

# RECENT DEVELOPMENTS

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### I. INTRODUCTION

This last year brought land use and environmental law to the headlines on numerous occasions. Discussions usually reserved for lawyers were cast to the forefront of the general public. Decisions such as *Kelo v. City of New London* raised issues of ownership rights that many people debated. All relevant contemporary cases and laws impacting the area of land use and environmental law cannot be covered in one article. The purpose of *Recent Developments* is to highlight a few of the new issues and laws arising over the last year that are of particular interest.

To stay abreast of all the issues facing the environmental and land use arena, there are a number of excellent websites providing useful and up-to-date information. At the state level, the Florida Senate maintains publications describing new legislation stemming from its various committees.<sup>1</sup> Of particular interest this last year, was the report from the Senate's Committee on Environmental Preservation. The Florida Department of Environmental Protection (DEP)<sup>2</sup> and the Florida Department of Community Affairs<sup>3</sup> also provide current news. Recently, DEP created a useful addition: the Florida Wetland Restoration Information Center.<sup>4</sup> Readers should consult with the Florida Bar Environmental Land Use Law Section for excellent articles on new law and court decisions.<sup>5</sup> In addition, private firms' websites, such as Holland Knight<sup>6</sup> and Hopping, Green and Sams,<sup>7</sup> offer an excellent source of current hot topics.

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\* Special thanks to Peter and Elizabeth McKernan.

<sup>1</sup> <http://www.flsenate.gov>.

<sup>2</sup> <http://www.dep.state.fl.us>.

<sup>3</sup> <http://www.dca.state.fl.us>.

<sup>4</sup> <http://www.dep.state.fl.us/water/wetlands/fwric/>.

<sup>5</sup> <http://www.eluls.org>.

<sup>6</sup> <http://www.hklaw.com>.

<sup>7</sup> <http://www.hgslaw.com>.

## II. FEDERAL CASE LAW

*Kelo v. City of New London*, 125 S.Ct. 2655 (2005).

The Court was faced with the issue of whether creating jobs, increasing the tax base and revitalizing an area constituted a public use under the Takings Clause of the Fifth Amendment.<sup>8</sup> In an effort to revitalize the city of New London, the city's planners sought property to develop a \$300 million research facility for Pfizer Pharmaceuticals.<sup>9</sup> They hoped the facility would be a catalyst for the area.<sup>10</sup> To obtain the necessary land, a development company was given the right to purchase, and if necessary "exercis[e] eminent domain in the City's name."<sup>11</sup> Portions of land upon which the company exercised eminent domain belonged to the petitioners.<sup>12</sup> None of the petitioners' properties constituted blight; they were all chosen because of the geographic area in which they were located.<sup>13</sup>

The effected residents went to court, claiming an improper taking under the Fifth Amendment.<sup>14</sup> Connecticut law allows for takings "as part of an economic development project" of "public use and in the public interest."<sup>15</sup> The Supreme Court analyzed whether the new use constituted a "public purpose."<sup>16</sup> The history of cases in this area recognized the duty owed to federalism and the "broad latitude" afforded to legislatures.<sup>17</sup> The city found the area to be distressed and in need of rejuvenation, and the planned development would serve a public purpose.<sup>18</sup> The Supreme Court could not Connecticut's decision, because the decision as to what constitutes a public purpose is one belonging to the state.<sup>19</sup> In opening this door to government's eminent domain power, the Court noted that many states had restricted the power, and that states were free to decide what constituted a public purpose.<sup>20</sup>

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<sup>8</sup> *Kelo v. City of New London*, 125 S.Ct. 2655, 2658 (2005).

<sup>9</sup> *Id.* at 2569.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2660.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (citing CONN. GEN. STAT. § 8-186 (2005)).

<sup>16</sup> *Id.* at 2663.

<sup>17</sup> *Id.* at 2664.

<sup>18</sup> *Id.* at 2665.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

*Orff v. United States*, 125 S.Ct. 2606 (2005).

A unanimous Supreme Court held that Congress did not intend to waive sovereign immunity, as it applies to a breach of contract under the Reclamation Reform Act of 1982.<sup>21</sup> The petitioners in this case were farmers who had contracted with the Westlands Water District to receive water.<sup>22</sup> The water district had in turn contracted with the United States Bureau of Reclamation for water.<sup>23</sup> While not contracted directly with the Bureau of Reclamation, the petitioners sued to enforce the contract as intended third-party beneficiaries when the amount of water was reduced.<sup>24</sup>

The Court reviewed 43 U.S.C. § 390uu to determine whether it conveyed a waiver of sovereign immunity.<sup>25</sup> The Court reiterated that a “waiver of sovereign immunity must be strictly construed in favor of the sovereign.”<sup>26</sup> Applying such, the applicable statutory section did not waive sovereign immunity.<sup>27</sup> The statute confers the right to “*join* the United States as a *necessary party defendant* in any suit”, not the right to sue the United States alone.<sup>28</sup>

*Riverkeeper, Inc. v. U.S. EPA*, 358 F.3d 174 (2d Cir. 2004).

At center stage in this case was an Environmental Protection Agency regulation designed to reduce the impact of power plants’ water-cooling systems.<sup>29</sup> Such systems destroy and kill voluminous amounts of fish, plankton, eggs, larvae and other organisms.<sup>30</sup> Entities from both sides of the impact debate argued against the validity of the regulation.<sup>31</sup> Environmental groups argued the regulation did not reflect the best technology available, that an alternative method did not meet required rules, and that dry cooling is the best technology available.<sup>32</sup> The court lumped the utilities’ challenges into four categories: that the regulation is

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<sup>21</sup> *Orff v. United States*, 125 S.Ct. 2606, 2608 (2005) (citing 43 U.S.C. § 390uu).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* The Bureau reduced the level of water pursuant to environmental obligations necessitated to prevent harm to threatened species. *Id.*

<sup>25</sup> *Id.* at 2609-10.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 2610.

<sup>28</sup> *Id.*

<sup>29</sup> *Riverkeeper v. U.S. EPA*, 358 F.3d 174, 181 (2d Cir. 2004).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 183.

<sup>32</sup> *Id.*

“insufficiently flexible,” “too vague and malleable,” that it contradicts the statute, and that it is “unsupported by record.”<sup>33</sup>

The court reviewed the statutes to determine whether Congress had “unambiguously expressed’ its meaning”, and if such, that intent would control.<sup>34</sup> If the statutes were ambiguous, then the court would review the regulation to see whether it was permissible within the intent.<sup>35</sup> If the regulation is found to be within the intent of the legislation, then it must also meet the test of not being “arbitrary, capricious, and [an] abuse of discretion, or otherwise not in accordance with law.”<sup>36</sup>

In reviewing the environmental petitions, the court found that water-cooling systems differed from pollution in regards to the precision of measuring impact.<sup>37</sup> Effluent is more readily measured, while the impact on water organisms of cooling systems requires the EPA to make “judgment calls.”<sup>38</sup> Therefore, it is reasonable for the EPA to issue standards stating an acceptable margin of error in measuring compliance.<sup>39</sup> The court then struck down an alternative EPA laid out.<sup>40</sup> The regulation had allowed for restorative measures if the preventative measures were found lacking.<sup>41</sup> An alternative allowing for restorative measures, where preventive measures fail, was against the intent of the legislature to minimize impact in the siting and design process.<sup>42</sup>

As for the environmental groups’ contention that dry cooling offers the best technology available, the court deferred to EPA’s findings.<sup>43</sup> EPA stated that dry cooling costs ten times that of water cooling.<sup>44</sup> Dry cooling consumes more energy, resulting in more emissions.<sup>45</sup> The costs would discourage new facilities; and, among other things, dry cooling is not technically feasible for those under the umbrella of this regulation.<sup>46</sup> The court noted it was “not well equipped” to weigh a 95% entrapment reduction against the other factors, such as added pollution and monetary costs.<sup>47</sup> The EPA had been given the statutory right to make such calls,

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 184.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* (citing 5 U.S.C. § 706(2)(A) (2000)).

<sup>37</sup> *Id.* at 188–89.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 189.

<sup>40</sup> *Id.* 189–90.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 189.

<sup>43</sup> *Id.* at 194–96.

<sup>44</sup> *Id.* at 194.

<sup>45</sup> *Id.* at 194–95.

<sup>46</sup> *Id.* at 195.

<sup>47</sup> *Id.* at 196.

and absent clear error or a lack of record, the court had to let the regulation stand in this regard.

The industrial group argued that some of the impinged species were “nuisance[s]’ that we are better off ‘eradicating,’ and that some species respond to ‘losses’ by increasing their reproduction to compensate.”<sup>48</sup> Based on this line of reasoning, the group argued that EPA had not contemplated other environmental factors other than the impingement numbers.<sup>49</sup> Once again, the court deferred to EPA’s studies and believed that EPA had done a thorough job of contemplating the relative factors upon which to make a sound decision.<sup>50</sup>

The court also dismissed claims of vagueness, such as EPA not putting forth a “national performance standard based on . . . technologies” available.<sup>51</sup> The court disagreed, noting that the process encourages permitting facilities to “engage in a dialogue” with the authorities.<sup>52</sup> After reviewing the available guidelines, the court thought it was “sufficiently clear . . . the industry will be able to understand its responsibilities under the Rule.”<sup>53</sup> The court went on to review the Rule’s intake velocity requirements, proportion flow requirements, state law requirements, below threshold structures, and the re-permitting process, finding all actions to be within EPA’s authority.<sup>54</sup>

*Am. Canoe Ass’n v. Louisa Water and Sewer Comm’n*, 389 F.3d 536 (6th Cir. 2004).

Members of the American Canoe Association and Sierra Club filed suit under the Clean Water Act alleging that the defendants had violated discharge permits.<sup>55</sup> The plaintiffs sued on their members’ behalf, stating “health, economic, recreational, aesthetic and environmental interests were affected by the pollution.”<sup>56</sup> The organizations also sued on their own behalf, asserting that the pollution violations “adversely affected [their] organizational interests.”<sup>57</sup> Additionally, Sierra Club attached affidavits from two of its members stating how they were harmed

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<sup>48</sup> *Id.* at 196.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 197.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 198.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 198–04.

<sup>55</sup> *American Canoe Association v. Louisa Water and Sewer Commission*, 389 F.3d 536, 538 (6th Cir. 2004).

<sup>56</sup> *Id.* at 539.

<sup>57</sup> *Id.*

by the pollution.<sup>58</sup> The district court threw the case out, stating the plaintiffs lacked standing.<sup>59</sup>

On appeal, the court ruled that the plaintiffs did have standing.<sup>60</sup> An organization has standing to sue for its members when the members have standing to sue on their own.<sup>61</sup> A member has standing to sue when they have been injured in a “concrete and particularized way” that can be attributed to the defendant’s actions.<sup>62</sup> The court held that the members demonstrated aesthetic, recreational and information injuries stemming from the defendant’s actions.<sup>63</sup> The court went on to say that the plaintiffs’ members had also met the causation requirement to survive dismissal.<sup>64</sup>

As for the status of the organizations, the court analyzed this point independently from individual member standing.<sup>65</sup> The plaintiffs argued they suffered an informational injury when the alleged polluters failed to report required data.<sup>66</sup> Siding with them, the court agreed that the organizations’ interests were “negatively affected by the defendants’ failure” to monitor and report.<sup>67</sup>

### III. FLORIDA CASE LAW

*Blanton v. City of Pinellas Park*, 887 So. 2d 1224 (Fla. 2004).

The court interpreted the Marketable Title to Real Property Act (MRTA) as not providing a means by which a claim to a statutory easement could be extinguished.<sup>68</sup> At issue was a means of ingress and egress for Mr. Blanton.<sup>69</sup> Blanton possessed a landlocked ten acre parcel of land.<sup>70</sup> He sued for a statutory easement under section 704.01(2), Florida Statutes, after the adjacent landowner demanded more than \$1.1 million for strip of

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<sup>58</sup> *Id.* at 540.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 181 (2000)).

<sup>62</sup> *Id.* (citing *Ailor v. City of Maynardville, Tenn.*, 368 F.3d 587, 596 (6th Cir. 2004)).

<sup>63</sup> *Id.* at 541-42.

<sup>64</sup> *Id.* at 542-43.

<sup>65</sup> *Id.* at 544.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 546.

<sup>68</sup> *Blanton v. City of Pinellas Park*, 887 So. 3d 1224, 1226 (Fla. 2004). MRTA is found under FLA. STAT. § 712 3003. The statutory easement was authorized by § 704.01(2).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

land appraised at \$18,100.<sup>71</sup> The trial court held that the easement was subject to time constraints under MRTA, and the Second District affirmed.<sup>72</sup> The opposition cited a case<sup>73</sup> where the Florida Supreme Court held that a common law easement could be extinguished by MRTA.<sup>74</sup>

In reversing the lower opinion, the court distinguished their prior case on grounds that they were interpreting a different section of the Florida Code, 704.01(1), and that the previous case was differentiated further because it involved common law easements, rather than statutory easements.<sup>75</sup> The opinion went on to say that a statutory easement does not come into existence until an “award ordered by the circuit court is paid.”<sup>76</sup> Then, it noted how MRTA extinguishes claims occurring “prior to the effective date of the root of title.”<sup>77</sup> The court ended the case by pointing to a public policy of the legislature: ensuring that land is used for a productive purpose.<sup>78</sup>

*River Place Condo Ass’n at Ellenton v. Benzing*, 890 So. 2d 386  
(Fla. 2d DCA 2004).

This case involved a land dispute as to who was the proper owner of land that had been submerged in a river until a dredge and fill operation uncovered it.<sup>79</sup> At issue was whether the immediate upland owner or the owner having “record or other title” to the filled lands is the proper owner.<sup>80</sup> The statute<sup>81</sup> in question divested the state of ownership of lands that had been filled prior to 1975.<sup>82</sup> The appeal involved language reading, “the landowner having record or other title to all or a portion thereof or to the lands immediately upland thereof and its successors in interest.”<sup>83</sup> Because the statute gave land to two different types of landowners, the question was which class of landowner had

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *H & F Land, Inc. v. Panama City-Bay County Airport & Ind. Dist.*, 736 So. 2d 1167 (Fla. 1999).

<sup>74</sup> *Blanton*, 887 So. 2d at 1227.

<sup>75</sup> *Id.* at 1228.

<sup>76</sup> *Id.* at 1231.

<sup>77</sup> *Id.* (citing FLA. STAT. § 712.04 (2003) (emphasis omitted)).

<sup>78</sup> *Id.* at 1233.

<sup>79</sup> *River Place Condo. Ass’n at Ellenton v. Benzing*, 890 So. 2d 386, 387-389 (Fla. 2d DCA 2004).

<sup>80</sup> *Id.*

<sup>81</sup> FLA. STAT. § 253.12(9) (2003).

<sup>82</sup> *River Place*, 890 So. 2d at 387.

<sup>83</sup> *Id.* at 387-88 (quoting FLA. STAT. § 253.12(9) (2003)).

priority over the other.<sup>84</sup> The court resolved the issue against the upland landowner, declaring that since the statute listed the landowner having title first, such went the priority of ownership.<sup>85</sup>

*Noblin v. Harbor Hills Dev., L.P.*, 896 So. 2d 781  
(Fla. 5th DCA 2005).

At issue was whether Noblin had an express or implied easement allowing her ingress and egress on property to search and extract oil and minerals;<sup>86</sup> and, if such an easement existed, whether the Marketable Record Titles to Real property Act (MRTA)<sup>87</sup> extinguished such as easement.<sup>88</sup> On the first issue, Noblin successfully argued that his 1948 deed giving an interest in oil and minerals, containing a provision allowing for exploiting minerals and oil, expressly conveyed an easement to enter, search, and extract such minerals and oil.<sup>89</sup> The court agreed that the term “exploit” should be read to grant an easement to search on the property.<sup>90</sup> The court also that noted even if the deed did not contain the “right to exploit”, an implied easement would also be found to exist.<sup>91</sup>

As to the second issue, whether MRTA had extinguished the easement, the court went through an analysis as to when MRTA may extinguish an easement in a case such as this.<sup>92</sup> The court noted factual issues in dispute on which the analysis must rely.<sup>93</sup> Since findings of fact were required to determine whether MRTA extinguished the easement, the case was remanded for further proceedings.<sup>94</sup>

*City of Orlando v. MSD-Mattie, L.L.C.*, 895 So. 2d 1127  
(Fla. 5th Dist 2005).

A landowner objected to a city leasing excess fiber optic capacity in lines running over private property.<sup>95</sup> The city had been granted an easement for electric transmission and

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<sup>84</sup> *See id.* at 387-89.

<sup>85</sup> *See id.*

<sup>86</sup> *Noblin v. Harbor Hills Dev., L.P.*, 896 So. 2d 781, 782 (Fla. 5th DCA 2005).

<sup>87</sup> FLA. STAT. ch. 712 (2002).

<sup>88</sup> *Noblin*, 896 So. 2d at 782.

<sup>89</sup> *Id.* at 783.

<sup>90</sup> *Id.* at 783-84.

<sup>91</sup> *Id.* at 784.

<sup>92</sup> *Id.* at 785.

<sup>93</sup> *Id.* at 786.

<sup>94</sup> *Id.* at 786-87.

<sup>95</sup> *City of Orlando v. MSD-Mattie, L.L.C.*, 895 So. 2d 1127, 1128 (Fla. 5th DCA 2005).

communications necessary for transmitting electricity.<sup>96</sup> The court analyzed the easement agreement and found that the language allowed the city the right to put up wires for communication necessitated by the electric transmission lines.<sup>97</sup> The court relied upon the bundle of sticks analogy and reiterated that an “easement is defined by what is granted, not by what is excluded, and all rights not granted are retained by the grantor.”<sup>98</sup> Even if additional use does not impose an increased burden on a subservient estate, an express easement cannot be expanded in purpose.<sup>99</sup>

*Savage v. Palm Beach County*, 2005 WL 2086197  
(Fla. 4th DCA 2005).

The county decided to purchase lots from the public, and some of the landowners objected to the compensation offered under condemnation proceedings.<sup>100</sup> The landowners appealed the trial court’s decision to exclude testimony from two appraisers.<sup>101</sup> The trial court reasoned, that because the appraisers were basing their opinion on the conclusion that governmental agencies had refused necessary permits in the area in order to reclaim the land, by allowing their testimony the county would be defending the permitting actions of Federal and State agencies.<sup>102</sup> Since the property owners had a right to appeal those permitting decisions administratively, the appraisers’ opinions would be speculative and unsupported.<sup>103</sup> The appellate court reversed the lower court, reckoning that the “property owners were deprived of the opportunity to prove the fair value of their property.”<sup>104</sup> They held that it was within the experts’ testimony to opine on the permitting process and other valuation issues.<sup>105</sup>

*Staten v. Gonzalez-Falla*, 904 So. 2d 498 (Fla. 1st DCA 2005).

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 1129.

<sup>98</sup> *Id.* at 1130.

<sup>99</sup> *Id.*

<sup>100</sup> *Savage v. Palm Beach County*, 2005 WL 2086197 (Fla. 4th DCA 2005).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

Gonzalez-Falla was the owner of a landlocked piece of property.<sup>106</sup> He filed and won a statutory right of way at trial.<sup>107</sup> Staten appealed because the trial court did not limit the easement to the uses allowed per the applicable statute.<sup>108</sup> The applicable statute allows a statutory right of way for necessity.<sup>109</sup> Needs that qualify for necessity include “dwellings or for agricultural or for timber raising or cutting or stockraising purposes.”<sup>110</sup> Staten complained that Gonzalez-Falla was creating a nuisance by leasing the property to hunters who were “loud and annoying at all hours of the day and night and [were] us[ing] the property in an unsanitary manner.”<sup>111</sup>

On appeal, the court held that it was error not to limit the easement to the restrictions found in section 704.01(2), Florida Statutes, the statute under which the easement was granted.<sup>112</sup> The court reasoned that the legislature permitted a statutory easement for certain purposes, and therefore, the easement should be limited to the purposes for which it could be granted.<sup>113</sup>

*St. Johns River Water Management District v. Womack*, 2005 WL 2253833 (Fla. 5th DCA 2005).

The trial judge held that the district had been “unduly influenced, by private interests, to set aside their public responsibilities” when they denied a permit for Womack.<sup>114</sup> Womack had submitted six plans to the district’s staff for development of property he owned along the Wikiva River. Each time the district’s staff recommended the permit be denied.<sup>115</sup> The first five applications had been certified and prepared by an engineer experienced in such permits.<sup>116</sup> The last permit, which was the only one voted on by the District Board, was prepared by Womack himself.<sup>117</sup> After being denied by the Board, Womack filed suit alleging that the improper denials constituted a

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<sup>106</sup> Staten v. Gonzalez-Falla, 904 So. 2d 498, 499 (Fla. 1st DCA 2005).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> FLA. STAT. § 704.01(2) (2001).

<sup>110</sup> Staten, 904 So. 2d at 499.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 500.

<sup>113</sup> *Id.*

<sup>114</sup> *St. Johns River Water Mgmt. Dist. v. Womack*, 2005 WL 2253833 (Fla. 5th DCA 2005).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

temporary and permanent condemnation of his land, in violation of section 373.617, Florida Statutes.<sup>118</sup> The trial court agreed and awarded Womack \$262,384 for the value of the taking and his expenses.<sup>119</sup>

While the appellate court noted the improprieties occurring within the district, it overturned the award for damages.<sup>120</sup> The only final determination by the Board to deny Womack's permit was based on Womack's own submission.<sup>121</sup> Womack's own experts at trial conceded that Womack's personally prepared submission was not sufficient to allow a permit.<sup>122</sup> Since the only final action of the Board was justified, as per Womack's own experts, no takings had occurred.<sup>123</sup> Therefore, the order granting Womack damages was dismissed.<sup>124</sup>

#### IV. FLORIDA STATUTES

The 2005 Florida Legislative session passed a number of bills impacting the environment. Some of the measures are more readily understood than others. One such bill clarified that there is no exemption for government entities from paying vehicle tire and battery fees.<sup>125</sup> Another bill repealed the sales tax exemption for solar energy systems.<sup>126</sup> One bill effectively doubled the fine for littering.<sup>127</sup> The politicians also took charge in the recycling area by passing a law that creates a pilot program to encourage the recycling of campaign signs.<sup>128</sup> A cross section reflecting a portion of the more substantially involved statutes follows. A number of laws involving, among other things, procedural questions have been omitted. For a more comprehensive listing and the text of the bills, the Florida Senate maintains an excellent website.<sup>129</sup> This summary is based on the Senate Committee on Environmental Protection Report.<sup>130</sup>

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at Appendix.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> CS / CB 786.

<sup>126</sup> SB 1620.

<sup>127</sup> CS / CB 1774.

<sup>128</sup> CS / SB 1542.

<sup>129</sup> <http://www.flsenate.gov/>.

<sup>130</sup> <http://www.flsenate.gov/publications/2005/senate/reports/summaries/pdf/environmental.pdf>.

*CS / SB 494 Renewable Energy*

This bill encourages renewable energy by requiring utilities to offer contracts to producers of renewable energy. It also requires that counties expanding or building new waste-to-energy facilities must meet a 30 percent waste reduction goal. Counties with populations under 100,000 are exempt from the latter requirement. Last, the bill encourages local governments to consider waste-to-energy facilities, rather than increasing landfill capacities.

*CS / SB 502 Lake Okeechobee Protection Program*

The legislature recognized that the Lake Okeechobee Protection Plan must be expeditiously implemented. It acknowledged that funding was needed to target the most prolific phosphorous polluters. Responsibility for implementing the plan was jointly assigned to the Department of Agriculture, the Department of Environmental Protection, and the South Florida Water Management District. The bill details funding procedures for the agencies, as well as sources of funding.

*CS / CS / CS / CS / SB 444 Water Supplies*

Looking both at the present and to the future, this bill changed a number of the laws pertaining to the development of water resources. Details in the statute include procedures and matching requirements to obtain state funding for alternative supplies. The bill also addresses permitting and the development of geographic water plans. Counties must address the present and future needs, especially in the face of new development.

*SB 1612 Water Management Security*

Water districts are now required to review employee criminal history for those working at structures of critical importance. Water districts are authorized to review employee criminal histories when they do not manage critical infrastructures. Convictions for certain offenses bar an individual from seeking employment with the water districts for seven years. Individuals currently employed are grandfathered in, unless they work in a restricted area.

*CS / CS / SB 2502 Environmental Permitting Programs*

New rules are enacted for phosphate mining that impacts wetlands. It requires mining companies to demonstrate the financial ability to mitigate wetlands affected by the permit. The bill also requires DEP to combine the process for wetlands permitting between the federal and state levels.

*SB 2288 Natural Resources*

Among other things, this bill encourages local government to construct and operate public marinas, boat ramps, and docks by requiring DEP to issue permits by rule. The marinas are not to exceed 40,000 square feet of wetlands and other surface waters. The resulting marinas are to be held in perpetuity for the use of the public.

*CS / CS / SB 774 Greenways and Trails*

The bill encourages private landowners to continue supporting the Florida National Scenic Trail by incentives and liability protection. It also creates the "Florida Circumnavigation Saltwater Paddling Trail". The bill directs DEP to set up starting and finishing points for the paddling trail. Lastly, the bill establishes a program to enhance bicycling in the State of Florida by studying how it can conserve resources, improve health, and reduce traffic congestion.

*CS / CS / SB 2426 Beach Safety*

DEP must create a uniform beach warning and safety program. The program's goals are to encourage uniform notification of dangers and to warn the public. The bill provides that, while establishing the program and since the coastal zone is inherently dangerous, the failure of a governmental entity to implement and use such warnings is not grounds for liability.

*CS / SB 2510 Natural Resources*

This bill addressed a number of issues including: natural resources damage assessments, heavy mineral mining and Coastal Zone Management Act reviews. Notably, the bill creates a Florida Oceans and Coastal Council within DEP. The Council is responsible for compiling and reviewing research regarding

activities along the coast and ocean. With the research gathered, they are to develop a library, as well as develop a research plan for future use by the Legislature to determine later appropriation of funds.