A. CALL TO ORDER - PLEASE MUTE CELL PHONES

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

D. APPROVAL OF AGENDA WITH ANY ADDITIONS, DELETIONS, OR CONTINUANCES

E. PUBLIC COMMENT

Individual comments have a 3 minute limit; Organizations have a 5 minute limit. General comment (non-agenda items) will be heard at this time; Specific agenda items will be heard right before the item. Speaker cards must be turned in before the meeting starts.
F. ACTION ITEMS
   1. Minutes of August 6, 2013

G. DISCUSSION ITEMS
   2. Waiver Reversal
   3. Anti-Shushing Bill

H. COMMISSIONER’S ROUNDTABLE

I. ADJOURNMENT
TAB 1
KEY LARGO WASTEWATER TREATMENT DISTRICT

Agenda Request Form

Meeting Date: August 13, 2013

Agenda Item No.

[ ] PUBLIC HEARING  [ ] RESOLUTION

[ ] DISCUSSION  [ ] BID/RFP AWARD

[X] ACTION ITEM  [ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Minutes of Aug. 6, 2013

RECOMMENDED MOTION/ACTION: The approval of minutes with any deletion, additions or corrections.

Approved by General Manager

Date: 8/13/2013

<table>
<thead>
<tr>
<th>Originating Department: Clerk</th>
<th>Costs: $</th>
<th>Attachments: Minutes</th>
</tr>
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<tr>
<td>Department Review:</td>
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<tr>
<td>[ ] District Counsel</td>
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<td>[ ] Engineering</td>
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<td>[ ] Clerk</td>
<td></td>
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<tr>
<td>[ ] Operations</td>
<td></td>
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</tbody>
</table>

Advertised:

Date: ____________

Paper: ____________

[X] Not Required

Summary Explanation/Background:

Resulting Board Action:

☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
The Key Largo Wastewater Treatment District Board of Commissioners met for a Commission Meeting at 4:02 PM. Present were Chairman Majeska, Commissioners, Norman Higgins, David Asdourian, and Steve Gibbs. Also present were the Paul Christian, General Counsel, Ray Giglio, District Clerk Carol Walker, and other appropriate District Staff.

Burke Cannon led the Pledge of Allegiance.

APPROVAL OF AGENDA
Commissioner Asdourian moved the Grinder Pump RFP to under the Engineer’s Report. Paul Christian added an update on Vacuum F under the Engineer’s Report and an introduction to new staff.

Motion: Commissioner Asdourian made a motion to approve the agenda as amended.
Commissioner Gibbs seconded the motion.

Vote on Motion

<table>
<thead>
<tr>
<th>Member</th>
<th>Yes</th>
<th>No</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Commissioner Gibbs</td>
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<tr>
<td>Commissioner Tobin</td>
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<td></td>
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</tr>
<tr>
<td>Commissioner Asdourian</td>
<td>X</td>
<td></td>
<td></td>
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</table>

Motion passed 4 to 0

NEW EMPLOYEE
Paul Christian introduced Adriana Jenkins.

PUBLIC COMMENT

<table>
<thead>
<tr>
<th>Name &amp; Address</th>
<th>Subject</th>
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<tbody>
<tr>
<td>D.A. Aldridge, Tavernier</td>
<td>Speaking to Bulk Items</td>
</tr>
<tr>
<td>Burke Cannon, Tavernier</td>
<td>Speaking to Bulk Items</td>
</tr>
<tr>
<td>Sue Heim, Key Largo</td>
<td>Speaking to Bulk Items Exhibit “A”</td>
</tr>
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</table>
ENGINEER REPORT
Report from Wade Trim on Islamorada Construction
Eugene Hoffman, Wade Trim, Construction Manager gave a report on the Islamorada construction (see Exhibit “B”)

Grinder Pump RFP
Dan Saus introduced the RFP.

Motion: Commissioner Gibbs made a motion to approve the staff recommendation to award Water Resource Technologies the grinder pump contract and give staff the authority to negotiate a lower price if possible. Commissioner Higgins seconded the motion.

Vote on Motion

<table>
<thead>
<tr>
<th>Member</th>
<th>Yes</th>
<th>No</th>
<th>Other</th>
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<td>Absent</td>
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<tr>
<td>Commissioner Asdourian</td>
<td>X</td>
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</tbody>
</table>

Motion passed 4 to 0

Vacuum Station F
Dan Saus reported that staff has fixed the problem with the vacuum at F. He will continue to monitor the situation.

BULK ITEMS
Minutes of July 16, 2013
EDU Adjustment for Mandalay Restaurant

Commissioner Higgins stated that anyone wishing to comment on any item on Bulk Items could now speak.

Motion: Commissioner Higgins made a motion to approve the Bulk Items. Commissioner Asdourian seconded the motion.

Vote on Motion

<table>
<thead>
<tr>
<th>Member</th>
<th>Yes</th>
<th>No</th>
<th>Other</th>
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<td>Commissioner Tobin</td>
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<tr>
<td>Commissioner Asdourian</td>
<td>X</td>
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</table>

Motion passed 3 to 1

PUBLIC HEARING
Open

KLWTD Board of Commissioners
Board Meeting
August 6, 2013
No public comment.
Closed

RESOLUTION NUMBER NO. 25-08-13
A RESOLUTION OF THE KEY LARGO WASTEWATER TREATMENT DISTRICT AMENDING AND RESTATE PRELIMINARY ASSESSMENT RESOLUTION (RESOLUTION NO. 14-05-13) RELATING TO THE CONSTRUCTION AND FUNDING OF WASTEWATER COLLECTION, TRANSMISSION, AND TREATMENT FACILITIES WITHIN THE DISTRICT; ESTABLISHING PROCEDURES FOR NOTICE AND ADOPTION OF ASSESSMENT ROLLS AND FOR CORRECTION OF ERRORS AND OMISSIONS; DIRECTING THE PROVISION OF NOTICE IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE

Motion: Commissioner Gibbs made a motion to approve the Bulk Items. Commissioner Higgins seconded the motion.

Vote on Motion

<table>
<thead>
<tr>
<th>Member</th>
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<tr>
<td>Commissioner Asdourian</td>
<td>X</td>
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</tbody>
</table>

Motion passed 4 to 0

FINANCIAL REPORT
Pending Payments
Connie Fazio reviewed the Pending Payments and answered Commissioners questions.

Motion: Commissioner Asdourian made a motion to approve the pending payments of Aug. 6, 2013 contingent on the availability of funds. Commissioner Higgins seconded the motion.

Vote on Motion

<table>
<thead>
<tr>
<th>Member</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
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<td>Commissioner Tobin</td>
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<tr>
<td>Commissioner Asdourian</td>
<td>X</td>
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</table>

Motion passed 4 to 0

Quarterly Report
Peter Rosasco, Bishop, Rosasco and Company presented the report.

Budget
Peter Rosasco, Bishop, Rosasco and Company presented the budget.

KLWTD Board of Commissioners
Board Meeting
August 6, 2013
MEETING EXTENSION
Motion: Commissioner Gibbs made a motion to extend the meeting for 30 minutes. Commissioner Higgins seconded the motion.

Vote on Motion

<table>
<thead>
<tr>
<th>Member</th>
<th>Yes</th>
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<th>Other</th>
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</thead>
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<td>Commissioner Tobin</td>
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<td></td>
<td>Absent</td>
</tr>
<tr>
<td>Commissioner Asdourian</td>
<td></td>
<td></td>
<td>Absent from Room</td>
</tr>
</tbody>
</table>

Motion passed 3 to 0

ADJOURNMENT
The K LWTD Board adjourned the Board Meeting at 6:27 PM.

The KLWTD meeting minutes of August 6, 2013 were approved on August 13, 2013.

____________________________
Chairman Majeska

____________________________
Carol Walker, CMC District Clerk
Regarding the Chairman’s actions at the last meeting - changing the public speaker procedure so that bulk items are automatically approved as consent with the agenda’s approval, thereby eliminating the opportunity for the public to speak on bulk items prior to their approval:

I quote from the District’s policy currently posted -

E. PUBLIC COMMENT - General comment (non-agenda items) will be heard at this time; Specific agenda items will be heard right before the item.

It does not say - Specific agenda items excluding the bulk items. Agenda items are specific whether they are in Bulk or not. Every item, regardless of it’s classification on the agenda should have - and has always had - the opportunity for public comment.

So, just to say for the record - General Comment is different from Specific item comment.

When the Chairman announced this change during the last meeting, none of you other commissioners objected, or even addressed his change, which lead us all to conclude that you all agree with the Chairman’s change. Your not addressing this change makes me wonder if some or all of you were already aware of this change.

So, if you commissioners do agree with this change, make it a motion. Put it to a vote. Let the public see for the record those who agreed with eliminating the opportunity for public comment on bulk items before the bulk items get automatically approved with the agenda.

The Chairman justified the change by saying the public has 3 minutes to speak in General Comment. Problem is for a speaker addressing more than 1 bulk item, 3 minutes is not sufficient time, therefore the speaker will never get to speak on the remaining items.

The Chairman told me to approach a Board member prior to a meeting to request that Board member pull a bulk item “out of bulk” prior to meeting start. That suggestion is not acceptable. I should not have to beg a Board member to be heard on an item. Also, since no one else from the public is aware of that method, they would not know to ask a Board member. And their chance to speak would vanish without their ever knowing what was going on.

Most insulting to the public, your customers aka the voters, is that the intention behind this change is so that you all get out of here sooner.

If you allow this change to stand, do it on the record. Make a motion. Vote. Then inform the public that the District has a new policy for public comment on bulk items, bulk items will be automatically approved with the agenda approval, thereby eliminating the opportunity for public comment on bulk items.
<table>
<thead>
<tr>
<th>Project</th>
<th>Phase</th>
<th>Location</th>
<th>Progress</th>
<th>2 Week Look Ahead</th>
</tr>
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<tbody>
<tr>
<td>CFM1.A</td>
<td>N/A</td>
<td>MM 99.6</td>
<td>MM 100.3 Work Complete. No Current Activities</td>
<td>No activities planned</td>
</tr>
<tr>
<td>CFM1.B</td>
<td>Phase 1</td>
<td>MM 96.7</td>
<td>MM 99.6 Restoration with sod commenced between MM 96.9 and MM 97.5. Mobilizations for new boring operations on hold until General Underground crews complete the HDD under US-1 for CFM 1.C in front of Coral Shores High School.</td>
<td>General Underground to commence with connecting HDD terminations at the bore pits north of MM 98.5 the week of 8/5/13. No lane closures anticipated.</td>
</tr>
<tr>
<td>CFM1.B</td>
<td>Phase 2</td>
<td>MM 93.1</td>
<td>MM 96.7 Installation of 18&quot; CFM in open cut trench on hold until Redland crews complete CFM1.C work in front of Coral Shores High School. CFM pipe is installed north to MM 95.2. Continued with grading north to MM 94.4. Continued with sod restoration north to MM 94.1.</td>
<td>Grading and sod restoration activities to continue moving north from MM 94.1. No lane closures anticipated.</td>
</tr>
<tr>
<td>CFM1.B</td>
<td>Phase 3</td>
<td>MM 90.9</td>
<td>MM 93.1 Continued installing 18&quot; CFM in open cut trench south from MM 93.1 to MM 92.2 and from MM 91.4 to MM 91.2. Began grading for sod restoration.</td>
<td>Continue nighttime open trenching activities working from MM 91.4 south. Lane closures expected.</td>
</tr>
<tr>
<td>CFM1.C</td>
<td>N/A</td>
<td>MM 89.8</td>
<td>MM 90.9 General Underground commenced with the HDD pipe installation under US-1 in front of Coral Shores High School. Redland commenced with the installation of CFM pipe in open cut along Old Highway fronting Coral Shores High School.</td>
<td>Arrow Excavating will begin staging for the horizontal directional drill crossing under Tavernier Creek the week of 8/12/13. HDD under the Creek is not expected to take place until after Labor Day. Redland will continue with open cut pipe installation in front of Coral Shores HS. General Underground will complete the bore under US-1 in front of Coral Shores HS, then move operation back to CFM 1.B Phase 1</td>
</tr>
</tbody>
</table>

Updated 8/6/2013
TAB 2
KEY LARGO WASTEWATER TREATMENT DISTRICT

Agenda Request Form

Meeting Date: August 13, 2013

Agenda Item No. [2]

[ ] PUBLIC HEARING
[X] DISCUSSION
[ ] ACTION ITEM
[ ] Other:

SUBJECT: Approval of form for reversal of waiver of wastewater service

RECOMMENDED MOTION/ACTION:

[Signature]
Approved by General Manager
Date: 8/18/2013

| Originating Department: | Costs: $0.00 |
| Legal | 

| Department Review: |
| [x] District Counsel RWG |
| [ ] General Manager |
| [ ] Finance |

| Funding Source: |
| [ ] Engineering |
| [ ] Clerk |
| [ ] Operations |

| Attachments: Form 21 – Reversal of Waiver |

| Advertised: |
| Date: |
| Paper: |
| [x] Not Required |

Summary Explanation/Background:

There are situations where owners have requested that the District exclude their Parcel from the District's Assessment roll and waive the Assessments levied against their Parcel on the grounds that the Parcel cannot and/or will not receive Wastewater Service. In such cases, the Owners have executed a Waiver of Wastewater Service and Acknowledgement of Potential Costs for the Parcel, which Waiver has been duly filed with County Clerk.

Some of those Owners have now requested that the District reinstate, and again provide, wastewater service to the previously waived Parcel. This is the proposed form that they will have to execute in order to have the waiver reversed. This form also contains an acceptance of the Reversal of Waiver by the District, which will be signed by the General Manager.

This matter was on the Agenda for the June 18, 2013 meeting, and it is being brought back for further discussion.

Resulting Board Action:

☐ Approved ☐ Tabled ☐ Disapproved ☐ Recommendation Revised
THIS Reversal of Waiver of Wastewater Service and Acknowledgement of Costs and Assessments (the “Reversal of Waiver”) is made this ______ day of ______________ 20___, by the undersigned, who are all of the Owners or are the legal representatives of all of the Owners (collectively, the “Owners”) of the Parcel(s) (the “Parcel(s)”) listed in Attachment “A”:

WHEREAS, pursuant to, and in accordance with, Chapter 197.3632, Florida Statutes (the Uniform Assessment Collection Act), the Key Largo Wastewater Treatment District (the “District”) adopted Resolution Number No. ________________, The 20____ Final Assessment Resolution, by the terms of which, Non-Ad Valorem Wastewater Assessments (the “Assessments”) were levied against each of the tax parcel(s) listed in attachments thereto; and

WHEREAS, the purpose of these said Assessments was to recover a portion of the District’s cost of providing wastewater service to such tax parcels; and

WHEREAS, the Owners previously requested that the District exclude the Parcel(s) listed in Attachment “A” from the District’s Assessment roll and waive the Assessments levied against the Parcel(s) on the grounds that the Parcel(s) cannot and/or will not receive Wastewater Service; and

WHEREAS, the District reviewed the Owners’ request and determined that the Parcel(s) were eligible for exclusion from the District’s Assessment roll; and

WHEREAS, the Owners executed a Waiver of Wastewater Service and Acknowledgement of Potential Costs for the Parcel(s), which waiver was filed in the Office of the Clerk of the Circuit Court of Monroe County, State of Florida, in Official Records Book Number ______, at Page ______ on the _____ day of __________, 20____; and

WHEREAS, the Owners now request that the District reinstate, and again provide, wastewater service to the previously waived Parcel(s) listed in Attachment “A”; and

WHEREAS, Owners of previously waived Parcel(s), who subsequently request that the District reinstate, and again provide, wastewater service to those Parcel(s), are required to pay a system development charge, in accordance with Resolution Number ________________, the 20____ Final Assessment Resolution, as well as all direct and indirect costs, expenses, and administrative fees.
NOW, THEREFORE, in consideration of the premises and in further consideration of the promises below, the undersigned Owners:

1. Certify that, as of the date of this Reversal of Waiver, and as appears from the records of the Monroe County Property Appraiser, they are all of the owners, or are the legal representatives of all of the Owners, of the Parcel(s) listed in Attachment “A.”

2. Certify that they now desire and they have requested that the District reinstate and again provide wastewater service to the previously excluded Parcels.

3. Acknowledge and agree that, in accordance with Resolution Number No.___________, The 20__________ Final Assessment Resolution, they are required to pay to the District an amount fairly representing the special benefit that the Parcel(s) have received, as determined by the District.

4. Acknowledge that the District will direct the Monroe County Tax Collector to, reinstate the District’s Non-Ad Valorem Wastewater Assessment against the Parcel(s) utilizing the method of collecting non-ad valorem assessments provided in Chapter 197.3632, Florida Statutes (the Uniform Assessment Collection Act).

5. Agree to pay the District an administrative fee of $200.00 to process this Reversal of Waiver.

6. Acknowledge and agree that this indenture and all of its terms shall be binding upon the signatories, their successors and assigns, and all subsequent Owners of the Parcels, and each of them.

7. Acknowledge and agree that the Effective Date of this Reversal of Waiver shall be the date on which a resolution approving and accepting same is adopted by the Board of Commissioners of the Key Largo Wastewater Treatment District.

8. Acknowledge that wherever used herein, the terms “Owners” and “District” include all the parties involved and their respective heirs, legal representatives, successors and assigns; and, unless the context clearly indicates otherwise, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

IN WITNESS WHEREOF, on the day and date first above written, the undersigned, comprising all of the Owners, or the legal representatives of all of the Owners, of the Parcel(s) listed in Attachment “A” have executed this Reversal of Waiver of Wastewater Service and Imposition of Costs and Assessments.

Owner __________________________________________ Owner __________________________________________
Print Name __________________________________________ Print Name __________________________________________

Signed, Sealed and Delivered in the presence of these Witnesses (one of whom may be the Notary):

Witness __________________________________________ Witness __________________________________________
Print Name __________________________________________ Print Name __________________________________________
COUNTY OF MONROE
STATE OF FLORIDA

I HEREBY CERTIFY that on this _____ day of ___________ 20___, before me, an officer duly authorized to take acknowledgments, personally appeared ____________________________, known to me to be the person(s) named in the foregoing instrument, who acknowledged executing same in the presence of two subscribing witnesses and who is/are personally known to me or who produced ____________________________, as identification and who did/did not take an oath.

(Notary Seal)

Notary Public

Printed Name of Notary

My Commission Expires:

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the Key Largo Wastewater Treatment District, acting by and through its General Manager, hereby accepts and agrees to this Reversal of Waiver of Wastewater Service and Acknowledgement of Costs and Assessments.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of ________________, 20_____.

Key Largo Wastewater Treatment District: Approved as to Form and Legal Sufficiency:

Margaret Blank, General Manager Ray Giglio, District Counsel

Attachment “A” – description of the Parcel(s)
KEY LARGO WASTEWATER TREATMENT DISTRICT
Agenda Request Form

Meeting Date: August 13, 2013
Agenda Item No. 3

[ ] PUBLIC HEARING  [ ] RESOLUTION
[X] DISCUSSION  [ ] BID/RFP AWARD
[ ] ACTION ITEM  [ ] CONSENT AGENDA

[ ] Other:

SUBJECT: Discussion of new "Anti-shushing" Law

RECOMMENDED MOTION/ACTION: No action required

Approved by General Manager  
Date: 8/13/2013

<table>
<thead>
<tr>
<th>Originating Department:</th>
<th>Costs: $0</th>
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Department Review:
[X] District Counsel RWG
[ ] General Manager
[ ] Finance

[ ] Engineering
[ ] Clerk
[Operations]

 advertised:
Date: __________________
Paper: __________________
[X] Not Required

Summary Explanation/Background:

On June 28, 2013, the Governor signed SB 50, which requires every government agency or board to give members of the public a reasonable opportunity to be heard before the agency or board takes action on a particular item.

In essence, this new law creates "minimum standards" for allowing public comment at government meetings. However, as the KLVTD has always been liberal in allowing public comment and tries, in fact, to encourage it. Therefore, this new law should have no effect on the KLVTD or the conduct of BOC meetings.

Resulting Board Action:

☐ Approved  ☐ Tabled  ☐ Disapproved  ☐ Recommendation Revised
OVERVIEW of Chap 2013-227 L.O.F. (Florida’s new “Anti-shushing” Law)

Members of the public must be given a reasonable opportunity to be heard by a board or commission before the board or commission takes official action on a proposition.

However:

- Such opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action on the proposition, if such opportunity to be heard:
  - Occurs at a meeting that is during the decision-making process; and
  - Is within reasonable proximity in time before the meeting at which the board or commission takes the official action.
- A board or commission is not prohibited from maintaining orderly conduct or proper decorum in a public meeting.
- If a board or commission adopts reasonable rules or policies and thereafter complies with them, it is deemed to be acting in compliance with the new law.
- The circuit court is authorized to issue injunctions to enforce the law and to assess reasonable attorney fees.
- Any action taken by a board or commission that is found to be in violation of the law is NOT void or invalid as a result of such violation.

The law specifically authorizes boards or commissions to adopt reasonable rules and policies governing the opportunity to be heard, if they are designed to:

- Provide guidelines regarding the amount of time an individual has to address the board or commission.
- Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard.
- Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses.
- Designate a specified period of time for public comment.

The law DOES NOT APPLY where:

- An official act involves no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations.
- An official act must be taken to deal with an emergency situation.
- The meeting or act is exempted from the “right to speak” requirement by statute.
BACKGROUND

Prior to its passage of Chap 2013-227 L.O.F., even though public meetings were required to be in the Sunshine, public boards and commissions were not required to allow the public to comment on matters before them.

The Florida Constitution and the Florida Sunshine Law both require all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.¹

However, neither the Sunshine Law nor the Florida Constitution actually spelled out the public's right to speak at public meetings.

The Florida Constitution and the Florida Statutes are silent concerning whether citizens have a right to be heard at a public meeting. In two separate cases, Florida courts have directly addressed the issue of whether a member of the public has the right to be heard at a meeting when he or she is not a party to the proceedings.

In two cases, the courts have held that the public had no right to speak.

In the first case², the plaintiffs alleged that a not-for-profit corporation charged by the City of Pensacola with overseeing the development of a parcel of public waterfront property violated the Sunshine Law by not providing them the opportunity to speak at a public meeting concerning the development of certain waterfront property. The plaintiffs argued that the Sunshine Law phrase “open to the public” grants citizens the right to speak at public meetings. However, in that case, the First District Court of Appeal held that no such right exists:

Relying on the language in Marston³, the trial court determined that, although the Sunshine Law requires that meetings be open to the public, the law does not give the public the right to speak at the meetings. Appellants have failed to point to any case construing the phrase “open to the public” to grant the public the right to speak, and in light of the clear and unambiguous language in Marston (albeit dicta), we are not inclined to broadly construe the phrase as granting such a right here.⁴

¹ Article I, s. 24(b) of the Florida Constitution; FSS s. 286.011
³ In Wood v. Marston, the Florida Supreme Court held that the University of Florida improperly closed meetings of a committee charged with soliciting and screening applicants for the deanship of the university’s college of law. However, the Marston court noted “nothing in this decision gives the public the right to be more than spectators. The public has no authority to participate in or to interfere with the decision-making process.” Wood v. Marston, 442 So.2d 934, 941 (Fla. 1983).
⁴ Keester, supra note 3, at 660-61
The second case\(^5\) was argued before Florida’s Fifth District Court of Appeal on October 13, 2011. In that case, the plaintiffs alleged, in part, that the St. Johns Water Management District violated the Sunshine Law by preventing certain people from speaking at a public meeting concerning the proposed approval of a water use permit. The trial court held that, “Because, as clearly articulated in Keesler, the Sunshine Law does not require the public be allowed to speak, plaintiffs’ claim … fails as a matter of law.”\(^6\) The Fifth District Court of Appeal affirmed the trial court’s ruling.\(^7\)

The Legislature felt that Florida law should be changed to give the public a reasonable opportunity to be heard by a board or commission before the board or commission takes official action on a proposition.

In response to the two rulings mentioned above, Rep. Ray Rodrigues, (R-Fort Myers), the sponsor of the bill in House, said that it was wrong that Florida citizens did not have the right to speak at public meetings. Rodrigues said, “The opportunity for the public to comment at government meetings is not enshrined in our sunshine statutes. So what that means is that any county, municipality or government agency could strike public comment, and there’s nothing that could be done about it.”

Apparently, the overwhelming majority of the Florida Legislature agreed that something should be done. The Bill passed unanimously in the Senate and passed 113-to-2 in the House\(^8\). The Bill was signed into law by Governor Scott on June 28, 2013. The new law takes effect October 1, 2013.

**SYNOPSIS OF LAW**

**Pertinent provisions of Ch. 2013-227 L.O.F. - s. 286.0114, F.S.**

At any meeting where a city, county, or special taxing district is about to vote on a proposal, the body must provide time for the public to comment. If it doesn’t, a court can intervene and issue an injunction. In addition, the board might be forced to pay attorneys’ fees if it’s found to have violated the rule.

However, the law does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting.

\(^6\) The trial court was the Circuit Court of the Seventh Judicial Circuit, in and for Putnam County, Florida. See the trial court’s “Order Granting Motion for Summary Judgment,” September 28, 2010, at 6 (on file with the Governmental Oversight and Accountability Committee).
\(^7\) 2011 WL 5124949 (Fla. 5th DCA 2011)
\(^8\) The only no votes came from Rep. Clovis Watson (D-Gainesville) and John Tobia (R-Melbourne). Tobia has said his goal is to never get involved in local government unless they are doing something fiscally irresponsible.
Each board or commission is authorized to create and adopt its own reasonable rules and regulations, which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of the public attending.

These rules and policies include limiting the amount of time an individual can speak and, when a large number of people attend and wish to speak, requesting that a representative of each side of the issue speak rather than everyone present. Allowing each state board or commission to create its own rules allows that board or commission to tailor its rules to its own particular needs.

The law specifically provides that a board or commission is deemed to be acting in compliance with the new law if the board or commission adopts rules or policies in compliance with the law’s provisions and follows such rules or policies when providing the public with an opportunity to be heard.

The law also provides that any action taken by a board or commission that is found to be in violation of this new law is not void or invalid as a result of such violation.

Whenever an action is filed against a board or commission to enforce the provisions of this law, the court is required to assess reasonable attorney fees against the appropriate state agency or local government board or commission if the court determines that the defendant to such action acted in violation of the law.

However, the law also authorizes the court to assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous.

Ambiguities and uncertainties in Ch. 2013-227 L.O.F. - s. 286.0114, F.S.

The law provides that members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. However, the law does not define the term “proposition.”

The law provides that “[t]he opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.” However, the law does not define the term “reasonable proximity.”

The law authorizes boards and commissions to provide “procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a

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9 These attorney fee provisions do not apply to a state attorney, to his or her duly authorized assistants, or to an officer charged with enforcing the provisions of the act.
large number of individuals wish to be heard.” However, the law does not define the terms “factions” or “groups.”

The law provides an exception to the right to speak requirements for “[a]n official act involving no more than a ministerial act....” However, the law does not define the term “ministerial act.”

The law provides an exception to the right to speak requirements for “[a]n official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act.” However, the law does not specify what is considered to be an “unreasonable delay” when deciding if the public’s opportunity to be heard should be usurped.

It is unclear whether a board’s or commission’s denial of someone’s right to speak may constitute an agency action challengeable under the Administrative Procedure Act. In cases in which an administrative remedy is available, a plaintiff may be required to exhaust all administrative remedies before pursuing a civil remedy.10

**EFFECT OF CH. 2013-227 L.O.F. - S. 286.0114, F.S. ON THE KLWTD**

This new law should have NO EFFECT on the KLWTD or the conduct of its board meeting.

In essence, all this new law has done is create “minimum standards” for allowing public comment at government meetings. It did so by eliminating a board’s ability to completely shut down public comment on a proposition before the board. Therefore, to comply with this law, a board or commission must simply allow the public a reasonable opportunity to comment on propositions before the board.

However, the KLWTD is extremely liberal in allowing public comment and has, in fact, always tried to encourage public comment and public participation. It is difficult to imagine that the KLWTD board would ever refuse to allow interested citizens to voice their opinions at public meetings or completely shut down public comment—unless there were an emergency like a hurricane or some other natural disaster that required expeditious action.11

Because the District’s policies go far beyond not prohibiting all public comment (which is essentially the “minimum standard” established by the “reasonable

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10 See, for example, Orange County, Fla. v. Game and Fresh Water Fish Commission, 397 So.2d 411 (Fla. 5th DCA 1981)
11 As mentioned above, this law specifically exempts, “[a]n official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act.”
opportunity” language of Ch. 2013-227), this law should have no effect whatsoever on the KLWTD or the conduct of its BOC meetings.

**Ch. 2013-227 has NO EFFECT on the ability of the KLWTD to make and institute reasonable rules and policies with respect to public comment at meetings of the KLWTD Board of Commissioners.**

As detailed above, Ch. 2013-227 specifically grants boards and commissions the authority to adopt reasonable rules and policies governing the public’s opportunity to be heard with respect to matters such as:

- the scheduling of a specified period of time for public comment;
- establishing the amount of time an individual has to address the board;
- establishing the procedures for allowing or requiring representatives of groups or factions on a proposition to address the board, rather than all members of such groups or factions; and
- prescribing the procedures or forms for an individual to use in making public comments.

It is worth repeating that while Ch. 2013-227 requires that boards, such as the KLWTD, give the public a reasonable opportunity to be heard before the board takes official action on a proposition, that does not mean that the new law forbids any restrictions on the right of the public to speak at meetings. In fact, the law tacitly acknowledges that during public meetings, with respect of the right of the public to speak, reasonable time, place, and manner restrictions are not only permitted, they are often required in order to keep meetings timely and under control.

Almost every board and commission is faced with the problem of balancing their desire to allow the public to comment with their need to do the people’s business in a timely and efficient fashion. To allow unlimited speakers unlimited time could have the effect of delaying action on matters that concern residents—many of whom cannot attend these meetings.

The KLWTD board—like every board—must balance its obligation to allow public participation with its responsibility to maintain order and to conduct public business efficiently. Therefore, even under this law, the board is still able to limit how long speakers may talk, to call for one speaker to sum up the sentiments of a larger group, and to require certain procedures for how residents declare that they want to speak.

**Ch. 2013-227 has NO EFFECT on the ability of the KLWTD to limit the right of the public to request that individual items be “pulled” from “bulk.”**

It has been suggested by some that this new law requires the KLWTD to allow members of the public to demand that individual items be “pulled” from “bulk” and commented on, before those bulk items are voted on by the Commissioners. However, for the reasons discussed in the section above, that is not the case. Even under this new law, the KLWTD board has the authority to adopt reasonable rules and policies
governing matters such as whether a member of the public can request that an item be pulled from bulk and when and for how long a member of the public may comment on such items.

It appears that the KLWTD board has always allowed members of the public to comment on bulk items. A “bulk” item could reasonably be considered to be a “proposition.” Therefore, because Ch. 2013-227 requires the KLWTD to provide the public with “a reasonable opportunity to be heard on a proposition,” the KLWTD policy of allowing members of the public to comment on bulk items would appear to be consistent with, and is required by, this new law. Consequently, pursuant to Ch. 2013-227, it would appear to be improper for a board to vote on bulk items without allowing the public “a reasonable opportunity to be heard.”

However, the KLWTD does allow the public “a reasonable opportunity to be heard” with respect to bulk items, before they are voted upon. Moreover, just because a member of the public wishes to comment on a particular item does not mean that the KLWTD must allow that person to demand that the individual item or items be pulled from bulk.

In that same vein, as discussed, Ch. 2013-227 permits the KLWTD to impose reasonable time, place, and manner restrictions on public comments. The means that the board has full authority to limit a speaker to, for example, one 3-minute comment for “bulk” items (or one 3-minute comment per meeting for that matter). Members of the public have no right or authority to demand that one or more item be pulled from bulk or to demand that they be given the right to make a separate 3-minute comment on each item. The board could choose to allow such procedures; but it is not required to do so.

CONCLUSION

This new law creates “minimum standards” for allowing public comment at government meetings. The KLWTD is so far above these “minimums” that this new law should have no effect on the KLWTD or the conduct of its BOC meetings.

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12 As of October 1, 2013, when the law goes into effect.
CHAPTER 2013-227

Committee Substitute for
Committee Substitute for Senate Bill No. 50

An act relating to public meetings; creating s. 286.0114, F.S.; defining “board or commission”; requiring that a member of the public be given a reasonable opportunity to be heard by a board or commission before it takes official action on a proposition; providing exceptions; establishing requirements for rules or policies adopted by the board or commission; providing that compliance with the requirements of this section is deemed to have occurred under certain circumstances; providing that a circuit court has jurisdiction to issue an injunction under certain circumstances; authorizing a court to assess reasonable attorney fees in actions filed against a board or commission; providing that an action taken by a board or commission which is found in violation of this section is not void; providing that the act fulfills an important state interest; providing an effective date.

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

Section 1. Section 286.0114, Florida Statutes, is created to read:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

1. For purposes of this section, “board or commission” means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

2. Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (3).

3. The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

CODING: Words stricken are deletions; words underlined are additions.
(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7)(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

CODING: Words stricken are deletions; words underlined are additions.
(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

Section 2. The Legislature finds that a proper and legitimate state purpose is served when members of the public have been given a reasonable opportunity to be heard on a proposition before a board or commission of a state agency or authority, or of an agency or authority of a county, municipal corporation, or political subdivision. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 3. This act shall take effect October 1, 2013.

Approved by the Governor June 28, 2013.

Filed in Office Secretary of State June 28, 2013.

CODING: Words struck are deletions; words underlined are additions.