of the Pasco County Board of County Commissioners. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

- Michael A. Smallridge, 43, of Inverness, is the owner of Pinecrest Utilities LLC. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.
• Raphael “Ralph” Terrero, 70, of Miami, is the assistant director of water operations for Miami-Dade County. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

• Tim E. Thompson, 74, of Salt Springs, is the president of Marion Utilities Inc. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

• Gary P. Williams, 53, of Tallahassee, is the executive director of the Florida Rural Water Association. He is appointed for a term beginning August 10, 2012, and ending June 31, 2013.

The committee is required to submit, by Feb. 15, 2013, a report of their findings to the Governor and the Legislature and recommendations, which would include proposed legislation and rulemaking.

The group has met several times, and has discussed some recommendations, but final recommendations have not yet been established and no draft report is available. The next meeting will be November 28 in Tallahassee.

Information regarding meetings and the documents associated meetings are available at this website: http://www.floridawaterstudy.com

IMPACT TO AWWA MEMBERS: TBD

RECOMMENDATION TO LEGISLATIVE COMMITTEE: Monitor this Committee and its development of recommendations to determine whether further action or positions are warranted.

POTENTIAL ALLIES (If any): TBD

POTENTIAL OPPONENTS (If any): TBD
TITLE: Utility Worker Safety

PREPARED BY: Suzanne Goss

PROPONET: Electric utilities and other utility sectors have taken the lead on this issue. This is not a product of any statutory direction or agency rulemaking.

ISSUE SUMMARY: Currently Section 784.07, Florida Statutes provides for the reclassification of a misdemeanor or felony degree of specified assault and battery offenses when those offenses are knowingly committed against law enforcement officers, firefighters, and other specified persons engaged in the lawful performance of their duties.

Utility workers perform their work on private and public property to ensure service connectivity for its customers. During certain events, such as traffic accidents, fires, hurricanes, etc., utility employees will work side by side with a variety of public service providers, such as law enforcement, fire fighters, emergency personnel, etc. Because of the nature of work performed by utility workers, companies prepare and train their employees for all types of hazards associated with their jobs, including dealing with hostile customers during service disconnects or storm events.

Since 2008, municipal owned and investor owned utilities throughout Florida have seen a notable increase in the assault or battery upon their utility workers, such as robberies, physical harm, death threats, etc. in the course of performing their duties. Over the past few years, efforts have been made to add “utility workers” to the list of specified persons that is already defined in current law. By doing so, a felony or misdemeanor degree of certain assault and battery offenses against a utility worker engaged in the lawful performance of his or her duties would be treated in the same manner as if those offenses were committed against a law enforcement officer or firefighter engaged in the lawful performance of his or her duties. In the 2012 bill, efforts were made to further define a utility worker to mean “any person employed by an entity that owns, operates, leases, or controls any plant, property, or facility for the generation, transmission, manufacture, production, supply, distribution; sale, storage, conveyance, delivery, or furnishing to or for the public of electricity, natural or manufactured gas, water, steam, sewage, or telephone service, including two or more utilities rendering joint service.”

IMPACT TO AWWA MEMBERS: If such legislation was successful in passing, penalties against an individual that commits an assault or battery against a utility worker would be treated the same as the penalties for an individual that commits such an offense against a law enforcement officer, firefighter, and other specified person engaged in the lawful performance of their duties. The penalties would be as follows:
• In the case of assault, from a misdemeanor of the second degree (maximum of 60 days in a county jail) to a misdemeanor of the first degree (maximum of 1 year in a county jail);
• In the case of battery, from a misdemeanor of the first degree (maximum of 1 year in a county jail) to a felony of the third degree (maximum of 5-years state imprisonment);
• In the case of aggravated assault, from a felony of the third degree (maximum of 5-years state imprisonment) to a felony of the second degree (maximum of 15-years state imprisonment); and
• In the case of aggravated battery, from a felony of the second degree (maximum of 15-years state imprisonment) to a felony of the first degree (maximum is generally 30-years state imprisonment)
• Fines may also be imposed in accordance to the degree of the offense.

RECOMMENDATION TO LEGISLATIVE COMMITTEE: SUPPORT if legislation is re-introduced.

POTENTIAL ALLIES (If any): Florida Electrical Workers Association; Florida Municipal Electric Association; Florida League of Cities; Florida Water Environment Association; Investor Owned Utilities (FPL for example); others (TBD)

POTENTIAL OPPONENTS (If any): National Rifle Association-Florida;
FSAWWA Legislative Committee Issue Paper

TITLE: Affordability

PREPARED BY: Suzanne Goss and Lee Killinger

PROPOsENT: TBD

ISSUE SUMMARY: The objective of this effort would be to ensure that in permitting and regulatory decisions, state regulatory agencies consider, to the extent allowable under state and federal law, the most cost-effective solution to deal with regulatory or environmental compliance priorities.

This discussion has come up in the context of “affordability,” but instead of pushing the phrase “affordability,” it may be more appropriate to emphasize that regulators should focus on allowing a utility to systemically implement the most cost-effective solutions to deal with regulatory (or environmental compliance) priorities. It is not about avoiding compliance, but about finding ways to get the biggest bang for the buck by prioritizing projects and maximizing the expected outcomes.

One issue that has been identified is when new regulations are developed and implemented before regulations adopted at an earlier date have been fully implemented.

Components of the approach could include:
- Identifying inefficiencies with competing requirements and finding ways to take a larger view and allow projects to be prioritized as budgets allow to achieve maximum environmental benefits.
- Encouraging the use of new and innovative technologies to achieve compliance.
- Entrusting local governments/utilities to use their limited resources to maximize community benefits (includes immediate and long-term improvements).
- Encouraging regional partnerships to find long-term sustainable solutions.

One question to be answered by discussion is whether AWWA members feel that there currently are enough statutory or rule directives in place for agencies to make such an evaluation; if the consensus is that there is insufficient direction for the agencies, a second question is whether this is something that should be pursued by statutory revision at this time, or whether we should engage DEP, for example, in an examination with examples from AWWA membership about how their rules or statutes should be revised, to first attempt to work through the issue with the agency.

Other states have proposed statutory mechanisms to require agencies to evaluate costs, and cost-effectiveness of regulatory decisions.
Legislation has been introduced in other states (much of it in the context of storm or wastewater treatment, but the concept is the same) to require analysis of costs, budgets, capacity, and cost-effectiveness. Concepts for discussion could include requiring a regulatory body to consider, to the extent allowable under relevant law:

- Limitations on a utility’s financial capabilities and ability to pay for or secure necessary funding to pay for a required project
- An evaluation of the effectiveness and cost of specific proposed requirements
- An evaluation of the impact of a specific requirement on the long-term planning of the utility as a whole and other projects and needs of the utility
- Reducing the economic impacts on a utility, or spreading the of economic impacts on a utility over time
- Allowing for reasonable flexibility in the implementation of a long-term plan when a proposed requirement would impose a disproportionate financial hardship compared to its benefits
- Allowing adequate time and flexibility for implementation of a schedule specified in a utility’s long-term plan
- Allowing for reasonable accommodations for utilities when inflexible standards and requirements would impose a disproportionate financial hardship in light of the benefits to be gained

RECOMMENDATION TO LEGISLATIVE COMMITTEE: After discussion with AWWA members, evaluate existing statutes and rules to determine whether additional direction is needed to ensure that cost-effectiveness and budgetary constraints are appropriately considered in regulatory decisions.

POTENTIAL ALLIES (If any): TBD

POTENTIAL OPPONENTS (If any): Environmental Organizations (NGOs)
TITLE: Florida Fire Prevention Code Requirements for One & Two Family Dwellings — Effective September 1, 2012.

PREPARED BY: Lisa Wilson-Davis

PROPOSER: State Fire Marshall, FAWWAUC, Southeast Florida Utility Council

ISSUE SUMMARY: Florida Statutes, Chapter 633.0215(1) require the State Fire Marshal to adopt by Rule the latest edition of the National Fire Protection Association (NFPA) codes every three years as part of the Florida Fire Prevention Code (FFPC). On December 31, 2011, the 2009 edition of NFPA 1 and NFPA 101 were adopted by into the Florida Fire Prevention Code, effective September 1, 2012. Now contained in the fire code, specifically Chapter 18.4.5.1, is a minimum fire flow requirement for all newly constructed one and two-family dwellings.

The fire flow is the flow rate of a hydrant water supply measured at 20 psi residual pressure.

There is debate among the State Fire Marshal’s as to the impact of this provision.

Compliance by Meeting the Fire Flow Requirement For Buildings

Some feel the FFPC now requires newly constructed one and two-family homes to be built within the parameters of the fire flow capability provided to the property. The new FFPC requires a minimum of 1,000 gallons per minute fire flow for a duration of one hour for homes that are 5,000 square feet or less. Other fire flows for homes larger than 5000 square feet are specified in the FFPC, NFPA 1, Chapter 18, Table 18.4.5.1.2.

The FFPC does contain provisions to meet or reduce the fire flow requirements through building design for homes that exceed the flow requirements.

Compliance Through Exemptions from the Fire Flow Requirement For Buildings

Some feel Florida Statutes (FS) 633.025 provides that the FFPC is the minimum code that will apply to buildings and structures subject to the firesafety standards under FS 633.022 and that single and two family dwellings are exempt from the FFPC by the following:

- FS 633.022 (1) provides a list of buildings that are subject to the firesafety standards and specifically does not list single family homes as being subject to the firesafety standard.
- FS 633.025 (9) states that the provisions of the Life Safety Code shall not apply to newly constructed one-family and two-family dwellings.
- NFPA 1 1.3.2.4 retroactivity would only apply if modifications at a certain level were being done or the situation constitutes an imminent danger.
Additionally, FS 633.025 (6) states, “With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the minimum firesafety code and that physical limitations may require disproportionate effort or expense with little increase in lifesafety. Prior to applying the minimum firesafety code to an existing building, the local fire official shall determine that a threat to lifesafety or property exists. If a threat to lifesafety or property exists, the fire official shall apply the applicable firesafety code for existing buildings to the extent practical to assure a reasonable degree of lifesafety and safety of property or the fire official shall fashion a reasonable alternative which affords an equivalent degree of lifesafety and safety of property. The decision of the local fire official may be appealed to the local administrative board described in s. 553.73.”

IMPACT TO AWWA MEMBERS: Depending on the interpretation of the State Fire Marshal, utilities may incur large financial burdens due to the necessity to upsize main lines to meet the required fire flow. Other utilities may be already meeting the fire flow requirements or be considered exempt from having to provide the fire flow requirements for newly constructed single and two family dwellings.

Because there is debate on the applicability of this rule, both the FSAWWAUC and State Fire Marshall recommend a clear legislative exemption of the fire flow requirement for single and two family dwellings.

RECOMMENDATION TO LEGISLATIVE COMMITTEE: The State Fire Marshall must be the lead agency for the legislative amendment to exempt single and two family dwellings and the FSAWWAUC should monitor and support such an amendment.

POTENTIAL ALLIES (If any): The State Fire Marshall

POTENTIAL OPPONENTS (If any): Unknown at this time.
TITLE: Water Conservation

PREPARED BY: Brian Wheeler

PROPOSAL: FDEP has initiated rule development under its Consumptive Use Permit Consistency (CUPCON) effort to include a statewide rule(s) on Water Conservation requirements to be met as a condition of receiving a Consumptive Use Permit. FSAAWWA in partnership with FWEAUC have established a Conservation Workgroup composed of a number of utilities to work with FDEP and the WMDs on the rule development.

ISSUE SUMMARY: Proposed CUPCON Conservation Rule(s) will establish requirements for water conservation programs that will become conditions for the issuance of Consumptive Use Permits (CUP). Presently each Water Management District (WMD) has its own prescriptive requirements for water conservation that must be met to obtain a CUP. Utilities concerns about the present approach and anxiety about the CUPCON potential rules are:

1. Under present rules/policy reduction in water demand through conservation could result in a utility receiving a reduction in allocation under its CUP upon renewal or at the 10 year review period. To provide an incentive for conservation utilities should be able to maintain their allocations and have their CUPs extended provided the future demand can be demonstrated. With the incentive of extending a CUP to incorporate the reductions in water demand from conservation a utility will be motivated to invest its resources in water conservation up to the cost of the next available increment of new or alternative water supply.

2. Water conservation programs/requirements should not be prescriptive but should be Goal Based and specific to an individual utility based upon each utility’s customer and use characteristics. A utility’s water conservation goal should be individual and specific to the utility.

3. The CUPCON approach could propose a statewide water use metric such as gallons per capita per day (gpcd) which would unfairly penalize a number of utilities based on their specific customer characteristics and associated water use requirements. Water use is highly variable in the state relative to topography and soil conditions.

IMPACT TO AWWA MEMBERS: Inappropriately designed and implemented water conservation rule(s) could result in water utilities expending significant resources to meet requirements that may provide little measurable benefit, may not be cost effective, and may provide little or no benefit to the utility.
RECOMMENDATION TO LEGISLATIVE COMMITTEE: The present CUPCON water conservation rule development should be closely MONITORED to insure that the public utility concerns are addressed. Some consideration should be given to evaluating FS373 to insure that it doesn't limit a WMD from extending a CUP based on reductions in water demand from conservation. If the CUPCON rule development does not address the permit extension problem/issue legislation should be proposed.

POTENTIAL ALLIES (If any): FWEA Utility Council is a partner already in this effort. Other allies should be the League of Cities and Association of Counties. Agricultural interests should also be allies relative to the permit extension issue as it would benefit an agricultural CUP holder too.

POTENTIAL OPPONENTS (If any): Environmental and Consumer groups may oppose the CUPCON rules if they perceive them as not strong enough. The same groups could oppose the permit extension incentive though the Audubon organization has previously expressed support for the permit extension incentive.
TITLE: CUPCON Process

PREPARED BY: Lee Killinger

PROONENT: DEP & WMDs

ISSUE SUMMARY: The Department of Environmental Protection is leading a statewide effort to improve consistency in the Consumptive/Water Use Permitting Programs implemented by the Water Management Districts. The individual water management district consumptive use permitting rules, while all developed under the authority of Ch. 373, F.S., are inconsistent among the districts. While some of the differences may be based on differing physical and natural characteristics, others are the result of development of separate rules and procedures developed over time. This results in confusion for the regulated public, particularly along the border areas of the districts, and inequitable treatment of similar applicants in different districts. Additionally, the development of separate procedures and rules is costly and inefficient.

The Department’s goals include:

- Make programs less confusing for applicants, particularly those who work in more than one District;
- Treat applicants equitably statewide;
- Provide consistent protection of the environment;
- Streamline the process; and
- Incentivize behavior that protects water resources, including conservation.

Process to date - In November and December 2011, the Department held 10 small group meetings around the state. The Department met with stakeholders from the following groups: public water supply, agricultural water use, industrial use, recreational and small commercial self supply, and environmental interests. The stakeholders identified many issues that should be addressed to improving consistency in consumptive use permitting. The Department and the Water Management Districts have formed a core team that will coordinate CUPcon Issue Workgroups to develop solutions for the issues identified during stakeholder meetings. Changes developed to promote consistency and efficiency will be codified through policy, rulemaking, or legislation as appropriate.

In August additional workshops are being held around the state; the same agenda and presentations are being used at each presentation. The Department is receiving comments until September 14, 2012.
All materials related to the process, including presentations, drafts and other documents, are online, here: http://www.dep.state.fl.us/water/waterpolicy/cupcon.htm The “first wave” of rulemaking is expected to include:

- Types of permits/thresholds
- Conditions for Issuance (40X-2.301)
- Water conservation
- 10-Year Compliance Report
- Compliance Monitoring

IMPACT TO AWWA MEMBERS: TBD

RECOMMENDATION TO LEGISLATIVE COMMITTEE: MONITOR progress of this process and determine whether administrative or legislative action is needed.

POTENTIAL ALLIES (If any): TBD

POTENTIAL OPPONENTS (If any): TBD
TITLE: Irrigation of Edible Crops with Reclaimed Water

PREPARED BY: Lisa Wilson-Davis

PROPOSER: Southeast Florida Utility Council – Rulemaking Initiative

ISSUE SUMMARY: Last year there was a proposal to amend HB 639 (Reclaimed Water Legislation) to include the provision to allow direct application of reclaimed water to edible crops that will not be peeled, skinned, cooked or thermally processed before consumption. This proposed amendment was withdrawn and it was determined that this issue may be best addressed through the rulemaking process.

Currently Florida Administrative Code 62-610 restricts reclaimed water irrigation methods on "salad" or edible crops that will not be peeled, skinned, cooked or thermally processed before consumption to drip irrigation or other non-direct spraying methods. This restriction is contradictory and burdensome in that residential/other reclaimed water users must install dual irrigation or more costly drip irrigation or non-direct spraying systems in order to irrigate gardens.

Comparable restrictions cannot be found for other irrigation sources, such as canals, wells and ponds, giving the appearance of an unsafe product compared to these other sources.

Other states such as California allow direct spray irrigation of salad crops without a demonstration project or variance. Countries throughout the world, including Australia have demonstrated for decades that there is no evidence or documentation of any disease associated with water reuse systems that have reasonable standards.

Stated in the HortScience, November 2010 article, "Reclaimed Water as an Alternative Water Source for Crop Irrigation", co-authored by David York past Florida Department of Environmental Protection Reuse Coordinator; "The regulation prohibiting direct contact of reclaimed water with salad crops was created in the 1980s to encourage acceptance of reclaimed water in Florida. At the time there were not sufficient studies to determine whether such a precaution was necessary. Since then, studies conducted in California ... have shown that salad crops can be directly sprayed with reclaimed water with no health, safety, or marketing problems."

Members are seeking regulatory change to eliminate the drip irrigation or indirect spray restriction for residential reclaimed water use on "salad" crops for customers.

IMPACT TO AWWA MEMBERS:

If such a regulatory or legislative provision was made, Florida utilities will be able to increase and maximize the number of residential reuse water connections within developed and undeveloped areas. Such a provision will also allow Florida utilities to expand the number large reclaimed water users such home owners or masters associations and to customers utilizing stormwater systems (especially those under the purview of a multitude of jurisdictions) to store
and use reclaimed water for irrigation. By providing reclaimed water to these customers, their current withdrawals from traditional sources will be eliminated.

By providing for an increase in the Florida utility customer base, Florida utilities would: realize an increase return on investment of their reclaimed water systems; reduce their need for existing and future traditional source withdrawals; be able to maximize a tool to address saltwater intrusion; and ultimately maximize and increase in the amount of efficient and beneficial reuse provided to customers.

RECOMMENDATION TO LEGISLATIVE COMMITTEE: (IE File legislation, monitor, actively oppose.)

Monitor Issue to see if it progresses in the regulatory arena and also monitor legislation for potential opportunity for a "legislative fix".

POTENTIAL ALLIES (If any):

- The Florida Department of Environmental Protection has indicated support of this regulatory change.

- The Florida Reuse Coordinating Committee has indicated support; at their June 27, 2012 meeting agreed to establish a TAC.

- The Lake Worth Drainage district verbally indicated support during the FDEP/WMD CUPCon workshop held at the South Florida Water Management District on August 23, 2012.

POTENTIAL OPPONENTS (If any):

- Commercial/Agricultural irrigators may oppose due to public perception/concerns.
The Floridan Aquifer System Sustainability Act of 2013

Title XXVIII
Natural Resources; Conservation, Reclamation, and Use

Chapter 373
Water Resources

373.____ Scientific Hydro-geologic Data, Modeling, Recovery, and Long-Term Protection of the Floridan Aquifer System

(1) The purpose of this section is to acquire, maintain, and advance an unbiased, comprehensive scientific and technical characterization of the Floridan Aquifer System from the earth’s surface to the tectonic plate’s bedrock including its geographic extent; its geologic properties and structures; its principal water sources and inputs both surface and subsurface; its water storage quantity and quality characteristics; its hydraulic and water flow attributes including interstitial and solution shafts, passages, cavities, caverns, and networks; and its principal water discharges, diffusive leakages, withdrawals and resurgences in accordance with the Florida State Constitution, Article II, Section 7. Recent scientific data indicate the combination of natural discharge and human induced withdrawals from the Floridan Aquifer System exceed its net recharge capability, resulting in long-term declines in aquifer levels, reduced spring flows, and causing irreparable harm to the aquifer and dependent natural systems. Evidence demonstrates the Floridan Aquifer System has lost a significant fraction of its natural discharge capability across vast regions of the Florida and neighboring states and the situation is broadening and worsening daily. Also, using all data and scientific evidence, whether existing or to be obtained, and models, whether existing or to be developed, this section’s purpose is to establish a program that restores the Floridan Aquifer System to a pre-development baseline and permanently protects the Floridan Aquifer System including all surface and subsurface resources from future anthropogenic induced long-term declines.

(2) Anecdotal, photographic, empirical and scientific data related to the Floridan Aquifer System as set forth in section 373.026(1) have been gathered for more than a century. Although these data were not uniformly acquired throughout the State, they indicate that regional water resources have been in decline since 1980 and earlier. Accordingly for the purposes of this section, water resources as existing in 1980, unless earlier reasonable data including all of the above sources indicate otherwise, shall be used as the baseline for all mitigation and restoration strategies, plans, and implementations unless a minimum flow or level established pursuant to section 373.042 is more stringent.

(3) In order to address the purpose set forth in subsection (1) each Water Management District (i.e., the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District) is hereby authorized and directed to identify, gather, and
consolidate any and all existing anecdotal, photographic, empirical and scientific data and analyses related to the State's water resources. Additionally, the Water Management Districts are authorized and directed to work with the National Academy of Sciences and or the U.S. Geologic Survey to identify shortcomings in the data records and to acquire new data and information related to both the State's surface and subsurface water resources and to maintain a program which continually updates and refreshes this information. As part of gathering data, beginning not later than 2015, each Water Management District shall take steps to obtain from Consumptive Use Permit holders real-time data on the quantities of water being withdrawn from all Consumptive Use Permit wells with a daily capacity to produce 100,000, or more, gallons per day of water.

(4) Further, in order to address the purpose set forth in subsection (1) each Water Management District is hereby authorized and directed to work jointly with the U.S. Geologic Survey to employ all known and to be acquired anecdotal, photographic, empirical and scientific data related to the Floridan Aquifer System whether surface or subsurface, to develop by 2016, maintain and continuously advance a single, unified ground and surface water flow model, including all existing or past first through third magnitude springs, rivers, lakes and streams, solution shafts, passages, cavities, caverns and other network piping featured individually, which would be an expanded version of the proposed North Florida, Southeast Georgia Model so that it includes all Water Management Districts in Florida as well as those portions of Alabama, Georgia and South Carolina where the Floridan Aquifer System, as defined by the U.S. Geological Survey in its Regional Aquifer System Analysis, exists as set forth in section 373.026(2). When completed, this model, to be known as the Unified Floridan Aquifer Model, is to be used by all Florida Water Management Districts to facilitate assessing, planning, managing all of the State’s water resources to ensure that adequate resources are available to meet all legal existing and reasonably anticipated future requirements without the need for inter-district transfers of water resources and to establish a program that restores to a 1980 or earlier pre-development baseline and protects the Floridan Aquifer System including all surface and subsurface resources by 2023.

(5) In order to undertake the tasks set forth in subsection (1) each Water Management District is hereby authorized and directed to set aside, to pledge, and to make available in fiscal year 2013 the sum of $400,000 for a total of $2,000,000 and annually beginning in fiscal year 2014 the sum of $250,000 for a total of $1,250,000 from funds appropriated by the Legislature, and/or available from Basin Taxes levied pursuant to s. 9(b), Art. VII of the State Constitution, and/or available proceeds from the lease or sale of State lands, and/or interests in State lands, and/or available from penalties recovered and held in the Water Management Lands Trust Fund, and/or available from artesian well flow violations penalties pursuant to section 373.209, and/or available in the Water Protection and Sustainability Program Trust Fund pursuant to section 373.707(8)(b), and/or available from the Permit Trust Fund, and/or monies available for environmental preservation/mitigation within the State Transportation Trust Fund. A minimum of eighty (80) percent of such sums shall be delivered to the National Academy of Sciences and or the U.S. Geologic Survey to be applied by the recipient organization to the tasks outlined in subsections (3 and 4) of this section with the remainder applied to the Water Management District's participation in the effort described in this section. Provided however, that said sums authorized in this section for the Water Management Districts shall not prevent either of said Districts from providing
additional amounts and/or other support to the National Academies to accelerate, expand, or enhance these tasks to achieve this Statute's purpose.

(6) To further accelerate the rate at which scientific data are acquired and the Unified Floridan Aquifer Model is developed and implemented as set forth in this section, any state agency, any county, any municipality, any drainage or reclamation or flood control district, any water utility, having funds available and organized under the laws of this state, any person, any firm or corporation is authorized to contribute to the costs of these tasks by depositing with the Florida Department of Environmental Protection any and all amounts as may be determined by the contributing entity.

(7) The Secretary of the Florida Department of Environmental Protection shall form a program management team composed of one individual each from the Florida Department of Environmental Protection, the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, the South Florida Water Management District, and the Florida Geologic Survey. The Florida Department of Environmental Protection appointee shall be the program management team leader. The Secretary of the Florida Department of Environmental Protection shall fill vacancies on the program management team as they occur.

(8) The Secretary of the Florida Department of Environmental Protection is hereby authorized and directed to make such arrangements and enter into such agreements or contracts with the National Academy of Sciences and the U.S. Geological Survey as may be necessary to carry out the purposes of this section. The program management team set forth in subsection (7) shall work closely with the National Academies and the U.S. Geological Survey to ensure the scientific data acquired and the Unified Floridan Aquifer Model developed provide a sustainable groundwater yield consistent with the recovery of baseline conditions as of 1980 or earlier, unless a minimum flow or level established pursuant to section 373.042 is more stringent, where ever applied throughout all Water Management Districts to meet the most essential groundwater needs of current and future Floridians.

(9) The Secretary of the Florida Department of Environmental Protection is hereby authorized and directed to make available all scientific and other data acquired, including its analysis, on a periodic basis to all Water Management Districts, all drainage or reclamation or flood control districts, any state agency dealing with water issues, all counties, all municipalities, all water utilities, all consumptive permit holders with permits for 100,000 gallons per day or greater, and any private person, and any firm or corporation requesting access. Further, when completed, the Secretary of the Florida Department of Environmental Protection is hereby authorized and directed to make the Unified Floridan Aquifer Model available to all scientific data recipients and to implement the Unified Floridan Aquifer Model in all Water Management Districts as the basis for all assessments, plans, and management, including issuance of consumptive permits, of the State's water resources.

(10) Each Water Management District within six (6) months of the availability of the Unified Floridan Aquifer Model and not less than once every five years thereafter, are hereby authorized and directed to
review and reassess regional water resources as well as the implications of all consumptive permits of 100,000 gallons per day or greater within their District. In the event, any Water Management District determines that any withdrawals associated with a consumptive use permit has caused, is causing, or could cause adverse impacts to the Floridan Aquifer System or significant harm to springs, rivers, lakes, and wetlands, whether locally or regionally, that Water Management District must address regional uses as well as enter into an agreement to develop and implement a plan with the consumptive use permit holder to begin jointly mitigating the impacts immediately and to jointly eliminate all adverse impacts with five years. Baseline conditions for the purposes of this legislation are defined as those that existed in 1980, or earlier where adequate data pursuant to subsections (2) and (3) are available. In this regard, from the date of enactment of this legislation each Water Management District is authorized and directed to make maximum use of mandatory conservation programs including widespread public education within two (2) years, implementation in all publicly owned facilities within five (5) years, and adoption in all new and replacement construction within ten (10) years pursuant to sections 373.227 and 373.228 on a regional basis; to require all utilities to inspect all distribution systems for leakages within three (3) years, to reduce water losses to five (5) percent or less within seven (7) years, and reduce water losses to zero (0) within twelve (12) years pursuant to section 373.227; to require all utilities to develop plans to reclaim and reuse the maximum quantities of water possible within four (4) years, to implement reclaimed water reuse for at least twenty-five (25) percent of reclaimed water within eight (8) years, fifty (50) percent within twelve (12) years, seventy-five (75) percent within sixteen (16) years, and one hundred (100) percent within twenty (20) years pursuant to section 373.250; to require all entities discharging and/or injecting waters, fluids, wastewaters, chemicals, etc. to the Floridan Aquifer System to develop plans to meet or exceed the same standards as required for surface water discharges within three (3) years, and to attain full compliance within eight (8) years including real time monitoring of all wells for quality and quantity pursuant to Chapter 62-528 Florida Administrative Code; to identify within two (2) years, acquire within five (5) years, and restore within ten (10) years recharge areas where ever located pursuant to sections 373.085 and 373.087; and develop alternative water supplies within seven (7) years pursuant to sections 373.705 and 373.707 whether individually or in concert with other Water Management Districts and or consumptive use permit holders to replace any necessary reductions in consumptive use permit withdrawals. In those situations where water resource uses, whether ground or surface, negatively impact more than one District, the affected Districts shall work cooperatively to mitigate negative impacts and restore baseline conditions.

(11) In order to address the activities set forth in subsection (10) each Water Management District is hereby authorized and directed to develop a mitigation and restoration plan for approval by the Secretary of the Florida Department of Environmental Protection. Upon approval the Water Management District, whether individually or in concert with an adjacent Water Management District, may issue bonds pursuant to the Florida Constitution Article VII, Section 14 and Florida Statutes section 373.584. The Water Management District shall operate any facilities created to recover its investments on a standard, but timely, basis.

(12) In order to accelerate water conservation and water use reduction programs, the Florida Department of Revenue is hereby authorized and directed to develop and implement a program of
incentives and credits to Florida businesses and other qualified entities for the purchase, installation and use of water conserving technologies for a period commencing from the date of enactment of this legislation and not to exceed ten (10) years thereafter pursuant to Title XIV, Chapter 220. In addition, the Department of Revenues is hereby authorized and directed to develop and implement Sales Tax holidays and rebates to individuals for the purchase, installation and use of water conserving technologies for a period commencing from the date of enactment of this legislation and not to exceed ten (10) years thereafter pursuant to Title XIV, Chapter 212. Further, each Water Management District is hereby authorized and directed to develop plans and share costs from funds available to it with individuals and entities within its region for technologies that save or otherwise reduce water consumption.