

KATHLEEN PASSIDOMO
President of the Senate



PAUL RENNER
Speaker of the House



Joint Legislative Auditing Committee

Senator Jason Pizzo, Alternating Chair
Representative Michael Caruso, Alternating Chair

Meeting Packet
Thursday, January 26, 2023
412 Knott Building

1:00 p.m. – 3:00 p.m.

The Florida Legislature
COMMITTEE MEETING AGENDA
JOINT LEGISLATIVE AUDITING COMMITTEE

Senator Jason W. B. Pizzo, Alternating Chair
Representative Michael A. “Mike” Caruso, Alternating Chair

MEETING DATE: Thursday, Jan 26th

TIME: 1:00 – 3:00 P.M.

PLACE: 412 Knott Building

MEMBERS:

Senator Jason Brodeur
Senator Tracie Davis
Senator Nick DiCeglie
Senator Corey Simon

Representative Daniel “Danny” Alvarez, Sr.
Representative Christopher Benjamin
Representative Peggy Gossett-Seidman
Representative Dianne “Ms Dee” Hart
Representative Vicki L. Lopez

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- 1. Consideration of a request for an Auditor General operational audit of the City of Winter Springs submitted by Senator Brodeur**
 - 2. Consideration of a request for an Auditor General operational audit of the North Springs Improvement District submitted by Representative Daley**
 - 3. Presentation of the Auditor General’s operational audit of the West Volusia Hospital Authority and the response from the Authority**
 - 4. Unfinished Business**

**1 Audit Request: City of
Winter Springs**



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Agriculture,
Environment, and General Government, *Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Committee on Health
and Human Services
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JASON BRODEUR

10th District

January 4, 2023

The Honorable Jason W. B. Pizzo
Chair, Joint Legislative Auditing Committee
876 Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1400

Dear Chair Pizzo,

I am requesting that the Joint Legislative Auditing Committee direct the Auditor General to perform an operational audit of the City of Winter Springs. I am aware of concerns regarding activities of the current Mayor, City Commission and City Manager. The residents of Winter Springs have compiled extensive material showing rampant mismanagement and even malfeasance which is harming the 38,000+ residents of the City of Winter Springs.

The scope of the audit, at a minimum, should include the following areas:

- Compliance with Florida law and the City's policies relating to wastewater disposal and environmental protection, and testing of documentation for such operations as deemed appropriate;
- Compliance with Florida law and the City's policies relating to third-party contracting, specifically relating to contracts for wastewater disposal, environmental protection, and marketing, and testing of documentation for such contracts as deemed appropriate;
- Compliance with Florida law and the City's policies relating to the 2017 Central Florida Water Initiative, specifically compliance with state law regarding Consumptive Use Permits, and testing of documentation for such permitting as deemed appropriate;
- Compliance with Florida law and the City's policies relating to public records requests, and testing of documentation for such requests as deemed appropriate;
- Review of the City's internal controls over wastewater disposal, environmental protection, and third-party contracting, and testing as deemed appropriate;
- An evaluation of City's ethics and fraud policies and the City's Code of Conduct

REPLY TO:

- ☐ 110 Timberlachen Circle, Suite 1012, Lake Mary, Florida 32746 (407) 333-1802
- ☐ 405 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5010

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

January 4, 2023
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Thank you for your consideration of this audit request.

Sincerely,

A handwritten signature in black ink that reads "Jason Brodeur". The signature is written in a cursive style with a long horizontal flourish at the end.

Senator Jason Brodeur – District 10

STAFF ANALYSIS

Date: January 25, 2023

Subject: Request for an Operational Audit of the City of Winter Springs

Analyst Coordinator

 DW KD
White DuBose

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Senator Jason Brodeur to have the Committee direct the Auditor General to conduct an operational audit of the City of Winter Springs.

II. Present Situation:

Current Law

Joint Rule 4.5(2) provides that the Legislative Auditing Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law. The Committee may make any appropriate disposition of such requests or referrals and shall, within a reasonable time, report to the requesting party the disposition of any audit request.

Joint Rule 4.5(1) provides that the Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit, review, or examination of any entity or record described in Section 11.45(2) or (3), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, provides that the Auditor General may, pursuant to his or her own authority, or at the discretion of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of the accounts and records of any governmental entity created or established by law.

Section 11.45(2)(j), *Florida Statutes*, provides, in part, that the Auditor General shall conduct a follow-up to his or her audit report on a local governmental entity no later than 18 months after the release of the audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

Request for an Operational Audit of the City of Winter Springs

Senator Brodeur has requested the Committee to direct an operational audit of the City of Winter Springs (City) and stated that he is aware of concerns regarding activities of the current Mayor, City Commission and City Manager and the residents of Winter Springs have compiled extensive material showing

rampant mismanagement and even malfeasance which is harming the 38,000+ residents of the City of Winter Springs. Senator Brodeur has requested that the scope of the audit, at a minimum, include the following areas:¹

1. Compliance with Florida law and the City's policies relating to wastewater disposal and environmental protection, and testing of documentation for such operations as deemed appropriate;
2. Compliance with Florida law and the City's policies relating to third-party contracting, specifically relating to contracts for wastewater disposal, environmental protection, and marketing, and testing of documentation for such contracts as deemed appropriate;
3. Compliance with Florida law and the City's policies relating to the 2017 Central Florida Water Initiative, specifically compliance with state law regarding Consumptive Use Permits, and testing of documentation for such permitting as deemed appropriate;
4. Compliance with Florida law and the City's policies relating to public records requests, and testing of documentation for such requests as deemed appropriate;
5. Review of the City's internal controls over wastewater disposal, environmental protection, and third-party contracting, and testing as deemed appropriate; and
6. An evaluation of City's ethics and fraud policies and the City's Code of Conduct.

Background

The City of Winter Springs, Florida, was originally incorporated in 1959 under the provisions of Chapter 59-1614, *Laws of Florida*,² as the Village of North Orlando. In 1972, Chapter 72-718, *Laws of Florida*, abolished the Village of North Orlando and established the City of Winter Springs (City). The City is located in Seminole County and has an estimated population of 39,038.³

The City operates under a council-manager form of government and is governed by five elected City Commissioners and a separately elected Mayor, each of whom are elected for four-year terms.⁴ The City Manager is a charter officer appointed by the City Commission, acts as the chief administrative officer of the City, and is responsible for the day-to-day management of the City.⁵ The City provides a full range of services to its residents, including police protection; the construction and maintenance of highways, streets, and other infrastructure; and recreational facilities, activities, and cultural events.⁶ The City also provides water, wastewater, garbage, and stormwater utility services to its residents.⁷

The City's Water Works program was "designed to improve the City's water aesthetics and to upgrade the City's current wastewater, reuse, and stormwater infrastructure. [It] is a multi-year program that

¹ Letter from Senator Jason Brodeur to The Honorable Jason W. B. Pizzo, Chair, Joint Legislative Auditing Committee dated January 4, 2023 (on file in Committee Office).

² Note 1 to the Financial Statements, *Annual Comprehensive Financial Report of the City of Winter Springs for the Fiscal Year Ended September 30, 2021*, page 33.

³ University of Florida, College of Liberal Arts and Sciences, Bureau of Economic and Business Research, *Florida Estimates of Population by County and City 2022 (Table 1 only)*, page 17, available at https://bebr.livewire-web-applications.com/wp-content/uploads/2022/12/estimates_2022.pdf (last visited January 24, 2023).

⁴ *Letter of Transmittal, Annual Comprehensive Financial Report of the City of Winter Springs for the Fiscal Year Ended September 30, 2021*, page v.

⁵ City of Winter Springs' website: <https://www.winterspringsfl.org/citymanager> (last visited January 24, 2023).

⁶ See *supra* note 3.

⁷ City of Winter Springs' website: <https://www.winterspringsfl.org/finance/page/utility-billing> (last visited January 24, 2023).

began in 2011 and focuses on improving City facilities and infrastructure related to water. These projects encompass all the City utilities, including the three water treatment plants, both wastewater treatment plants, the water distribution and sewer collection system, the reuse system and augmentation plant, and the stormwater system of ponds, culverts, and pipelines. Phase 1, which began in 2011, included \$3.5 million for the construction of the Lake Jessup Reclaimed Water Augmentation Plant and a \$6.3 million drinking water system upgrade in 2015 at Water Treatment Plant No. 1...In addition to improvements to the drinking water system, Phase 1 also included four major stormwater projects. Phase 2...includes improving the taste and smell of the drinking water. The City has engaged two...engineering firms...to consult with the City on how improvements can be realized. This phase is currently underway...The final phase of the program is the replacement of the City's two wastewater plants. In 2019, the City contracted with Veolia Water North America - South, LLC (Veolia) to assume the operation, maintenance, and management services for the City's drinking water treatment, wastewater treatment, and reuse utilities."⁸

Concerns

Concerned residents of Winter Springs provided a detailed letter and documentation to Senator Brodeur's office regarding the following concerns/allegations:⁹

- Rampant mismanagement and even malfeasance which is harming the 38,000+ City residents;
- Issues surrounding the Consent Orders from the Florida Department of Environmental Protection (DEP) to the City; the City's hiring of Veolia, a company sued for its involvement in the Flint, Michigan Water Crisis; demand letters from the St. Johns River Water Management District (SJRWMD) to the City for issues with the City's Consumptive Use Permits (CUP);
- Suspected violations of state ethics laws (one commissioner may have paid another commissioner's utility bill);
- A complete lack of transparency and censoring residents;
- Taxpayer-funded misinformation campaigns and inappropriate use of taxpayer dollars to aid commissioner(s) re-election campaigns; and
- Possible public corruption and profiteering with a commissioner, who is an attorney, threatening a special assessment in writing on residents to pay his own legal fees.

Wastewater Issues and DEP Consent Orders

In their letter, the citizens state that, "[o]n January 1, 2021, a massive environmental catastrophe occurred in which hundreds of fish died in a pond in a [City] subdivision...As 10,000-15,000 gallons of wastewater was unlawfully released into a pond in the middle of a neighborhood, killing the fish and putting endangered birds at risk who depended on the fish for food. This was widely reported in local news media outlets¹⁰...Prior to the first signs of fish dying, residents had been reporting odors and discoloration in the same pond as early as November 29th. The City failed to act upon reports, even

⁸ City of Winter Springs' website: <https://www.winterspringsfl.org/publicworks/page/water-works> (last visited January 24, 2023).

⁹ Source: December 21, 2022 Email from Senator Brodeur's legislative assistant with a link to the detailed letter and documentation received from residents of Winter Springs (on file in Committee Office).

¹⁰ One local news media outlet reported that "In an email to [them], the DEP said Winter Springs says it was a valve malfunction, which has since been repaired. That means 10,000 to 15,000 gallons of partially-treated effluent was released which impacted a stormwater pond, which resulted in a fish kill." [Dave McDaniel, *Significant fish kill brings foul smell to Winter Springs neighborhood*, wesh.com, updated January 20, 2021. Available at: <https://www.wesh.com/article/significant-fish-kill-winter-springs-neighborhood/35272251> (last visited January 24, 2023).]

though DEP documents showed there were unauthorized discharges of sewage into the environment as early as November 11th.¹¹

The letter further states:

- “As a result of the fish kill incident, [DEP] issued an initial warning letter...and conducted an investigation in which they found the city to have committed at least 24 violations...The DEP took disciplinary action and issued three separate Consent Orders against the City.”¹²
- “Leaders of the Winter Springs Community Association, who are tracking many of these issues, interviewed an individual who was a licensed Plant Manager and employee of Veolia at the time, who gave testimony of malfeasance by his supervisors with Veolia, including allegations he was denied access to make appropriate notes in the log books, his log book entries were altered, he notified and met with the City Public Works Director...who stated he would go back to his supervisor, the City Manager, he notified and met with, advised and questioned his Veolia senior Manager about critical issues even before the fish kill and additional sewage dumping, that he was required to improperly test the water, leading to falsified test results being sent to the state. This testimony matches several findings of the March, 2021 DEP Investigation, and indicates foul play on the part of Veolia and possibly [the] City Manager..., who may have engaged in a purposeful attempt to hide test results and send false test results to the state.”¹³

Documentation provided with the citizens’ letter included copies of DEP letters to the City Manager in December 2021 and Consent Orders relating to two enforcement cases against the City.¹⁴

- One Consent Order¹⁵ related to facility spills, maintenance, and operational violations at the City’s West Wastewater Treatment Plant (West Facility).
 - There were reports of multiple unauthorized discharges of partially treated effluent¹⁶ from the West Facility. The City failed to report such discharges to the DEP within 24 hours of discovery, in violation with DEP Rule 62.620.610(20), *Florida Administrative Code*.
 - The reported instances included the January 1, 2021 event referenced above.
 - DEP staff performed a complaint inspection regarding such on January 6, 2021, followed by a compliance evaluation inspection on January 12, 2021, which noted 16 violations. In addition, two reconnaissance inspections were conducted on January 28 and February 11, 2021, in which two and five additional violations were noted, respectively.
 - The DEP ordered the City to comply with specified corrective actions within stated time periods, including paying \$150,417.65¹⁷ to the DEP in settlement of the regulatory matters addressed in the Consent Order.

¹¹ See *supra* note 9.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The citizens provided a copy of an unsigned Consent Order, along with a December 13, 2021 letter from the DEP to the City regarding such. The executed Consent Order, dated December 20, 2021, was subsequently obtained from DEP by Committee staff.

¹⁶ Effluent means wastewater flowing out of the treatment plant.

¹⁷ \$149,417.65 for civil penalties and \$1,000 for costs and expenses incurred by DEP during its investigation and the preparation and tracking of the Consent Order. The Consent Order states that “[t]he civil penalty in this case includes 9 violations that each warrant a penalty of \$2,000 or more.”

- The City was provided two options it could elect in lieu of making a cash payment for the civil penalties of \$149,417.65: (1) implementing a Pollution Prevention (P2) Project; or (2) implementing an in-kind penalty project with a value of 1^{1/2} times the civil penalty (or at least \$224,126.47), which must be either an environmental enhancement, environmental restoration, or a capital/facility improvement project and could not be a corrective action requirement of the Consent Order or otherwise required by law. The City was required to obtain DEP's approval for either project option it chose.
- The City proposed an in-kind project¹⁸ in lieu of paying the civil penalty.¹⁹
- The second Consent Order, executed on December 20, 2021, related to facility maintenance violations noted during a March 23, 2021 compliance evaluation inspection performed at the City's East Wastewater Treatment Facility (East Facility).
 - These violations included, in part,: (1) calibration and verification procedures and records were incomplete in violation of DEP Rule 62.160.210, *Florida Administrative Code*; (2) an unauthorized discharge occurred at the East Facility's reclaim water distribution pump station in violation of DEP Rule 62.620.610(7), *Florida Administrative Code*; and (3) the air distribution system had multiple malfunctions in violation of DEP Rule 62.620.610(7), *Florida Administrative Code*.
 - The DEP ordered the City to comply with specified corrective actions within stated time periods, including paying \$20,896²⁰ to the DEP in settlement of the regulatory matters addressed in the Consent Order.
 - The City was provided two options it could elect in lieu of making a cash payment for the civil penalties of \$20,396: (1) implementing a Pollution Prevention (P2) Project; or (2) implementing an in-kind penalty project with a value of 1^{1/2} times the civil penalty (or at least \$30,594), which must be either an environmental enhancement, environmental restoration, or a capital/facility improvement project and could not be a corrective action requirement of the Consent Order or otherwise required by law. The City was required to obtain DEP's approval for either project option it chose.

DEP staff stated that additional correspondence and documentation related to both Consent Orders are available on DEP's website through its electronic management system (OCULUS).²¹ In March 2022 DEP approved both the in-kind project and the P2 Project proposed by the City in lieu of paying the civil penalties imposed in the Consent Orders on the West Facility and the East Facility, respectively. DEP staff stated that some extensions for additional time have been granted, mainly due to supply chain delays that all utility companies have been facing. In addition, the City has been and is continuing to provide the quarterly reports to DEP as required by the Consent Orders.

Water Contractor (Veolia) Hiring

The citizens' letter includes concerns regarding the City's current water contractor and states that "The City... hired a company called 'Veolia' to take over all operations of the [City's] water system. Veolia

¹⁸ The in-kind project was a facilities improvement project to complete SCADA (Supervisory Control and Data Acquisition) system improvements at both its West Water Reclamation Facility and the 57 lift stations within the City's boundaries by replacing old equipment.

¹⁹ Letter from the City Public Works and Utilities Director to DEP Central District staff dated January 28, 2022 (on file in Committee office).

²⁰ \$20,396 for civil penalties and \$500 for costs and expenses incurred by DEP during its investigation and the preparation and tracking of the Consent Order.

²¹ Phone conversation with an Environmental Consultant in DEP's Central District on January 23, 2023.

is known for its involvement in the Flint, Michigan water crisis. Veolia was originally sued by the State of Michigan for making misleading statements to the public about the safety of water in Flint, Michigan. That case did not move forward, in favor of another class action lawsuit which is still pending, in which Veolia is still a party, and in which there have already been hundreds of millions of dollars paid out by other companies who have been part of that suit. The City Commission was well advised of the issues concerning Veolia not only in Flint, but in several other cities throughout the country.”²²

The letter further states: “The City Manager, in concert with [the] Commissioner [who was Deputy Mayor at the time]..., attempted on May 20, 2019 to hire Veolia to a 5-year, \$17-million NO BID contract at a city workshop in which the Mayor was known to not be present and in which [he]...was running the agenda. According to [a May 21, 2022 letter from the former Mayor], it was known that the City Manager...had prior connections to Veolia. It was only media presence and public pressure that derailed the attempt to make the NO BID hire on May 20, 2019, but [the City Manager]’s personal past relationship, favoritism and professional neglect ensured the Flint, Michigan water company would ultimately be hired and the ‘bidding process’ which followed would be perfunctory. After the failed NO BID attempt, an RFQ (Request for Qualifications) was crafted in part by Veolia, which included questions and issues that only Veolia would be able to answer which caused other qualified water management companies to not bid, realizing the ‘fix’ was in.”^{23 24}

During the September 9, 2019 City Commission meeting in which the City Advisory Selection Committee’s ranking and recommendation for RFQ #05-19 LR (“Professional Services for Utilities Operations, Maintenance, and Management Services”) were presented.²⁵ Only two companies responded to the RFQ, and Veolia had the highest scoring total and was recommended as “the most qualified firm, demonstrating experience and financial capability to effectively and efficiently assume responsibility for managing the City’s two wastewater plants, three water plants, reuse augmentation plant, reclaimed water storage and pumping system, 50 lift stations, and stormwater infrastructure.” The City Commission voted 4-1 to accept the Advisory Selection Committee’s ranking of Veolia and authorize contractual negotiations with Veolia.

St. Johns River Water Management District - Violations, Demands, and Water Shortages

In their letter, the citizens state that “in addition to running afoul [with]...DEP standards, the City...has faced many issues with its Consumptive Use Permits²⁶ (CUPs). Residents made public information requests and discovered the City had not taken any action to comply with the requirements of the 2017 Central Florida Water Initiative²⁷ to develop alternate sources of water. This is despite previous

²² See *supra* note 9.

²³ At the time of the RFQ, Veolia was providing Wastewater Emergency Assistance Services as approved by the City Commission.

²⁴ See *supra* note 9.

²⁵ City Commission Meeting Packet for September 9, 2019. Available at:

https://winterspringsfl.granicus.com/DocumentViewer.php?file=winterspringsfl_709b6deb19ddfffe9e13ba1ade549990.pdf&view=1 (last visited January 24, 2023)

²⁶ It typically allows water to be withdrawn from groundwater or surface water for reasonable-beneficial uses - such as public supply (drinking water), agricultural and landscape irrigation, commercial use and power generation - in a manner that does not interfere with other existing legal water uses and protects water resources from harm (such as saltwater intrusion and drying up of wetlands, lakes and springs). Source: <https://www.sjrwmd.com/permitting/#about-cups> (last visited January 25, 2023).

²⁷ “The Central Florida Water Initiative (CFWI) is a collaborative process involving the Department of Environmental Protection, the St. Johns River Water Management District, the South Florida Water Management District, the Southwest Florida Water Management District, the Department of Agriculture and Consumer Services, regional public water supply

leadership having knowledge of an artesian well in the Parkstone HOA which was certified to be producing 1 million daily gallons of potable water from an artesian well. The Parkstone HOA board began to interact with the SJRWMD to assert its rights...The City wrongfully asserted its rights as the owner of the water on the Parkstone HOA property. This fraudulent claim to ownership of the water was the basis for obtaining the CUP and a \$3 million grant from [SJRWMD] in 2013. The [SJRWMD] sent a letter to Parkstone HOA on March 18, 2022 stating the [C]ity never produced documentation proving ownership of the water. The leadership of the City continues to defraud the SJRWMD and residents of [the City] by unlawfully asserting its ownership of the artesian well.”²⁸

Three letters from the SJRWMD were included as addendums to the citizens’ letter:

- The first letter, dated July 30, 2021, was addressed to the City’s Public Works and Utilities Director and referenced a meeting with him and other City representatives, a subsequent visit to the free-flowing artesian well site, and review of the City’s CUP No. 105763 and related compliance. The letter stated that “it is our understanding that the incorporation of this well as a supplement to the City’s reclaimed water system is incomplete. Specifically, the construction of a submersible pump station, flow meters, and piping to the Lake Jesup Reclaimed Water Augmentation Plant from the artesian well as envisioned when the CUP was issued in 2007 (Conditions 13 and 14 of the CUP) has not been completed.” The letter further references SJRWMD’s understanding of the City intent to “evaluate the feasibility of completing the construction noted above, as well as stabilizing the surface soils in the vicinity of the well on the Parkstone Community Association’s property to alleviate episodic subsidence in the area of the well (Condition 4 of CUP 105763)” and requests that the City provide “an evaluation of the feasibility of utilization of this resource within 90 days of receipt of this letter” and requests if, after the evaluation, the City: (1) “wish[es] to retain the use of the water...[the City’s] report include a schedule to install the infrastructure required to connect the artesian well to the City’s reclaimed water distribution system;” or (2) “determine[s] that it is not feasible to use the artesian well for beneficial purposes, you may submit a permit modification request to remove the well and attendant metering stations from CUP 105763.”²⁹
- The second letter, dated October 28, 2021, was addressed to the City Manager and related to the City’s CUP No. 105763 and the utilization of the free-flowing artesian well in the Parkstone

utilities, and other stakeholders. As set forth in the Central Florida Water Initiative Guiding Document of January 30, 2015, the initiative has developed an initial framework for a unified process to address the current and long-term water supply needs of Central Florida without causing harm to the water resources and associated natural systems. The “CFWI Area” is all of Orange, Osceola, Polk, and Seminole Counties, and southern Lake County. Section 373.0465, *Florida Statutes*, directs the agencies to develop a water supply planning process to identify measures necessary to prevent further harm to water resources in the area. The CFWI’s planning process concluded that traditional resources alone cannot meet future water demands or currently permitted allocations without resulting in unacceptable harm to water resources and related natural systems. The public interest requires protection of the water resources from harm. Section 373.0465, *Florida Statutes*, directs the Department of Environmental Protection to adopt uniform rules for application within the CFWI Area. Rules 62-41.300 through 62-41.305, *Florida Administrative Code*, and [the Central Florida Water Initiative] Supplemental Applicant’s Handbook address the public interest by providing a uniform regulatory framework to allow for the allocation of available groundwater in the area, subject to avoidance and mitigation measures to prevent harm. This regulatory framework is one component of a comprehensive joint water management strategy for regional water resource management that also includes regional water supply planning, alternative water supply project funding, and water resource investigations and analyses. These rules will apply to consumptive use permit applicants in the CFWI Area.” [Source: *Central Florida Water Initiative Area Supplemental Applicant’s Handbook*, page 3, located on the St. Johns River Water Management District’s website: <https://www.sjrwmd.com/documents/permitting/#cup> (last visited January 25, 2023).]

²⁸ See *supra* note 9.

²⁹ *Id.*

Subdivision.³⁰ SJRWMD requested that: (1) “the City provide a detailed timeline with respect to the individual projects that City is undertaking that will result in delaying completion of the feasibility evaluation for the free-flowing artesian well located within the Parkstone project;” (2) “if there are tasks that can be undertaken by the City’s hydrogeological consultant, regardless of the outcome of the feasibility analysis, they be completed as soon as possible;” and (3) “the City provide a detailed timeline for the artesian well feasibility evaluation for District’s review and consideration...by November 15, 2021.”^{31 32}

- The third letter, dated March 18, 2022, was addressed to the Parkstone Community Association and provided answers to three questions that had been recently asked by the Association:
 1. “To date St. Johns has been unable to locate a well on the property? District Response: Evaluation by District staff indicates there is no wellhead associated with the groundwater discharge occurring with PCA’s property.”
 2. “No one has produced a signed agreement between Winter Springs and Parkstone giving Winter Springs access to this water, correct? District Response: Yes, a signed agreement has not been provided to the District.”
 3. “Whomever Parkstone decides to give access is a private matter between Parkstone and that entity, and does not require approval from the District, correct? District Response: Yes, that is correct.”³³

Committee staff discussed the artesian well issue with SJRWMD staff. Approximately 20 years ago, a free-flowing artesian feature was encountered on property within the Parkstone subdivision by the developer during site earthwork operations. The groundwater seepage to the land surface was addressed by installing a subsurface drainage collection system that was connected to a pipe that laterally conveys the water from the property to Lake Jesup, approximately a few hundred feet away. It is SJRWMD staff’s understanding that, although the parties involved at the time apparently agreed to such, there was no financial agreement made and the City has never tried to perfect an easement on this portion of the property. Based on such and additional information provided by SJRWMD, this item is considered to be more of a legal issue than an audit issue.³⁴

Suspected Violations of State Ethics Laws; Public Records Access Issues

The citizens’ letter stated that “as pressure mounted on the City...by the DEP and SJRWMD, and in response to the emergency water shortages, the City leadership decided instead to launch an ‘investigation’ and issue subpoenas to a long list of individuals who were known political adversaries of [one] Commissioner...many of whom [the Commissioner] had received ‘Cease and Desist’ letters during the last election after it was discovered they were supporting his opponent. This was done under the pretense of attempting to get to the bottom of the water crisis, however the current City Manager who presided over this crisis, the long time current City Attorney..., both who were deeply involved in the original CUP negotiations with SJRWMD, and the contractor Veolia who operated the water system since 2019, were not called in for questioning.”³⁵

³⁰ SJRWMD’s letter references a letter from the City dated October 6, 2021, and a meeting on September 9, 2021.

³¹ *Id.*

³² No additional documentation was provided regarding this matter.

³³ *See supra* note 9.

³⁴ Phone conversations with SJRWMD staff on January 23 and 25, 2023.

³⁵ *See supra* note 9.

The citizens provided a copy of a letter from an attorney, who represented many of the individuals who were subpoenaed, to the City Commission, dated September 20, 2021, and stated that the letter outlines: (1) “The blatant abuse of power of the [City] Mayor and Commission;” (2) “The motive, bias and lack of candor of the commission meetings;” (3) “How [a certain] Commissioner...incited the City [a]gainst his constituents;” (4) “How [a certain] Commissioner...violated his Code of Ethics six times;” (5) “How the Commissioners fell in line with a taxpayer funded witch hunt of residents;” and (6) “How the Commission and Mayor abused their power on the dais to make knowingly false statements to the public.”³⁶

In addition, the citizens allege that an informant told them that one City commissioner “had personally paid the water utility bill for [another City commissioner]” and stated that “[t]his is a violation of state ethics laws which prevent conflicts of interest in voting on [C]ity business and has not been reported as gifts.”³⁷ The citizens stated that the City did not provide the public records regarding such as requested.³⁸

Other Concerns

The citizens’ letter also references other areas of concern relating to: (1) lack of transparency; (2) censoring of residents; (3) concerns of public corruption and profiteering; (4) a former employee’s statement that “[p]ayment card compliance isn’t worried about since they say no one will ever audit them;” and (5) a toxic environment at City Hall and a high exodus of senior staff over the past three years.³⁹ The letter states that “[t]he condition in city hall became so bad that six former elected city officials wrote a letter demanding the resignation of [the current City Manager].”^{40 41} In regards to the staff turnover, the citizens’ letter states that the:

- “The long-time City Clerk with over 24 years [of] experience...was forced to resign and retire.”
- “The replacement Clerk had no experience in that position.”⁴²
- City is on at least its 3rd Chief of Police, Finance Director, Parks Director, Public Works Director, and City Engineer (and now is mostly an outsource).⁴³
- City is on at least its 4th Community Development Director.⁴⁴
- IT department is down to one person and is mostly outsourced now.⁴⁵
- Water department was outsourced to Veolia including all water employees.⁴⁶
- “The larger concern is that despite outsourcing so many employees, the [C]ity payroll has exploded due to the apparent policy of just throwing bodies at issues without any viable plans for real solutions.”⁴⁷

In addition, Senator Brodeur received concerns from another citizen relating to the following areas:⁴⁸

1. Records that reflect how the City has spent its share of the 2014 penny sales tax;

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ The referenced letter is included as an addendum to the citizens’ letter.

⁴² *See supra* note 9.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Emails from Senator Brodeur to Committee staff dated January 23, 2023 (on file in Committee Office).

2. Records that reflect what was spent to repair and maintain certain bridges since 2014 (request appears to be limited to bridges damaged by Hurricane Ian):
 - The citizen, a former Seminole County Commissioner, stated that the City included the bridges on its list of infrastructure that needed updating when it was supporting the penny sales tax passed in 2014.⁴⁹
 - In late November 2022, the citizen made a public records request for the following: (1) records reflecting the current damage assessment relating to these bridges; (2) an estimate of the design and repair work that is being done; and (3) any records that reflect applications the City is making to FEMA for compensation concerning damages incurred relating to Hurricanes Ian and Nicole and, in particular, relating to the subject bridges. He was informed that it would cost him in excess of \$1,000 for the City to compile and provide the requested records.⁵⁰
3. City reserves to fund capital improvements and needed repairs without borrowing money:
 - The City's Water and Sewer Utility Enterprise Fund had \$18,560,505 in unrestricted net position at the end of the 2020-21 fiscal year.⁵¹ The citizen states that "[i]t is well known that [the City's] W&S Utility has suffered from deferred maintenance for quite some time. The problems with our water and wastewater treatment plants have already been the subject of some TV news reports. It has been represented by the mayor at a public meeting recently that the system needs about \$70M to address deferred maintenance and repairs that are needed. Clearly, the system does not have cash to fund a \$70M capital expenditure and needs to plan and execute a Capital Improvement Program ("CIP")...[the City] needs to perform a rate study to determine the parameters of what that CIP would be, including the amount needed to be borrowed, the rates of interest and, most importantly, the effect on rates for water and sewer to be charged to the customers."⁵² In addition, the citizen stated that in August 2022 he was told by the City Manager that "this 'rate study' was going to be done in December 2022."⁵³

Financial Audit

The City has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA). The City has submitted the audit reports to the Auditor General's Office in accordance with Section 218.39(1), *Florida Statutes*.⁵⁴ The most recent financial audit report submitted to the Auditor General is for the 2020-21 fiscal year and did not include any audit findings. In addition, the audit report stated that there were no audit findings or recommendations in the prior year that required corrective action.

Summary of Certain Financial Information Included in the City's Audit Report:

- "The assets and deferred outflows of the City of Winter Springs exceeded its liabilities and deferred inflows at the close of the most recent fiscal year by \$139,413,122 (net position). Of this amount,

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Pursuant to Section 218.39(7), *Florida Statutes*, these audits are required to be conducted in accordance with rules of the Auditor General promulgated pursuant to Section 11.45, *Florida Statutes*. The Auditor General has issued *Rules of the Auditor General, Chapter 10.550 - Local Governmental Entity Audits* and has adopted the auditing standards set forth in the publication entitled *Government Auditing Standards* (2018 Revision) as standards for auditing local governmental entities pursuant to Florida law.

\$35,787,436 (unrestricted net position) may be used to meet the government's ongoing obligations to citizens and creditors."⁵⁵

- "As a result of the current year's activities, the government's total net position increased by \$6,010,110 or 4.51% from the prior year."⁵⁶
- "As of the close of the current fiscal year, the City of Winter Springs' governmental funds reported combined ending fund balances of \$38,476,471. Approximately 23% of this total amount, \$8,777,061, is available for spending at the government's discretion (unassigned fund balance)."⁵⁷
- "At the end of the current fiscal year, unassigned fund balance for the general fund was \$8,811,749, or 57% of total general fund expenditures."⁵⁸
- "As a result of current year's activities, the City of Winter Springs' total debt decreased by \$1,453,827 (5%)."⁵⁹ At fiscal year-end, the City had total debt outstanding of \$30,679,047.⁶⁰

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit as defined in Section 11.45(1)(i), *Florida Statutes*, and take steps to avoid duplicating the work efforts of other audits being performed of the City's operations, such as the annual financial audit. The primary focus of a financial audit is to examine the financial statements in order to provide reasonable assurance about whether they are fairly presented in all material respects. The focus of an operational audit is to evaluate management's performance in establishing and maintaining internal controls and administering assigned responsibilities in accordance with laws, rules, regulations, contracts, grant agreements, and other guidelines. Also, in accordance with Section 11.45 (2)(j), *Florida Statutes*, the Auditor General will be required to conduct an 18-month follow-up audit to determine the City's progress in addressing the findings and recommendations contained within the previous audit report.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with the City's governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of the City's governing board and management, as well as the citizens living within the boundaries of the City. Alternately, any audit findings that are not corrected after three successive audits are required to be reported to the Committee by the Auditor General, and a process is provided in Section 218.39(8), *Florida Statutes*, for the Committee's involvement. First, the City may be required to provide a written statement explaining why corrective action has not been taken and to provide details of any corrective action that is anticipated. If the statement is not determined to be sufficient, the Committee may request the Chair of the City Council to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to the City until the City complies with the law.

⁵⁵ *Management's Discussion and Analysis; Annual Comprehensive Financial Report of the City of Winter Springs for the Fiscal Year Ended September 30, 2021*, page 4.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*, page 15.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an operational audit of the City of Winter Springs as addressed herein, the Auditor General, pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of Senator Brodeur as included in his request letter and herein are considered.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the Committee directs the audit, the Auditor General will absorb the audit costs within her approved operating budget.

V. Related Issues:

None.

This staff analysis does not reflect the intent or official position of the requestor.
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**2 Audit Request: North
Springs Improvement
District**



Florida House of Representatives

Representative Dan Daley

District 96

District Office:

1607 NW 36th Ave. Building A
Sunrise, FL 33323
Cell: 954-778-3304

Tallahassee Office:

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January 11, 2023

Chair Jason Pizzo & Vice Chair Michael Caruso
Joint Legislative Auditing Committee
876 Pepper Building
111 W. Madison St.
Tallahassee, FL 32399

Re: Request for Internal Audit of the North Springs Improvement District (“NSID”)

Dear Chairman Pizzo and Vice Chair Caruso,

I am respectfully requesting the Joint Legislative Auditing Committee (the “Committee”) direct the Auditor General to perform an operational audit of the North Springs Improvement District (“NSID”).

Over the past several years, our office has received several questions and complaints regarding the operation and actions of NSID. These accounts have multiplied as of late and include threats, nepotism, cronyism, unethical practices, and potential illegalities.

The original complaints regarding a lack of transparency and issues with operation led me to file and successfully pass a local bill during the 2022 Legislative Session that aimed to change the voting mechanism by which the public elect the NSID Board of Directors. That measure will be on the ballot during the 2024 election and will likely lead to the direct election (by popular vote) of the Board of Directors. I fear that changing the voting mechanism may not be enough, nor would it have the same immediate accountability that a state led internal audit would render. I am confident if the Committee chose to undertake such a review, the taxpayers of the State of Florida, and the ratepayers of NSID would be much better off.

In the past several months, local news outlets have shined a light on NSID, and the result has been quite concerning. Accounts of the District Director, Rod Colon, using a loophole in the ethics law

(a loophole I am filing a general bill to close in the 2023 Legislative Session) to pay himself \$240,000 in real estate commission as part of the sale of NSID property; accounts of the District Director hiring friends, relatives, loved ones, and lovers (even going so far as to allegedly provide the love interest with clean urine for a drug test); accounts of NSID funds being paid to friends, relatives, and sitting board members of NSID for work performed purportedly on NSID's behalf; and the list goes on.

Several years ago, when I initially filed the NSID local bill, I described NSID as a "fiefdom" and Mr. Colon as King. Based on recent revelations, I clearly was not far off, and I am deeply concerned with what else may be happening at NSID – that is why I am asking the Committee and the State Auditor General to pull back the curtain and audit NSID.

At a minimum, the audit scope should include NSID's compliance with laws, rules, regulations, contracts, and other requirements in the areas of:

- Purchasing and procurement processes, including contracting, use of competitive bidding, sole source procurements, and other purchasing methods;
- Land purchases (in particular the purchase of the Heron Bay Golf Course with the intent to resell a portion of the land for commercial development and whether the District has the authority to do such);
- Related-party transactions;
- Sale of District land and the process used, including Board approval and direction; and
- Hiring and employment practices.

I have included copies of the most recent articles that relate to the activities of NSID and its Director. I am respectfully requesting the Joint Legislative Auditing Committee conduct a review and direct the State Auditor General to conduct an operational audit. If you need any additional information or have any questions, please feel free to reach out at any time.

Best,

A handwritten signature in blue ink that reads "Dan Daley". The signature is written in a cursive, flowing style.

Dan Daley

Article 1

Public official received \$16 million in contracts from own agency

Wed, May 04, 2022

By Bob Norman, FLCGA News

The ghost government is tucked behind steel gates on a dead-end road in a quiet suburban Coral Springs neighborhood.

Known as the North Springs Improvement District, the agency provides water and sewer services to roughly 40,000 residents of Coral Springs and Parkland, collecting roughly \$17 million a year in taxes and fees to do so.

Small taxing districts like NSID are ubiquitous in Florida. They collect hundreds of billions of dollars between them, yet receive precious little attention, hence their ghost-like profile.

A brighter spotlight might have been helpful in 2017 when NSID's elected three-member board voted unanimously to build a stormwater pumping station in a rural and flood-prone residential area at the upper northwest edge of Broward County, called the Wedge.

That \$4 million contract was awarded to a company called Intersol LLC. It was quite a score for a home-based company with no track record of commercial or government construction work.

More surprising, Intersol was owned by a top NSID official: Rod Colon, then its deputy district manager. Records show Colon was Intersol's sole officer. His Plantation home was its corporate address.

The \$4 million contract was but the first major job Colon's company won at the agency. During a two-year period, Colon's company received roughly \$16 million in contracts for everything from installing water pipelines, to building aquifers, to designing wells. If ever the board discussed the propriety of awarding such contracts to a top employee, meeting minutes don't reflect it.

Florida ethics laws generally prohibit public employees from doing business with their own agencies. But Colon says the rules are different for special taxing districts.

"We're quasi-governmental," Colon told the Florida Center for Government Accountability when reached by phone. "We can do things that other governmental entities can't do."

Later, Colon underscored; "Everything I made was legal."

There does, in fact, exist a little-known provision in the Florida Ethics Code that exempts officers and employees of special districts like NSID from the prohibition against having contractual relationships with their own agencies.

However, the exemption says all other ethics laws still apply and any conduct that runs contrary to the code's "intent" would be deemed a conflict of interest.

When potential conflicts arise, public officials are encouraged to request an opinion from the state's Ethics Commission. NSID instead obtained a letter from a private law firm, Miami-based Genovese Joblove and Battista, which gave Colon a conditional go-ahead.

The November 2017 letter cited the exemption, but also cautioned that the arrangement not "create a personal benefit to Rod's business to the exclusion of others." Attorney Michael Joblove wrote that Colon is still beholden to the state ethics rule that forbids public employees from "corruptly" using their official position to secure a special benefit for personal gain.

In the phone call, Colon stressed that the district engages in a strict competitive process. But our investigation found a system rife with irregularities, inconsistencies, and mounting debt, leaving open the question:

Is this really legal?

The rise of Intersol

In bid documents for the \$4 million contract, Intersol is portrayed as an experienced player on South Florida's construction scene, performing projects "from municipal and government, to commercial and residential." The documents listed several projects the company said it had completed, with photos of the finished work.

But our investigation reveals that Intersol had no such track record. A month before the \$4 million bid was submitted, Colon described Intersol as a "real estate" firm in financial statements he was required to file as a public official. Public records show the company had flipped a couple of residential homes.

Colon's name appeared in the bidding documents only once, on a form that identified him as company's president. The form shows the incorporation date as June 16, 2012, which is erroneous. State records show it was formed on June 16, 2015, just two years before the bid was submitted.

Intersol's bid also boasted of having a knowledgeable and experienced team, though it had no licensed contractor at the time of submission and listed only one "key personnel" member: a Romanian-born engineer named Vandin Lucien Calitu, project manager.

The 51-year-old Calitu was no stranger to the district, either. A former NSID board member, he too has previously won millions in district contracts. In his resume, Calitu wrote that he began working with Intersol in 2014, though the company wasn't formed until 2015. He also said that while employed with Intersol he worked on "countless projects throughout Broward, Miami-Dade, and Palm Beach counties."

But three of the four projects mentioned in the bid documents as having been done by Intersol were also listed in Calitu's resume under the name of a previous employer, Century Building Restoration USA.

One of them was a relatively minor \$300,000 NSID water tank modification that Intersol claimed was completed in 2014, a year prior to the company's formation. District records show the contract was awarded to Century in 2009. Calitu's resume says he began working for Century in 2012.

A "terrible" bidding process

Intersol was up against two other companies for the \$4 million stormwater pump job. Calitu worked for both of those firms, as well.

According to board meeting minutes, Calitu also represented the second-ranked firm, Virtual Design Group, which just a few months before had been awarded a \$7.8 million contract to construct an "employee operations center."

Incredibly, state licensing records show that at the time, Calitu also was the engineer for the third-ranked company, Hallandale Beach-based Cornerstone Engineering Group. Contacted by phone, Cornerstone owner Joseph Ciurdad said Calitu "took the lead" on the NSID bid.

"Cornerstone was not involved with that ... it was done with [Calitu's] companies," Ciurdad said. "I'm not sure how you got Cornerstone involved with that. You should get in contact with Vandin (Calitu)."

Calitu refused to answer any questions when reached on the phone.

"I have nothing to say," he said before hanging up.

Calitu's involvement in all three bids is problematic, said Ben Wilcox, an ethics watchdog with the non-profit group Integrity Florida.

"That's terrible," said Wilcox. "He would have inside knowledge [about all three bidders]."

Colon meanwhile refused to answer follow-up questions about any of his company's dealings with the district, including the criticism he's received on social media.

"For myself, I'm not going to comment," he said. "I have filed a slander lawsuit and that's how I'm responding to it."

Colon sues Facebook critics

Indeed, Colon and Calitu filed a pair of defamation lawsuits in October after an anonymous Facebook poster accused them of corruption.

On their behalf, attorney Douglas Reynolds of the Tripp Scott law firm filed a "John Doe" defamation lawsuit against the Facebook poster, whose pseudonym was "Ed Connely." It said the poster falsely accused Colon and Calitu of "criminal activity including orchestrating a bid-rigging scheme." A separate lawsuit targets a woman who shared and commented on the posts.

"I'm suing anybody who reposted it or anybody who commented on it," Colon told FLCGA News.

The lawsuit says defendant Eileen Maltese urged people to forward the Facebook posts to local government officials. Among the comments listed in the complaint:

"Rodney Colon and his gang should be in prison!!!"

"It's been rumored for years that he is corrupt ... I hope to see him in handcuffs soon!"

"They're liked [sic] a mafia stealing from the taxpayers and getting away with it year after year, after year, after year."

Maltese's husband is a former employee of NSID. She characterized the lawsuit as the "definition of a SLAPP suit." The acronym stands for Strategic Lawsuit Against Public Participation. Such suits are meant to harass people into staying silent. "I think it's ridiculous," she said.

Both lawsuits are pending.

Debt and a new development

To pay for its many construction-related projects, NSID has issued tens of millions of dollars in tax-exempt municipal bonds in recent years. District records show the taxing district currently owes \$82 million on the bonds. To pay down the debt, NSID has levied special assessments on property owners – about \$4 million this year alone.

Colon, an avid bodybuilder whom sources say runs the district with an iron fist, has bigger plans. Under his command, NSID purchased the Heron Bay Golf Course for \$32 million with plans to sell 70 acres for commercial development. "We're hoping for a Mizner Park type of feel," he told the Parkland Talk news website last year.

The plan has prompted vocal protest in the affluent Heron Bay neighborhood. In November residents formed a group called Citizens Against Golf Course Redevelopment and sued NSID to try to stop a "sprawling 529,000 square-foot commercial complex" almost literally in their backyards.

They say Colon's plan violates a deed restriction that forbids commercial development until 2027.

"In November of 2020, NSID sought to buy 150 acres of the Heron Bay Golf Course for \$15 million to create a preserve, which is perfectly allowable," the group's attorney, Joseph Garrity, said in a press release. "Just four months later, in a backroom deal doubling the cost to taxpayers,

70 acres are added to the purchase for commercial development. The Florida Legislature did not grant the NSID the power to be a commercial developer.”

The group’s president, Robert Tankoos, said the lawsuit is about stopping "government organizations and officials from abusing their power and failing to represent their constituents.”

NSID claims the purchase of the land wipes away the deed covenant and is moving forward with the plan. On November 6, it approved a \$4.5 million contract for landscaping and other jobs on the golf course property. The recipient was a company called VLC One Inc The initials reflect those of its owner: Vandin Lucien Calitu, the former NSID board member who also worked for Colon’s company.

VLC One also received a \$500,000 contract to perform design services at the site, all of it to be funded by a \$5 million municipal bond sold by the district. The district is holding a meeting today at noon to name the Heron Bay project’s developer. A selection committee made up of Colon and two district employees has recommended East Coast Builders.

East Coast is a former subcontractor for Colon and Calitu and itself has been awarded millions of dollars in district contracts. In its initial proposal to build the Heron Bay project, the company identified Calitu as its project manager. Its most recent proposal lists another project manager.

Approving the deals has been NSID’s three-member elected board of directors. After a nine-minute meeting on January 5, FLCGA News asked board president Vincent Moretti if he believed it was legal for Colon’s company to receive millions in work from the district.

Moretti, who owns a plumbing business and has served on the board since 2008, looked at Colon, who tried to stop the questioning. The buffed-up, flat-topped Colon demanded that the reporter either leave the building or be arrested for trespassing.

"The meeting is over, you have to get off the property ... or you’re going to be arrested for trespassing,” Colon warned. A police officer echoed his words.

Reminded that he was a public official, Colon countered, "I’m not a public official.”

The only resident in the audience was Tankoos, the president of the citizen’s group suing the district. Tankoos said he’s often the sole person in attendance and that he has watched Colon’s power go seemingly unchecked.

Tankoos would like to see authorities investigate NSID’s dealings.

"There’s virtually no accountability,” he said. "The people who care about responsible government should be stepping in and looking at what's going on, but they don't seem to be doing a damn thing.”

Article 2

Top public official has past business ties, other links to favored Heron Bay developer

Tue, May 31, 2022

By Bob Norman, FLCGA News

The young mother held her daughter in one arm and the mic in the other as she addressed public officials in a room packed with her unhappy neighbors.

"I am angry that they even gave the land to you so you even have the opportunity to ruin the place that I've worked so hard to live in," she said. "And you're gonna turn it into a mall? ... It's not your land to create some money!"

The crowd of more than 150 people erupted in thunderous applause, as it had for others who spoke against a plan to build a massive commercial development on a defunct golf course in Heron Bay, a neighborhood surrounded by nature preserves on the edge of the Everglades in northwest Broward County.

Presenting the development plan at the public meeting was Rod Colon, district manager of the North Springs Improvement District (NSID). The taxpayer-financed public utility supplies water and sewer services to 16,000 households in Parkland and Coral Springs. Now the public agency, under Colon's control, has jumped into the development game.

After purchasing the Heron Bay golf course for \$32 million last year, Colon is recommending to the NSID Board of Supervisors that a local construction company called East Coast Builders and Developers Corp. develop the project. East Coast's proposal entails a huge mall nearly a million square feet in total scope.

But what Colon didn't mention at the May 4 meeting is that he's had business ties of his own with East Coast, a financial relationship that might exceed ethical bounds.

As originally reported earlier this month by FLCGA News, Colon formed a makeshift company called Intersol LLC in his Plantation home and beginning in 2017 was awarded some \$16 million in contracts from his own agency, NSID, over a three-year period.

While that may appear to be blatant self-dealing on the public dime, Colon points to a little-known exemption in the Florida Ethics Code that allows public officials at special taxing districts like NSID to secure contracts with their own agencies.

Residents have filed multiple formal complaints about Colon's dealings at the district with both the Florida Attorney General and the Florida Ethics Commission, FLCGA News has learned.

Because Colon isn't a general contractor and Intersol was largely a company on paper, he had to find another company to do the actual work. For his first big NSID contract, a \$4 million stormwater pump station, Colon hired East Coast to complete the job, according to Broward County public records.

He did this despite a state ethics code that forbids public officials like Colon from having "any employment or contractual relationship" with any company that, like East Coast, does business with his own agency.

Colon didn't respond to a call for comment. East Coast's owner, Frank Anzalone, acknowledged he worked for Colon but said there've been no special favors.

"He hired my company to perform work," said Anzalone. "He wouldn't give me the job unless I was cheaper than everyone else."

But the record shows numerous connections, both professional and personal, between Colon and Anzalone that precipitated the recommendation of East Coast as the builder at Heron Bay.

Colon hired East Coast as a subcontractor for his makeshift construction company, Intersol LLC.

Ties that bind?

Some known connections between Anzalone and NSID:

– According to county construction records, East Coast was engaged to do work not only on Colon's personal residence but also a driveway replacement at the home of Colon's assistant at NSID, Katherine Castro. Anzalone says his company never actually did any work on either property.

– Last summer NSID put Anzalone's then 19-year-old daughter on the public payroll. Anzalone said his daughter was hired as an assistant to the agency's engineering department. The younger Anzalone worked the temporary summer job for two and half months with a pay rate of \$20 an hour, according to NSID.

– The elected NSID board president, Vincent Moretti, owns a plumbing company that has served as a subcontractor for East Coast in the past. Moretti's Pro Bowl Plumbing did work for East Coast in Davie, specifically installing large bathrooms for the company at the Bergeron Rodeo Grounds, confirmed Anzalone. A vote for East Coast could raise ethical questions for Moretti, who was absent for the May 4 meeting and didn't return messages from FLCGA News.

– East Coast, dating back to early 2017, has won millions of dollars in contracts of its own from NSID, including one to build a "records facility" that now hosts the board meetings. In the year following the award, NSID approved "change orders" for the project that ballooned the cost to \$7.4 million, more than double the original contract.

– The relationship extends to social events. Photos posted on Facebook show Anzalone in attendance at a birthday party for Colon's wife, Katherine Coral, last year.

"I don't remember the occasion exactly, but if I'm there, I'm there," said Anzalone. "If you invited me to your birthday party, I would show up."

Anzalone was unwilling to explain the reason for his involvement in a complicated and secrecy-shrouded \$358,000 condominium purchase in March that also involved Colon, one of his business associates, and a former NSID board president.

The condo in Coral Springs was initially purchased on March 4 by a blind trust whose trustee was Stephen Cameron, an attorney for whom Colon has worked as an investigator. A week later Cameron deeded the property to Anzalone as trustee in a transaction that listed Colon as a witness.

Anzalone then deeded the property to Mark Capwell, a lawyer and former NSID board president who left the district in 2020. For that transaction, Colon again served as a witness, along with NSID clerk Brenda Richard. Notarizing the deed was Castro, Colon's assistant at NSID.

The original purchase appears to have been a cash deal and the buyer of the property is never identified in public documents. Anzalone, who is an attorney, refused to shed any light on the deal when asked if Colon was the buyer.

"I can't tell you legal stuff," he said. "I can't tell you attorney-client privilege. I was being hired as an attorney."

Capwell, the former NSID president, had a similar response when contacted by FLCGA News on the phone.

"You're going into areas of attorney-client privilege," said Capwell. "I can't talk about any of that. I'm still an attorney and I have to honor that."

When asked specifically if Colon was the owner, Capwell said, "I can't admit or deny that because the whole point of the trust is to not disclose that."

Capwell's very presence at NSID is testament to Colon's control over the district. Prior to his election to the NSID board, Capwell served as vice president for a now defunct company owned by Colon called R & A Asset Recovery, Inc. Capwell resigned his position at R & A in January 2016 and was soon elected to the NSID board, where he was installed as president just six months later.

When asked if he had any other financial connections to Colon or NSID, Capwell refused to answer the question.

Peter Hegedus, a member of the Heron Bay opposition group, said he finds the "intertwining interests" of East Coast and NSID "abhorrent."

"[Colon] should not have a business relationship with a company that he is supposed to be supervising [at NSID]," said Hegedus. "That's a total conflict of interest. It's against the most elementary rules of contracting and business, not just government."

Questioning the rap sheet

Anzalone himself once had political ambitions. He ran for city commission in Cooper City back in 1998, when he was 32-years-old. But the campaign was tainted when the Sun-Sentinel reported on his criminal history.

In an article headlined, "Record doesn't deter bid," the newspaper detailed candidate Anzalone's "rap sheet," which included "arrests on charges ranging from use of a stolen credit card to grand theft and spans from 1985 to 1994."

Anzalone had been arrested four times with charges dropped in two of the cases, the newspaper reported, citing the Florida Department of Law Enforcement. In 1994, he pleaded no contest to fraudulent use of a credit card and grand theft and was sentenced to two days in jail that had already been served.

"According to the arrest report, a Burdines sales clerk was issuing fraudulent credit to the accounts of several people, including four accounts held by Anzalone," the Sentinel reported. "In one transaction, Anzalone purchased \$1,469 worth of luggage. He then left Burdines with the luggage. However, the receipt showed the transaction was recorded as a credit on his Visa card."

Anzalone was required to pay \$2,000 in restitution to Burdines. The newspaper also reported that Anzalone pleaded no contest in 1985 to grand larceny and using a stolen credit card. In that case he was sentenced to 18 months probation as well as \$120 in restitution.

Broward County court records also show a 1988 conspiracy to distribute cocaine charge for Anzalone. That case was dropped by prosecutors a few weeks after the arrest. Anzalone said he believes the arrest was a case of mistaken identity.

"That one they had the wrong people," he told FCLGA News. "They pulled over a truck that we were driving and I think they found it was the wrong people and they dropped everything."

He told the Sun-Sentinel in 1998 that his arrests were due to his lack of cooperation.

"Every one of these [arrests] could have been avoided," said Anzalone, who was a second year law student at the University of Miami at the time. "[Police officers] question you first and if you answer their questions you are dismissed. But I don't cooperate, I just don't."

Barring traffic infractions, Anzalone hasn't added to that rap sheet in the quarter century since. He graduated law school in 1999 and was soon working as a public defender in Broward County.

"I went to law school just so I could work at the Public Defender's Office and help indigent people," he said. "That's the kind of person I am. I passed up other jobs for more money so I could work with indigent people."

In 2002, Anzalone obtained his general contractor's license and formed East Coast. He acted as both a public defender and construction company operator until 2014, when he left the Public Defender's Office to focus full time on his construction company. He lists his construction company and law office at a mail drop at a UPS Store on University Boulevard in Davie.

As part of his proposal for the Heron Bay development, Anzalone boasted that East Coast had overseen more than \$100 million worth of demolition and construction projects. The three largest East Coast projects he listed as having completed were the Kendall Ice Arena, the Pines Ice Arena, and the Shoppes at Waterways in Aventura.

The problem: East Coast didn't build any of those projects. All of them were in fact completed years before the company was even founded. The completion dates provided in Anzalone's proposal were erroneous. In the case of the Pines Ice Arena, for instance, Anzalone wrote that the building was done at a cost of \$12 million in 2012, when in reality it was built in the late 1990s for \$6.6 million by another company.

When questioned about the discrepancies, Anzalone admitted that East Coast hadn't actually built them. He explained that the projects were completed by a Miami company called Nibor Enterprises, but he included them because he personally worked on the job sites as a "construction supervisor" back in his 20s.

He said he also listed the properties in part because Nibor Enterprises CEO Shlomo Epstein is on his development team for the Heron Bay project as "financial coordinator."

"We've done many projects together," said Anzalone of Epstein. "I was working for Nibor when we did Kendall and Pines Ice Arena."

NSID, under the leadership of Anzalone business associate Colon, either never identified the discrepancies in the East Coast proposal or didn't disclose them to the public.

Heron Bay resident Neil Bass, a leader of the anti-development group, said it sounded like "more smoke and mirrors."

"Everything I've heard is that East Coast hasn't done anything as substantial [as the Heron Bay project]," Bass said. "How is it that they are going to get this job?"

A \$28,000 Dog

Often working with both Colon and Anzalone is a third man, Vandin Calitu, a state-licensed engineer and former NSID board member who has also been involved in millions of dollars worth of construction projects at the agency.

Calitu served as engineer and project manager for Colon's company, Intersol, and, as previously reported by FLCGA News, was deeply tied to all three bidders for Colon's first big \$4 million contract with the agency. Calitu's own company, VLC One Inc., recently won \$5 million in NSID contracts to conduct site work at Heron Bay.

Calitu's company has also served as a subcontractor for East Coast, most notably on the building of the records facility at the water plant that began in January 2020 as a \$3.25 million project, but soon grew to \$7.4 million.

District records show that just four months after East Coast was given the records facility contract, NSID awarded the company a change order to build a second floor, adding \$1.965 million to the bill. In December 2020, NSID handed East Coast another \$1.872 million change order for a roof replacement, the removal of load-bearing walls, a lab expansion, and the addition of "another locker room." Another \$300,000 was added a few months later to bring the total for the building to \$7.4 million.

In the same time period, NSID awarded East Coast more than \$3 million in additional contracts to bring its total to over \$10 million during a 14-month period.

In January 2021, photographs were posted on Facebook by Calitu's wife, Adriana, of Anzalone celebrating the 44th birthday of Colon's wife, Katherine Coral. A photo of Vandin Calitu, Colon and their respective wives was also posted. Anzalone said he occasionally socializes with Colon "if there's an event or something," but added "we don't hang out."

County records show that East Coast was lined up last November to install a paver driveway at the home of Castro, Colon's assistant. Anzalone admitted that a notice of commencement was filed for his company to do the work but says he never did it.

"Someone might have thought I would do something or help them," he said. "But there was no work done by East Coast Builders or Frank Anzalone on that job."

Another personal connection between the parties comes in a lawsuit filed by Adriana Calitu. Filed in October 2020, the suit alleges that when she attempted to buy a \$28,000 French bulldog (with "the most exotic and expensive" color), the dealer switched dogs on her. She claims to be owed a \$5,000 deposit she put down on the purchase. Adriana Calitu's attorney in the case? Frank Anzalone.

Calitu was initially listed as East Coast's project manager for the Heron Bay project in bid documents submitted last year. Another contractor, Upper Buena Vista Management of Miami, was chosen for the job last fall. Anzalone says that choice alone proves the fix wasn't in for his company.

"The track record is me not getting picked a majority of the time," he said.

But disagreements between NSID and Upper Buena Vista led to the latter's removal from the job and prompted a new round of proposals from three companies – the Falcone Group, Toll Brothers, and East Coast. Calitu was removed as project manager in the second East Coast proposal, though he was listed as a witness to Anzalone's signature in the document.

East Coast had by far the most commercial development in its plan and offered NSID just \$21 million for the land, \$11 million less than Toll Brothers, and \$17 million less than Falcone.

Despite that \$11 million deficit and its unpopular plan, East Coast was chosen by a three-member panel consisting of Colon and two of his underlings as the recommended firm to build at Heron Bay.

"I don't trust them."

Heron Bay residents, whose anti-development Facebook page numbers more than 570 members, mobilized to oppose the East Coast plan. While they prefer no development on the property, their clear favorite is Toll Brothers' plan, which involves 110 "luxury home sites" along with no more than 175,000 square feet of commercial space.

When Colon recommended East Coast at the May 4 meeting, those residents packed the meeting to protest the East Coast selection. The meeting began with a surprise, when board president Moretti, usually little more than a rubber stamp for Colon's directives, failed to show up. Attempts by FLCGA News to contact Moretti were unsuccessful.

That left two board members – Grace Solomon and Robert Payton – to make the decision regarding the recommendation. After hearing numerous residents criticize the East Coast plan, Solomon indicated she still backed it.

"Residents, myself included, are tired of driving to Boca or south of here in order to go to a nice restaurant or to meet friends for drinks and dinner," Solomon explained, "or to go to a nice spa or go shopping or do something fun with the kids and have a place to walk around and have a coffee or an ice cream."

Payton then both shocked and delighted the crowd when he essentially tabled the matter, saying the plans needed more vetting by the cities and county. The matter was delayed until the next meeting, which is scheduled for June 1.

"It's gonna be traffic, it's gonna be zoning, it's gonna be land use, it's gonna be a lot of things," Payton said. "... There's going to be a lot of obstacles in the way, so I think we just need to take a step back."

After the contentious meeting was over, Anzalone waited to meet with Colon.

When everybody got done talking to him, I asked [Colon], "What's happening?" said Anzalone. "He [explained what happened] at the board [meeting] I'm assuming I'm going back there in the next month. I have no idea."

Residents will fight East Coast's proposal as long as it takes, promised Heron Bay resident Bass.

"I think East Coast should be eliminated based on the ethical issues alone," he said.

NSID's published agenda for its next meeting indicates the board will again vote on East Coast on June 1. But on Friday the Parkland City Commission called an emergency meeting for June 8 to

discuss a plan to purchase the golf course property from NSID and let the city take the reins on any development that might take place. It's a welcome development for the residents.

"I hope Parkland buys the land," said Bass. "I want NSID out of the picture. I don't trust them."

STAFF ANALYSIS

Date: January 25, 2023

Subject: Request for an Operational Audit of the North Springs Improvement District

Analyst Coordinator

DuBose^{KD} DuBose^{KD}

I. Summary:

The Joint Legislative Auditing Committee (Committee) has received a request from Representative Dan Daley to have the Committee direct the Auditor General to conduct an operational audit of the North Springs Improvement District.

II. Present Situation:

Current Law

Joint Rule 4.5(2) provides that the Legislative Auditing Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law. The Committee may make any appropriate disposition of such requests or referrals and shall, within a reasonable time, report to the requesting party the disposition of any audit request.

Joint Rule 4.5(1) provides that the Legislative Auditing Committee may direct the Auditor General or the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an audit, review, or examination of any entity or record described in Section 11.45(2) or (3), *Florida Statutes*.

Section 11.45(3)(a), *Florida Statutes*, provides that the Auditor General may, pursuant to his or her own authority, or at the discretion of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of the accounts and records of any governmental entity created or established by law.

Section 11.45(2)(j), *Florida Statutes*, provides, in part, that the Auditor General shall conduct a follow-up to his or her audit report on a local governmental entity no later than 18 months after the release of the audit report to determine the local governmental entity's progress in addressing the findings and recommendations contained in the previous audit report.

Request for an Operational Audit of the North Springs Improvement District

Representative Daley has requested the Committee to direct an operational audit of the North Springs Improvement District (NSID) and stated that “[o]ver the past several years, our office has received several questions and complaints regarding the operation and actions of NSID. These accounts have

multiplied as of late and include threats, nepotism, cronyism, unethical practices, and potential illegalities.”¹

Representative Daley has requested that “[a]t a minimum, the audit scope should include NSID’s compliance with laws, rules, regulations, contracts, and other requirements in the areas of:

- Purchasing and procurement processes, including contracting, use of competitive bidding, sole source procurements, and other purchasing methods;
- Land purchases (in particular the purchase of the Heron Bay Golf Course with the intent to resell a portion of the land for commercial development and whether the District has the authority to do such);
- Related-party transactions;
- Sale of District land and the process used, including Board approval and direction; and
- Hiring and employment practices.”

Background

NSID, an independent special district located in Broward County, was created as North Springs Drainage District by a circuit court decree in 1971. Its charter was codified by special act the same year,² as authorized by Chapter 298, *Florida Statutes* (Drainage and Water Control), and its name was changed to NSID.³ In 2005, all previous Special Acts relating to NSID were codified, amended, reenacted, and repealed by Chapter 2005-341, *Laws of Florida*.⁴

In part, Chapter 2005-341, *Laws of Florida*, provides NSID’s Board of Supervisors (Board) with powers to:

- Adopt a water control plan;
- Acquire and maintain sites for storage and maintenance of NSID’s equipment;
- Clean out, straighten, widen, open up, or change the course and flow, alter, or deepen any canal, ditch, drain, river, water course, or natural stream to drain and reclaim the lands within NSID;
- Regulate by resolution drainage requirements;
- Build and construct any other works and improvements across, through, or over any public right-of-way, highway, grade, fill, or cut in or out of NSID;
- Hold, control, and acquire by donation, purchase, or condemnation, any easement, reservation, or dedication in NSID; to condemn as provided by Chapters 73 and 74, *Florida Statutes*, or acquire by purchase or grant for use in NSID any land or property within NSID;
- Assess and impose an ad valorem tax, an annual drainage tax, and a maintenance tax;
- Prohibit, regulate, and restrict by appropriate resolution all structures, materials, and things, whether solid, liquid, or gas, whether permanent or temporary in nature, which come upon, come into, connect to, or be part of any facility owned or operated by NSID;
- Exercise all of the powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes of NSID;
- Construct, improve, and maintain roadways and roads necessary and convenient to provide access to and efficient development of areas within NSID;
- Make use of any public easements, dedications to public use, platted reservations for public purposes, or any reservations for drainage purposes within NSID’s boundaries;

¹ Letter from Representative Daley to Committee Chair Jason Pizzo and Vice Chair Michael Caruso dated January 11, 2023 (on file in Committee Office).

² The original Special Act was Chapter 71-580, *Laws of Florida*, which was revised by eight subsequent Special Acts.

³ Department of Economic Opportunity, Special Districts Profiles available at: <https://specialdistrictreports.floridajobs.org/OfficialList/SpecialDistrictProfiles> (last visited January 24, 2023).

⁴ The Legislature enacted and the Governor approved House Bill 1479 (2005).

- Regulate the supply and level of water within NSID;
- Own, acquire, construct, operate, and maintain parks, playgrounds, picnic grounds, camping facilities, and water recreation facilities within or without NSID;
- Construct or renovate school buildings and related structures, when authorized by the local district school board, which may be leased, sold, or donated to the school district for use in the public education system; and
- Exercise any and all other powers conferred to water control districts by Chapter 298, *Florida Statutes* (Drainage and Water Control).

In addition, NSID has the authority to enter into contracts, borrow money, issue bonds and other financial instruments, impose and foreclose special assessment liens, promulgate rules, cooperate or contract with other water control districts, employ personnel, and enter in leases, as a lessor or lessee.⁵

Since 2005, five additional Special Acts related to NSID have been enacted by the Legislature and approved by the Governor. Four of the Special Acts were limited to extending and enlarging NSID's boundaries.⁶ The fifth, Chapter 2007-285, *Laws of Florida*, provided the Board with the authority, by majority vote, to convert to a Board elected by qualified electors.⁷ It also increased the allowable compensation for each supervisor to \$400 per meeting, not to exceed \$4,800 per year, and amended language in the section of the Special Act related to required bids.

In accordance with Chapter 2005-341, *Laws of Florida*, as amended, the Board shall consist of three members, each serving a term of four years.⁸ NSID's website currently lists two Board members, rather than the three required.⁹ Since October 5, 2022, when the newest Board member's resignation was accepted by the remaining Board members, there have apparently only been two Board members.¹⁰ ¹¹The Board member who resigned was appointed to the Board in December 2021.¹² Those minutes reflect that the Board accepted the resignation of the supervisor who held the at-large seat,¹³ appointed a new individual to fill the vacancy after a nomination from one of supervisors,¹⁴ and approved a

⁵ Chapter 2005-341, *Laws of Florida*.

⁶ Chapters 2010-269, 2011-251, 2015-192, and 2017-209 *Laws of Florida*.

⁷ The Special Act specified that "qualified elector" means any person at least 18 years of age who is a citizen of the United States, a legal resident of the state and of the district and who registers to vote with the Supervisor of Elections of Broward County. Absent the conversion to an election by qualified voters, the Board members are elected by landowners within NSID.

⁸ An exception occurs during transition from a Board elected by landowners to a Board elected by qualified electors of NSID. One of the three seats is initially elected for a two-year term to allow for staggered terms.

⁹ NSID's Website is available at: <https://nsidfl.gov/board-members.php> (last visited January 24, 2023).

¹⁰ The resignation was effective September 21, 2022, according to the District Manager as reported in the minutes for the October 5, 2022 Board Meeting. Available at https://nsidfl.gov/files/10.05.2022_MM.pdf (last visited January 24, 2023).

¹¹ Meeting minutes through the December 2022 Board meeting are posted on NSID's website; no minutes from October 2022 forward reference any discussion about appointing a new Board member. Minutes are available at: <https://nsidfl.gov/meeting-minutes.php> (last visited January 21, 2023).

¹² NSID Board of Supervisors Monthly Meeting Minutes - December 1, 2021 meeting. Available at: https://nsidfl.gov/files/12.01.2021_MM.pdf (last visited January 24, 2023).

¹³ NSID's charter (Chapter 2005-341, *Laws of Florida*, as amended) requires Board seats 1 and 2 to be elected solely by landowners owning property within the city limits of the City of Parkland and the City of Coral Springs, respectively. These Board members must be landowners who own property within the respective city limits. Seat 3 is the at-large seat and is elected by all landowners of NSID, regardless of where his or her property is located. The Board member occupying that seat must be a landowner within NSID.

¹⁴ Chapter 2005-341, *Laws of Florida*, authorizes the remaining supervisor or supervisors (even though less than a quorum) to fill a vacancy by appointment of a new supervisor or supervisors for the unexpired term of the supervisor who vacated his or her office.

resolution designating the President, Secretary, Treasurer, and other officers that consisted of Board members and staff.¹⁵

In 2021, Representative Daley was a sponsor of House Bill 1503, a local bill relating to NSID. The bill passed and was approved by the Governor as Chapter 2021-256, *Laws of Florida*. However, it requires a referendum election and approval by a majority of the qualified electors¹⁶ of NSID before it takes effect.¹⁷ The act requires a referendum on the ballot for the General Election in 2024.¹⁸ If approved by the electors, the act will transition the Board from being elected by landowners to being elected by qualified electors and increase the Board from three to five members.¹⁹ The act removes the requirement for all Board members to be landowners within NSID and states that the members shall be residents of NSID.²⁰

The South Florida Water Management District's map of Broward County (County) lists 21 special drainage districts. NSID is located in the northwest corner of the County.²¹ It is adjacent to Pine Tree Water Control District and Sunshine Water Control District.²²

NSID's 10-Year Water Supply Facilities Work Plan²³ states that "[i]n 1971, [NSID] started out with 3,000 acres and has grown to over 8,500 acres within its District Boundaries. [NSID] provides drainage, potable water services, and wastewater collection to portions of the City of Coral Springs and the City of Parkland, which are located in the municipal boundaries of [NSID]."²⁴ It provides these services to almost 40,000 residents.²⁵

In September 2022, the Board adopted budgets for Fiscal Year 2022-23 with revenues totaling \$19,955,000 for the Water and Sewer Fund and \$3,025,921 for the General Fund.²⁶ The revenues for the Water and Sewer Fund are primarily comprised of fees paid for water and sewer services. The revenues for the General Fund are primarily comprised of Non-Ad Valorem assessments levied on all taxable property within NSID in order to pay for the operating and maintenance expenditures.²⁷ In addition, the Board adopted budgets for Parkland Isles, Heron Bay Mitigation, and its Debt Service Funds.²⁸ Variable amounts of Non-Ad Valorem fees are assessed on NSID's taxable property. While

¹⁵ See *supra* note 12.

¹⁶ The act defines a "qualified elector" as any person at least 18 years of age who is a citizen of the United States, a permanent resident of the state, and a resident of the district who registers to vote with the supervisor of elections of the county in which the district lands are located when the registration books are open.

¹⁷ Chapter 2021-256, *Laws of Florida*. Available at: <http://laws.flrules.org/2021/256> (last visited: January 24, 2023).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Available at: https://nsidfl.gov/PDF/sfwmd_map.pdf. (last visited January 24, 2023).

²² *Id.*

²³ This plan, prepared by NSID staff and ratified by the Board, is dated May 21, 2019. The plan is available at: <https://nsidfl.gov/PDF/10-year-water-supply-plan.pdf> (last visited January 24, 2023).

²⁴ NSID's Directory of Services indicates that it provides water and sewer services for Zip Code 33076 (north side of Coral Springs, portions of Parkland). The directory is available at: <https://nsidfl.gov/service-provider-directory.php> (last visited January 24, 2023).

²⁵ NSID's website available at <https://nsidfl.gov/about-us.php> (last visited January 24, 2023).

²⁶ The Meeting Minutes are available at: https://nsidfl.gov/files/09.14.2022_MM.pdf; the adopted Water and Sewer Fund Budget is available at: https://nsidfl.gov/files/NSID_WS_Adopted_FY_23.pdf; the adopted General Fund budget is available at: https://nsidfl.gov/files/General_Fund_PI_HBM_&_DS_Adopted_Budgets_FY2023.pdf (all sites last visited January 24, 2023).

²⁷ *Id.* Page 5 of budget that includes the General Fund.

²⁸ The adopted budgets are available at: https://nsidfl.gov/files/General_Fund_PI_HBM_&_DS_Adopted_Budgets_FY2023.pdf (last visited on January 24, 2023).

all taxable property is assessed the fee for NSID's General Fund, only taxable property located within Parkland Isles or the Heron Bay Mitigation area, respectively, are assessed the fee related to those fund budgets.²⁹

Concerns

As stated previously, in his request letter, Representative Daley stated that “[o]ver the past several years, our office has received several questions and complaints regarding the operation and actions of NSID. These accounts have multiplied as of late and include threats, nepotism, cronyism, unethical practices, and potential illegalities.”³⁰ He also stated that “[t]he original complaints regarding a lack of transparency and issues with operation led me to file and successfully pass a local bill during the [2021] Legislative Session that aimed to change the voting mechanism by which the public elect the NSID Board... I fear that changing the voting mechanism may not be enough, nor would it have the same immediate accountability that a state led... audit would render.”^{31 32}

Representative Daley stated that “[i]n the past several months, local news outlets have shined a light on NSID, and the result has been quite concerning.” He provided two such articles with his request letter that were investigative reports from the Florida Center for Government Accountability.^{33 34}

The Florida Center for Government Accountability has reported the following concerns in these and other news articles since May 2022:

- In 2017, the Board awarded a \$4 million contract for a stormwater pumping station to Intersol LLC, a company with no track record of commercial or government construction work owned by NSID's then Deputy District Manager, who is now the District Manager.³⁵ The Florida Center for Government Accountability's investigation included a review of the bid documents and the company's history and reported the following:
 - Although in the bid documents “Intersol is portrayed as an experienced player on South Florida's construction scene, performing projects ‘from municipal and government, to commercial and residential’...our investigation reveals that Intersol had no such track record... Public records show the company had flipped a couple of residential homes.”³⁶
 - There were conflicts noted regarding the company's incorporation date. A form in the bid documents, which identified the now District Manager as the company's President, shows the incorporation date in June 2012 rather than June 2015 according to State records.³⁷

²⁹ NSID Adopted Budgets for Fiscal Year 2023 for General Fund, Parkland Isles, Heron Bay Mitigation, and Debt Service Funds are available at: https://nsidfl.gov/files/General_Fund_PI_HBM_&_DS_Adopted_Budgets_FY2023.pdf

³⁰ See *supra* note 1.

³¹ *Id.*

³² See the previous page for a description of the local bill referenced.

³³ See *supra* note 1.

³⁴ As described on its website, “The Florida Center for Government Accountability a non-partisan 501(c)(3) organization, focuses its government accountability and journalistic efforts primarily on local governments, providing support and assistance for citizens and investigative journalists working to hold government accountable.” Its website is available at: <https://flcga.org/> (last visited January 25, 2023).

³⁵ Bob Norman, *Public official received \$16 million in contracts from own agency*, Florida Center for Government Accountability's website, May 4, 2022. Available at: <https://flcganews.org/public-official-received-million-in-contracts-from-own-agency-p379-115.htm> (last visited on January 25, 2023).

³⁶ *Id.*

³⁷ *Id.* Intersol LLC's Articles of Organization can be viewed on Department of State - Division of Corporations' website at: <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResults/EntityName/Intersol%20LLC/Page1?searchNameOrder=INTER SOL> [Note: The LLC was voluntarily dissolved on June 14, 2021].

- “Intersol’s bid also boasted of having a knowledgeable and experienced team, though it had no licensed contractor at the time of submission and listed only one ‘key personnel’ member: a[n]...engineer named... project manager.”³⁸ The engineer was a former NSID board member who had previously won millions in NSID contracts and also represented or worked for the other two firms that had submitted bids for this stormwater pumping station.”³⁹
- Three of the four projects listed as previous company projects in Intersol’s bid documents were also listed on the engineer’s resume as work performed while he was employed by another company.⁴⁰
- The stormwater pumping station was the first major job that the now District Manager’s company, Intersol LLC, had been awarded by NSID.⁴¹ “During a two-year period, [his] company received roughly \$16 million in contracts for everything from installing water pipelines, to building aquifers, to designing wells. If ever the board discussed the propriety of awarding such contracts to a top employee, meeting minutes don’t reflect it.”⁴²
- Residents of the Heron Bay neighborhood formed a group called Citizens Against Golf Course Redevelopment and sued NSID in response to its effort to develop property for commercial purposes.⁴³ An attorney for the group stated that “[i]n November of 2020, NSID sought to buy 150 acres of the Heron Bay Golf Course for \$15 million to create a preserve, which is perfectly allowable... Just four months later, in a backroom deal doubling the cost to taxpayers, 70 acres are added to the purchase for commercial development. The Florida Legislature did not grant the NSID the power to be a commercial developer.”⁴⁴ NSID purchased the land for \$32 million.⁴⁵ The group believes NSID’s plan for development violates a deed restriction that forbids commercial development until 2027; however, “NSID claims the purchase of the land wipes away the deed covenant and is moving forward with the plan.”^{46 47}

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Board Meeting Minutes for September 7, 2022, reflect that the lawsuit referenced was voluntarily dismissed. At its May 4, 2022 Meeting, the Board deferred a decision to proceed with discussions with a builder that the District Manager ranked number one in response to RFP 2022-031 to develop the Heron Bay property. One Board Member voiced concerns about the impact the development would have on traffic in the community, and only two Board Members were present. The Board’s next discussion on this item was three meetings later, at its September 14, 2022 meeting. The City of Parkland (City) was scheduled to consider purchasing NSID’s land (65 acres of the former Heron Bay Golf Course) on September 21, 2022. The NSID Board approved a motion to allow the City ten days to sign a negotiated Purchase and Sale agreement for the land. If the City failed to meet this deadline, the Board authorized staff to execute a back-up agreement with the builder the District Manager had ranked number one, with specific provisions designated. The Florida Center for Government Accountability reported that “the records show numerous connections, both professional and personal, between [the District Manager] and [the owner/builder that the District Manager ranked number one in response to the RFP]. On September 21, 2022, the City approved the execution of a Purchase and Sale Agreement with NSID for the land specified above in the amount of \$25,410,000.

NSID Meeting minutes are available at: <https://nsidfl.gov/meeting-minutes.php> (last visited: January 25, 2023).

Florida Center for Government Accountability news article available at: <https://flcganews.org/top-public-official-has-past-business-ties-other-links-to-favored-heron-ba-p385-115.htm> (last visited: January 25, 2023).

City Meeting minutes are available at: <https://parklandfl.civicclerk.com/Web/Player.aspx?id=300&key=-1&mod=-1&mk=-1&nov=0> (last visited: January 25, 2023).

- The District Manager “has made great sums of money in jaw-dropping ways. Among the personal windfalls for [the District Manager⁴⁸] is the pocketing of a \$240,000 Realtor’s commission on the sale of a \$4 million parcel of [NSID] land.⁴⁹ The District Manager cited a “provision in the Florida Ethics Code that exempts special taxing districts like NSID from the law that prohibits public employees from securing contracts with their own agencies.⁵⁰ The exemption, however, says that all other laws apply and that any conduct that frustrates the intent of the ethics code would be considered unlawful.”⁵¹ An ethics expert cited another provision in the ethics code that may apply that prohibits public officials from misusing their public position to gain a special private benefit, for which there is no exemption.”⁵²
- “Records show that the NSID payroll has served as a kind of employment petri dish for relatives and special interests tied to [the District Manager] and the district he manages.”⁵³ Examples included a relative who reportedly did little while employed and a personal acquaintance who claimed she was not qualified for the position and that he assisted her in passing the required drug test.⁵⁴

Financial Audit

NSID has obtained annual financial audits of its accounts and records by an independent certified public accountant (CPA). NSID has submitted the audit reports to the Auditor General’s Office in accordance with Section 218.39(1), *Florida Statutes*.⁵⁵ The most recent financial audit report submitted to the Auditor General is for the 2020-21 fiscal year and did not include any audit findings. In addition, the audit report stated that there were no audit findings or recommendations in the prior year that required corrective action.

Summary of Certain Financial Information Included in NSID’s Audit Report:

- “The District’s total assets and deferred outflows of resources exceeded total liabilities and deferred inflows of resources by \$167,635,476 (net position).
- Unrestricted net position (deficit) for governmental activities was (\$1,358,325).
- Unrestricted net position for business-type activities was \$21,093,853.

⁴⁸ At the time of the sale, in 2017, he was the Deputy District Manager, and it was reported that it was already part of his job to conduct the land sale.

⁴⁹ Bob Norman, *Water official pockets \$240,000 on public land sale, cites ethics “loophole,”* Florida Center for Government Accountability’s website, December 16, 2022. Available at: <https://flcganews.org/water-official-pockets-on-public-land-sale-cites-ethics-loophole-p416-115.htm> (last visited: January 25, 2023).

⁵⁰ Representatives Daley and Hunschofsky, who each represent part of NSID, have filed separate House Bills for the 2023 Legislative Session to remove this exemption for special districts. See House Bills 199 and 241 (2023). Available at: <https://www.myfloridahouse.gov/Sections/Bills/bills.aspx?SessionId=99&HouseChamber=B> (last visited January 25, 2023).

⁵¹ See *supra* note 49.

⁵² *Id.*

⁵³ Bob Norman, *Rampant cronyism, nepotism plague obscure Broward County water utility,* Florida Center for Government Accountability’s website, December 31, 2022. Available at <https://flcganews.org/rampant-cronyism-nepotism-plague-broward-county-water-utility-p419-115.htm> (last visited January 25, 2023).

⁵⁴ *Id.*

⁵⁵ Pursuant to Section 218.39(7), *Florida Statutes*, these audits are required to be conducted in accordance with rules of the Auditor General promulgated pursuant to Section 11.45, Florida Statutes. The Auditor General has issued *Rules of the Auditor General, Chapter 10.550 - Local Governmental Entity Audits* and has adopted the auditing standards set forth in the publication entitled *Government Auditing Standards* (2018 Revision) as standards for auditing local governmental entities pursuant to Florida law.

- Governmental activities revenues totaled \$11,467,910 while governmental activities expenses totaled \$14,754,170.
- Business-type revenues totaled \$19,606,745 while business-type expenses totaled \$19,996,073.”⁵⁶

Other Considerations

The Auditor General, if directed by the Committee, will conduct an operational audit as defined in Section 11.45(1)(i), *Florida Statutes*, and take steps to avoid duplicating the work efforts of other audits being performed of NSID’s operations, such as the annual financial audit. The primary focus of a financial audit is to examine the financial statements in order to provide reasonable assurance about whether they are fairly presented in all material respects. The focus of an operational audit is to evaluate management’s performance in establishing and maintaining internal controls and administering assigned responsibilities in accordance with laws, rules, regulations, contracts, grant agreements, and other guidelines. Also, in accordance with Section 11.45 (2)(j), *Florida Statutes*, the Auditor General will be required to conduct an 18-month follow-up audit to determine NSID’s progress in addressing the findings and recommendations contained within the previous audit report.

The Auditor General has no enforcement authority. If fraud is suspected, the Auditor General may be required by professional standards to report it to those charged with NSID’s governance and also to appropriate law enforcement authorities. Audit reports released by the Auditor General are routinely filed with law enforcement authorities. Implementation of corrective action to address any audit findings is the responsibility of NSID’s governing board and management, as well as the citizens living within the boundaries of NSID. Alternately, any audit findings that are not corrected after three successive audits are required to be reported to the Committee by the Auditor General, and a process is provided in Section 218.39(8), *Florida Statutes*, for the Committee’s involvement. First, NSID may be required to provide a written statement explaining why corrective action has not been taken and to provide details of any corrective action that is anticipated. If the statement is not determined to be sufficient, the Committee may request the President of NSID to appear before the Committee. Ultimately, if it is determined that there is no justifiable reason for not taking corrective action, the Committee may direct the Department of Economic Opportunity to declare NSID inactive or to proceed with legal enforcement.

III. Effect of Proposed Request and Committee Staff Recommendation

If the Committee directs the Auditor General to perform an operational audit of the North Springs Improvement District as addressed herein, the Auditor General, pursuant to the authority provided in Section 11.45(3), *Florida Statutes*, shall finalize the scope of the audit during the course of the audit, providing that the audit-related concerns of Representative Daley as included in his request letter are considered.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

⁵⁶ *Management’s Discussion and Analysis; North Springs Improvement District, Basic Financial Statements for the Fiscal Year Ended September 30, 2021*, page 4. The audit report is available at: https://flauditor.gov/pages/specialdistricts_efile%20rpts/2021%20north%20springs%20improvement%20district.pdf.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the Committee directs the audit, the Auditor General will absorb the audit costs within her approved operating budget.

V. Related Issues:

None.

This staff analysis does not reflect the intent or official position of the requestor.
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WEST VOLUSIA HOSPITAL AUTHORITY

OPERATIONAL AUDIT

REPORT No. 2022-174

LEGISLATIVE AUDITING COMMITTEE

JANUARY 26, 2023



BACKGROUND

- ❖ The Legislative Auditing Committee directed the Auditor General to conduct an operational audit of the West Volusia Hospital Authority.
- ❖ Our audit focused on selected Authority processes and administrative activities, including those related to providing access to health care for low-income residents, during the period October 2018 through June 2020.
- ❖ In March 2022, we issued our operational audit report No. 2022-174 with nine audit findings.

AUDIT FINDINGS

Finding 1: Significant Constraints Imposed on Audit

Contrary to State law, the Authority did not provide requested records needed to achieve all the objectives of our audit, thereby imposing significant constraints on the conduct of our audit.

- The Authority entered into agreements with a health care provider agency (HIV Grantee) to provide HIV testing and counseling, health behavior and education, and non-clinical support to West Volusia County's indigent population. For the 2018-19 and 2019-20 fiscal years, the maximum contract amounts were \$235,000 and \$219,000, respectively.

AUDIT FINDINGS

- The objectives of our audit included objectives related to various aspects of the Authority's agreement with the HIV Grantee and performance of the HIV Grantee.
 - We received an allegation that the HIV Grantee was frequently and repeatedly testing and counseling the same West Volusia residents.
- To achieve our objectives, we requested relevant records for examination. However, contrary to Federal law and State law, our requests for certain records related to the Authority's contract with the HIV Grantee were denied, imposing significant constraints on the conduct of our audit.

AUDIT FINDINGS

- To analyze the frequency of the HIV Grantee's testing and counseling of West Volusia residents, and to determine the number of those residents who were HIV positive, we requested records regarding services provided during the audit period, including service dates and HIV test results.
- Invoices for HIV Grantee services were provided and showed that, cumulatively, the HIV Grantee billed the Authority for HIV services provided to 1,274 individuals. However, the HIV Grantee declined our request to provide detail supporting the invoices.

AUDIT FINDINGS

- The Authority and HIV Grantee attorneys cited the Health Insurance Portability and Accountability Act (HIPAA) requirements as the reason for not providing the requested records.
- HIPAA provides that “health oversight agencies,” such as the Auditor General, are entitled to protected information.

AUDIT FINDINGS

- We requested the Authority's accounting firm to obtain records from the HIV Grantee to explain the significant difference in the number of clients noted between statements recorded in the minutes of the June 2020 Citizens Advisory Committee (CAC) meeting and data reported in the HIV Grantee report for the period October 2018 to March 2019, which was accepted by the Board at the Authority's May 2019 meeting.
- The HIV Grantee's attorney responded that the HIV Grantee was not "in the appropriate position to investigate the concerns raised regarding perceived inconsistencies with meeting minutes."

AUDIT FINDINGS

Finding 2: Monitoring – Human Immunodeficiency Virus Services Agreement

The Authority should enhance its oversight and monitoring procedures to provide greater assurance that grantees provide services consistent with the Board's intent and that payments to grantees are appropriate, properly supported, and in compliance with agreement terms and conditions.

AUDIT FINDINGS

- The Authority did not monitor the frequency of the HIV Grantee's testing and consultation of West Volusia residents or determine the number of residents that tested positive for HIV.
- Authority records did not evidence that the intervals between services were reasonable and that individuals were not tested more than 3 times during a fiscal year in accordance with HIV Grantee verbal assurances.
- Although the Authority's accounting firm performed compliance reviews to monitor certain aspects of grantee performance, the compliance reviews of the HIV Grantee did not include the procedures necessary to comprehensively evaluate the Grantee's performance.

AUDIT FINDINGS

Finding 3: Grantee Compliance Monitoring

The Authority did not have adequate policies and procedures to ensure that grantee compliance review reports contained all information necessary for the Authority to make fully informed decisions on reported results. Additionally, the Authority Board did not always take appropriate action of record to resolve deficiencies identified in those reports.

AUDIT FINDINGS

Finding 4: Monitoring Contracted Services

The Authority paid a grantee for medical services pursuant to invoices not supported by the detailed records required by the grant agreement.

Finding 5: Contract Approval

The Authority did not approve health care services agreements between the Authority's third-party administrator and health care providers that obligated the Authority to pay for the health care services.

AUDIT FINDINGS

Finding 6: Accumulation of Resources

The Authority accumulated significant resources that may be in excess of amounts necessary for the Authority to fulfill its duties and responsibilities.

Finding 7: Budget Preparation

The Authority had not established written budget preparation policies and procedures. Additionally, contrary to State law, the 2015-16 through 2020-21 fiscal year budgets generally did not include estimated beginning or ending fund balances.

AUDIT FINDINGS

Finding 8: Citizen's Advisory Committee Member Removal

The Authority had not established policies and procedures governing the removal of Citizens Advisory Committee (CAC) members. In addition, in May 2019, the Authority Board removed a CAC member at a public meeting without placing the member's removal on the agenda, which limited the opportunity for public involvement.

Finding 9: Anti-Fraud Policies and Procedures

The Authority had not established anti-fraud policies or procedures.



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FLAUDITOR.GOV

STATE OF FLORIDA AUDITOR GENERAL

Operational Audit

Report No. 2022-174
March 2022

WEST VOLUSIA HOSPITAL AUTHORITY



Sherrill F. Norman, CPA
Auditor General

Board of Commissioners

The following individuals served on the West Volusia Hospital Authority Board during the period of October 2018 through June 2020:

	<u>Seat No.</u>
Barbara Girtman to 12-31-18 ^a	Group A, Seat 1
Dr. John Hill from 1-17-19	
Andy Ferrari, Chair to 1-16-19	Group A, Seat 2
Judy Craig, Chair 1-17-19 to 1-15-20, Vice-Chair to 1-16-19	Group A, Seat 3
Dolores Guzman, Chair from 1-16-20, Vice-Chair 1-17-19 to 1-15-20	Group B, Seat 1
Kathie D. Shephard to 3-18-19 ^b	Group B, Seat 2
Voloria Manning from 4-18-19 Vice-Chair from 1-16-20	

^a Member resigned as of 12-31-18. Position vacant through 1-16-19.

^b Member deceased 3-18-19. Position vacant through 4-17-19.

The team leader was James H. Cole, CPA, and the audit was supervised by Derek H. Noonan, CPA.

Please address inquiries regarding this report to Derek H. Noonan, CPA, Audit Manager, by e-mail at dereknnoonan@aud.state.fl.us or by telephone at (850) 412-2864.

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WEST VOLUSIA HOSPITAL AUTHORITY

SUMMARY

This operational audit of the West Volusia Hospital Authority (Authority) focused on selected processes and administrative activities. Our audit disclosed the following:

Summary of Findings

Finding 1: Contrary to State law, the Authority did not provide requested records needed to achieve all the objectives of our audit, thereby imposing significant constraints on the conduct of our audit.

Finding 2: The Authority should enhance its oversight and monitoring procedures to provide greater assurance that grantees provide services consistent with the Board's intent and that payments to grantees are appropriate, properly supported, and in compliance with agreement terms and conditions.

Finding 3: The Authority did not have adequate policies and procedures to ensure that grantee compliance review reports contained all information necessary for the Authority to make fully informed decisions on reported results. Additionally, the Authority Board did not always take appropriate action of record to resolve deficiencies identified in those reports.

Finding 4: The Authority paid a grantee for medical services pursuant to invoices not supported by the detailed records required by the grant agreement.

Finding 5: The Authority did not approve health care services agreements between the Authority's third-party administrator and health care providers that obligated the Authority to pay for the health care services.

Finding 6: The Authority accumulated significant resources that may be in excess of amounts necessary for the Authority to fulfill its duties and responsibilities.

Finding 7: The Authority had not established written budget preparation policies and procedures. Additionally, contrary to State law, the 2015-16 through 2020-21 fiscal year budgets generally did not include estimated beginning or ending fund balances.

Finding 8: The Authority had not established policies and procedures governing the removal of Citizens Advisory Committee (CAC) members. In addition, in May 2019, the Authority Board removed a CAC member at a public meeting without placing the member's removal on the agenda, which limited the opportunity for public involvement.

Finding 9: The Authority had not established anti-fraud policies or procedures.

BACKGROUND

The West Volusia Hospital Authority (Authority) is an independent special district in Volusia County, created in 1957 to provide access to health care for the qualified indigent residents within the Authority's geographic boundaries, the western portion of Volusia County (West Volusia). The Authority is governed

by a five-member Board of Commissioners (Board), each elected for 4-year terms.¹ The commissioners elect a chair, vice-chair, secretary, and treasurer on an annual basis. The Authority has also established a Citizens Advisory Committee (CAC), which is composed of ten members appointed by the Board and who serve at the pleasure of the Board. The CAC makes recommendations to the Board on how to serve and meet the health care needs of West Volusia residents.

The Authority does not directly own or manage any hospital or clinic and has no employees. The Authority levies ad valorem (property) taxes to provide funding to hospitals and contracted agencies to support health care for low-income residents of West Volusia. As the Authority has no employees, the Board contracted with an accounting firm to perform its accounting and administrative functions (including maintaining Board meeting agendas and minutes) and with an attorney for legal work. The Authority contracted with a third-party administrator (TPA) to provide health care network access and related administrative services.

To provide health services to low-income West Volusia residents, the Authority established the HealthCard Program.² West Volusia residents are eligible for a HealthCard if they meet certain residency, identification, income, and medical coverage requirements.

FINDINGS AND RECOMMENDATIONS

Finding 1: Significant Constraints Imposed on Audit

Pursuant to State law,³ the Authority was created to provide, either directly or through third parties, health care access to indigent residents within its geographic boundaries, the western portion of Volusia County. To exercise these powers, the Authority's enabling legislation⁴ granted the Board the power to contract and be contracted with.

The Board entered into agreements⁵ with a health care provider agency to provide Human Immunodeficiency Virus (HIV) testing and counseling, health behavior and education, and non-clinical support to West Volusia's indigent population for the 2018-19 and 2019-20 fiscal years⁶ with maximum amounts of \$235,000 and \$219,000, respectively. The health care provider agency (HIV Grantee) invoiced the Authority monthly for variable amounts based upon the amount of HIV services performed, and the Authority paid the HIV Grantee \$198,548 and \$186,350 for those 2 fiscal years, respectively.

¹ Chapter 2004-421, Section 3, Charter Section 2, Laws of Florida, provides that, to stagger Board member 4-year terms, elections are held every 2 years by identifying Commissioners as either Group A (three Commissioners) or Group B (two Commissioners). Group A Commissioners are elected in one election cycle, and Group B Commissioners are elected in the next election cycle.

² The HealthCard Program is a program whereby eligible indigent residents receive an Authority HealthCard which the residents provide to contracted health care agencies to receive health care services.

³ Chapter 2004-421, Section 3, Charter Section 1, Laws of Florida.

⁴ Chapter 2004-421, Section 3, Charter Section 1, Laws of Florida.

⁵ The Authority's health care agencies' funding agreement contracts refer to the agencies as "Grantee", but the Authority internally refers to them as funded agencies.

⁶ The Authority's fiscal year begins on October 1 and ends on September 30. The grant periods corresponded with the Authority's fiscal years ended, September 2019 and September 30, 2020, respectively.

As described in the **OBJECTIVES, SCOPE, AND METHODOLOGY** section of this report, the objectives of our audit included objectives related to various aspects of the Authority's agreement with the HIV Grantee. For example, our audit objectives included determining whether payments to the HIV Grantee were appropriate, properly supported, and complied with the agreement terms and conditions. To achieve those objectives, we requested relevant records for examination. However, contrary to Federal law⁷ and State law,⁸ our requests for certain records related to the Authority's contract with the HIV Grantee were denied, imposing significant constraints on the conduct of our audit. Specifically:

- In connection with our analysis of the frequency of the HIV Grantee's testing and counseling of West Volusia residents, and to determine the number of those residents who were HIV positive, we requested electronic records from the HIV Grantee showing information regarding services provided during the period October 2018 and June 2020, including service dates and HIV test results. Acknowledging the Authority's concerns about patient privacy, we requested that the information be provided without patient names, social security numbers, or any other sensitive or personally identifiable information. In August 2021, the HIV Grantee's attorney denied our request, stating that, due to the Health Insurance Portability and Accountability Act (HIPAA) requirements, the HIV Grantee would not provide the requested records. Insofar as Federal law⁹ states that nothing in the HIPAA laws limits a state from accessing health records and information for audits, and State law¹⁰ requires that all officers whose respective offices the Auditor General is authorized to audit shall make all public records¹¹ available to the Auditor General on demand, the HIV Grantee's refusal to provide the requested records was unfounded.
- In September 2021, we obtained from the accounting firm the HIV Grantee's invoices for the period October 2018 through June 2020. Cumulatively, the invoices disclosed that the HIV Grantee billed the Authority for HIV services¹² provided to 1,274 individuals. However, the HIV Grantee declined our request to provide detail supporting the invoices, such as descriptions of the actual services provided.
- In October 2021 we requested the Authority's accounting firm to obtain records from the HIV Grantee to explain the significant difference in the number of clients noted between statements recorded in the minutes of the June 2020 Citizens Advisory Committee (CAC) meeting and data reported in the HIV Grantee report for the period October 2018 to March 2019,¹³ which was accepted by the Board at the Authority's May 2019 meeting. The HIV Grantee's attorney responded that the HIV Grantee was not "in the appropriate position to investigate the concerns raised regarding perceived inconsistencies with meeting minutes."

In August 2021, we requested the Authority's assistance in obtaining records from the HIV Grantee. The HIV Grantee agreement permits Authority representatives to review "grantee internal records and operations"; however, the Authority's attorney responded that, since the records belong to the HIV

⁷ Title 42, Section 1320d-7(c), United States Code, Effect on State Law, provides that "nothing in this part shall limit the ability of a State to require a health plan to report, or to provide access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification laws limits a state from accessing health records and information for audits."

⁸ Section 11.47(1), Florida Statutes, requires that all officers whose respective offices the Auditor General is authorized to audit shall make all public records available to the Auditor General on demand.

⁹ Title 42, Section 1320d-7(c), United States Code, Effect on State law.

¹⁰ Section 11.47(1), Florida Statutes.

¹¹ Section 119.011(12), Florida Statutes, defines "public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

¹² The invoices did not distinguish between counseling and testing services.

¹³ October 2018-March 2019 Verbal Utilization Report, page 7.

Grantee rather than the Authority, the Authority did not have to provide the records to us. In addition, at its August 2021 meeting, the Board passed a motion that, while it would generally continue to provide the Auditor General information within its possession, it would not request the HIV Grantee to provide records to us because “the Auditor General has not pointed to any contractual or other basis for this ‘unique’ treatment of [(the HIV Grantee) versus other Authority] funded entities, none of which have received such intrusive requests concerning the number of times a client has received a test/exam, the frequency, the outcome, along with the clients’ addresses.”¹⁴

Constraints limiting access to records and information requested for audit purposes frustrates the audit process and limits our ability to provide timely and relevant information to the Legislature and other decision makers.

Recommendation: In future audits, the Authority should demonstrate a commitment to accountability and comply with all auditor requests when such requests are made in accordance with Federal and State laws.

Follow-Up to Management’s Response

In her response to the finding, the Board Chair indicated the HIV Grantee’s legal counsel had advised “that responding to the request raised concerns under both State law and HIPAA” and that the referenced Federal laws “don’t apply since neither the WVHA [Authority] nor RAAO [HIV Grantee] would be considered a ‘health plan’.” Notwithstanding, as stated in our finding, the HIV Grantee’s refusal was unfounded as the Authority was required to provide the requested records to us under Federal regulations and State law. Pursuant to Title 45 Code of Federal Regulations (CFR) Section 164.501, the Auditor General is a “health oversight agency” which assists in health care operations and entitled to protected health information pursuant to Title 45 CFR Section 164.506, without the written authorization of the individual under Title 45 CFR Section 164.512. Additionally, Section 119.07(6), Florida Statutes, provides records rendered exempt and confidential under State law are nonetheless available to the Auditor General for inspection without limitation and Section 11.47, Florida Statutes, requires cooperation for all audit requests. Consequently, the finding and related recommendation stand as presented.

Finding 2: Monitoring – Human Immunodeficiency Virus Services Agreement

The Florida Attorney General has opined¹⁵ that a governmental entity may carry out a public purpose through private nonprofit corporations provided that “some degree of control should be retained by the public authority to assure accomplishment of the public purpose.” Consequently, it is important that agreements with Authority grantees include provisions for sufficient oversight to provide assurance that the grantees utilize Authority grant moneys consistent with the Board’s intent. Stewardship and fiduciary responsibilities include ensuring that Board internal controls provide for the effective and efficient use of public resources in accordance with applicable laws and contracts and agreements entered into by the Board. Effective management for contractual services includes procedures to monitor and evaluate

¹⁴ To determine client eligibility, we requested documentation establishing that clients resided within the Authority’s boundaries (West Volusia).

¹⁵ Attorney General Opinion No. 2002-18.

grantee performance and compliance with agreement terms and conditions and appropriate actions to address any noted deficiencies.

Our review of grant agreement provisions and evaluation of the Authority's monitoring of agreements disclosed that the Authority could enhance the provisions in its agreements with, and improve its oversight of, the HIV Grantee.

As we received an allegation that the HIV Grantee was frequently and repeatedly testing and counseling the same West Volusia residents, we reviewed the grant agreements and noted that the agreements did not establish a minimum time between each test or between each counseling session. Because the grant agreements provided for the Authority to reimburse the HIV Grantee for each HIV test and counseling service and did not stipulate the frequency of repeat testing or counseling services for the same individuals, there was an incentive for the HIV Grantee to maximize agreement revenue by testing and providing counseling services to the same individual multiple times within an inappropriately short time frame. However, according to the Authority's attorney, the HIV Grantee elected on its own to only bill the Authority for three HIV tests per individual client per fiscal year.

To evaluate the Authority's monitoring of the HIV Grantee performance, we reviewed meeting minutes and HIV Grantee reports and requested documentation, including records obtained by the Authority or its accounting firm to support payments made by the Authority to the HIV Grantee. We found that:

- The June 2020 CAC meeting minutes documented discussions with HIV Grantee representatives regarding 12 of their 2020-21 fiscal year grant funding requests, including discussions between the Grantee representatives and the CAC members concerning the number of clients served and tested. In response to a CAC member's question, "How many clients do you see?" the HIV Grantee representatives stated that they had served approximately 675 unique clients for the 2019-20 fiscal year and that 80 percent of those clients tested were HIV positive. Insofar as the Authority's May 2019 meeting minutes indicated that the Board accepted an HIV Grantee report for the period October 2018 to March 2019,¹⁶ which indicated that the HIV Grantee had identified 30 HIV positive individuals, the number of HIV positive clients purported by the HIV Grantee representatives at the June 2020 CAC meeting appeared unreasonable. However, the Authority did not request the HIV Grantee to provide an explanation for the significant difference and, as noted in Finding 1, our request for records to explain the difference was denied. Absent explanations for the discrepancies in information provided by the HIV Grantee at public meetings, the Authority's Board may not have reliable information regarding the clients served by the HIV Grantee.

In February 2022, the Board Chair¹⁷ provided to us her contemporaneously prepared notes from the June 2020 meeting indicating that the HIV Grantee's representative reported a 3 percent HIV positive rate (rather than 80 percent), which would equate to 20 positive HIV positive individuals based upon 675 clients served. An e-mail accompanying the notes stated, "On further review, [Authority] staff provided me with the audio file and substantial interpretations emerged as to what others heard in the audio. Answers ranged from 3%, 8%, 30%, & 80%." The Board Chair also provided us with an audio file of the meeting and stated that "the applicable portion of the audio file is inaudible." We listened to the file and confirmed that the audio quality of the file was poor and did not clearly indicate the percentage of HIV positive individuals served according to the HIV Grantee representative.

¹⁶ October 2018-March 2019 Verbal Utilization Report, page 7.

¹⁷ Elected Board Chair at January 20, 2022, meeting.

- The Authority did not monitor the frequency of the HIV Grantee’s testing and consultation of West Volusia residents or determine the number of residents that tested positive for HIV. In the absence of such monitoring, we requested electronic records from the HIV Grantee showing the individuals served during the period October 2018 and June 2020, the service dates, and HIV test results. However, as noted in Finding 1, our requests for these records were denied. Absent Authority efforts to verify and measure the services provided by the HIV Grantee, the Board has limited assurance that the HIV Grantee provided services consistent with the Board’s intent.
- For the period October 2018 through June 2020, the HIV Grantee billed the Authority \$324,623 for HIV services. According to the HIV Grantee invoices we obtained in September 2021 from the accounting firm, the HIV Grantee provided services to 1,274 individuals, and 94 of these clients received 4 to 10 HIV services during the period October 2018 through June 2020. However, the invoices did not provide sufficient detail to support the services performed or the number of clients with positive HIV test results. For example, the invoices did not distinguish between counseling and testing services. Absent the necessary detail to support the invoiced amounts, we selected 17 of the 94 clients who received more than 3 HIV services and requested that the HIV Grantee identify the specific procedures performed and indicate whether any HIV test results were positive or negative. As noted in Finding 1, the HIV Grantee declined to provide the requested information. Absent detailed records supporting the amounts billed by the HIV Grantee, the Board has limited assurance that the Grantee used Authority grant moneys consistent with the Board’s intent and public resources were used efficiently and effectively.

Reliable information and documentation evidencing the number and types of services provided is essential to the Board’s ability to effectively monitor and evaluate grantee performance. Although the Authority’s accounting firm performed compliance reviews to monitor certain aspects of grantee performance, the compliance reviews of the HIV Grantee did not include the procedures necessary to comprehensively evaluate the Grantee’s performance. For example, the reviews did not determine the number of times the same individual received HIV services or verify verbal representations made by the Grantee regarding the number of clients served and the number of HIV positive individuals. (See Finding 3 for further discussion of compliance reviews.) As such, it is important that Authority agreements facilitate the provision of grantee records and information necessary to the Board’s responsibility to perform appropriate oversight and monitoring procedures.

Recommendation: The Authority should enhance its oversight and monitoring procedures to provide greater assurance that grantees provide services consistent with the Board’s intent and that payments to grantees are appropriate, properly supported, and in compliance with agreement terms and conditions. In addition, the Authority should:

- **Include provisions in future HIV Grantee agreements requiring the Grantee to provide records, including records supporting the clients served, the services provided, and test results, in sufficient detail to enable the Board to effectively monitor and evaluate Grantee performance.**
- **Consider establishing the frequency of HIV testing and other services eligible for reimbursement in the grant agreement and periodically verify the HIV Grantee’s compliance with such limits.**

Finding 3: Grantee Compliance Monitoring

During the period October 2018 through June 2020, the Authority paid \$6.3 million to ten grantees to provide various health-related services to eligible indigent residents located within the Authority’s

boundaries. The Authority paid amounts exceeding \$500,000 each, for a total of \$4.9 million, to three grantees for five service types:

- \$1.3 million for primary care services.
- \$1.3 million for pharmacy services.
- \$1.1 million for residential treatment services.¹⁸
- \$0.6 million for Health Card Application screening services.
- \$0.6 million for mental health (Baker Act¹⁹) services.

The Authority's standard grant agreements included provisions allowing the Authority or its representative to review grantee records and operations and prepare a grantee compliance report²⁰ on the results. The compliance reports were to include the total amount received by the grantee, an opinion on the grantee's compliance with the agreement requirements, and any instances of noncompliance noted during the compliance review. However, the Authority had not established written policies and procedures to ensure the proper completion of the compliance reports.

The Authority's accounting firm performed the compliance reviews, and the accounting firm's engagement letter with the Authority characterized the engagements as agreed upon procedures engagements.²¹ The engagement letter specified that the accounting firm would:

- Document the grantee's monitoring procedures regarding grant agreement compliance.
- Select a sample of transactions and test compliance with agreement provisions.
- Prepare a written report summarizing the results and provide recommendations to the Board.

Our examination of 19 of the accounting firm's 23 compliance reports issued during the period October 2018 through December 2020 disclosed that 9 of the reports contained findings of noncompliance and recommendations. Our review of these compliance reports disclosed that:

- Contrary to the Authority's standard grant agreement terms,²² none of the 19 compliance reports indicated the amount of funding received by the grantees. Including the funding received by the grantees would provide valuable perspective to the Board when considering any findings and recommendations disclosed in the compliance reports.
- Questioned costs for identified exceptions and deficiencies were not included in 7 of the 9 reports. For example, the October 2018 HIV Grantee compliance report noted that the accounting firm tested 28 (11 percent) of the 269 October 2017 client visits and found 2 (7 percent) of the 28 tested client files did not contain adequate client identification, and 2 other client files did not contain proof of the client's West Volusia residency. As a result of this finding, at its November 2018 meeting, the Board directed the accounting firm to perform an expanded compliance review for May 2019. The resulting June 2019 compliance review report noted that

¹⁸ The grant agreement indicates that examples of such services include hospital diversion and post-detoxification services.

¹⁹ Section 394.463, Florida Statutes, provides that a mentally ill person may be taken to a receiving facility for involuntary examination under certain circumstances; for example, there is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

²⁰ Authority records also refer to the compliance reports as "site visit reports."

²¹ AT-C Section 215, *AICPA Professional Standards*, promulgated by the American Institute of Certified Public Accountants, defines an agreed-upon procedures engagement as an attestation engagement in which a practitioner performs specific procedures on subject matter and reports the findings without providing an opinion or conclusion.

²² Section 8, Grantee Funding Agreement.

the accounting firm obtained a list of 231 May 2019 client events, examined 23 client files, and found that 4 (17 percent) of the client files did not contain approved proof of identification. Thus, the exception rate increased. However, the compliance review reports did not quantify the resulting questioned costs. Subsequent to our requests, the accounting firm determined that the resulting non-qualified client questioned costs totaled \$1,200. Requiring compliance reports to include identified questioned costs would inform the Board of the dollars associated with the noted exceptions.

- None of the compliance reports with identified exceptions and deficiencies included a reasonable estimate of the potential total exceptions and deficiencies, including the potential dollar impacts, that may exist in the untested portion of the population. For example, the accounting firm tested selected Baker Act clients identified as served in a grantee's May 2019 invoice totaling \$16,227 and reported exceptions. Upon our request, the accounting firm determined that questioned costs totaled \$566. However, as the Authority paid the grantee \$300,000 for the 2018-19 fiscal year, additional questioned costs associated with untested transactions were likely present. Including an estimate of the potential total exceptions and deficiencies in the compliance reports would provide the Board with valuable perspective as to the potential magnitude of the noncompliance noted.

We also noted that the Board did not always take official action to either waive reported questioned costs or require grantees to repay the costs associated with noted exceptions and deficiencies. For example, the Board did not, of record, address the deficiencies or \$753 in questioned costs reported in the August 2019 grantee compliance report for residential treatment services. Specifically, while the report was listed for review during the September 2019 Board meeting, the meeting minutes do not reflect any discussions about the report. Notwithstanding, the grantee refunded the \$753 in October 2019. While the Board often requested the accounting firm to follow up on deficiencies noted in compliance reports, absent thorough discussions about the report findings, including the potential for exceptions and deficiencies to exist in the untested portion of the population, and formal Board actions to resolve all findings, the compliance reports' benefits are limited.

According to the accounting firm, the Board has always taken the stance that each compliance report is different and unique, due to the nature of the programs, and that the Board evaluates the report findings during regular meetings and discusses any findings. At the July 2020 meeting, the Board and accounting firm discussed whether the Board wished to pursue or create additional policies for future compliance reports presented to the Board and, although the Board did not vote on any motion associated with the compliance reports, the Board reached a general consensus that the policies in place for evaluating findings were sufficient and each compliance report should be evaluated on a case-by-case basis.

Notwithstanding, failure of the compliance reports to include the total amount received by the grantee²³ and the absence of written policies and procedures requiring the calculation and presentation of all questioned costs and the Board to take official action on all deficiencies, the Board has limited assurance that the compliance review process is effective and sufficient to determine grantee compliance with agreement requirements, evaluate the potential impact of instances of noted noncompliance, and verify that grantees are providing appropriate services to eligible residents.

Recommendation: The Board should require its accounting firm to include in the compliance reports the amounts received by grantees. In addition, the Board should adopt written policies

²³ Section 8. Site Inspection/Agreed Upon Procedures Report, of the grantee funding agreements typically require that "the Compliance Report shall include a statement of the total amount received by Grantee from the Authority."

and procedures to ensure that the compliance reports include all factors and information, including questioned costs and a reasonable estimate of the potential total exceptions and deficiencies, necessary for the Board's informed consideration of grantee performance. Also, the policies and procedures should require the Board to take appropriate actions based upon findings and recommendations noted in compliance reports. Such actions should include waiving or requiring repayment of questioned costs and determining whether additional compliance testing is warranted.

Finding 4: Monitoring Contracted Services

As the Authority's governing body, the Board is responsible for monitoring and enforcing the terms and conditions of all funding agreements and contracts to ensure that deliverables are appropriately provided, and related payments are adequately supported.

Between October 2018 and June 2020, the Authority paid one grantee 21 payments totaling \$1.3 million for pharmacy services pursuant to funding agreements for the 2018-19 and 2019-20 fiscal years. The agreements provided that payments from the Authority to the grantee were to be based upon the presentation of invoices that included a client listing with the client's zip code, prescription dispensed date, name of prescription dispensed, prescription price, the prescribing doctor, and other supporting information as deemed necessary by the Authority's contracted TPA.

Our examination of invoices for 2 pharmacy services payments totaling \$152,200 disclosed that payments were not always supported by the records required under the funding agreements. Specifically, neither invoice included a client listing with the client's zip code, prescription dispensed date, name of prescription dispensed, or the prescribing doctor.

In response to our inquiries, the TPA indicated that the grantee billed the Authority in 12 equal payments that equated to the grant agreement's annual maximum and, as such, neither the Authority nor the TPA expected the grantee to provide the detailed information required by the funding agreement. Notwithstanding this explanation, the funding agreement provides that the Authority be invoiced based upon actual prescriptions dispensed and requires documentation supporting such prescriptions. Absent such documentation, the Authority lacks the information needed for accurate payment processing and effective monitoring of contracted services and the Board has limited assurance that it is receiving the desired services at the agreed-upon rates.

Recommendation: The Authority should require the grantee providing pharmacy services to provide the invoice supporting information required by the funding agreements and ensure that the information is utilized for payment processing and accomplishing the Authority's contract monitoring responsibilities. If the Board determines that such documentation is not necessary to support grantee invoices, the Board should remove the requirements from the funding agreements and establish alternate payment and monitoring procedures to ensure that the grantee is providing the contracted services in accordance with the Board's expectations.

Finding 5: Contract Approval

State law²⁴ authorizes the Board to contract as necessary to carry out its responsibilities. Such contracting may be directly or through third parties providing access to health care for indigent residents within district boundaries. As a good business practice, and to promote transparency and ensure that the contracts are in accordance with Board intent, the Board, as the Authority's governing body, should approve at a publicly noticed meeting contracts entered into by or on behalf of the Authority.

In June 2021 the TPA²⁵ entered into agreements with four health care providers, including a hospital, to provide health care services and the agreements designated the Authority as the payor for the services provided. The agreements included provisions for the health care providers to provide inpatient, outpatient, and urgent care services on a fee-for-service basis to eligible residents at contracted rates. However, the Authority did not sign or otherwise approve the agreements at a publicly noticed meeting. Contracted Authority representatives indicated that, because the agreements were between the TPA and the health care providers, the Board was not signatory to the agreements and, consequently, it was not necessary for the Board to sign or otherwise approve the contracts.

Notwithstanding this response, the Authority is designated in the agreements as the payor of services and the Authority pays health care providers upon the TPA's authorization. For example, the Authority paid a total of \$22.5 million to TPA-contracted non-grantee health care providers during the 2018-19 and 2019-20 fiscal years. Acknowledging and approving the health care provider agreements at a publicly noticed Board meeting would enhance transparency; affirm that the agreements meet the intent of the Board; and reduce the potential for misunderstandings and disagreements among the Board, TPA, and health care providers.

Recommendation: The Board should adopt policies and procedures to require contracts negotiated by the TPA on the Board's behalf be Board-approved at a publicly noticed meeting.

Follow-Up to Management's Response

In her response to the finding, the Board Chair indicated that there is no legal requirement that the Authority directly approve provider agreements between the TPA and its network of providers and that approving the agreements at a publicly noticed Board meeting could limit the TPA's negotiating power and increase overall healthcare costs. Notwithstanding, acknowledging and approving the health care provider agreements at a publicly noticed Board meeting would enhance transparency; affirm that the agreements meet the intent of the Board; and reduce the potential for misunderstandings and disagreements among the Board, TPA, and health care providers. Consequently, the finding and related recommendation stand as presented.

Finding 6: Accumulation of Resources

The General Fund serves as the Authority's operating fund and accounts for all financial resources, and the Authority's operations are primarily funded by ad valorem property taxes levied by the Authority. Fund

²⁴ Chapter 2004-421, Section 3, Charter Section 1, Laws of Florida.

²⁵ As previously noted, the TPA provided the Authority with health care network access and related administrative services.

balance in the General Fund represents the net financial resources available in the fund. The Governmental Accounting Standards Board²⁶ (GASB) established classifications of fund balance based on the extent to which the funds are bound by external and internal constraints.

A Government Finance Officers Association (GFOA) best practice²⁷ recommends that governments establish a formal policy on the level of unrestricted fund balance, which is composed of committed, assigned, and unassigned fund balance that should be maintained for the General Fund. Contrary to the best practice, the Authority had not established a formal policy on the level of fund balance that should be maintained. As shown in Table 1, the Authority's General Fund unrestricted (i.e., sum of assigned and unassigned) fund balance increased significantly from the 2016-17 to the 2019-20 fiscal year.

Table 1
Revenues, Expenditures, and Fund Balances by Fiscal Year
For the 2016-17 Through 2019-20 Fiscal Years

	2016-17	2017-18	2018-19	2019-20
Ad Valorem Tax Revenue	\$12,510,790	\$20,092,455	\$20,241,288	\$19,507,765
Other Revenue	209,474	136,419	285,169	217,927
Total Revenue	<u>12,720,264</u>	<u>20,228,874</u>	<u>20,526,457</u>	<u>19,725,692</u>
Total Expenditures, Health Care and Other	16,640,666	16,766,315	17,443,639	15,496,057
Net Change in Fund Balance	<u>(3,920,402)</u>	<u>3,462,559</u>	<u>3,082,818</u>	<u>4,229,635</u>
Fund Balance, Beginning	10,499,331	6,578,929	10,041,488	13,124,306
Fund Balance, Ending	<u>\$ 6,578,929</u>	<u>\$10,041,488</u>	<u>\$13,124,306</u>	<u>\$17,353,941</u>
Fund Balance:				
Nonspendable	\$ 2,000	\$ 2,000	\$ 39,454	\$ 133,626
Assigned, Subsequent Year's Budget	-	-	-	2,000,000
Unassigned	6,576,929	10,039,488	13,084,852	15,220,315
Total Fund Balance	<u>\$ 6,578,929</u>	<u>\$10,041,488</u>	<u>\$13,124,306</u>	<u>\$17,353,941</u>
Property Tax Millage	1.5900	2.3660	2.1751	1.9080
Months of Available Fund Balance On-Hand, Based on Subsequent Year's Expenditures	4.7	6.9	10.1	CND ^a

^a The months of available fund balance on-hand could not be determined as the audited 2020-21 fiscal year expenditure data was not available at the conclusion of our audit fieldwork.

Source: Authority's audited financial statements and auditor analysis.

As shown in Table 1, the amount of unrestricted fund balance increased from \$6.6 million to \$17.2 million, a total increase of \$10.8 million or 162 percent, from September 30, 2017, to September 30, 2020. The increase was primarily due to the Authority increasing the ad valorem millage rates over the 2016-17 fiscal year rate and the resultant increase in tax revenues. The accounting firm indicated that the number of the Authority's HealthCard holders increased in 2016, resulting in increased medical operating costs which led to the 2017 ad valorem millage rate increase. The Authority's expenditures declined by \$1.9 million from the 2018-19 fiscal year to the 2019-20 fiscal year due to reduced service

²⁶ GASB Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions.

²⁷ GFOA publication, *Fund Balance Guidelines for the General Fund (2015)*.

demand, which the Authority attributes to the COVID-19 pandemic. According to the accounting firm, the subsequent Board did not lower the millage rate because it wanted to retain fund balances in case demand for medical services increases when COVID-19 fears decline.

In addition, according to the accounting firm, because the Authority receives most of its ad valorem tax revenues at the end of December, and the Authority's fiscal year begins on October 1, the Authority needs 3 months of operating costs to start each fiscal year (approximately \$5 million). The accounting firm also recommended the Authority set aside an additional 3 months of operating costs for unexpected events, resulting in a recommended unrestricted fund balance of approximately \$10 million at the end of each fiscal year. Notwithstanding, as of September 30, 2019, the Authority's fund balance represented over 10 months of the 2019-20 fiscal year's total expenditures, and the accounting firm indicated that, based upon discussions with the Board, the Board acknowledged the increase in fund balance and was planning to reduce fund balance through future year tax decreases. The Board reduced the 2021-22 fiscal year property tax millage rate to 1.4073 mills, a 6.4 percent decrease from the 2020-21 fiscal year 1.5035 millage rate.

Notwithstanding the need for the Authority to maintain sufficient operating resources, the Authority may have retained resources in excess of the amount needed to achieve its purpose of providing health care access to qualified indigent residents within the Authority's geographic boundaries.

Recommendation: The Authority should adopt a written policy that establishes minimum and maximum levels of unrestricted fund balance. In addition, the Board should establish a plan to address any excessive General Fund resources, for example, the Board could reduce ad valorem tax levies or expand health care services to West Volusia residents.

Finding 7: Budget Preparation

State law²⁸ requires the governing body of each special district to adopt a budget by resolution each fiscal year and provides that the total amount available from taxation and other sources, including balances brought forward from prior fiscal years, must equal the total appropriations for expenditures and reserves.

Our examination of the Authority's 2015-16 through 2020-21 fiscal year budgets disclosed that, contrary to State law, available fund balances were not brought forward from the prior fiscal year and included as available resources for the next year. Table 2 shows the Authority's budgeted resources.

²⁸ Section 189.016(3), Florida Statutes.

Table 2
Budgeted Revenues, Expenditures, Fund Balances, and Property Tax Millages by Fiscal Year
For the 2015-16 Through 2020-21 Fiscal Years

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21 ^a
Budgeted Revenues:						
Ad Valorem Taxes	\$12,225,000	\$12,500,000	\$19,910,000	\$20,194,000	\$19,350,000	\$16,431,158
Other Revenue	131,876	132,301	113,304	125,968	206,988	135,000
Use of Reserves	-	-	-	-	-	2,000,000
Total Revenues and Other Sources	\$12,356,876	\$12,632,301	\$20,023,304	\$20,319,968	\$19,556,988	\$18,566,158
Total Budgeted Expenditures	\$16,741,063	\$18,096,855	\$20,022,257	\$20,319,968	\$19,556,988	\$18,566,158
Revenue Less Expenditures	(4,384,187)	(5,464,554)	1,047	-	-	-
Financial Statements Assigned and Unassigned Fund Balance Available From Prior Fiscal Year	<u>\$12,295,627</u>	<u>\$10,497,331</u>	<u>\$ 6,576,929</u>	<u>\$10,039,488</u>	<u>\$13,084,852</u>	<u>\$17,220,315</u>
Property Tax Millage	1.6679	1.5900	2.3660	2.1751	1.9080	1.5035

^a The 2020-21 fiscal year amounts are unaudited amounts. At the conclusion of our audit fieldwork, the most recent audited financial statements available were for the 2019-20 fiscal year.

Source: Authority budget records, financial records, and audited financial statements.

Our analysis of the Authority's fund balance disclosed that:

- At the end of the 2014-15 fiscal year, the Authority had \$12.3 million available for the 2015-16 fiscal year budget.
- At the end of the 2015-16 fiscal year, the Authority had \$10.5 million available for the 2016-17 fiscal year budget.
- At the end of the 2016-17 fiscal year, the Authority had \$6.6 million available for the 2017-18 fiscal year budget.
- At the end of the 2017-18 fiscal year, the Authority had \$10 million available for the 2018-19 fiscal year budget.
- At the end of the 2018-19 fiscal year, the Authority had \$13.1 million for the 2019-20 fiscal year budget.
- At the end of the 2019-20 fiscal year, the Authority had \$17.2 million available for the 2020-21 fiscal year budget. Of this amount, the Authority budgeted \$2 million "use of reserves." However, the Authority did not budget the remaining \$15.2 million of available fund balance for the 2020-21 fiscal year.

According to the Authority's accounting firm, to address the excess fund balance accumulation, the Authority budgeted significant deficits for the 2015-16 and 2016-17 fiscal years "to repay taxpayers for excess cash on hand" and, to address an expected significant increase in HealthCard membership, the Authority increased the millage rate from 1.5900 in the 2016-17 fiscal year to 2.3660 in the 2017-18 fiscal year.

In response to our October 2021 request for the Authority's budget policies and procedures, the Authority responded that their budget process was governed by the Volusia County Tax Collector's Office (Tax Collector) and the Florida Department of Revenue's (FDOR) Truth-In-Millage (TRIM) processes.

However, although the Tax Collector and FDOR processes provide guidance on the millage calculation and budget approval processes, they do not provide guidance for estimating revenues, expenditures, and beginning fund balance. The Authority did point out that the 2018-19 and 2019-20 fiscal year newspaper budget advertisements included estimated beginning fund balances as available for appropriation and estimated ending fund balances with the planned expenditures. However, these published amounts were tentative budgets and the estimated beginning and ending fund balances were excluded from the approved final budget documents on the Authority's Web site.

In response to our inquiries, the accounting firm indicated that the Board does discuss fund balances during the budget process when they discuss the "use of reserves" line item in the budgets. Notwithstanding, without including balances brought forward from prior fiscal years, the budget does not include all available resources, and the budget's usefulness as a financial management tool is diminished. In addition, the exclusion of prior fiscal year fund balance as available resources increases the risk that the Authority may levy more ad valorem property tax than necessary to fund budgeted expenditures.

Recommendation: The Authority should establish written budget policies and procedures that require budgets to include balances brought forward from prior fiscal years as required by State law.

Finding 8: Citizens Advisory Committee (CAC) Member Removal

Except as otherwise provided in the Constitution of the State of Florida, pursuant to the State's Sunshine Law,²⁹ Board meetings at which official acts are to be taken are to be public meetings open to the public at all times. State law requires the Board meeting minutes to be promptly recorded and open to public inspection. To assist the public and governmental entities in understanding the requirements and exemptions to Florida's open government laws, the Attorney General's Office compiles a comprehensive guide known as the *Government-in-the-Sunshine Manual (Sunshine Manual)*. The *Sunshine Manual* is published each year.

When addressing the use of an agenda for board meetings, the *Sunshine Manual* refers to a Florida Attorney General Opinion (AGO),³⁰ which indicates that, although boards are not required to consider only those matters on a published agenda during a noticed meeting, it is strongly recommended that boards postpone formal action on controversial matters where the public has not been given notice that such an issue will be discussed. The AGO further indicates that "the purpose of the notice requirement in the Sunshine Law is to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wished."

During its May 2019 meeting, the Board voted to add a discussion item to remove a CAC member due to allegations made against him. This discussion item was not on the publicly noticed meeting agenda. During the meeting, the Authority's attorney recommended that the Board consider adding the CAC member removal action to a future Board meeting agenda and give the CAC member notice to appear

²⁹ Section 286.011(1) and (2), Florida Statutes (Sunshine Law).

³⁰ Florida General Attorney Opinion No. 2003-53.

before the Board and the opportunity to be heard at such meeting; however, contrary to the attorney's advice, the Board removed the CAC member during the May 2019 meeting. The Board's decision to remove the CAC member without prior public notice was contrary to the Sunshine Manual's recommendation and limited the opportunity for public input.

In addition, although the CAC Bylaws provide that a member can be replaced at any time without cause, the Bylaws do not include specific provisions for removing members from the CAC. Revision of the CAC Bylaws to establish a process for removal of CAC members would provide more transparency and increase the public's trust that advisory committees, such as the CAC, are functioning as intended.

Recommendation: To promote transparency of Authority operations and encourage community involvement, the Board should:

- **Publicly notice in advance all proposed Board actions, including those that may be deemed controversial**
- **Amend its bylaws or otherwise establish policies and procedures for removing CAC members.**

Finding 9: Anti-Fraud Policies and Procedures

Effective policies and procedures for communicating, investigating, and reporting known or suspected fraud are essential to aid in the mitigation, detection, and prevention of fraud. Such policies and procedures serve to establish the responsibilities for investigating potential incidents of fraud and taking appropriate action, reporting evidence of such investigations and actions to the appropriate authorities and protecting the reputation of persons suspected but determined not guilty of fraud.

Such policies and procedures should:

- Provide examples of actions constituting fraud.
- Require individuals to communicate and report known or suspected fraud.
- Provide for anonymous reporting of known or suspected fraud. Particularly if regarding the Authority's grantee medical service providers.
- Require officials to keep accurate records of reported fraud or suspected fraud.
- Assign responsibility for investigating potential incidents of fraud and taking appropriate action.
- Provide guidance for investigating potential and actual incidents of fraud, reporting evidence obtained by the investigation to the appropriate authorities, and protecting the reputations of persons suspected but determined not guilty of fraud.

In response to our October 2020 inquiry, the Authority's attorney identified some controls and procedures that serve as compensating controls for the lack of anti-fraud policies and procedures. These controls require:

- All checks be signed by two Board members.
- All moneys be transacted through a qualified public depository.
- The Authority's accounting firm to prepare monthly financial statements for review by Board members and members of the public.
- The accounting firm to conduct periodic site visits of funded agencies and prepare reports.

- A separate CPA firm to conduct the Board’s annual financial statements audit.

As of October 2021, the Board had not established written policies and procedures to mitigate the risk of fraud and the Authority’s attorney again responded that the controls already in place were adequate. Notwithstanding this response, absent adequately designed, comprehensive anti-fraud policies and procedures, there is an increased risk that known or suspected fraud may not be identified, communicated, investigated, or reported to the appropriate authority for resolution.

Recommendation: The Board should establish policies and procedures for communicating, investigating, and reporting known or suspected fraud that:

- **Define fraud and provide examples of acts constituting fraud.**
- **Require individuals to communicate and report known or suspected fraud.**
- **Provide for anonymous reporting of known or suspected fraud.**
- **Require officials to keep accurate records of known or suspected fraud reported.**
- **Assign responsibility for investigating potential incidents of fraud and for taking appropriate action.**
- **Provide guidance for investigating potential and actual incidents of fraud; reporting evidence obtained by the investigation to the appropriate authorities; and protecting the reputations of persons suspected but determined not guilty of fraud.**

Follow-Up to Management’s Response

In her response to the finding, the Board Chair indicated that our characterization of the Authority attorney’s response as “the controls already in place were adequate,” is inaccurate. However, as the attorney identified specific controls and procedures and stated in his October 2020 e-mail, “I’ve been their contracted attorney for over 13 years and the above layers of review seem to have worked,” and indicated in his October 2021 e-mail, that his response “remains the same,” we believe that our characterization of the attorney’s response is accurate.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida’s citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations. Pursuant to Section 11.45(2)(j), Florida Statutes, the Legislative Audit Committee, at its December 17, 2019, meeting, directed us to conduct this operational audit of the West Volusia Hospital Authority (Authority).

We conducted this operational audit from October 2020 through October 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of this operational audit were to:

- Evaluate management’s performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed in operation to promote and encourage the achievement of management’s control objectives in the categories of compliance, economic and efficient operations, reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management’s internal controls significant to our audit objectives; instances of noncompliance with applicable laws, contracts, and other guidelines; and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; identifying and evaluating internal controls significant to our audit objectives; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records for the audit period October 2018 through June 2020, and selected Authority actions taken prior and subsequent thereto. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of Authority management, contractors, and grantees and, as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, grants, contracts, Authority policies and procedures, and other guidelines, and interviewed contracted personnel to obtain an understanding of applicable processes and administrative activities.

- Examined Board records to determine whether the Board had adopted anti-fraud policies and procedures to provide guidance for communicating known or suspected fraud to appropriate individuals.
- Obtained and reviewed Attorney General Opinion No. 2007-11, which indicates that the Authority is permitted to provide services to qualified illegal aliens residing within the Authority's boundaries.
- Evaluated financial condition monitoring procedures for reasonableness, including projections of revenues and expenditures used in setting the ad valorem property tax millage rates for the 2018-19, 2019-20, and 2020-21 fiscal years.
- Analyzed the Authority's financial condition to determine whether the financial resources accumulated by the Authority were reasonable compared to Authority expenditures.
- Examined Authority records to determine whether the Authority complied with applicable Florida Department of Revenue ad valorem property tax levy requirements.
- Evaluated the adequacy of Authority policies and procedures governing public records retention, including retention of electronic communications, for compliance with Section 286.011, Florida Statutes (Sunshine Law).
- For the period October 2018 through June 2020, examined all 55 public records requests received by the Authority to determine whether the Authority timely responded to records requests.
- Examined Authority records to determine the legal authority for the Citizens Advisory Committee (CAC) and to understand the CAC's purpose and functionality. We also evaluated whether the CAC operated and interacted with the Board as intended.
- Examined Board records to determine whether the Board had adopted policies and procedures for removing CAC members and whether the removal of a CAC member in May 2019 complied with the Sunshine Law and CAC Bylaws and was conducted in a transparent manner that provided opportunity for public input.
- Examined minutes of the 50 Board meetings and 9 CAC meetings held during the period October 2018 through June 2020 to determine whether the Board:
 - Conducted the meetings using pre-established agendas.
 - Discussed topics not included in the pre-established agendas in a transparent manner that allowed for participation of interested members of the public.
 - Discussed significant items in detail prior to acting on those items.
- From the 23 compliance reports completed by the Authority's accounting firm during the period October 2018 to June 2020, selected and examined 19 reports to determine whether:
 - The reports were completed in compliance with grant agreement provisions, which required, for example, that the reports include the total amount received by the grantee, and engagement letter provisions.
 - The reports were presented to the Board and the reports included adequate context to enable the Board to understand the potential effects of the noted deficiencies.
 - The Board adequately discussed the report results and took reasonable follow-up actions to resolve any noted deficiencies.
- Scanned Board accounting records for the period October 2018 through October 2020, to determine whether the \$33 million of expenditures incurred by the Board during that period were for stated purposes consistent with the Authority's powers and duties established in Chapter 2004-421, Laws of Florida.

- From the population of 5,682 health cards active during the period October 2018 through June 2020, examined 30 health card applications to determine whether the Authority determined the cardholders to be eligible in accordance with the Authority's *Health Card Program Eligibility Guidelines and Procedures*.
- Reviewed the Authority's accounting records and supporting documentation to determine whether the Authority remitted the correct amount of ad valorem property tax revenues to all community redevelopment agencies (CRAs) within the Authority's borders and refrained from remitting property tax revenues to CRAs not located within the Authority's borders.
- Evaluated the Board's procedures for negotiating grant agreements and contracts with various health care entities to determine whether the grants and contracts served a valid public purpose, as allowed by Chapter 2004-421, Laws of Florida, and that the Board made reasonable efforts to negotiate the lowest rates.
- Reviewed the Board's contracts with its hospital operators to determine whether the Board took reasonable efforts to receive the most favorable terms and rates.
- Determined whether the Board competitively selected grantees and contractors for the various services required by the Board.
- Examined 29 of the 33 grant agreements, the hospital agreements, and the two third party administrator (TPA) contracts for which the Authority paid \$17.3 million during the 2018-19 and 2019-20 fiscal years, to determine whether the agreements and contracts contained provisions that:
 - Identified the required deliverables, including services to be performed by the grantee or contractor.
 - Where applicable, included clear eligibility criteria for Authority residents to qualify for the services to be provided.
 - Included a requirement that supporting documentation be provided prior to payment being rendered.
- From the population of 844 expenditures totaling \$26.9 million paid to grantees and the Authority's TPAs from October 2018 through June 2020, selected and examined 37 expenditures totaling \$2.2 million to determine whether sufficient detail was provided to support each expenditure and as required by the grant agreements.
- Reviewed Authority and grantee records and interviewed applicable individuals to determine whether policies and procedures had been established to provide reasonable assurance that grantees only provided services to eligible individuals.
- Reviewed the minutes for Board meetings occurring during the audit period and examined Authority accounting records to determine whether the Authority had any restricted revenues requiring separate accounting.
- Determined whether the amounts paid to grantees during the audit period exceeded the contracted amounts.
- Communicated on an interim basis with applicable individuals to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is written in a cursive style with a large, stylized initial 'S'.

Sherrill F. Norman, CPA
Auditor General

MANAGEMENT'S RESPONSE¹



West Volusia Hospital Authority

March 17, 2022

Sherrill F. Norman, CPA
Auditor General
State of Florida
Claude Denson Pepper Building, Suite G74
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Ms. Norman,

We received the Auditor General's preliminary and tentative audit findings and recommendations on February 21, 2022, resulting from your operational audit of the West Volusia Hospital Authority. We appreciate your team's diligence and review during the audit process and we are pleased that the audit reports no instances of fraud or violations of WVHA's internal controls to avoid fraud. A focus of my time as chair, which began in January 2022, is to promote more transparency of internal practices and procedures for budgeting and operations, and your findings will be a useful tool.

Sincerely,



Jennifer Coen
Chair, West Volusia Hospital Authority

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¹ The Findng 9 response refers to e-mails that are not included in this report but may be obtained from the Authority upon request.

West Volusia Hospital Authority's Response to the Florida Auditor General's Preliminary and Tentative Audit Findings

The Board of Commissioners of the West Volusia Hospital Authority appreciates the operational audit performed by staff of the Auditor General and their recommendations. The West Volusia Hospital Authority (WVHA) funds local agencies that serve the health care needs of our community. It operates as an independent special taxing district for the purpose of providing access to *no-cost* primary and hospital care, *low co-pay* specialty care, and *low-cost* prescriptions for working poor residents of West Volusia. To qualify for access to this unique network of low or no cost healthcare, applicants must first demonstrate that they are not eligible for Medicare, Medicaid, Affordable Care Act, SSI or any other governmental or private health care program. WVHA is a payer of last resort for those who would otherwise fall through the cracks. Instead of burdening taxpayers with the operational expense and liabilities of owning and operating hospital facilities, WVHA appropriates \$4 million dollars each year to reimburse for hospital and emergency room expenses of Health Card members, with no balance billing, at three privately owned and operated hospitals: AdventHealth DeLand, AdventHealth Fish Memorial, or HalifaxHealth| UF Health Medical Center of Deltona. Outside of funding for staffing local hospitals, WVHA funding partially *supports over 150 employees* of local agencies — people who live and work right here in West Volusia. WVHA also encourages funded agencies to work together to combine resources and reduce costs. Our goal is to keep costs down and keep local tax dollars close to home.

The Board of Commissioners has thoroughly reviewed the operational audit findings and recommendations made by the Auditor General. In responding to all of the requests for records and information from the Auditor General between September 2020 and the receipt of its preliminary findings in February 2022, WVHA's contracted Accountant, Administrative Support and Attorney have logged over \$17,000.00 in billable time to respond to this inquiry.

We are pleased that the audit findings did not discover any fraud or violations of WVHA's existing internal controls to avoid fraud. This is consistent with the "clean" audit findings WVHA has received over the last fifteen years of yearly outside audits, currently conducted by James Moore & Company and previously by Moore, Stephens Lovelace, P.A. Similarly, as to WVHA's compliance with the statutory budget process during this timeframe, WVHA has consistently received findings of "no violations" of the TRIM (Truth in Millage) certifications requirements by the Director of Property Tax Oversight Program.

We continuously look for ways to improve our budget and operational practices, while keeping costs down for taxpayers. For example, we implemented or began implementing some new practices before notification of the audit findings which addressed concerns noted by the audit team, including the modification of its Electronic Records Retention policy to discourage social media posts generally but to require their retention as public records whenever such posts are

deemed necessary by Board members, and also with the adoption of a 2021-22 budget that represents a gradual reduction of millage and the spend down of reserves that were accumulated due to uncertainties of the Covid-19 pandemic.

Below are our written explanation to the findings presented to us for your operational audit of the West Volusia Hospital Authority.

Finding 1: Contrary to State law, the Authority did not provide requested records needed to achieve all the objectives of our audit, thereby imposing significant constraints on the conduct of our audit.

WVHA provided all requested records in its possession and all documentation that was provided to it by contracted third-parties. The disputed request sought protected health information (HIV test results) concerning clients of one third-party contractor, Rising Against All Odds (RAAO), which has received State and national recognition for its effectiveness in reducing the spread of HIV-AIDS in Volusia County. RAAO consulted their own legal counsel who expressed concerns that responding to the request raised concerns under both State law and HIPAA. Briefly, RAAO's counsel expressed concern about the disclosure of HIV Test Results, which is protected under Florida law (381.004(e), F.S.). RAAO's counsel also expressed concerns about the manner in which the audit team suggested client information could be de-identified which was believed to be non-complaint with 45 CFR 164.514. We have no record that the audit team replied back to RAAO's counsel to dispute its determination or to WVHA with citations to applicable State law to the contrary of Section 381.004(e). See attached follow-up letter dated 3/4/2022 from RAAO's counsel.

It should be noted that federal laws cited by the audit team with regard to its ability to audit health plans don't apply since neither WVHA nor RAAO would be considered a "health plan" as defined in that statute. Additionally, there is plainly recognition of enhanced patient privacy protections for HIV Test Results under Florida law (381.004(e), F.S.). WVHA has complied with its obligations under State law to avoid becoming complicit with the unauthorized disclosure of HIV Test Results to any State agency (other than the Department of Health itself) without specific releases signed by those tested.

Finding 2: The Authority should enhance its oversight and monitoring procedures to provide greater assurance that grantees provide services consistent with the Board's intent and that payments to grantees are appropriate, properly supported, and in compliance with agreement terms and conditions.

The oversight and monitoring procedures performed for the Grantees were to ensure compliance with Grantee contract provisions. The issue documented by the auditors was a lack of limit on number of times and individual may be tested for HIV. The contract with the Grantee contained no limits on the number of times an individual may be tested. Instead, the WVHA Board allowed this health care provider the same level of discretion as all other providers to exercise professional discretion in providing health care. There can be valid reasons that an individual may need re-testing ranging from verification of original test results to subsequent tests of an at-risk individual requiring on-going monitoring for the protection of themselves, their family and the whole community.

Consistent with the recommendations of the Auditor General, moving forward WVHA contracts concerning HIV testing will specify any limits on the number and frequency of testing allowed and include provisions to require more detailed invoices to that would indicate in a de-identified fashion whether the bundle of services included a test and the number of times that each unique client is tested.

Finding 3: The Authority did not have adequate policies and procedures to ensure that grantee compliance review reports contained all information necessary for the Authority to make fully informed decisions on reported results. Additionally, the Authority Board did not always take appropriate action of record to resolve deficiencies identified in those reports.

The WVHA authorizes its accountants to review grantee records and prepare a compliance report based on contract requirements. The finding requested that additional information be included in the compliance reports.

Consistent with the recommendations of the Auditor General, all future WVHA compliance review reports will contain the grantee's annual budget, questioned costs, and a reasonable estimate of potential total exceptions and deficiencies. The findings of any reports with questioned costs will be presented to the Board for discussion and consideration of follow-up action on a case-by-case basis. This action will be based on the findings and recommendations noted in the compliance review reports and may include waiving or requiring repayment of questionable costs and determining whether additional compliance testing is warranted.

Finding 4: The Authority paid a grantee for medical services pursuant to invoices not supported by the detailed records required by the grant agreement.

This finding was related to information provided by our former contracted pharmacy. The pharmacy was required to submit claims to the TPA for processing. The TPA would then submit claims to the WVHA for payment. The pharmacy got behind on providing detailed paperwork. The TPA, knowing that patients were receiving prescriptions, approved payment for the claims. When a new TPA was hired in 2020, they also had difficulty getting detailed records. They worked to set up a new pharmacy that would provide them with appropriate processing information. They approved the payment of the claims in the interim period to ensure that the WVHA card members were not cut off from medications that they needed.

In 2021, the WVHA contracted with a new agency to provide pharmacy services. They provide supporting information such as client Health Card information, prescription dispensed date, name of prescription dispensed, prescription price, the prescribing doctor, and other supplemental information requested by the TPA sufficient to ensure that the payment is made for valid prescriptions for eligible Health Card members.

Finding 5: The Authority did not approve health care services agreements between the Authority's third-party administrator and health care providers that obligated the Authority to pay for the health care services.

The WVHA reimburses its Third Party Administrator ("TPA") on a fee-for-service basis for the hospital and specialty care services needed by Health Card members. The TPA is responsible for establishing its own hospital and specialty care networks, based on contracts that it negotiates directly with providers. WVHA determines an overall budget for these hospital and

specialty care services and also determines a maximum potential reimbursement rate tied to comparable Medicaid or Medicare rates, but WVHA's agreement with the TPA permits and provides incentives for the TPA to negotiate lower rates with individual providers. While approving health care provider agreements at a publicly noticed Board meeting would enhance transparency, WVHA has learned based on past experience that it would also limit the negotiating power of our TPA and increase overall costs of providing healthcare to taxpayers. Once one provider knows what other providers are willing to accept, the WVHA loses the ability to get the competitive reimbursement rates.

WVHA is deeply committed to transparency in government, particularly where it is required by State laws such as the Public Records and Sunshine Law. But, WVHA is also deeply committed to reducing the costs of government to taxpayers. Because the audit team acknowledged during the exit interview that there is no legal requirement that WVHA directly approves these provider agreements between the TPA and its network of providers, WVHA will continue allowing the TPA to negotiate for lower rates with its own network of providers and passing along those savings to taxpayers.

Finding 6: The Authority accumulated significant resources that may be in excess of amounts necessary for the Authority to fulfill its duties and responsibilities.

The WVHA has been rebuilding its reserves over the past several years. After the passage of the Affordable Care Act, the enrollment of the WVHA Health Card dropped considerably. Due to the unknown effects, the WVHA generated a large cash reserve. They cut their millage rate in 2012-2016 to reduce the large cash reserve position. Unfortunately, as cash reserves diminished, the enrollment increased on unexpected 38%. This caused the Board to dramatically increase the millage rate to cover current costs and provide a small buffer for unexpected costs. Since 2017, this reserve has been rebuilding. In 2020, the uncertainties associated with Covid-19 caused the Board to be conservative in their budgeting to ensure that there was enough money to cover medical expenses for the Health Card members. This Covid-19 related uncertainty continued through the 2021-22 budget cycle.

Consistent with the recommendations of the Auditor General, the WVHA will adopt a policy that establishes a minimum and maximum level of unrestricted fund balance. This plan will include known reserve requirements (such as the need for operating capital for 3 months until the ad-valorem tax levies are collected), an expected minimum reserve for unexpected expenses, and an additional reserve amount for specific uncertainties or costs as deemed necessary by the Board. If the reserves end above their maximum level of unrestricted fund balance, the Board will develop a plan to gradually reduce the reserves while avoiding the need for a sudden and dramatic increase in millage rates.

Finding 7: The Authority had not established written budget preparation policies and procedures. Additionally, contrary to State law, the 2015-16 through 2020-21 fiscal year budgets generally did not include estimated beginning or ending fund balances.

The Board follows the TRIM process in scheduling their budget meetings. As part of this TRIM process and the determination of ad-valorem tax rates, the Board considers expected revenue and expenses, budget vs actual budget presentations and discusses unrestricted reserve money carrying forward and the impact that may have on the budgeting process. As noted in the preliminary audit findings, the newspaper advertisements describing the tentative budgets for the TRIM hearings presented carry forward fund balances. But, the final budget

presentations listed on the website did not list the carry forward fund balances from prior fiscal years.

Consistent with the recommendations of the Auditor General, WVHA will ensure that future budget presentations include balances brought forward from prior fiscal years.

Finding 8: The Authority had not established policies and procedures governing the removal of Citizens Advisory Committee (CAC) members. In addition, in May 2019, the Authority Board removed a CAC member at a public meeting without placing the member's removal on the agenda, which limited the opportunity for public involvement.

This is an isolated incident. As noted in the preliminary audit findings, WVHA amended its agenda at the beginning of the May 16, 2019 meeting to include a discussion item to consider complaints that a new CAC member had allegedly made so many disruptive, abusive and potentially defamatory comments at the May 7th CAC meeting that some other members, including the CAC Chair were offering to resign their volunteer public service rather than continue being subjected to such comments. This amendment was made after Board members received last minute information including a letter from the CAC Chair, the complained about CAC's member's "reply to all" response and verbal reports from others who attended the May 7th CAC meeting. As a standard practice, the Board places all known items on a preliminary agenda, regardless of how controversial they may be. This agenda is published a week in advance according to State guidelines. At times, due to last minute events leading up to the board meeting, the agendas are amended at the start of the Board meeting. Because the subject of this discussion originated in a meeting that occurred after the publication of that preliminary agenda and then the Board received pressing letters from the CAC Chair 2 days before the meeting and a detailed response from the complained about CAC member 1 day before the meeting, WVHA exercised its discretion to make a last-minute amendment and took immediate action that it deemed necessary to restore good order and decorum in the overall functioning of the CAC. To our knowledge for at least the last 15 years, this removal power had not been exercised previously and WVHA has not had any occasion to exercise it since May 16, 2019.

The CAC bylaws state that "The Board may expand, reduce, or abolish the Committee or replace any member without stating a cause". To avoid even the appearance that this removal power is being utilized often and arbitrarily, WVHA will amend this provision to state that "The Board may expand, reduce or abolish the Committee or replace any member without stating a cause; provided however, the Board will only exercise this discretion during a regular meeting where the question is noticed on its published agenda unless exigent circumstances require otherwise".

Finding 9: The Authority had not established anti-fraud policies or procedures.

The characterization of either Attorney's 10/8/2021 or 10/15/2020 email as an expression of his opinion that "the controls already in place were adequate" is not accurate. See attached those emails. During the exit interview with the audit team, all WVHA representatives, including the Attorney, welcomed members of the audit team to send sample policies that might be appropriate for an entity like WVHA where, as here, any documented report of fraud to a member of "management" would become a public record since WVHA has no employees and the elected officials are the management. Consistent with the recommendations of the Auditor General, WVHA will consider any such suggestions and will also endeavor to find on its own anti-fraud policies and procedures that would respond to this finding.



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March 4, 2022

Via Email

tsmall@businessemploymentlawyer.com

Ted W. Small
General Counsel
West Volusia Hospital Authority
C/O PO Box 172
DeLand, Florida 32721

Re: Comments Regarding Florida Auditor General's Preliminary and Tentative Audit Findings

Dear Mr. Small:

Please allow this correspondence to serve as a reply to some of the issues raised in the above referenced Audit Findings. As you know, our office represents Rising Against All Odds, Inc., ("RAAO"), on certain matters as requested by the client. One such matter involved reviewing requests from representatives of the Florida Auditor General's Office to RAAO for sensitive patient information (HIV Test Results) related to clients of RAAO. Ostensibly, the Auditor General's request was to determine the West Volusia Hospital Authority's, ("WVHA"), compliance with its statutory purpose. As more fully explained below, RAAO was not able to comply with the request as doing so would have violated applicable law. Unfortunately, it appears that the Auditor General has equated RAAO's attempt to comply with applicable law as being contrary to Federal and State law. RAAO would vigorously deny that it has done anything other than comply with applicable law.

In the Summer of 2021, representatives of the Auditor General's office contacted RAAO and requested certain patient related information. More specially, the Auditor General's representative made the following request:

"Can you please provide a version (preferably in excel) of the "HIV Utilization 2021 WHVA Audit Docs" that includes individuals served by RAAO between October 2018 and June 2020 and shows the result of the test, if applicable? Please do not include the address on this file so that the listing is as deidentified as possible."

Our office, on behalf of RAAO, responded the Auditor General's representative via email on August 5, 2021, and advised that we had regulatory concerns about RAAO releasing such

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information under both HIPAA and applicable state law. We briefly explained our concerns and in particular focused on the Auditor General's request for patent information that "*is as deidentified as possible*". We attempted to explain our concerns that under 45 CFR 164.514 deidentification of PHI can only be achieved by two methods; expert determination and/or the applicable safe harbor which requires the removal of all specified identifiers. Our email response to the Auditor General's representative concluded with an invitation to contact our office if they had any questions. To my knowledge there was no response to our office or any effort to address RAAO's concerns.

It is RAAO's good faith belief that it has a legal obligation to safeguard the information of its clients. First, under HIPAA, RAAO has an obligation not to disclose PHI without the individual patients' authorization or consent. RAAO may release PHI under HIPAA for treatment, payment or health care operations without an individuals' specific consent.¹ However, it should be noted that given the sensitive nature of the information, Florida law treats the disclosure of HIV Test Results in a more restrictive manner than HIPAA.² Based on the sensitive nature of RAAO's HIV testing services, only limited information was supplied to the WVHA as set forth in the agreement between the parties. The request from the Auditor General's representative exceeded what RAAO felt it was legally able to provide, a fact that we would have been happy to discuss with the Auditor General's representative had they contacted our office.

We would also note that in the Audit Findings, the Auditor General seems to imply (Footnotes 9 and 10) that RAAO somehow impeded the Auditor General's authority. With all due respect to the Auditor General, we would disagree. With regard to Footnote 9, the Auditor General implies that 42 USC 1320d-7(c), provides it with the authority to require a "health plan" to provide access to certain records, however, RAAO is not a "health plan" and as such the stated statutory reference would not seem to apply in so far as a request to RAAO. Accordingly, RAAO would have no legal basis to release the information to the Auditor General without individual authorization from the patients whose information was to be disclosed. While we are not counsel for WVHA, it should be noted that under HIPAA's regulatory definition for "Health plan", specifically excluded from the definition is any "government-funded program", like WHVA, that makes grants to fund the direct provision of health care to persons.³ As for RAAO's purported non-compliance with 11.47(1), F.S., (Footnote 10), it is RAAO's good faith belief that as a private not for profit organization, not specifically identified 11.45, F.S., it does not fall under the purview of the Auditor General statute. Accordingly, we believe it would have been a violation of applicable law for RAAO to supply to the Auditor General the PHI it was requesting.

In conclusion, it has been RAAO's pleasure to serve individuals in the community who are concerned with and/or are dealing with a life-threatening disease that still, unfortunately, has a significantly negative social stigma. RAAO has been proud to work with the WVHA in carrying out its mission to serve the residents of West Volusia County. It will always be RAAO's primary

¹ 45 CFR 164.502

² 381.004, F.S.

³ 45 CFR 160.103

Ted W. Small
General Counsel
March 4, 2022
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mission to serve the patients in the community and RAAO looks forward to partnering with the WVHA to perform continued good works.

Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,
The Gunster Law Firm



William Dillon

There are no meeting materials for this Tab