

**Seaport Environmental
Management Committee
September 7, 2011
8:30am – 12:00pm**

**Room 229 Senate Office Building
The Capitol
Tallahassee, Florida**

AGENDA

Seaport Environmental Management Committee

September 7, 2011

8:30am – 12:00pm

Room 229 Senate Office Building

The Capitol

Tallahassee, Florida

8:30 – 9:00 Welcome and Introductions

Approval of Meeting Agenda

Approval of November 4, 2010, Meeting Summary

Discussion of Future Meeting Dates

9:00 – 10:00 Preliminary Discussion of Issues

1. Legislative
2. Environmental Permitting
3. Use of State Sovereign Submerged Lands
4. Growth Management
5. Imperiled Species (Manatee, Sea Turtle, Right Whale, Other) and Nesting Birds

10:00 – 12:00 Discussion of Issues with Ex-Officio Members

12:00 Adjourn for Lunch

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8. First Organizational Report on Department of Economic Opportunity

TAB 1
SEMC LIST OF MEMBERS

SEAPORT ENVIRONMENTAL MANAGEMENT COMMITTEE

(updated October 2010)

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TAB 2
NOVEMBER 4, 2011 MEETING
SUMMARY

MEETING SUMMARY

SEAPORT ENVIRONMENTAL MANAGEMENT COMMITTEE

November 4, 2010
10:00 a.m. - 3:30 p.m.

Florida Ports Council
502 E. Jefferson Street
Tallahassee, Florida

The Seaport Environmental Management Committee (SEMC) meeting was called to order by David Kaufman, Chairman, about 10:10 a.m. In attendance were:

David Kaufman, Chair - JaxPort	David Stubbs - JaxPort
Becky Hope - Port of Miami (via telephone)	Carol Noble - Port Canaveral
Bob Musser - Port Everglades	David Anderton - Everglades
Phil Steadham - Port of Tampa	Craig Foil – Panama City
Chuck Littlejohn - Consultant to FPC	Toy Keller – FPC

Joining the meeting at 1:30 p.m. were:

Sheri Coven – Department of Community Affairs (DCA)
Mike Barnett – Department of Environmental Protection (DEP)
Jerry Scarborough – United States Army Corps of Engineers (USACOE)

Chuck Littlejohn gave a detailed report on **Numeric Nutrient Criteria (NNC)** and distributed several handouts to the SEMC. He discussed the disruptive effects proposed NNC would have on Florida's Total Maximum Daily Load (TMDL) and other water quality standards and regulatory programs. He stated that EPA's proposed NNC were not based on sound science and were not supported by its own technical advisory committee consisting of respected and nationally recognized water quality scientists. Mr. Littlejohn reminded SEMC members that last year only regulated interests testified before Judge Hinkle to counter the testimony of EPA and EarthJustice who favor the NNC. This issue will likely be taken up by Judge Hinkle again in the spring of 2011, and at that time NNC will face strong opposition from DEP, Florida's Governor, members of Florida's Cabinet, the Florida Legislature, and Florida's Congressional Delegation. In addition, a number of lawsuits declaring EPA's proposed NNC to be "arbitrary and capricious" have been filed by Florida's Attorney General and a host of public and private interests. It's not unreasonable to expect Judge Hinkle to reconsider his position at that time, nor is it unreasonable to expect that one or more of the pending lawsuits will prevail in showing that EPA's actions in adopting proposed NNC were arbitrary and capricious. In fact, any of a number of political solutions to prevent EPA from implementing NNC may prove to be successful.

A discussion of other seaport environmental issues followed. Mr. Littlejohn, Bob Musser and Carol Noble provided an update on circumstances relative to **Port Canaveral's over-water pier stormwater issue**. On October 19, 2010, FDEP sent a letter to Port Canaveral, commenting on the results of a study conducted for the port on best management practices (BMP) relative to runoff from the overwater pier. The Department concluded that the study "did not provide reasonable assurance to dissuade its concerns that runoff would cause adverse impacts to the surface water quality of Port Canaveral." The Department's letter goes on to say that some

form of stormwater treatment will be required. This is of particular concern due to the cost and scarcity of land for stormwater treatment within a port.

The SEMC concluded that it does not appear to be a problem for other ports in Florida or for private interests to obtain permits for overwater piers within other regions of the state, and questioned the application of different standards by the Department in different regions of the state. **The Committee expressed a desire to look into the ability for ports to contribute to a regional stormwater fund for offsite mitigation**, especially because the return on investment is greater for upland, urban compensatory storage than on ports. The intent of HB 963 during the 2010 legislative session was to allow for BMPs to be used in lieu of stormwater treatment. The Department has indicated that it does not want to develop a rule on this issue, as provided for in the legislation, and the language may need to be strengthened during the upcoming legislative session.

Information on the EPA's solicitation for **Diesel Emissions Reductions Program (DERP)** grant applications was distributed. In early November, \$60 million will be available for this upcoming round of grants which will be split between the states and the national competitive programs.

Permitting timeframes/efficiencies/standardization was discussed. The need for more flexibility, not reduced standards was expressed. Mr. Littlejohn reported that Port Manatee has an issue involving a drainage canal that connects a spoil disposal site to Tampa Bay. The discharge occurs approximately one mile upstream from the point where the canal waters meet the Bay. The SEMC's position is that the mixing zone should begin where canal waters meet the Bay. This issue may require a statutory fix.

It was noted that comments attributable to mining industry standards seem to be creeping into some of the comments appearing on permits for spoil disposal sites. They are reflective of requirements for a berm/dike disposal area similar to clay settling ponds rather than a spoil disposal facility. In addition, the DEP is now requiring an operation permit for weirs.

There was a discussion about "perpetual" permits and conceptual permits and whether or not they are useful. The question was asked if ports would want to see the law implemented the way it currently exists. Perhaps this is another area where legislative clarification is needed.

Jerry Scarborough reported that the Natural Resource Defense Council (NRDC) received grant funding to continue the study on the use of sonar to detect manatees in the vicinity of dredging operations. When asked if the timeframes for reviewing dredging permits may be improved under the new administration in Washington, he indicated that the cost/benefit reviews have not yet been standardized and most of the models being used have not been approved, so probably not.

Michael Barnett reported on oil spill contingency plans and commented on the huge size of DEP's work force being assigned to this crisis. He said the use of dispersants was found to be a bad idea in dealing with the spill. He said there was still oil in the form of tar balls being found on the beaches and the impacts on interior waters is yet to be determined. Port Canaveral's over-water pier stormwater issue was discussed with Mr. Barnett. He reported that Mimi Drew and Janet Llewellyn had reviewed the issues as well as the district, and found that water quality standards were not being met. There was discussion about a "perpetual permit" or general use permit for all of seaports' maintenance dredging activities, rather than utilizing the MOA that exists between the FPC and the Department, which has never been implemented. It was suggested that a "noticed general permit," similar to one used by the Florida Inland Navigational

District, might be more efficient. Mr. Barnett said he would have this discussion within the agency and advise the SEMC.

Mr. Littlejohn indicated he would keep all members advised of legislative issues during the session and contact members for help as necessary. The meeting was adjourned at approximately 3:30 p.m.

TAB 3
ENROLLED HB 399
Regulatory Relief

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2011 Legislature

1 A bill to be entitled
2 An act relating to infrastructure investment; amending s.
3 20.23, F.S.; requiring the Secretary of Transportation to
4 designate duties relating to certain investment
5 opportunities and transportation projects to an assistant
6 secretary; amending s. 311.09, F.S.; revising requirements
7 for the inclusion of certain goals and objectives in the
8 Florida Seaport Mission Plan; requiring the Florida
9 Seaport Transportation and Economic Development Council to
10 develop a priority list of projects and submit the list to
11 the Department of Transportation; amending s. 311.14,
12 F.S.; requiring certain ports to develop strategic plans;
13 providing criteria for such plans; requiring such plans to
14 be consistent with local government comprehensive plans;
15 requiring such plans to be submitted to the Florida
16 Seaport Transportation and Economic Development Council;
17 requiring the Florida Seaport Transportation and Economic
18 Development Council to review such plans and include
19 related information in the Florida Seaport Mission Plan;
20 amending s. 339.155, F.S.; clarifying and revising the
21 principles on which the Florida Transportation Plan is
22 based; amending s. 339.63, F.S.; adding certain existing
23 and planned facilities to the list of facilities included
24 in the Strategic Intermodal System and the Emerging
25 Strategic Intermodal System; amending s. 373.406, F.S.;
26 exempting overwater piers, docks, and structures located
27 in deepwater ports from stormwater management system
28 requirements under specified conditions; amending s.

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2011 Legislature

373.4133, F.S.; requiring the Department of Environmental Protection to approve or deny an application for a port conceptual permit within a specified time; providing a limitation for the request of additional information from an applicant by the department; providing that failure of an applicant to respond to such a request within a specified time constitutes withdrawal of the application; providing that a third party who challenge the issuance of a port conceptual permit has the burden of ultimate persuasion and the burden of going forward with evidence; amending s. 403.813, F.S.; exempting specified seaports and inland navigation districts from requirements to conduct maintenance dredging under certain conditions; excluding ditches, pipes, and similar linear conveyances from consideration as receiving waters for the disposal of dredged materials; authorizing public ports and inland navigation districts to use sovereignty submerged lands in connection with maintenance dredging; authorizing the disposal of spoil material on specified sites; providing an exemption from permitting requirements for sites that meet specified criteria; requiring notice to the Department of Environmental Protection of intent to use the exemption; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 20.23, Florida Statutes, is amended to read:

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2011 Legislature

57 20.23 Department of Transportation.—There is created a
58 Department of Transportation which shall be a decentralized
59 agency.

60 (1)

61 (d) The secretary may appoint up to three assistant
62 secretaries who shall be directly responsible to the secretary
63 and who shall perform such duties as are assigned by the
64 secretary. The secretary shall designate to an assistant
65 secretary the duties related to enhancing economic prosperity,
66 including, but not limited to, the responsibility of liaison
67 with the head of economic development in the Executive Office of
68 the Governor. Such assistant secretary shall be directly
69 responsible for providing the Executive Office of the Governor
70 with investment opportunities and transportation projects that
71 expand the state's role as a global hub for trade and investment
72 and enhance the supply chain system in the state to process,
73 assemble, and ship goods to markets throughout the eastern
74 United States, Canada, the Caribbean, and Latin America. The
75 secretary may delegate to any assistant secretary the authority
76 to act in the absence of the secretary.

77 Section 2. Subsection (3) of section 311.09, Florida
78 Statutes, is amended to read:

79 311.09 Florida Seaport Transportation and Economic
80 Development Council.—

81 (3) The council shall prepare a 5-year Florida Seaport
82 Mission Plan defining the goals and objectives of the council
83 concerning the development of port facilities and an intermodal
84 transportation system consistent with the goals of the Florida

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85 Transportation Plan developed pursuant to s. 339.155. The
86 Florida Seaport Mission Plan shall include specific
87 recommendations for the construction of transportation
88 facilities connecting any port to another transportation mode
89 and for the efficient, cost-effective development of
90 transportation facilities or port facilities for the purpose of
91 enhancing ~~international~~ trade, promoting cargo flow, increasing
92 cruise passenger movements, increasing port revenues, and
93 providing economic benefits to the state. The council shall
94 develop a priority list of projects based on these
95 recommendations annually and submit the list to the Department
96 of Transportation. The council shall update the 5-year Florida
97 Seaport Mission Plan annually and shall submit the plan no later
98 than February 1 of each year to the President of the Senate; the
99 Speaker of the House of Representatives; the Office of Tourism,
100 Trade, and Economic Development; the Department of
101 Transportation; and the Department of Community Affairs. The
102 council shall develop programs, based on an examination of
103 existing programs in Florida and other states, for the training
104 of minorities and secondary school students in job skills
105 associated with employment opportunities in the maritime
106 industry, and report on progress and recommendations for further
107 action to the President of the Senate and the Speaker of the
108 House of Representatives annually.

109 Section 3. Section 311.14, Florida Statutes, is amended to
110 read:

111 311.14 Seaport ~~freight-mobility~~ planning.—

112 (1) The Florida Seaport Transportation and Economic

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Development Council, in cooperation with the Office of the State Public Transportation Administrator within the Department of Transportation, shall develop freight-mobility and trade-corridor plans to assist in making freight-mobility investments that contribute to the economic growth of the state. Such plans should enhance the integration and connectivity of the transportation system across and between transportation modes throughout Florida for people and freight.

(2) The Office of the State Public Transportation Administrator shall act to integrate freight-mobility and trade-corridor plans into the Florida Transportation Plan developed pursuant to s. 339.155 and into the plans and programs of metropolitan planning organizations as provided in s. 339.175. The office may also provide assistance in expediting the transportation permitting process relating to the construction of seaport freight-mobility projects located outside the physical borders of seaports. The Department of Transportation may contract, as provided in s. 334.044, with any port listed in s. 311.09(1) or any such other statutorily authorized seaport entity to act as an agent in the construction of seaport freight-mobility projects.

(3) Each port shall develop a strategic plan with a 10-year horizon. Each plan must include the following:

(a) An economic development component that identifies targeted business opportunities for increasing business and attracting new business for which a particular facility has a strategic advantage over its competitors, identifies financial resources and other inducements to encourage growth of existing

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141 business and acquisition of new business, and provides a
142 projected schedule for attainment of the plan's goals.

143 (b) An infrastructure development and improvement
144 component that identifies all projected infrastructure
145 improvements within the plan area which require improvement,
146 expansion, or development in order for a port to attain a
147 strategic advantage for competition with national and
148 international competitors.

149 (c) A component that identifies all intermodal
150 transportation facilities, including sea, air, rail, or road
151 facilities, which are available or have potential, with
152 improvements, to be available for necessary national and
153 international commercial linkages and provides a plan for the
154 integration of port, airport, and railroad activities with
155 existing and planned transportation infrastructure.

156 (d) A component that identifies physical, environmental,
157 and regulatory barriers to achievement of the plan's goals and
158 provides recommendations for overcoming those barriers.

159 (e) An intergovernmental coordination component that
160 specifies modes and methods to coordinate plan goals and
161 missions with the missions of the Department of Transportation,
162 other state agencies, and affected local, general-purpose
163 governments.

164
165 To the extent feasible, the port strategic plan must be
166 consistent with the local government comprehensive plans of the
167 units of local government in which the port is located. Upon
168 approval of a plan by the port's board, the plan shall be

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submitted to the Florida Seaport Transportation and Economic
Development Council.

(4) The Florida Seaport Transportation and Economic
Development Council shall review the strategic plans submitted
by each port and prioritize strategic needs for inclusion in the
Florida Seaport Mission Plan prepared pursuant to s. 311.09(3).

Section 4. Subsection (1) of section 339.155, Florida
Statutes, is amended to read:

339.155 Transportation planning.—

(1) THE FLORIDA TRANSPORTATION PLAN.—The department shall
develop and annually update a statewide transportation plan, to
be known as the Florida Transportation Plan. The plan shall be
designed so as to be easily read and understood by the general
public. The plan shall consider the needs of the entire state
transportation system and examine the use of all modes of
transportation to effectively and efficiently meet such needs.

The purpose of the Florida Transportation Plan is to establish
and define the state's long-range transportation goals and
objectives to be accomplished over a period of at least 20 years
within the context of the State Comprehensive Plan, and any
other statutory mandates and authorizations and based upon the
prevailing principles of:

(a) Preserving the existing transportation
infrastructure.~~†~~

(b) Enhancing Florida's economic competitiveness.~~†~~ and

(c) Improving travel choices to ensure mobility.

(d) Expanding the state's role as a hub for trade and
investment. ~~The Florida Transportation Plan shall consider the~~

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~~needs of the entire state transportation system and examine the
use of all modes of transportation to effectively and
efficiently meet such needs.~~

Section 5. Subsection (2) of section 339.63, Florida
Statutes, is amended to read:

339.63 System facilities designated; additions and
deletions.—

(2) The Strategic Intermodal System and the Emerging
Strategic Intermodal System include four ~~three~~ different types
of facilities that each form one component of an interconnected
transportation system which types include:

(a) Existing or planned hubs that are ports and terminals
including airports, seaports, spaceports, passenger terminals,
and rail terminals serving to move goods or people between
Florida regions or between Florida and other markets in the
United States and the rest of the world.†

(b) Existing or planned corridors that are highways, rail
lines, waterways, and other exclusive-use facilities connecting
major markets within Florida or between Florida and other states
or nations.† ~~and~~

(c) Existing or planned intermodal connectors that are
highways, rail lines, waterways or local public transit systems
serving as connectors between the components listed in
paragraphs (a) and (b).

(d) Existing or planned facilities that significantly
improve the state's competitive position to compete for the
movement of additional goods into and through this state.

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224 Section 6. Subsection (12) is added to section 373.406,
225 Florida Statutes, to read:

226 373.406 Exemptions.—The following exemptions shall apply:

227 (12) An overwater pier, dock, or a similar structure
228 located in a deepwater port listed in s. 311.09 is not
229 considered to be part of a stormwater management system for
230 which this chapter or chapter 403 requires stormwater from
231 impervious surfaces to be treated if:

232 (a) The port has a stormwater pollution prevention plan
233 for industrial activities pursuant to the National Pollutant
234 Discharge Elimination System Program; and

235 (b) The stormwater pollution prevention plan also provides
236 similar pollution prevention measures for other activities that
237 are not subject to the National Pollutant Discharge Elimination
238 System Program and that occur on the port's overwater piers,
239 docks, and similar structures.

240 Section 7. Paragraph (a) of subsection (8) of section
241 373.4133, Florida Statutes, is amended to read:

242 373.4133 Port conceptual permits.—

243 (8) Except as otherwise provided in this section, the
244 following procedures apply to the approval or denial of an
245 application for a port conceptual permit or a final permit or
246 authorization:

247 (a) Applications for a port conceptual permit, including
248 any request for the conceptual approval of the use of
249 sovereignty submerged lands, shall be processed in accordance
250 with the provisions of ss. 373.427 and 120.60, with the
251 following exceptions:—

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252 1. An application for a port conceptual permit, and any
253 applications for subsequent construction contained in a port
254 conceptual permit, must be approved or denied within 60 days
255 after receipt of a completed application.

256 2. The department may request additional information no
257 more than twice, unless the applicant waives this limitation in
258 writing. If the applicant does not provide a response to the
259 second request for additional information within 90 days or
260 another time period mutually agreed upon between the applicant
261 and department, the application shall be considered withdrawn.

262 ~~However,~~

263 3. If the applicant believes that any request for
264 additional information is not authorized by law or agency rule,
265 the applicant may request an informal hearing pursuant to s.
266 120.57(2) before the Secretary of Environmental Protection to
267 determine whether the application is complete.

268 4. If a third party petitions to challenge the issuance of
269 a port conceptual permit by the department, the petitioner
270 initiating the action has the burden of ultimate persuasion and,
271 in the first instance, has the burden of going forward with the
272 evidence.

273 Section 8. Subsection (3) of section 403.813, Florida
274 Statutes, is amended to read:

275 403.813 Permits issued at district centers; exceptions.—

276 (3) A permit is not required under this chapter, chapter
277 373, chapter 61-691, Laws of Florida, or chapter 25214 or
278 chapter 25270, 1949, Laws of Florida, for maintenance dredging
279 conducted under this section by the seaports of Jacksonville,

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280 Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami,
281 Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City,
282 Pensacola, Key West, and Fernandina or by inland navigation
283 districts if the dredging to be performed is no more than is
284 necessary to restore previously dredged areas to original design
285 specifications or configurations, previously undisturbed natural
286 areas are not significantly impacted, and the work conducted
287 does not violate the protections for manatees under s.
288 379.2431(2)(d). In addition:

289 (a) A mixing zone for turbidity is granted within a 150-
290 meter radius from the point of dredging while dredging is
291 ongoing, except that the mixing zone may not extend into areas
292 supporting wetland communities, submerged aquatic vegetation, or
293 hardbottom communities.

294 (b) The discharge of the return water from the site used
295 for the disposal of dredged material shall be allowed only if
296 such discharge does not result in a violation of water quality
297 standards in the receiving waters. The return-water discharge
298 into receiving waters shall be granted a mixing zone for
299 turbidity within a 150-meter radius from the point of discharge
300 into the receiving waters during and immediately after the
301 dredging, except that the mixing zone may not extend into areas
302 supporting wetland communities, submerged aquatic vegetation, or
303 hardbottom communities. Ditches, pipes, and similar types of
304 linear conveyances may not be considered receiving waters for
305 the purposes of this paragraph.

306 (c) The state may not exact a charge for material that
307 this subsection allows a public port or an inland navigation

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308 district to remove. In addition, consent to use any sovereignty
309 submerged lands pursuant to this section is hereby granted.

310 (d) The use of flocculants at the site used for disposal
311 of the dredged material is allowed if the use, including
312 supporting documentation, is coordinated in advance with the
313 department and the department has determined that the use is not
314 harmful to water resources.

315 (e) The spoil material from maintenance dredging may be
316 deposited in a self-contained, upland disposal site. The site is
317 not required to be permitted if:

318 1. The site exists as of January 1, 2011;

319 2. A professional engineer certifies that the site has
320 been designed in accordance with generally accepted engineering
321 standards for such disposal sites;

322 3. The site has adequate capacity to receive and retain
323 the dredged material; and

324 4. The site has operating and maintenance procedures
325 established that allow for discharge of return flow of water and
326 to prevent the escape of the spoil material into the waters of
327 the state.

328 (f) The department must be notified at least 30 days
329 before the commencement of maintenance dredging. The notice
330 shall include, if applicable, the professional engineer
331 certification required by paragraph (e).

332 (g) ~~(e)~~ This subsection does not prohibit maintenance
333 dredging of areas where the loss of original design function and
334 constructed configuration has been caused by a storm event,
335 provided that the dredging is performed as soon as practical

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after the storm event. Maintenance dredging that commences within 3 years after the storm event shall be presumed to satisfy this provision. If more than 3 years are needed to commence the maintenance dredging after the storm event, a request for a specific time extension to perform the maintenance dredging shall be submitted to the department, prior to the end of the 3-year period, accompanied by a statement, including supporting documentation, demonstrating that contractors are not available or that additional time is needed to obtain authorization for the maintenance dredging from the United States Army Corps of Engineers.

Section 9. This act shall take effect July 1, 2011.

TAB 4
ENROLLED HB 869
Sovereign Submerged Lands

ENROLLED

CS/HB 869

2011 Legislature

1 A bill to be entitled
2 An act relating to the Manatee County Port Authority;
3 amending chapter 2003-351, Laws of Florida; providing for
4 the conveyance of title to submerged lands adjacent to the
5 port authority's boundaries from the Board of Trustees of
6 the Internal Improvement Trust Fund; defining the
7 territorial boundaries of the submerged lands; providing
8 an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (15) is added to section 6 of
13 section 3 of chapter 2003-351, Laws of Florida, to read:

14 Section 6. Grant of powers.—The Port Authority, in
15 addition to any and all powers granted to it by section 315.03,
16 Florida Statutes, other laws, general, local or special, is
17 hereby authorized and empowered:

18 (15) To receive title to, right of entry upon, and to
19 regulate the improvement of any and all submerged lands
20 belonging to the Board of Trustees of the Internal Improvement
21 Trust Fund contained within the area described in this
22 subsection. Said submerged lands are hereby conveyed to the Port
23 Authority, for consideration of \$1 from the Port Authority to
24 the Board of Trustees of the Internal Improvement Trust Fund,
25 subject to the riparian rights of the respective owners of the
26 uplands adjacent thereto. Such titles and rights shall
27 effectually and fully vest in the Port Authority. No such
28 submerged lands owned by the Port Authority shall be sold or

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otherwise disposed of by the Port Authority to any party or parties and shall only be used for proper public and Port Authority purposes. The submerged lands conveyed and granted to the Port Authority shall comprise and include the territory described as follows:

Commence at the northeast corner sec. 1, township 33 south, range 17, east thence N 89° 30' 22" W along the common line between Manatee and Hillsborough counties a distance of 1642.84 for a point of beginning, thence continue for 89° 30' 22" W along said line a distance of 162.63 to a point lying +/- 100 westerly of shore line, thence S 68° 00' 00" W a distance of 7680.0' to a point northwest of shore line of spoil island, thence continue of said line a distance of 1315.0' thence S 26'00' 00" E a distance of 2500.0', thence S 51° 00' 00" E a distance of 4776.0' to the intersection of the shore line, said point lying +/- 100.0 southerly of Red Fish Creek, thence continue along +/- MHWL N 76' 03' 53" E a distance of 81.92' thence N 54° 37' 19" W distance of 79.60 thence S 66° 09' 45" E a distance of 51.92' thence S 68° 45' 58" E distance of 57.69, thence N 14° 29' 51" E distance of 101.11', thence N 06° 24' 26" W a distance of 195.98, thence N 48° 04' 53" W distance of 166.06 thence N 28° 20' 57" W distance 194.77' thence N 66° 34' 24" W distance of 265.74 thence continue at MHWL entering site 7 N 34° 17' 49" W a distance of 50.72'

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57 thence N 01° 08' 23" W a distance of 50.70' thence N
 58 45° 10' 56" E a distance of 67.70' thence N 08° 24'
 59 59" E a distance of 132.72' thence N 80° 06' 31" E a
 60 distance of 81.43 thence con't. around site 7 at MHWL
 61 N 88° 25' 22" E a distance of 64.00' thence S 78° 56'
 62 03" E a distance of 70.58' thence N 83° 46' 11" E a
 63 distance of 57.51 thence S 87° 22' 25" E a distance of
 64 297.08 thence S 56° 16' 40" E a distance of 43.65
 65 thence along easterly side of site 7 N 59° 11' 15" E a
 66 distance of 51.17, thence N 52° 01' 16" E a distance
 67 of 49.53 thence N 58° 31' 03" E a distance of 83.27',
 68 thence N 51 53' 44" E a distance of 45.91 thence N 39°
 69 56' 18"E a distance of 59.62' thence con't. along
 70 easterly side of site 7 N 13° 58' 29" E a distance of
 71 185.39' thence N 08° 06' 21"E a distance of 56.47'
 72 thence N 06° 45' 56" E a distance of 121.48 to the
 73 point of curve thence N 40° 48' 46" W on a chord
 74 bearing to the point of tangent having chord distance
 75 of 312.39' and having radius of 195.0' thence continue
 76 along the northerly side of site 7 at the MHWL S 85°
 77 57' 43" W a distance of 144.95' thence S 88° 44' 05" W
 78 a distance of 83.76' thence N 82° 56' 37" W a distance
 79 of 52.85' thence N 53° 59' 27" W a distance of 169.86'
 80 thence S 74° 09' 29" W a distance of 38.95' thence S
 81 42° 24' 26" W a distance of 200.54' thence N 89° 54'
 82 24" W a distance of 37.22' thence N 32° 32' 32" W a
 83 distance of 185.15' thence S 71° 34' 35" W a distance
 84 of 201.21' thence S 47° 24' 18" W a distance of 38.59'

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85 thence S 84° 04' 21" W a distance of 103.95' thence N
86 25° 10' 43" E a distance of 344.7' thence S 67° 41'
87 13" E a distance of 200.79' thence N 47° 03' 32" E a
88 distance of 269.39' thence N 49° 21' 58" E a distance
89 107.11' thence N 11° 16' 37" E a distance of 174.34'
90 thence N 14° 07' 20" E a distance of 283.42' thence N
91 25° 20' 31" E a distance of 176.78' thence N 45° 17'
92 17" E a distance of 194.89' thence N36°45'42"E a
93 distance of 89.68' thence N 08°12'15"W a distance of
94 401.86 thence S 30°59'55"W a distance of 29.34' thence
95 N 89°30'00"W a distance of 87.98' thence N 06°15'00"E
96 a distance of 653.29' thence S 89°29'57"E a distance
97 of 405.26' thence N31° 00'19"E a distance of 928.40'
98 thence N 89°30'00"W a distance of 795.99' thence N
99 06°15'00"E a distance of 1306.57' thence S 89°30'00"E
100 a distance of 245.24' thence S 41°39'46"E a distance
101 of 85.02 thence along MHWL N 84° 12' 36" E a distance
102 of 75.70' thence N 84° 48' 41" E a distance of 60.12'
103 thence N 85° 46' 08" E a distance of 31.01' thence N
104 81° 34' 07" E a distance of 124.11' thence N 71° 34'
105 19" E a distance of 125.95' thence N 69° 34' 04" E a
106 distance of 71.70' thence con't along said MHWL S 83°
107 58' 50" E a distance of 91.76' thence S 77° 25 10 E a
108 distance of 66.90' thence S 89° 35' 54" E a distance
109 of 65.91' thence N 74° 03' 21" E a distance of 85.96'
110 thence cont along MHWL on northerly side of Port
111 Manatee S 87° 49' 54" E a distance of 256.55' thence N
112 64° 08' 51" E a distance of 118.68' thence N 58° 51'

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113 27" E a distance of 106.97' thence N 90° 00' 00" E a
114 distance of 32.45' thence N 44° 26' 47" E a distance
115 of 64.36' thence cont along said MHWL between Port
116 Manatee and Piney Point N 22° 59' 12" E distance of
117 122.33' thence N 32° 49' 10" E a distance of 129.72'
118 thence N 12° 31 '40" E a distance of 38.19' thence N
119 24° 48' 58" E a distance of 118.12' thence N 16° 25
120 '47" E a distance of 107.89' thence N 23° 40' 54" E a
121 distance of 85.84' thence N 20° 16' 13" E a distance of
122 77.45' thence N 06° 36' 22" E a distance of 81.77'
123 thence N 18° 56' 55" E a distance of 212.48' thence N
124 40° 41' 40" E a distance of 109.25' thence N 42° 46'
125 34" W a distance 71.88' thence N 61° 43' 42" W a
126 distance of 365.29' thence cont along said MHWL S 09°
127 23' 40" W a distance of 84.26' thence S 12° 07' 20" E
128 a distance of 55.20' thence S 38° 44' 27" E a distance
129 of 119.03' thence S 32° 18' 23" E a distance of 32.76'
130 thence S 46° 26' 41" E a distance of 58.05' thence
131 cont along said MHWL S 33° 22' 22" E a distance of
132 28.20' thence S 11° 08' 57" E a distance of 55.95'
133 thence S 04° 05' 31" W a distance of 47.24' thence S
134 81° 21' 03" W a distance of 25.28' thence N 50° 01' 51"
135 W a distance of 21.98' thence N 03° 04' 16" E a
136 distance of 30.46' thence N 40° 52' 58" W a distance
137 of 24.28' thence N 73° 46' 50" E a distance of 20.59'
138 thence N 01° 23' 18" W a distance of 28.79' thence N
139 44° 20' 10" W a distance of 106.02' thence N 52° 53'
140 48" W a distance of 63.82' thence N 42° 13' 45" W a

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2011 Legislature

distance of 61.71' thence N 14° 03' 11" W a distance
of 58.45' thence continued along said MHWL N 53° 00'
29" W a distance of 28.33' thence N 05° 52' 34" W a
distance of 25.83' thence N 23° 39' 27" E distance of
15.75' thence N 00° 42' 19" W a distance of 62.69'
thence N 21°33'24"W a distance of 51.13' thence cont
along MHWL said point lying on the southerly side of
Piney Point N 61° 44' 16"W a distance of 40.30' thence
N 80° 09' 19" W a distance of 37.06' thence S 80° 27'
42" W a distance of 31.65' thence N 67° 45' 37" W a
distance of 23.24' thence N 02° 11' 39" W a distance
of 13.62' thence S 61° 27' 37" E a distance of 22.30'
thence cont along MHWL thence N 70° 09' 07" E a
distance of 25.52' thence N 54° 29' 37" E a distance
of 134.04' thence cont along said MHWL point being
most northerly side of Piney Point N 88° 28' 44"E a
distance of 48.18' thence S 80° 19' 03" E a distance
of 80.55' thence N 65° 09' 03" E a distance of 35.10'
thence S 58° 23' 58" E a distance of 48.51' thence N
70° 36' 00" E a distance of 41.20' thence S 57° 37'
44" E a distance of 51.59' thence N 85° 40' 16" E a
distance of 42.39' thence N 63° 49' 06" E a distance
of 36.41' thence S 79° 53' 46" E a distance of 23.46'
thence S 67° 11' 50" E a distance of 65.33' thence S
87° 49' 35" E a distance of 78.78' thence N 87° 44'
29" E a distance of 66.56' thence N 69° 02' 32" E a
distance of 47.64' thence cont along said MHWL N 77°
48' 22" E a distance of 57.21' thence N 72° 35' 46" E

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169 a distance of 57.61' thence N 67° 51' 14" E a distance
170 of 51.28' hence N 01° 58' 56" E a distance of 48.64'
171 thence N 38° 40' 23" E a distance of 39.12' thence N
172 90° 00' 00" E a distance of 22.22' thence S 49° 14'
173 59" E a distance of 21.27' thence S 37° 59' 05" E a
174 distance of 28.88' thence S 00° 39' 05" W a distance
175 of 48.87' thence cont on said MHWL N 59° 13' 40" E a
176 distance of 30.39' thence N 70° 30' 22" E for a
177 distance of 28.29' thence N 14° 47' 20" E for a
178 distance of 31.24' thence N 28° 41' 51" E a distance
179 of 42.12' thence N 10° 00' 00" W a distance of 41.84'
180 thence N 56° 13' 32" E a distance of 29.03' thence N
181 90° 00' 00" E a distance of 30.69' thence S 01° 08'
182 47" E a distance of 34.86' thence N 47° 30' 11" E a
183 distance of 56.76' thence N 33° 53' 58" E a distance
184 of 56.27' thence N 70° 21' 17" E a distance of 31.10'
185 thence cont along said MHWL N 29° 48' 31" E a distance
186 of 255.11 thence N 27°27'03"E a distance of 208.93
187 thence N 33° 23' 54" E a distance of 214.28' thence N
188 33° 17' 14" E a distance of 136.49" thence N 76° 02'
189 27" E a distance of 135.64' to the point of beginning.
190 Section 2. This act shall take effect upon becoming a law.

TAB 5
ENROLLED HB 993
Shift of Burden

ENROLLED

CS for CS/CS/HB 993 & HB 7239, Engrossed 1

2011 Legislature

1 A bill to be entitled

2 An act relating to rulemaking; amending s. 120.54, F.S.;

3 requiring that an agency include in its notice of intended

4 rulemaking a statement as to whether the proposed rule

5 will require legislative ratification; providing for

6 withdrawal of an adopted rule that is not ratified by the

7 Legislature; clarifying that certain proposed rules are

8 effective only when ratified by the Legislature; amending

9 s. 120.541, F.S.; reducing the time before an agency files

10 a rule for adoption within which the agency must notify

11 the person who submitted a lower cost alternative and the

12 Administrative Procedures Committee; excluding rules

13 adopting federal standards and emergency rulemaking from

14 certain provisions; amending s. 120.56, F.S.; reducing the

15 time in which a substantially affected person may seek an

16 administrative determination of the invalidity of a rule

17 after the statement or revised statement of estimated

18 regulatory costs is available; amending s. 120.74, F.S.;

19 providing for agency reporting of certain annual

20 regulatory plans; providing for certain omissions and

21 suspensions of reports; creating s. 120.745, F.S.;

22 providing for legislative review of agency rules in effect

23 on or before November 16, 2010; providing definitions;

24 requiring that each agency complete an enhanced biennial

25 review of its existing rules; requiring a report of the

26 enhanced biennial review; providing specifications for the

27 report; providing for objections and the agency's

28 response; requiring the performance of a compliance

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CS for CS/CS/HB 993 & HB 7239, Engrossed 1

2011 Legislature

29 economic review and report under certain circumstances;
30 providing specifications for the review; providing
31 specifications for publishing the final report of the
32 agency's review; requiring that an agency publish notices,
33 determinations, and reports in a specified format;
34 requiring the Department of State to publish certain
35 notices in the Florida Administrative Weekly; providing
36 specifications; providing for future review and repeal;
37 providing for suspension of rulemaking authority for
38 failure to comply with the certification requirements of
39 the section; providing for an exemption from certain
40 requirements; creating s. 120.7455, F.S.; providing that
41 the Legislature may establish and maintain an Internet-
42 based public survey of regulatory impacts; providing input
43 details; providing that legislative leaders may certify in
44 writing to certain individuals the establishment and
45 identity of any such Internet-based survey; providing
46 immunities from enforcement action or prosecution
47 involving information solicited through the survey;
48 providing protections from retaliatory enforcement
49 actions; clarifying that the legal status of a rule that
50 has been determined to be invalid is not changed by the
51 amendment or creation of specified provisions by the act;
52 amending s. 120.80, F.S.; exempting the adoption of
53 certain amendments and the triennial updates to the
54 Florida Building Code from required legislative
55 ratification; exempting the adoption of certain amendments
56 and the triennial updates to the Florida Fire Prevention

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57 Code from required legislative ratification; exempting the
58 adoption of rules adjusting rates of certain
59 transportation and expressway tolls from the preparation
60 of a statement of estimated regulatory costs and from
61 submission for legislative ratification; amending s.
62 120.81, F.S.; excluding the adoption of rules under
63 chapter 2011-1, Laws of Florida, the Student Success Act,
64 from the preparation of a statement of estimated
65 regulatory costs and from submission for legislative
66 ratification; amending s. 120.569, F.S.; providing that a
67 nonapplicant who petitions to challenge an agency's
68 issuance of a license, permit, or conceptual approval in
69 certain circumstances has the burden of ultimate
70 persuasion and the burden of going forward with evidence;
71 providing an effective date.

72
73 Be It Enacted by the Legislature of the State of Florida:

74
75 Section 1. Paragraphs (a), (d), and (e) of subsection (3)
76 of section 120.54, Florida Statutes, as amended by chapter 2010-
77 279, Laws of Florida, are amended to read:

78 120.54 Rulemaking.—

79 (3) ADOPTION PROCEDURES.—

80 (a) Notices.—

81 1. Prior to the adoption, amendment, or repeal of any rule
82 other than an emergency rule, an agency, upon approval of the
83 agency head, shall give notice of its intended action, setting
84 forth a short, plain explanation of the purpose and effect of

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85 the proposed action; the full text of the proposed rule or
86 amendment and a summary thereof; a reference to the grant of
87 rulemaking authority pursuant to which the rule is adopted; and
88 a reference to the section or subsection of the Florida Statutes
89 or the Laws of Florida being implemented or interpreted. The
90 notice must include a summary of the agency's statement of the
91 estimated regulatory costs, if one has been prepared, based on
92 the factors set forth in s. 120.541(2); ~~and~~ and a statement that
93 any person who wishes to provide the agency with information
94 regarding the statement of estimated regulatory costs, or to
95 provide a proposal for a lower cost regulatory alternative as
96 provided by s. 120.541(1), must do so in writing within 21 days
97 after publication of the notice; and a statement as to whether,
98 based on the statement of the estimated regulatory costs or
99 other information expressly relied upon and described by the
100 agency if no statement of regulatory costs is required, the
101 proposed rule is expected to require legislative ratification
102 pursuant to s. 120.541(3). The notice must state the procedure
103 for requesting a public hearing on the proposed rule. Except
104 when the intended action is the repeal of a rule, the notice
105 must include a reference both to the date on which and to the
106 place where the notice of rule development that is required by
107 subsection (2) appeared.

108 2. The notice shall be published in the Florida
109 Administrative Weekly not less than 28 days prior to the
110 intended action. The proposed rule shall be available for
111 inspection and copying by the public at the time of the
112 publication of notice.

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113 3. The notice shall be mailed to all persons named in the
114 proposed rule and to all persons who, at least 14 days prior to
115 such mailing, have made requests of the agency for advance
116 notice of its proceedings. The agency shall also give such
117 notice as is prescribed by rule to those particular classes of
118 persons to whom the intended action is directed.

119 4. The adopting agency shall file with the committee, at
120 least 21 days prior to the proposed adoption date, a copy of
121 each rule it proposes to adopt; a copy of any material
122 incorporated by reference in the rule; a detailed written
123 statement of the facts and circumstances justifying the proposed
124 rule; a copy of any statement of estimated regulatory costs that
125 has been prepared pursuant to s. 120.541; a statement of the
126 extent to which the proposed rule relates to federal standards
127 or rules on the same subject; and the notice required by
128 subparagraph 1.

129 (d) Modification or withdrawal of proposed rules.—

130 1. After the final public hearing on the proposed rule, or
131 after the time for requesting a hearing has expired, if the rule
132 has not been changed from the rule as previously filed with the
133 committee, or contains only technical changes, the adopting
134 agency shall file a notice to that effect with the committee at
135 least 7 days prior to filing the rule for adoption. Any change,
136 other than a technical change that does not affect the substance
137 of the rule, must be supported by the record of public hearings
138 held on the rule, must be in response to written material
139 submitted to the agency within 21 days after the date of
140 publication of the notice of intended agency action or submitted

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141 to the agency between the date of publication of the notice and
142 the end of the final public hearing, or must be in response to a
143 proposed objection by the committee. In addition, when any
144 change is made in a proposed rule, other than a technical
145 change, the adopting agency shall provide a copy of a notice of
146 change by certified mail or actual delivery to any person who
147 requests it in writing no later than 21 days after the notice
148 required in paragraph (a). The agency shall file the notice of
149 change with the committee, along with the reasons for the
150 change, and provide the notice of change to persons requesting
151 it, at least 21 days prior to filing the rule for adoption. The
152 notice of change shall be published in the Florida
153 Administrative Weekly at least 21 days prior to filing the rule
154 for adoption. This subparagraph does not apply to emergency
155 rules adopted pursuant to subsection (4).

156 2. After the notice required by paragraph (a) and prior to
157 adoption, the agency may withdraw the rule in whole or in part.

158 3. After adoption and before the rule becomes effective
159 ~~date~~, a rule may be modified or withdrawn only in the following
160 circumstances:

161 a. When the committee objects to the rule;

162 b. When a final order, which is not subject to further
163 appeal, is entered in a rule challenge brought pursuant to s.
164 120.56 after the date of adoption but before the rule becomes
165 effective pursuant to subparagraph (e)6.;

166 c. If the rule requires ratification, when more than 90
167 days have passed since the rule was filed for adoption without
168 the Legislature ratifying the rule, in which case the rule may

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169 be withdrawn but may not be modified; or

170 d. response to an objection by the committee or may be
171 modified to extend the effective date by not more than 60 days

172 When the committee notifies ~~has notified~~ the agency that an
173 objection to the rule is being considered, in which case the
174 rule may be modified to extend the effective date by not more
175 than 60 days.

176 4. The agency shall give notice of its decision to
177 withdraw or modify a rule in the first available issue of the
178 publication in which the original notice of rulemaking was
179 published, shall notify those persons described in subparagraph
180 (a)3. in accordance with the requirements of that subparagraph,
181 and shall notify the Department of State if the rule is required
182 to be filed with the Department of State.

183 5. After a rule has become effective, it may be repealed
184 or amended only through the rulemaking procedures specified in
185 this chapter.

186 (e) Filing for final adoption; effective date.—

187 1. If the adopting agency is required to publish its rules
188 in the Florida Administrative Code, the agency, upon approval of
189 the agency head, shall file with the Department of State three
190 certified copies of the rule it proposes to adopt; one copy of
191 any material incorporated by reference in the rule, certified by
192 the agency; a summary of the rule; a summary of any hearings
193 held on the rule; and a detailed written statement of the facts
194 and circumstances justifying the rule. Agencies not required to
195 publish their rules in the Florida Administrative Code shall
196 file one certified copy of the proposed rule, and the other

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197 material required by this subparagraph, in the office of the
198 agency head, and such rules shall be open to the public.

199 2. A rule may not be filed for adoption less than 28 days
200 or more than 90 days after the notice required by paragraph (a),
201 until 21 days after the notice of change required by paragraph
202 (d), until 14 days after the final public hearing, until 21 days
203 after a statement of estimated regulatory costs required under
204 s. 120.541 has been provided to all persons who submitted a
205 lower cost regulatory alternative and made available to the
206 public, or until the administrative law judge has rendered a
207 decision under s. 120.56(2), whichever applies. When a required
208 notice of change is published prior to the expiration of the
209 time to file the rule for adoption, the period during which a
210 rule must be filed for adoption is extended to 45 days after the
211 date of publication. If notice of a public hearing is published
212 prior to the expiration of the time to file the rule for
213 adoption, the period during which a rule must be filed for
214 adoption is extended to 45 days after adjournment of the final
215 hearing on the rule, 21 days after receipt of all material
216 authorized to be submitted at the hearing, or 21 days after
217 receipt of the transcript, if one is made, whichever is latest.
218 The term "public hearing" includes any public meeting held by
219 any agency at which the rule is considered. If a petition for an
220 administrative determination under s. 120.56(2) is filed, the
221 period during which a rule must be filed for adoption is
222 extended to 60 days after the administrative law judge files the
223 final order with the clerk or until 60 days after subsequent
224 judicial review is complete.

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225 3. At the time a rule is filed, the agency shall certify
226 that the time limitations prescribed by this paragraph have been
227 complied with, that all statutory rulemaking requirements have
228 been met, and that there is no administrative determination
229 pending on the rule.

230 4. At the time a rule is filed, the committee shall
231 certify whether the agency has responded in writing to all
232 material and timely written comments or written inquiries made
233 on behalf of the committee. The department shall reject any rule
234 that is not filed within the prescribed time limits; that does
235 not comply with all statutory rulemaking requirements and rules
236 of the department; upon which an agency has not responded in
237 writing to all material and timely written inquiries or written
238 comments; upon which an administrative determination is pending;
239 or which does not include a statement of estimated regulatory
240 costs, if required.

241 5. If a rule has not been adopted within the time limits
242 imposed by this paragraph or has not been adopted in compliance
243 with all statutory rulemaking requirements, the agency proposing
244 the rule shall withdraw the rule and give notice of its action
245 in the next available issue of the Florida Administrative
246 Weekly.

247 6. The proposed rule shall be adopted on being filed with
248 the Department of State and become effective 20 days after being
249 filed, on a later date specified in the notice required by
250 subparagraph (a)1., ~~or~~ on a date required by statute, or upon
251 ratification by the Legislature pursuant to s. 120.541(3). Rules
252 not required to be filed with the Department of State shall

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become effective when adopted by the agency head, ~~or~~ on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

Section 2. Paragraph (d) of subsection (1) and subsection (4) of section 120.541, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, are amended to read:

120.541 Statement of estimated regulatory costs.—

(1)

(d) At least 21 ~~45~~ days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and shall provide notice on the agency's website that it is available to the public.

(4) This section ~~Paragraph (2)(a)~~ does not apply to the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6).

Section 3. Paragraph (a) of subsection (2) of section

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120.56, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, is amended to read:

120.56 Challenges to rules.—

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 ~~44~~ days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The petitioner has the burden of going forward. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. A person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change. A person who is not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the rule and is not limited to challenging the change to the proposed

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rule.

Section 4. Subsections (3) and (4) are added to section 120.74, Florida Statutes, to read:

120.74 Agency review, revision, and report.—

(3) Beginning in 2012, and no later than July 1 of each year, each agency shall file with the President of the Senate, the Speaker of the House of Representatives, and the committee a regulatory plan identifying and describing each rule the agency proposes to adopt for the 12-month period beginning on the July 1 reporting date and ending on the subsequent June 30, excluding emergency rules.

(4) For the year 2011, the certification required in subsection (2) may omit any information included in the reports provided under s. 120.745. Reporting under subsections (1) and (2) shall be suspended for the year 2013, but required reporting under those subsections shall resume in 2015 and biennially thereafter.

Section 5. Section 120.745, Florida Statutes, is created to read:

120.745 Legislative review of agency rules in effect on or before November 16, 2010.—

(1) DEFINITIONS.—The following definitions apply exclusively to this section:

(a) "Agency" has the same meaning and application as provided in s. 120.52(1), but for the purposes of this section excludes each officer and governmental entity in the state with jurisdiction in one county or less than one county.

(b) "Compliance economic review" means a good faith

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337 economic analysis that includes and presents the following
338 information pertaining to a particular rule:

339 1. A justification for the rule summarizing the benefits
340 of the rule; and

341 2. A statement of estimated regulatory costs as described
342 in s. 120.541(2); however:

343 a. The applicable period for the economic analysis shall
344 be 5 years beginning on July 1, 2011;

345 b. For the analysis required in s. 120.541(2)(a)3., the
346 estimated regulatory costs over the 5-year period shall be used
347 instead of the likely increase in regulatory costs after
348 implementation; and

349 c. An explanation of the methodology used to conduct the
350 analysis must be provided. A technical methodology need not be
351 used to develop the statement of estimated regulatory costs, if
352 the agency uses routine regulatory communications or its
353 Internet website to reasonably survey regulated entities,
354 political subdivisions, and local governments and makes good
355 faith estimates of regulatory costs in conformity with
356 recommendations from the Office of Fiscal Accountability and
357 Regulatory Reform ("OFARR"), or from one or more legislative
358 offices if requested by the agency and such request is approved
359 by the President of the Senate and the Speaker of the House of
360 Representatives.

361 (c) "Data collection rules" means those rules requiring
362 the submission of data to the agency from external sources,
363 including, but not limited to, local governments, service
364 providers, clients, licensees, regulated entities, other

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365 constituents, and market participants.

366 (d) "Revenue rules" means those rules fixing amounts or
367 providing for the collection of money.

368 (e) "Rule" has the same general meaning and application as
369 provided in s. 120.52(16), but for purposes of this section may
370 include only those rules for which publication in the Florida
371 Administrative Code is required pursuant to s. 120.55(1). As
372 used in this section, the term "rule" means each entire
373 statement and all subparts published under a complete title,
374 chapter, and decimal rule number in the Florida Administrative
375 Code in compliance with Florida Administrative Code Rule 1B-
376 30.001.

377 (2) ENHANCED BIENNIAL REVIEW.—By December 1, 2011, each
378 agency shall complete an enhanced biennial review of the
379 agency's existing rules, which shall include, but is not limited
380 to:

381 (a) Conduct of the review and submission of the report
382 required by s. 120.74 and an explanation of how the agency has
383 accomplished the requirements of s. 120.74(1). This paragraph
384 extends the October 1 deadline provided in s. 120.74(2) for the
385 year 2011.

386 (b) Review of each rule to determine whether the rule has
387 been reviewed by OFARR pursuant to the Governor's Executive
388 Order 2011-01.

389 (c) Review of each rule to determine whether the rule is a
390 revenue rule, to identify the statute or statutes authorizing
391 the collection of any revenue, to identify the fund or account
392 into which revenue collections are deposited, and, for each

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revenue rule, to determine whether the rule authorizes, imposes,
or implements:

1. Registration, license, or inspection fees.
2. Transportation service tolls for road, bridge, rail, air, waterway, or port access.
3. Fees for a specific service or purpose not included in subparagraph 1. or subparagraph 2.
4. Fines, penalties, costs, or attorney fees.
5. Any tax.
6. Any other amounts collected that are not covered under subparagraphs 1.-5.

(d) Review of each rule to determine whether the rule is a data collection rule, providing the following information for each rule determined to be a data collection rule:

1. The statute or statutes authorizing the collection of such data.
2. The purposes for which the agency uses the data and any purpose for which the data is used by others.
3. The policies supporting the reporting and retention of the data.
4. Whether and to what extent the data is exempt from public inspection under chapter 119.

(e) Identification of each entire rule the agency plans to repeal and, if so, the estimated timetable for repeal.

(f) Identification of each entire rule or subpart of a rule the agency plans to amend to substantially reduce the economic impact and the estimated timetable for amendment.

(g) Identification of each rule for which the agency will

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be required to prepare a compliance economic review, to include each entire rule that:

1. The agency does not plan to repeal on or before December 31, 2012;

2. Was effective on or before November 16, 2010; and

3. Probably will have any of the economic impacts described in s. 120.541(2)(a), for 5 years beginning on July 1, 2011, excluding in such estimation any part or subpart identified for amendment under paragraph (e).

(h) Listing of all rules identified for compliance economic review in paragraph (g), divided into two approximately equal groups, identified as "Group 1" and "Group 2." Such division shall be made at the agency's discretion.

(i) Written certification of the agency head to the committee verifying the completion of the report for all rules of the agency, including each separate part or subsection. The duty to certify completion of the report is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

(3) PUBLICATION OF REPORT.—No later than December 1, 2011, each agency shall publish, in the manner provided in subsection (7), a report of the entire enhanced biennial review pursuant to subsection (2), including the results of the review; a complete list of all rules the agency has placed in Group 1 or Group 2; the name, physical address, fax number, and e-mail address for the person the agency has designated to receive all inquiries,

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public comments, and objections pertaining to the report; and
the certification of the agency head pursuant to paragraph
(2)(i). The report of results shall summarize certain
information required in subsection (2) in a table consisting of
the following columns:

(a) Column 1: Agency name.

(b) Column 2: F.A.C. rule number, with subcolumns
including:

1. Column 2a: F.A.C. title and any subtitle or chapter
designation; and

2. Column 2b: F.A.C. number, excluding title and subtitle
or chapter designation.

(c) Column 3: OFARR reviewed rule under Executive Order
2011-01. Entries should be "Y" or "N."

(d) Column 4: Revenue rule/fund or account with subcolumns
including:

1. Column 4a: Licensure fees.

2. Column 4b: Transportation tolls.

3. Column 4c: Other fees.

4. Column 4d: Fines.

5. Column 4e: Tax.

6. Column 4f: Other revenue.

Entries should be "N" or the identification of the fund or
account where receipts are deposited and provide notes
indicating the statutory authority for revenue collection.

(e) Column 5: Data collection rule. Entries should be "Y"
or "N." If "Y," provide notes supplying the information required

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in paragraph (2) (d).

(f) Column 6: Repeal. Entries should be "Y" or "N" for the entire rule. If "Y," provide notes estimating the timetable for repeal.

(g) Column 7: Amend. Entries should be "Y" or "N," based on the response required in paragraph (2) (f), and provide notes identifying each specific subpart that will be amended and estimating the timetable for amendment.

(h) Column 8: Effective on or before 11/16/2010. Entries should be "Y" or "N."

(i) Column 9: Section 120.541(2) (a) impacts. Entries should be "NA" if Column 8 is "N" or, if Column 6 is "Y," "NP" for not probable, based on the response required in subparagraph (2) (f) 3., or "1" or "2," reflecting the group number assigned by the division required in paragraph (2) (h).

(4) PUBLIC COMMENT ON ENHANCED BIENNIAL REVIEW AND REPORT; OBJECTIONS.—Public input on reports required in subsection (3) may be provided by stating an objection to the information required in paragraphs (2) (b), (c), (d), and (g) and identifying the entire rule or any subpart to which the objection relates, and shall be submitted in writing or electronically to the person designated in the report.

(a) An objection under this subsection to a report that an entire rule or any subpart probably will not have, for 5 years beginning on July 1, 2011, any of the economic impacts described in s. 120.541(2) (a), must include allegations of fact upon which the objection is based, stating the precise information upon which a contrary evaluation of probable impact may be made.

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505 Allegations of fact related to other objections may be included.

506 (b) Objections may be submitted by any interested person
507 no later than June 1, 2012.

508 (c) The agency shall determine whether to sustain an
509 objection based upon the information provided with the objection
510 and whether any further review of information available to the
511 agency is necessary to correct its report.

512 (d) No later than 20 days after the date an objection is
513 submitted, the agency shall publish its determination of the
514 objection in the manner provided in subsection (7).

515 (e) The agency's determination with respect to an
516 objection is final but not a final agency action subject to
517 further proceedings, hearing, or judicial review.

518 (f) If the agency sustains an objection, it shall amend
519 its report within 10 days after the determination. The amended
520 report shall indicate that a change has been made, the date of
521 the last change, and identify the amended portions. The agency
522 shall publish notice of the amendment in the manner provided in
523 subsection (7).

524 (g) On or before July 1, 2012, the agency shall deliver a
525 written certification of the agency head or designee to the
526 committee verifying the completion of determinations of all
527 objections under this subsection and of any report amendments
528 required under paragraph (f). The certification shall be
529 published as an addendum to the report required in subsection
530 (3). Notice of the certification shall be published in the
531 manner provided in subsection (7).

532 (5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED

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533 REPORT.—Each agency shall perform a compliance economic review
534 and report for all rules, including separate reviews of
535 subparts, listed under Group 1 "Group 1 rules" or Group 2 "Group
536 2 rules" pursuant to subparagraph (2)(g)3. Group 1 rules shall
537 be reviewed and reported on in 2012, and Group 2 rules shall be
538 reviewed and reported on in 2013.

539 (a) No later than May 1, each agency shall:

540 1. Complete a compliance economic review for each entire
541 rule or subpart in the appropriate group.

542 2. File the written certification of the agency head with
543 the committee verifying the completion of each compliance
544 economic review required for the respective year. The
545 certification shall be dated and published as an addendum to the
546 report required in subsection (3). The duty to certify
547 completion of the required compliance economic reviews is the
548 responsibility solely of the agency head as defined in s.
549 120.52(3) and may not be delegated to any other person. If the
550 defined agency head is a collegial body, the written
551 certification must be prepared by the chair or equivalent
552 presiding officer of that body.

553 3. Publish a copy of the compliance economic review,
554 directions on how and when interested parties may submit lower
555 cost regulatory alternatives to the agency, and the date the
556 notice is published in the manner provided in subsection (7).

557 4. Publish notice of the publications required in
558 subparagraphs 2. and 3. in the manner provided in subsection
559 (7).

560 5. Submit each compliance economic review to the Small

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Business Regulatory Advisory Council for its review.

(b) Any agency rule, including subparts, reviewed pursuant to Executive Order 2011-01 are exempt from the compliance economic review if the review found that the rule:

1. Does not unnecessarily restrict entry into a profession or occupation;

2. Does not adversely affect the availability of professional or occupational services to the public;

3. Does not unreasonably affect job creation or job retention;

4. Does not place unreasonable restrictions on individuals attempting to find employment;

5. Does not impose burdensome costs on businesses; or

6. Is justifiable when the overall cost-effectiveness and economic impact of the regulation, including indirect costs to consumers, is considered.

(c) No later than August 1, the Small Business Regulatory Advisory Council may submit lower cost regulatory alternatives to any rule to the agency that adopted the rule. No later than June 15, other interested parties may submit lower cost regulatory alternatives to any rule.

(d) No later than December 1, each agency shall publish a final report of the agency's review under this subsection in the manner provided in subsection (7). For each rule the report shall include:

1. The text of the rule.

2. The compliance economic review for the rule.

3. All lower regulatory cost alternatives received by the

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agency.

4. The agency's written explanation for rejecting submitted lower regulatory cost alternatives.

5. The agency's justification to repeal or amend the rule or to retain the rule without amendment.

6. The written certification of the agency head to the committee verifying the completion of the reviews and reporting required under this subsection for that year. The certification shall be dated and published as an addendum to the report required in subsection (3). The duty to certify completion of the report is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

(e) Notice of publication of the final report and certification shall be published in the manner provided in subsection (7).

(f) By December 1, each agency shall begin proceedings under s. 120.54(3) to amend or repeal those rules so designated in the report under this subsection. Proceedings to repeal rules are exempt from the requirements for the preparation, consideration, or use of a statement of estimated regulatory costs under s. 120.54 and the provisions of s. 120.541.

(6) LEGISLATIVE CONSIDERATION.—With respect to a rule identified for retention without amendment in the report required in subsection (5), the Legislature may consider specific legislation nullifying the rule or altering the

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statutory authority for the rule.

(7) MANNER OF PUBLICATION OF NOTICES, DETERMINATIONS, AND REPORTS.—Agencies shall publish notices, determinations, and reports required under this section exclusively in the following manner:

(a) The agency shall publish each notice, determination, and complete report on its Internet website. If the agency does not have an Internet website, the information shall be published on the committee's Internet website using [www.japc.state.fl.us/\[agency name\]/](http://www.japc.state.fl.us/[agency name]/) in place of the address of the agency's Internet website. The following URL formats shall be used:

1. Reports required under subsection (3), including any reports amended as a result of a determination under subsection (4):

[Address of agency's Internet website]/2011 Rule review/[Florida Administrative Code (F.A.C.) title and subtitle (if applicable) designation for the rules included].
(Example: <http://www.dos.state.fl.us/2011 Rule review/1S>).

2. The lists of Group 1 rules and Group 2 rules, required under subsection (3):

[Address of agency's Internet website]/2011 Rule review/Economic Review/Schedule.
(Example: <http://www.dos.state.fl.us/2011 Rule review/Economic Review/Schedule>)

3. Determinations under subsection (4):

[Address of agency's Internet website]/2011 Rule review/Objection Determination/[F.A.C. Rule number].

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(Example: http://www.dos.state.fl.us/2011_Rule_review/Objection_Determination/1S-1.001).

4. Completed compliance economic reviews reported under subsection (5):

[Address of agency's Internet website]/2011 Rule review/Economic Review/[F.A.C.Rule number].

(Example: http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/1S-1.001).

5. Final reports under paragraph (5)(d), with the appropriate year:

[Address of agency's Internet website]/2011 Rule review/Economic Review/[YYYY Final Report].

(Example: http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/2012_Final_Report).

(b)1. Each notice shall be published using the following URL format:

[Address of agency's Internet website]/2011 Rule review/Notices.

(Example: http://www.dos.state.fl.us/2011_Rule_review/Notices).

2. Once each week a copy of all notices published in the previous week on the Internet under this paragraph shall be delivered to the Department of State, for publication in the next available issue of the Florida Administrative Weekly, and a copy shall be delivered by electronic mail to the committee.

3. Each notice shall identify the publication for which notice is being given and include:

a. The name of the agency.

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673 b. The name, physical address, fax number, and e-mail
674 address for the person designated to receive all inquiries,
675 public comments, and objections pertaining to the publication
676 identified in the notice.

677 c. The particular Internet address through which the
678 publication may be accessed.

679 d. The date the notice and publication is first published
680 on the agency's Internet website.

681 (c) Publication pursuant to this section is deemed to be
682 complete as of the date the notice, determination, or report is
683 posted on the agency's Internet website.

684 (8) FAILURE TO FILE CERTIFICATION OF COMPLETION.-If an
685 agency fails to timely file any written certification required
686 in paragraph (2)(i), paragraph (4)(g), subparagraph (5)(a)2., or
687 subparagraph (5)(d)6., the entire rulemaking authority delegated
688 to the agency by the Legislature under any statute or law shall
689 be suspended automatically as of the due date of the required
690 certification and shall remain suspended until the date that the
691 agency files the required certification with the committee.

692 (a) During the period of any suspension under this
693 subsection, the agency has no authority to engage in rulemaking
694 under s. 120.54.

695 (b) A suspension under this subsection does not authorize
696 an agency to promulgate any statement defined as a rule under s.
697 120.52(16).

698 (c) A suspension under this subsection shall toll the time
699 requirements under s. 120.54 for any rulemaking proceeding the
700 agency initiated before the date of suspension, which time

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701 requirements shall resume on the date the agency files the
702 written certification with the committee and publishes notice of
703 the required certification in the manner provided in subsection
704 (7).

705 (d) Failure to timely file a written certification
706 required under paragraph (2)(i) tolls the time for public
707 response, which period shall not begin until the date the agency
708 files the written certification with the committee and publishes
709 notice of the required certification in the manner provided in
710 subsection (7). The period for public response shall be extended
711 by the number of days equivalent to the period of suspension
712 under this subsection.

713 (e) Failure to timely file a written certification
714 required under subparagraph (5)(a)2. shall toll the deadline for
715 submission of lower cost regulatory alternatives for any rule or
716 subpart for which a compliance economic review has not been
717 timely published. The period of tolling shall be the number of
718 days after May 1 until the date of the certification as
719 published.

720 (9) EXEMPTION FROM ENHANCED BIENNIAL REVIEW AND COMPLIANCE
721 ECONOMIC REVIEW.—

722 (a) An agency is exempt from subsections (1)-(8) if it has
723 cooperated or cooperates with OFARR in a review of the agency's
724 rules in a manner consistent with Executive Order 2011-01, or
725 any alternative review directed by OFARR; if the agency or OFARR
726 identifies each data collection rule and each revenue rule; and
727 if the information developed thereby becomes publicly available
728 on the Internet by December 1, 2011. Each such agency is exempt

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729 from the biennial review required in s. 120.74(2) for the year
730 2011.

731 (b) For each rule reviewed under this subsection, OFARR
732 may identify whether the rule imposes a significant regulatory
733 cost or economic impact and shall schedule and obtain or direct
734 a reasonable economic estimate of such cost and impact for each
735 rule so identified. A report on each such estimate shall be
736 published on the Internet by December 31, 2013. On or before
737 October 1, 2013, the agency head shall certify in writing to the
738 committee that the agency has completed each economic estimate
739 required under this paragraph and thereupon the agency is exempt
740 from the biennial review required in s. 120.74(2) for the year
741 2013.

742 (c) The exemption under this paragraph does not apply
743 unless the agency head certifies in writing to the committee, on
744 or before October 1, 2011, that the agency has chosen such
745 exemption and has cooperated with OFARR in undertaking the
746 review required in paragraph (a).

747 (10) REPEAL.—This section is repealed July 1, 2014.

748 Section 6. Section 120.7455, Florida Statutes, is created
749 to read:

750 120.7455 Legislative survey of regulatory impacts.—

751 (1) From July 1, 2011, until July 1, 2014, the Legislature
752 may establish and maintain an Internet-based public survey of
753 regulatory impact soliciting information from the public
754 regarding the kind and degree of regulation affecting private
755 activities in the state. The input may include, but need not be
756 limited to:

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(a) The registered business name or other name of each reporting person.

(b) The number and identity of agencies licensing, inspecting, registering, permitting, or otherwise regulating lawful activities of the reporting person.

(c) The types, numbers, and nature of licenses, permits, and registrations required for various lawful activities of the reporting person.

(d) The identity of local, state, and federal agencies, and other entities acting under color of law which regulate the lawful activities of the reporting person or otherwise exercise power to enforce laws applicable to such activities.

(e) The identification and nature of each ordinance, law, or administrative rule or regulation deemed unreasonably burdensome by the reporting person.

(2) The President of the Senate and the Speaker of the House of Representatives may certify in writing to the chair of the committee and to the Attorney General the establishment and identity of any Internet-based public survey established under this section.

(3) Any person reporting or otherwise providing information solicited by the Legislature in conformity with this section is immune from any enforcement action or prosecution that:

(a) Is instituted on account of, or in reliance upon, the fact of reporting or nonreporting of information in response to the Legislature's solicitation of information pursuant to this section; or

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785 (b) Uses information provided in response to the
786 Legislature's solicitation of information pursuant to this
787 section.

788 (4) Any alleged violator against whom an enforcement
789 action is brought may object to any proposed penalty in excess
790 of the minimum provided by law or rule on the basis that the
791 action is in retaliation for the violator providing or
792 withholding any information in response to the Legislature's
793 solicitation of information pursuant to this section. If the
794 presiding judge determines that the enforcement action was
795 motivated in whole or in part by retaliation, any penalty
796 imposed is limited to the minimum penalties provided by law for
797 each separate violation adjudicated.

798 Section 7. The amendment of section 120.74, Florida
799 Statutes, and the creation of sections 120.745 and 120.7455,
800 Florida Statutes, by this act do not change the legal status of
801 a rule that has otherwise been judicially or administratively
802 determined to be invalid.

803 Section 8. Subsection (16) of section 120.80, Florida
804 Statutes, is amended, and subsections (17) and (18) are added to
805 that section, to read:

806 120.80 Exceptions and special requirements; agencies.—

807 (16) FLORIDA BUILDING COMMISSION.—

808 (a) Notwithstanding the provisions of s. 120.542, the
809 Florida Building Commission may not accept a petition for waiver
810 or variance and may not grant any waiver or variance from the
811 requirements of the Florida Building Code.

812 (b) The Florida Building Commission shall adopt within the

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Florida Building Code criteria and procedures for alternative means of compliance with the code or local amendments thereto, for enforcement by local governments, local enforcement districts, or other entities authorized by law to enforce the Florida Building Code. Appeals from the denial of the use of alternative means shall be heard by the local board, if one exists, and may be appealed to the Florida Building Commission.

(c) Notwithstanding ss. 120.565, 120.569, and 120.57, the Florida Building Commission and hearing officer panels appointed by the commission in accordance with s. 553.775(3)(c)1. may conduct proceedings to review decisions of local building code officials in accordance with s. 553.775(3)(c).

(d) Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Building Code expressly authorized by s. 553.73.

(17) STATE FIRE MARSHAL.—Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Fire Prevention Code expressly authorized by s. 633.0215.

(18) DEPARTMENT OF TRANSPORTATION.—Sections 120.54(3)(b) and 120.541 do not apply to the adjustment of tolls pursuant to s. 338.165(3).

Section 9. Paragraph (1) is added to subsection (1) of section 120.81, Florida Statutes, to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(1) Sections 120.54(3)(b) and 120.541 do not apply to the

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841 adoption of rules pursuant to s. 1012.22, s. 1012.27, s.
842 1012.34, s. 1012.335, or s. 1012.795.

843 Section 10. Paragraph (p) is added to subsection (2) of
844 section 120.569, Florida Statutes, to read:

845 120.569 Decisions which affect substantial interests.—

846 (2)

847 (p) For any proceeding arising under chapter 373, chapter
848 378, or chapter 403, if a nonapplicant petitions as a third
849 party to challenge an agency's issuance of a license, permit, or
850 conceptual approval, the order of presentation in the proceeding
851 is for the permit applicant to present a prima facie case
852 demonstrating entitlement to the license, permit, or conceptual
853 approval, followed by the agency. This demonstration may be made
854 by entering into evidence the application and relevant material
855 submitted to the agency in support of the application, and the
856 agency's staff report or notice of intent to approve the permit,
857 license, or conceptual approval. Subsequent to the presentation
858 of the applicant's prima facie case and any direct evidence
859 submitted by the agency, the petitioner initiating the action
860 challenging the issuance of the license, permit, or conceptual
861 approval has the burden of ultimate persuasion and has the
862 burden of going forward to prove the case in opposition to the
863 license, permit, or conceptual approval through the presentation
864 of competent and substantial evidence. The permit applicant and
865 agency may on rebuttal present any evidence relevant to
866 demonstrating that the application meets the conditions for
867 issuance. Notwithstanding subsection (1), this paragraph applies
868 to proceedings under s. 120.574.

ENROLLED

CS for CS/CS/HB 993 & HB 7239, Engrossed 1

2011 Legislature

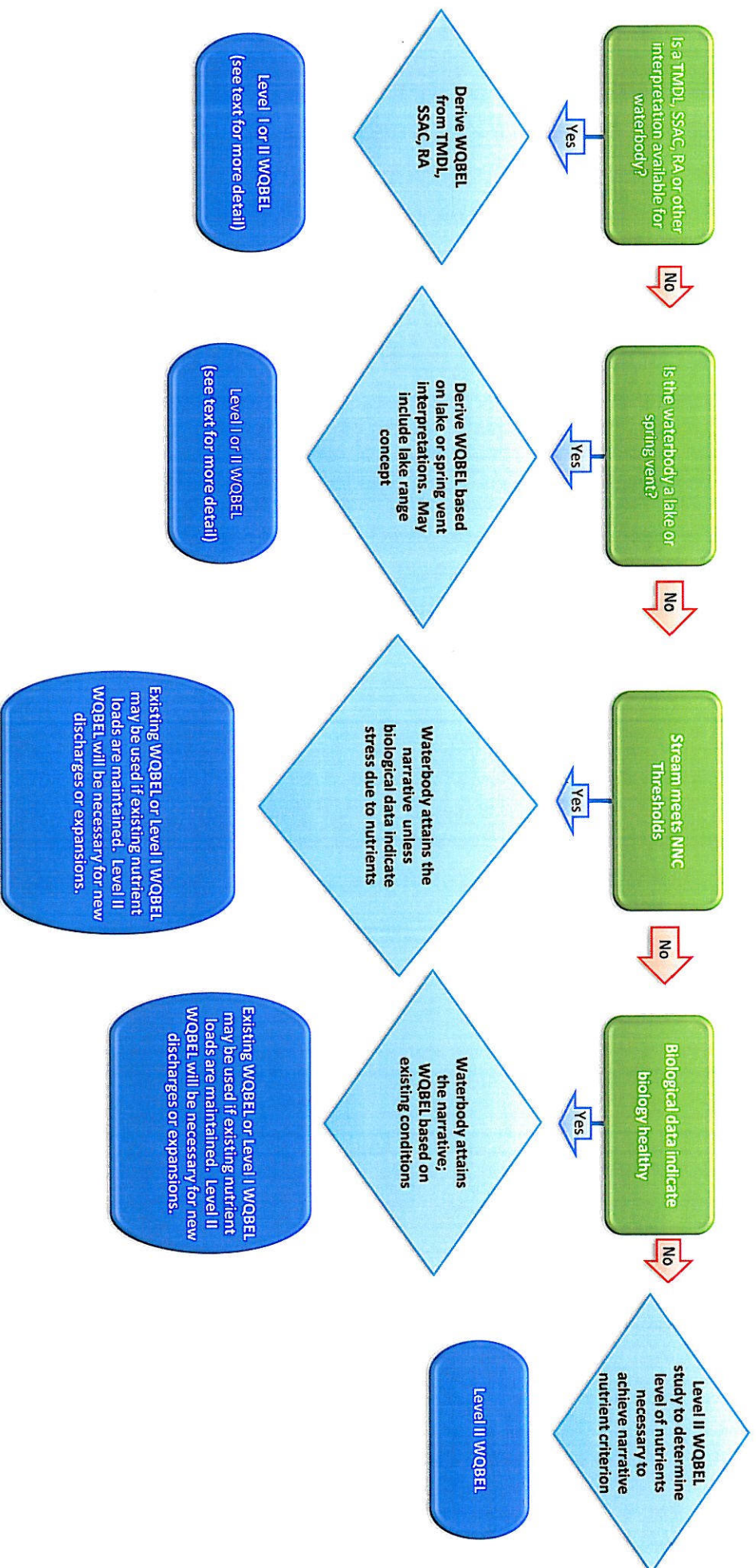
869 Section 11. This act shall take effect upon becoming a
870 law.

TAB 6
DEP RULE REVIEW SUMMARY

FOR DEP RULE REVIEW SUMMARY, GO
TO:

[http://flaports.org/Assets/824201145918PM
_DEP_Rules_Under_Review.pdf](http://flaports.org/Assets/824201145918PM_DEP_Rules_Under_Review.pdf)

TAB 7
NUMERIC NUTRIENT CRITERIA
INFORMATION



CHAPTER 62-302 SURFACE WATER QUALITY STANDARDS

62-302.200 Definitions.

As used in this chapter:

(1) "Acute ~~t~~Toxicity" shall mean a concentration greater than one-third (1/3) of the amount lethal to 50% of the test organisms in 96 hours (96 hr LC₅₀) for a species protective of the indigenous aquatic community for a substance not identified in paragraph 62-302.500(1)(c), F.A.C., or for mixtures of substances, including effluents.

(2) "Annual ~~a~~Average ~~f~~Flow" is the long-term harmonic mean flow of the receiving water, or an equivalent flow based on generally accepted scientific procedures in waters for which such a mean cannot be calculated. For waters for which flow records have been kept for at least the last three years, "long-term" shall mean the period of record. For all other waters, "long-term" shall mean three years (unless the Department finds the data from that period not representative of present flow conditions, based on evidence of land use or other changes affecting the flow) or the period of records sufficient to show a variation of flow of at least three orders of magnitude, whichever period is less. For nontidal portions of rivers and streams, the harmonic mean (Q_{hm}) shall be calculated as

$$Q_{hm} = \frac{n}{\frac{1}{Q_1} + \frac{1}{Q_2} + \frac{1}{Q_3} + \frac{1}{Q_4} + \dots + \frac{1}{Q_n}},$$

in which each Q is an individual flow record and n is the total number of records. In lakes and reservoirs, the annual average flow shall be based on the hydraulic residence time, which shall be calculated according to generally accepted scientific procedures, using the harmonic mean flows for the inflow sources. In tidal estuaries and coastal systems or tidal portions of rivers and streams, the annual average flow shall be determined using methods described in EPA publication no. 600/6-85/002b pages 142 - 227, incorporated by reference in paragraph 62-4.246(9)(k), F.A.C., or by other generally accepted scientific procedures, using the harmonic mean flow for any freshwater inflow. If there are insufficient data to determine the harmonic mean then the harmonic mean shall be estimated by methods as set forth in the EPA publication Technical Support Document for Water Quality-Based Toxics Control (March 1991), incorporated by reference in paragraph 62-4.246(9)(d), F.A.C., or other generally accepted scientific procedures. In situations with seasonably variable effluent discharge rates, hold-and-release treatment systems, and effluent-dominated sites, annual average flow shall mean modeling techniques that calculate long-term average daily concentrations from long-term individual daily flows and concentrations in accordance with generally accepted scientific procedures.

(3) "Background" shall mean the condition of waters in the absence of the activity or discharge under consideration, based on the best scientific information available to the Department.

(4) "Biological Health Assessment" shall mean, for purposes of this Chapter, one of the following aquatic community-based biological evaluations: Stream Condition Index (SCI), Lake Vegetation Index (LVI), or Shannon-Weaver Diversity Index.

(5) ~~(4)~~ "Chronic ~~t~~Toxicity"

(a) For a substance without an aquatic life-based criterion in Rule 62-302.530, F.A.C., and where chronic toxicity studies evaluating the toxicity of the substance are available, or for mixtures of substances, including effluents, chronic toxicity shall mean the concentration that equals or exceeds the IC₂₅ on species protective of the indigenous aquatic community; or

(b) For a substance without an aquatic life-based criterion in Rule 62-302.530, F.A.C., and where chronic toxicity studies evaluating the toxicity of the substance on species protective of the indigenous aquatic community are not available, the chronic toxicity of a substance shall be established as a concentration greater than one-twentieth (1/20) of the amount lethal to 50% of the test organisms in 96 hours (96 hr LC₅₀) for a species protective of the indigenous aquatic community.

(6) ~~(5)~~ "Commission" shall mean the Environmental Regulation Commission.

(7) ~~(6)~~ "Compensation ~~p~~Point for ~~p~~Photosynthetic ~~a~~Activity" shall mean the depth at which one percent of the light intensity at the surface remains unabsorbed. The light intensities at the surface and subsurface shall be measured simultaneously by irradiance meters such as Kahlsico Underwater Irradiometer (Model No. 268 WA 310), or other device having a comparable spectral response.

(8) ~~(7)~~ "Department" shall mean the Department of Environmental Protection.

(9) ~~(8)~~ "Designated ~~u~~Use" shall mean the present and future most beneficial use of a body of water as designated by the Environmental Regulation Commission by means of the classification system contained in this Chapter.

(10) ~~(9)~~ "Dissolved ~~m~~Metal" shall mean the metal fraction that passes through a 0.45 micron filter.

(11) ~~(10)~~ "Effluent ~~l~~Limitation" shall mean any restriction established by the Department on quantities, rates or concentrations of chemical, physical, biological or other constituents which are discharged from sources into waters of the State.

(12) ~~(11)~~ "Exceptional ~~e~~Ecological ~~s~~Significance" shall mean that a water body is a part of an ecosystem of unusual value. The exceptional significance may be in unusual species, productivity, diversity, ecological relationships, ambient water quality, scientific or educational interest, or in other aspects of the ecosystem's setting or processes.

(13) ~~(12)~~ "Exceptional ~~r~~Recreational ~~s~~Significance" shall mean unusual value as a resource for outdoor recreation activities. Outdoor recreation activities include, but are not limited to, fishing, boating, canoeing, water skiing, swimming, scuba diving, or nature observation. The exceptional significance may be in the intensity of present recreational usage, in an unusual quality of recreational experience, or in the potential for unusual future recreational use or experience.

(14) ~~(13)~~ "Existing ~~u~~Uses" shall mean any actual beneficial use of the water body on or after November 28, 1975.

(15) ~~(14)~~ "IC₂₅" or "Inhibition Concentration 25%" shall mean the concentration of toxicant that causes a 25% reduction in a biological response such as biomass, growth,

fecundity, or reproduction in the test population when compared to the control population response.

(17) "Lake" shall mean a freshwater waterbody with a minimum of two acres of contiguous open water, under average hydrologic and climatic conditions, that is free from emergent vegetation. Aquatic plants, as defined in subsection 62-340.200(1), F.A.C., may be present in the open water. Lakes include ponds, reservoirs, impoundments, and other similar waterbody types, but do not include springs, streams, or wetlands.

(18) "Lake Vegetation Index (LVI)" shall mean a Biological Health Assessment that measures lake health in predominantly freshwaters using aquatic and wetland plants, performed and calculated using the methodologies, dated 03-31-08, in DEP-SOP-002/01 LT 7500, DEP-SOP-002/01 LQ 7300 and DEP-SOP-001/01 FS 7310, which are incorporated by reference herein. Copies of the methodologies may be obtained from the Department's internet site at <http://www.dep.state.fl.us/water> or by writing to the Florida Department of Environmental Protection, Standards and Assessment Section, 2600 Blair Stone Road, MS 6511, Tallahassee, FL 32399-2400.

(19) (15) "Man-induced conditions which cannot be controlled or abated" shall mean conditions that have been influenced by human activities, and

(a) would remain after removal of all point sources,

(b) would remain after imposition of best management practices for non-point sources, and

(c) cannot be restored or abated by physical alteration of the water body, or there is no reasonable relationship between the economic, social and environmental costs and the benefits of restoration or physical alteration.

(20) (16) "Natural Background" shall mean the condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department. The establishment of natural background for an altered waterbody may be based upon a similar unaltered waterbody or on historical pre-alteration data.

(21) (17) "Nuisance Species" shall mean species of flora or fauna whose noxious characteristics or presence in sufficient number, biomass, or areal extent may reasonably be expected to prevent, or unreasonably interfere with, a designated use of those waters.

(22) (18) "Nursery Area of Indigenous Aquatic Life" shall mean any bed of the following aquatic plants, either in monoculture or mixed: *Halodule wrightii*, *Halophila* spp., *Potamogeton* spp. (pondweed), *Ruppia maritima* (widgeon-grass), *Sagittaria* spp. (arrowhead), *Syringodium filiforme* (manatee-grass), *Thalassia testudinum* (turtle grass), or *Vallisneria* spp. (eel-grass), or any area used by the early-life stages, larvae and post-larvae, of aquatic life during the period of rapid growth and development into the juvenile states.

(23) "Nutrient" shall mean total nitrogen (TN), total phosphorus (TP) or their organic or inorganic forms.

(24) "Nutrient response variable" shall mean a biological variable, such as chlorophyll *a*, biomass or structure of the phytoplankton, periphyton or vascular plant community, that responds to nutrient load or concentration in a predictable and measurable manner. Dissolved Oxygen (DO) shall also be considered to be a nutrient response variable if it is demonstrated that low DO results in biological imbalance and

the DO responds to a nutrient load or concentration in a predictable and measurable manner.

(25) "Nutrient Watershed Region" shall be as defined on pages 75805 and 75806 in Volume 75, Number 233 of the Federal Register, as published on December 6, 2010, which are incorporated by reference. Copies of pages 75805 and 75806 may be obtained from the Department's internet site at <http://www.dep.state.fl.us/water> or by writing to the Florida Department of Environmental Protection, Standards and Assessment Section, 2600 Blair Stone Road, MS 6511, Tallahassee, FL 32399-2400.

(26) (19) "Outstanding Florida Waters" shall mean waters designated by the Environmental Regulation Commission as worthy of special protection because of their natural attributes.

(27) (20) "Outstanding National Resource Waters" shall mean waters designated by the Environmental Regulation Commission that are of such exceptional recreational or ecological significance that water quality should be maintained and protected under all circumstances, other than temporary lowering and the lowering allowed under Section 316 of the Federal Clean Water Act.

(28) (21) "Pollution" shall mean the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of air or water in quantities or levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, including outdoor recreation.

(29) (22) "Predominantly fFresh wWaters" shall mean surface waters in which the chloride concentration is less than 1,500 milligrams per liter.

(30) (23) "Predominantly mMarine wWaters" shall mean surface waters in which the chloride concentration is greater than or equal to 1,500 milligrams per liter.

(31) (24) "Propagation" shall mean reproduction sufficient to maintain the species' role in its respective ecological community.

(32) (25) "Secretary" shall mean the Secretary of the Department of Environmental Protection.

(33) (26) "Shannon-Weaver Diversity Index" shall mean: negative summation (from $i=1$ to s) of $(n_i/N) \log_2 (n_i/N)$ where s is the number of species in a sample, N is the total number of individuals in a sample, and n_i is the total number of individuals in species i .

(34) (27) "Special Waters" shall mean water bodies designated in accordance with Section 62-302.700, F.A.C., by the Environmental Regulation Commission for inclusion in the Special Waters Category of Outstanding Florida Waters, as contained in Section 62-302.700, F.A.C. A Special Water may include all or part of any water body.

(35) "Spring vent" shall mean a location where groundwater flows out of a natural, discernable opening in the ground onto the land surface or into a surface water.

(36) "Stream" shall mean a predominantly fresh surface waterbody with perennial, unidirectional flow during typical climatic and hydrologic conditions for its region within the state. Streams flow in a defined channel with banks, and include waterbodies such as rivers, creeks, branches, canals, spring runs, and other similar waterbodies. During periods of drought, portions of a stream channel may exhibit a dry bed, but wetted pools are typically still present during these conditions. Streams do not include non-perennial waters that do not fit the above description, wetlands, or portions

of streams that exhibit lake characteristics (e.g., long water residence time, increased width, and predominance of biological taxa typically found in non-flowing conditions).

(37) "Stream Condition Index (SCI)" shall mean a Biological Health Assessment that measures stream health in predominantly freshwaters using benthic macroinvertebrates, performed and calculated using the methodologies, dated 03-31-08, in DEP-SOP-002/01 LT 7200, DEP-SOP-002/01 LQ 7400 and DEP-SOP-001/01 FS 7420, and *Sampling and Use of the Stream Condition Index (SCI) for Assessing Flowing Waters: A Primer* (DEP/EA/xxx/11), which are incorporated by reference herein. Copies of the methodologies may be obtained from the Department's internet site at <http://www.dep.state.fl.us/water> or by writing to the Florida Department of Environmental Protection, Standards and Assessment Section, 2600 Blair Stone Road, MS 6511, Tallahassee, FL 32399-2400. For water quality standards purposes, the Stream Condition Index shall not apply in the South Florida Nutrient Watershed Region.

(38) (28) "Surface wWater" means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

(39) "Total maximum daily load" (TMDL) for an impaired water body or water body segment shall mean the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated. A TMDL shall include either an implicit or explicit margin of safety and a consideration of seasonal variations.

(39) (29) "Total rRecoverable mMetal" shall mean the concentration of metal in an unfiltered sample following treatment with hot dilute mineral acid.

(40) (30) "Water quality criteria" shall mean elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports the present and future most beneficial uses.

(41) (31) "Water quality standards" shall mean standards composed of designated present and future most beneficial uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the Florida antidegradation policy, and the moderating provisions, such as Site Specific Alternative Criteria, variances, mixing zone rule provisions, or exemptions contained in this Rule and in F.A.C. Rule 62-4, adopted pursuant to Chapter 403, F.S.

(42) (32) "Waters" shall be as defined in Section 403.031(13), Florida Statutes.

(43) (33) "Zone of mMixing" or "mMixing zZone" shall mean a volume of surface water containing the point or area of discharge and within which an opportunity for the mixture of wastes with receiving surface waters has been afforded.

Specific Authority 403.061, 403.062, 403.087, 403.504, 403.704, 403.804, 403.805 FS. Law Implemented 403.021, 403.031, 403.061, 403.085, 403.086, 403.087, 403.088, 403.502, 403.802 FS. History - New 05-29-90, Amended 2-13-92, Formerly 17-302.200, Amended 1-23-95, 5-15-02, 4-2-08, - -11.

62-302.530 Table: Surface Water Quality Criteria.

The following table contains both numeric and narrative surface water quality criteria to be applied except within zones of mixing. The left-hand column of the Table is a list of constituents for which a surface water criterion exists. The headings for the water quality classifications are found at the top of the Table, and the classification descriptions for the headings are specified in subsection 62-302.400(1), F.A.C. Applicable criteria lie within the Table. The individual criteria should be read in conjunction with other provisions in water quality standards, including Rule 62-302.500, F.A.C. The criteria contained in Rule 62-302.500, F.A.C., also apply to all waters unless alternative or more stringent criteria are specified in Rule 62-302.530, F.A.C. Unless otherwise stated, all criteria express the maximum not to be exceeded at any time. In some cases, there are separate or additional limits, which apply independently of the maximum not to be exceeded at any time. For example, annual average (denoted as "annual avg." in the Table) means the maximum concentration at average annual flow conditions (see subsection 62-302.200(2), F.A.C.). Numeric interpretations of the narrative nutrient criterion (paragraph 62-302.530 (47)(b), F.A.C.) shall be expressed as spatial averages and applied over a spatial area consistent with their derivation. In applying the water quality standards, the Department shall take into account the variability occurring in nature and shall recognize the statistical variability inherent in sampling and testing procedures. The Department's assessment methodology, set forth in Chapter 62-303, F.A.C., accounts for such natural and statistical variability when used to assess ambient waters pursuant to sections 305(b) and 303(d) of the Federal Clean Water Act.

((INSERT TABLE))

Specific Authority 403.061, 403.062, 403.087, 403.504, 403.704, 403.804 FS. Law Implemented 403.021, 403.061, 403.087, 403.088, 403.141, 403.161, 403.182, 403.502, 403.702, 403.708 FS. History—New 1-28-90, Formerly 17-3.065, Amended 2-13-92, 6-17-92, Formerly 17-302.540, 17-302.550, 17-302.560, 17-302.570, 17-302.580, Amended 4-25-93, Formerly 17-302.530, Amended 1-23-95, 1-15-96, 5-15-02, 7-19-04, 12-7-06, 8-5-10, - -11.

62-302.531 Numeric Interpretations of Narrative Nutrient Criteria.

(1) The narrative water quality criteria for nutrients in subsection 62-302.530(47), F.A.C., applies to all Class I, Class II, and Class III waters.

(2) The narrative water quality criterion for nutrients in paragraph 62-302.530(47)(b), F.A.C., shall be numerically interpreted for both nutrients and nutrient response variables in a hierarchical manner as follows:

(a) Where a site specific numeric interpretation of the criterion in paragraph 62-302.530(47)(b), F.A.C., has been established by the Department, this numeric interpretation shall be the primary interpretation. If there are multiple interpretations of the narrative criterion for a waterbody, the most recent interpretation shall apply. If a site specific numeric interpretation only addresses one nutrient (e.g., TP but not TN), the narrative shall be independently interpreted for the other nutrient using the hierarchical approach in subsection 62-302.531(2), F.A.C. Site specific interpretations include:

1. Total Maximum Daily Loads (TMDLs) adopted under Chapter 62-304, F.A.C., for one or more nutrients or nutrient response variables; or
2. Site specific alternative criteria (SSAC) for one or more nutrients or nutrient response variables as established under Rule 62-302.800, F.A.C.; or
3. Other site specific interpretations for one or more nutrients or nutrient response variables that are formally established by rule or final order by the Department, such as a Reasonable Assurance Demonstration pursuant to subsection 62-303.100(5), F.A.C.

(b) If site specific numeric interpretations, as described in paragraph 62-302.531(2)(a), F.A.C., above, have not been established for a waterbody, but there is an established, quantifiable cause-and-effect relationship between one or more nutrients and nutrient response variables linked to a value that protects against an imbalance in the natural populations of the aquatic flora or fauna, then the numeric values for the nutrients or nutrient response variables, set forth in this paragraph, shall be the applicable interpretations. Absent a numeric interpretation as established in paragraph 62-302.531(2)(a), F.A.C., site specific numeric interpretations are established as follows:

1. For lakes, the applicable numeric interpretation of the narrative nutrient criterion in paragraph 62-302.530(47)(b), F.A.C., is as follows:

a. The annual geometric mean concentrations shall not exceed the following values more than once in any three calendar year period:

<u>Long Term Geometric Mean Lake Color and Alkalinity</u>	<u>Chlorophyll a</u>	<u>Total Phosphorus</u>	<u>Total Nitrogen</u>
<u>> 40 and ≤ 140 Platinum Cobalt Units</u>	<u>20 µg/L</u>	<u>0.05 mg/L</u>	<u>1.27 mg/L</u>
<u>≤ 40 Platinum Cobalt Units and > 20 mg/L CaCO₃</u>	<u>20 µg/L</u>	<u>0.03 mg/L</u>	<u>1.05 mg/L</u>
<u>≤ 40 Platinum Cobalt Units and < 20 mg/L CaCO₃</u>	<u>6 µg/L</u>	<u>0.01 mg/L</u>	<u>0.51 mg/L</u>

b. If there are sufficient data to calculate the annual geometric mean chlorophyll a and the magnitude of the chlorophyll a numeric interpretation set forth in sub-subparagraph 62-302.531(2)(b)1.a., F.A.C., above are not exceeded, then the total phosphorus and total nitrogen numeric interpretations shall be the annual geometric mean values of ambient samples, subject to the following upper and lower limits:

<u>Long Term Geometric Mean Lake Color and</u>	<u>Minimum calculated numeric interpretation</u>		<u>Maximum calculated numeric interpretation</u>	
	<u>Total</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>

Alkalinity	Phosphorus	Nitrogen	Phosphorus	Nitrogen
> 40 and ≤ 140 Platinum Cobalt Units	<u>0.05 mg/L</u>	<u>1.27 mg/L</u>	<u>0.16 mg/L</u>	<u>2.23 mg/L</u>
≤ 40 Platinum Cobalt Units and > 20 mg/L CaCO ₃	<u>0.03 mg/L</u>	<u>1.05 mg/L</u>	<u>0.09 mg/L</u>	<u>1.91 mg/L</u>
≤ 40 Platinum Cobalt Units and < 20 mg/L CaCO ₃	<u>0.01 mg/L</u>	<u>0.51 mg/L</u>	<u>0.03 mg/L</u>	<u>0.93 mg/L</u>

c. For the purpose of subparagraph 62-302.531(2)(b)1., F.A.C., color shall be assessed as true color and shall be free from turbidity. Lake color and alkalinity shall be the long-term geometric mean, based on a minimum of ten data points over at least three years with at least one data point in each year. If alkalinity data are unavailable, long-term geometric mean specific conductance values shall be used, with a value of <100 micromhos/cm used to estimate the 20 mg/L CaCO₃ alkalinity concentration until such time that alkalinity data are available.

d. For lakes with long-term geometric mean color above 140 Platinum Cobalt Units or with insufficient data to determine lake color and alkalinity as established in sub-subparagraphs 62-302.531(2)(b)1.b. and c., F.A.C., above, the narrative nutrient criterion in paragraph 62-302.530(47)(b), F.A.C., shall apply.

[The Department is still evaluating available lake data and may propose region-specific criteria for Central Florida and other regions.]

2. For spring vents, the applicable numeric interpretation of the narrative nutrient criterion in paragraph 62-302.530(47)(b), F.A.C., is 0.35 mg/L of nitrate-nitrite (NO₃ + NO₂) as an annual geometric mean, not to be exceeded more than once in any three calendar year period.

(c) For streams, if neither paragraph 62-302.531(2)(a) nor (2)(b), F.A.C., above apply, reference-based nutrient thresholds shall be used to interpret the narrative nutrient criterion only in combination with biological information. The narrative nutrient criterion in paragraph 62-302.530(47)(b), F.A.C., shall be interpreted as being achieved in a stream if the nutrient impairment provisions of subsections 62-303.450(1) and (2), F.A.C., are not being exceeded and:

1. the SCI score is 40 or higher for either the average of the two most recent temporally independent SCI evaluations, or if more than two SCIs were collected, the average of all the temporally independent SCIs from the most recent three year period, performed at one or more representative locations and times; or

2. the nutrient thresholds set forth in the table below are being attained, unless there is an average SCI score of less than 40 for either the two most recent temporally independent SCI evaluations, or if more than two SCIs were collected, the average of all the temporally independent SCIs from the most recent three year period, performed at one or more representative locations and times, and a stressor identification study [links] ? the adverse biological effects to nutrients.

Nutrient Watershed	Reference-based	Reference-based
--------------------	-----------------	-----------------

Region	Total Phosphorus ¹	Total Nitrogen ¹
Panhandle West	0.06 mg/L	0.67 mg/L
Panhandle East	0.18 mg/L	1.03 mg/L
North Central	0.30 mg/L	1.87 mg/L
Peninsular	0.12 mg/L	1.54 mg/L
West Central	0.49 mg/L	1.65 mg/L
South Florida	No numeric interpretation. The narrative criterion in paragraph 62-302.530(47)(b), F.A.C., applies.	No numeric interpretation. The narrative criterion in paragraph 62-302.530(47)(b), F.A.C., applies.

¹These values are annual geometric mean concentrations not to be exceeded more than once in any three calendar year period

During the public workshops and in the "Conceptual Framework" document, the Department described four main attainment outcomes when relying on a combination of reference-based thresholds and bioassessment data to interpret the narrative nutrient criterion for streams. However, when preparing the above rule language, the Department attempted to streamline/ simplify the language, resulting in only two, somewhat more complex outcomes, with additional outcomes described in the Impaired Waters Rule. Alternative language that more closely tracks the outcomes described in the framework document is provided below, and the Department would like feedback on the preferred approach.]

The narrative nutrient criterion of paragraph 62-302.530(47)(b), F.A.C., shall be interpreted in the following manner:

1. Streams that do not exceed the nutrient thresholds, have an average of the two most recent temporally independent SCI scores of 40 or higher at a location and time that is representative of the nutrient concentrations, and do not exceed the nutrient impairment provisions of subsections 62-303.450(1) and (2), F.A.C., meet the narrative nutrient criterion.

2. Streams that exceed the nutrient thresholds, but have an average of the two most recent temporally independent SCI scores of 40 or higher at a location and time that is representative of the nutrient concentrations, and do not exceed the nutrient impairment provisions of subsections 62-303.450(1) and (2), F.A.C., meet the narrative nutrient criterion.

3. Streams that do not exceed the nutrient thresholds and do not exceed the nutrient impairment provisions of subsections 62-303.450(1) and (2), F.A.C., but the average of the two most recent temporally independent SCI scores is less than 40 at a location and time that is representative of the nutrient concentrations, attain the narrative nutrient criterion unless a stressor identification study links the adverse biological effects to nutrients.

4. Streams that exceed the nutrient thresholds and the average of the two most recent temporally independent SCI scores at the same location is less than 40, or do not attain subsections 62-303.450(1) or (2), F.A.C., do not attain the narrative nutrient criterion unless a stressor identification study links the adverse biological effects to causal factor(s) other than nutrients.

(3) Except for data used to establish historical chlorophyll *a* levels, chlorophyll *a* data assessed under this Chapter shall be measured according to the DEP document titled "Applicability of Chlorophyll *a* Methods" (DEP/SAS/002/10), incorporated by reference herein. Copies of the chlorophyll *a* document may be obtained from the

Department's internet site at <http://www.dep.state.fl.us/water> or by writing to the Florida Department of Environmental Protection, Standards and Assessment Section, 2600 Blair Stone Road, MS 6511, Tallahassee, FL 32399-2400. Chlorophyll *a* data shall be corrected for or free from the interference of phaeophytin.

(4) In no case shall the loading of nutrients from a waterbody cause or contribute to an exceedance of water quality standards in a downstream waterbody.

(5) To qualify as temporally independent samples, each SCI shall be conducted at least three months apart. SCIs collected at the same location less than three months apart shall be considered to be one sample, with the mean value used to represent the sampling period.

(6) To calculate an annual geometric mean for TN, TP, or chlorophyll *a*, there shall be at least four temporally-independent samples per year with at least one sample taken between May 1 and September 30 and at least one sample taken during the other months of the calendar year. To be treated as temporally-independent, samples must be taken at least one week apart.

(7) The numeric interpretation of the narrative nutrient criterion shall be applied over a spatial area consistent with its derivation. If the numeric interpretation is based on a TMDL or SSAC, the spatial application of the numeric interpretation is as defined in the TMDL document or SSAC rule. For lakes covered under subparagraph 62-302.531(2)(b)1., F.A.C., the numeric interpretation shall be applied as a lake-wide average. For spring vents covered under subparagraph 62-302.531(2)(b)2., F.A.C., the numeric interpretation shall be applied at or above the spring vent. For streams covered under paragraph 62-302.531(2)(c), F.A.C., the spatial application of the numeric interpretation shall be determined by relative system homogeneity and shall be applied to waterbody segments or aggregations of segments as determined by the site-specific considerations.

(8) Load-based nutrient TMDLs or Water Quality Based Effluent Limitations (WQBELs) pursuant to Chapter 62-650, F.A.C., do not need to be converted into concentration-based nutrient TMDLs to be used as the basis for the numeric interpretation of the narrative criterion.

(9) The numeric interpretations of the narrative nutrient criterion in Rule 62-302.531, F.A.C., shall be implemented in wastewater permits pursuant to Chapter 62-650, F.A.C., and surface waters shall be assessed for attainment of the interpretations pursuant to Chapter 62-303, F.A.C.

(10) Rule 62-302.531, F.A.C., shall not become effective until approved in its entirety pursuant to 40 Code of Federal Regulations §131.21.

Idea: Not ^{encompassed} ~~included~~ unless EPA & ^{Judge} ~~State~~ ^{could} ~~could~~ ^{stand} ~~could~~ ^{have} ~~have~~ ^{"suppl"} ~~improvement~~
 EIT requires ^{60 days!} ~~60 days!~~ ^{Protective against partial approval by EPA & ~~State~~ ^{Judge} ~~could~~ ^{stand} ~~could~~ ^{have} ~~have~~ ^{"suppl"} ~~improvement~~} ~~stand~~ ^{stand} ~~could~~ ^{have} ~~have~~ ^{"suppl"} ~~improvement~~

Specific Authority 403.061, 403.062, 403.087, 403.504, 403.704, 403.804 FS. Law
 Implemented 403.021, 403.061, 403.087, 403.088, 403.141, 403.161, 403.182,
 403.502, 403.702, 403.708 FS. History – New - -11.

62-302.800 Site Specific Alternative Criteria.

(1) Type I Site Specific Alternative Criteria: A water body, or portion thereof, may not meet a particular ambient water quality criterion specified for its classification, due to

natural background conditions or man-induced conditions which cannot be controlled or abated. In such circumstances, and upon petition by an affected person or upon the initiation by the Department, the Secretary may establish a site specific alternative water quality criterion when an affirmative demonstration is made that an alternative criterion is more appropriate for a specified portion of waters of the state. Public notice and an opportunity for public hearing shall be provided prior to issuing any order establishing alternative criteria.

(a) The affirmative demonstration required by this section shall mean a documented showing that the proposed alternative criteria would exist due to natural background conditions or man-induced conditions which cannot be controlled or abated. Such demonstration shall be based upon relevant factors which include:

1. A description of the physical nature of the specified water body and the water pollution sources affecting the criterion to be altered.

2. A description of the historical and existing water quality of the parameter of concern including, spatial, seasonal, and diurnal variations, and other parameters or conditions which may affect it. Conditions in similar water bodies may be used for comparison.

3. A description of the historical and existing biology, including variations, which may be affected by the parameter of concern. Conditions in similar water bodies may be used for comparison.

4. A discussion of any impacts of the proposed alternative criteria on the designated use of the waters and adjoining waters.

(b) The Secretary shall specify, by order, the site specific criteria for the parameters which the Secretary determines to have been demonstrated by the preponderance of competent substantial evidence to be more appropriate.

(2) Type II Site Specific Alternative Criteria: In accordance with the procedures set forth below, affected persons may petition the Department to adopt an alternative water quality criterion for a specific water body; or portion thereof, on the basis of site-specific reasons other than those set forth above in subsection 62-302.800(1), F.A.C. The Department shall process any such petition as follows:

(a) No later than 60 days after receipt of a petition, the Department shall review the petition and notify the petitioner of whether the petition is sufficiently complete to enable the Department to evaluate the proposed site-specific alternative criterion under subparagraph (c) below. If the petition is not sufficiently complete, the Department shall request the submittal of additional information. The Department shall review any additional information within 60 days of receipt from the applicant and may then request only that information reasonably needed to clarify or answer new questions directly related to the additional information, unless the Department shows good cause for not having requested the information previously.

(b) Petitions deemed complete by the Department shall be processed under subparagraph (c). For any petition not deemed complete, if the petitioner believes that additional information requested by the Department under subparagraph (a) is not necessary to the Department's evaluation, the Department, at the petitioner's request, shall proceed to process the petition under subparagraph (c) below.

(c) The Department shall initiate rulemaking for the Commission to consider approval of the proposed alternative criterion as a rule if the petitioner meets all the

requirements of this subparagraph and its subparts. The petitioner must demonstrate that the proposed criterion would fully maintain and protect human health, existing uses, and the level of water quality necessary to protect human health and existing and designated beneficial uses. If the petition fails to meet any of these requirements (including the required demonstration), the Department shall issue an order denying the petition. In deciding whether to initiate rulemaking or deny the petition, the Department shall evaluate the petition and other relevant information according to the following criteria and procedures:

1. The petition shall include all the information required under subparagraphs (1)(a)1.-4. above.

2. In making the demonstration required by this paragraph (c), the petition shall include an assessment of aquatic toxicity, except on a showing that no such assessment is relevant to the particular criterion. The assessment of aquatic toxicity shall show that physical and chemical conditions at the site alter the toxicity or bioavailability of the compound in question and shall meet the requirements and follow the Indicator Species procedure set forth in *Water Quality Standards Handbook* (December 1983), a publication of the United States Environmental Protection Agency, incorporated here by reference. If, however, the Indicator Species Procedure is not applicable to the proposed site-specific alternative criterion, the petitioner may propose another generally accepted scientific method or procedure to demonstrate with equal assurance that the alternative criterion will protect the aquatic life designated use of the water body.

3. The demonstration shall also include a risk assessment that determines the human exposure and health risk associated with the proposed alternative criterion, except on a showing that no such assessment is relevant to the particular criterion. The risk assessment shall include all factors and follow all procedures required by generally accepted scientific principles for such an assessment, such as analysis of existing water and sediment quality, potential transformation pathways, the chemical form of the compound in question, indigenous species, bioaccumulation and bioconcentration rates, and existing and potential rates of human consumption of fish, shellfish, and water. If the results of the assessments of health risks and aquatic toxicity differ, the more stringent result shall govern.

4. The demonstration shall include information indicating that one or more assumptions used in the risk assessment on which the existing criterion is based are inappropriate at the site in question and that the proposed assumptions are more appropriate or that physical or chemical characteristics of the site alter the toxicity or bioavailability of the compound. Such a variance of assumptions, however, shall not be a ground for a proposed alternative criterion unless the assumptions characterize a factor specific to the site, such as bioaccumulation rates, rather than a generic factor, such as the cancer potency and reference dose of the compound. Man-induced pollution that can be controlled or abated shall not be deemed a ground for a proposed alternative criterion.

5. The petition shall include all information required for the Department to complete its economic impact statement for the proposed criterion.

6. For any alternative criterion more stringent than the existing criterion, the petition shall include an analysis of the attainability of the alternative criterion.

7. No later than 180 days after receipt of a complete petition or after a petitioner requests processing of a petition not found to be complete, the Department shall notify the petitioner of its decision on the petition. The Department shall publish in the Florida Administrative Weekly either a notice of rulemaking for the proposed alternative criterion or a notice of the denial of the petition, as appropriate, within 30 days after notifying the petitioner of the decision. A denial of the petition shall become final within 14 days unless timely challenged under Section 120.57, F.S.

(d) The provisions of this subsection do not apply to criteria contained in Rule 62-302.500, F.A.C., or criteria that apply to:

1. Biological Integrity (subsection 62-302.530(10), F.A.C.).
2. B.O.D. (subsection 62-302.530(11), F.A.C.).
- ~~3. Nutrients.~~
3. 4. Odor (subsections 62-302.500(1), 62-302.530(21), 62-302.530(48), and paragraphs 62-302.530 (49)(b) and 62-302.530(52)(a), F.A.C.).
- ~~4. 5. Oils and Greases~~ (subsection 62-302.530(49), F.A.C.).
- ~~5. 6. Radioactive Substances~~ (subsection 62-302.530(57), F.A.C.).
- ~~6. 7. Substances in concentrations that injure, are chronically toxic to, or produce adverse physiological or behavioral response in humans, animals, or plants~~ (subsection 62-302.530(61), F.A.C.).
- ~~7. 8. Substances, other than nutrients, in concentrations that result in the dominance of nuisance species~~ (subsection 62-302.200(20), F.A.C.).
- ~~8. 9. Total Dissolved Gases~~ (subsection 62-302.530(66), F.A.C.).
- ~~9. 10. Any criterion or maximum concentration based on or set forth in paragraph 62-4.244(3)(b), F.A.C.~~

(e) Despite any failure of the Department to meet a deadline set forth in this subsection (2), the grant of an alternative criterion shall not become effective unless approved as a rule by the Commission.

(f) Nothing in this rule shall alter the rights afforded to affected persons by Chapter 120, F.S.

(3) Type III Site Specific Alternative Criteria (SSAC): Upon petition by an affected person or upon the initiation by the Department, the Department shall establish, by Secretarial Order, site specific alternative criteria for nutrients when an affirmative demonstration is made that the proposed alternative criteria are fully protective of the designated use for a specified portion of waters of the state, including downstream waters. Public notice and an opportunity for public hearing shall be provided prior to adopting any order establishing alternative criteria under this subsection.

(a) The Department shall establish a Type III SSAC only if all of the following conditions are met:

1. The petitioner demonstrates, using Biological Health Assessments, that the waterbody fully supports the propagation and maintenance of a healthy, well-balanced population of fish and wildlife pursuant to paragraph 62-302.800(3)(c), F.A.C. For streams, there shall be at least two spatially-independent stations representative of the waterbody or water segment for which a SSAC is requested. However, for lakes, the Lake Vegetation Index assesses the entire lake. Biological Health Assessments must comply with the quality assurance requirements of Chapter 62-160, F.A.C. (including adherence to Sampling and Use of the Stream Condition Index (SCI) for Assessing

Flowing Waters: A Primer (DEP-SAS-001/09), which was incorporated by reference in subsection 62-302.200(18), F.A.C., and Sampling and Use of the Lake Vegetation Index (LVI) for Assessing Lake Plant Communities in Florida: A Primer (DEP-SAS-002/09), which was incorporated by reference in subsection 62-302.200(37), F.A.C.) and shall be conducted during the water quality sampling period described in subparagraph 62-302.800(3)(a)2., F.A.C. There shall be a minimum of two assessments per station or lake, with at least one assessment conducted during the final year.

2. The petitioner provides sufficient data to characterize existing water quality, including temporal variability, such as water quality data collected at the biological monitoring stations at a frequency and duration approved by the Department, as described in (title to be determined). Water quality data collected during extreme hydrologic conditions, such as floods and droughts, shall be excluded from the analysis.

3. Demonstration of downstream protection by one of the following methods:

a. Downstream waters are attaining water quality standards pursuant to Chapter 62-303, F.A.C., related to nutrient conditions; or

b. The nutrients delivered by the waterbody subject to the Type III SSAC meet the allocations of a downstream TMDL; or

c. The nutrients delivered are demonstrated to not ~~cause or contribute~~ to nonattainment of water quality standards pursuant to Chapter 62-303, F.A.C. The demonstration of nonattainment shall be based on scientifically-defensible evidence, such as information on excess algal growth, nuisance aquatic plant coverage, or other phytoplankton, periphyton, and vascular plant community responses.

(b) The Type III SSAC shall be established at a level representative of nutrient concentrations that have been demonstrated to be protective of the designated use, while taking into account natural variability by using statistical methods appropriate to the data set.

(c) Biological Health Assessments are used to demonstrate full support of propagation and maintenance of a healthy, well-balanced population of fish and wildlife (Classes I, II, and III). Biological Health Assessments will be used by the Department to determine whether a site specific alternative criterion is appropriate and whether the designated use is fully protected.

1. The designated use of propagation and maintenance of a healthy, well-balanced population of fish and wildlife is fully supported when the average of the two most recent temporally independent Stream Condition Index (SCI) scores or Lake Vegetation Index (LVI) scores at the same location are 40 or above (SCI) or 46 or above (LVI).

2. To qualify as temporally independent samples, each Biological Health Assessment shall be conducted at least three months apart. Biological Health Assessments collected at the same location less than three months apart shall be considered to be one sample, with the mean value used to represent the sampling period.

(4) (3) The Department shall modify permits of existing sources affected in a manner consistent with the Secretary's Order.

(5) (4) Additional relief from criteria established by this Chapter may be provided through exemption pursuant to Rule 62-4.243, F.A.C., or variances as provided for by Rule 62-110.104, F.A.C.

(6) (5) Type II sSite specific alternative criteria apply to the water bodies, or portions of the water bodies, listed below. For dissolved oxygen site specific alternative criteria, normal daily and seasonal fluctuations above the levels listed in the table below shall be maintained. For site specific alternative criteria with seasonal limits, the generally applicable criteria in Rule 62-302.530, F.A.C., apply at other times of the year.

Water Body and Class	Site Specific Alternative Criteria	County(s)
(a) Marine portions of the lower St. Johns River and its tributaries between Julington Creek and the mouth of the river. Class III.	<p>Dissolved Oxygen not less than a minimum concentration of 4.0 mg/L, and a Total Fractional Exposure not greater than 1.0 over an annual evaluation period as defined by the following equation:</p> $\left(\text{Total Fractional Exposure} \right) = \frac{\text{Days between } 4.0 - < 4.2 \text{ mg/L}}{16 \text{ day Max}} + \frac{\text{Days between } 4.2 - < 4.4 \text{ mg/L}}{21 \text{ day Max}} + \frac{\text{Days between } 4.4 - < 4.6 \text{ mg/L}}{30 \text{ day Max}} + \frac{\text{Days between } 4.6 - < 4.8 \text{ mg/L}}{47 \text{ day Max}} + \frac{\text{Days between } 4.8 - < 5.0 \text{ mg/L}}{55 \text{ day Max}}$ <p>where the number of days in an interval is based on the daily average Dissolved Oxygen concentration.</p>	Duval/Clay/St. Johns
(b) Discharge wetlands at the Orange County Eastern Water Reclamation Facility. Class III.	pH of not greater than 8.5 standard units.	Orange
(c) Fenholloway River from river mile -0.1 to river mile 3.5. Class III.	The annual average compensation depth for photosynthetic activity for phytoplankton shall not be decreased greater than 44.3 percent from background conditions as determined by an annual average compensation depth of at least 0.66 meters at river mile 0.53 (station F06). This value must be based on a minimum of 12 measurements during times when the average flow at Cooley Island Bridge at river mile 7.15 measures less than 200 cubic feet per second.	Taylor

(d) Fenholloway River coastal waters (Apalachee Bay) as spatially defined by the coordinates (83° 49' 29.95" W, 29° 59' 38.70" N), (83° 45' 3.61" W, 29° 57' 22.10" N), (83° 47' 23.50" W, 29° 54' 5.01" N), and (83° 51' 45.47" W, 29° 56' 25.71" N). Class III.	The annual average down-welling light at 1 m depth at stations F10 (83° 47' 6.60" W, 29° 57' 4.20" N) and F11 (83° 48' 27.00" W, 29° 57' 38.40" N) shall be 27 percent or more of surface values based on a minimum of 12 measurements using a 2 pi sensor during times when the average flow at Hampton Springs Bridge (USGS gage 02325000 near Perry) is less than or equal to 60 cubic feet per second (after subtracting flows from permitted point sources).	Taylor
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Specific Authority 403.061, 403.062, 403.087, 403.504, 403.704, 403.804, 403.805 FS. Law Implemented 403.021, 403.061, 403.087, 403.088, 403.141, 403.161, 403.201, 403.502 FS. History—Formerly 17-3.05(4), Amended 3-1-79, 10-2-80, 2-1-83, Formerly 17-3.031, Amended 6-17-92, Formerly 17-302.800, Amended 5-15-02, 1-9-06, 6-28-06, 12-7-06, 8-5-07, 8-5-10, - -11.

TAB 8
FIRST ORGANIZATIONAL REPORT
ON DEPARTMENT OF ECONOMIC
OPPORTUNITY



DEPARTMENT OF ECONOMIC OPPORTUNITY

SB 2156: Reorganization

Joint Progress Report

August 15, 2011

TRANSITION COORDINATORS

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Deputy Commissioner, Finance and Operations

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I. EXECUTIVE SUMMARY

Senate Bill 2156 (2011) realizes the goal of consolidating Florida's economic development efforts into a single, highly focused agency. The Department of Economic Opportunity is designed to work hand-in-hand with Enterprise Florida, Inc. and Workforce Florida, Inc. to accomplish the goals for job creation and improving Florida's business climate.

The Legislature provided the period between July 1 and October 1 to establish the Department of Economic Opportunity and to effectuate the reorganization of a number of other governmental units. Additional time was allotted, until December 31, for the transition of the Florida Sports Foundation and the Black Business Investment Board from independent entities to subdivisions of Enterprise Florida, Inc. This report is submitted pursuant to a requirement in the bill for a Joint Progress Report to be submitted by agency transition coordinators to the Governor, President of the Senate, and Speaker of the House of Representatives by August 15, 2011.

The transition coordinators are continuing to work with a team of business leaders in Florida, outside consultants, and economic experts in building the Department of Economic Opportunity and to further the other organizational changes framed by the Governor and the Legislature.

Progress to date includes:

- MGT of America, Inc., has been employed by the Executive Office of the Governor for advice on the efficacy of the organizational charts and particularly to recommend a structure that will enhance the integration of the migrating units.
- Evaluation of DEO overhead costs by funding source is currently underway.
- Planning meetings are ongoing between AWI, DCA and DMS related to transfer of FTE positions to DEO.
- A team of government agencies, public-private partnerships, and members of the business community has been assembled and is working with a facilitator to develop a Business Plan by September 1, as required by Senate Bill 2156, that will guide strategic alignment of the Department of Economic Opportunity and the use of economic development incentives.
- The Enterprise Florida's Board of Directors has authorized Enterprise Florida management to complete merger transactions and seek an Attorney General's opinion on compliance with the reorganization statute.
- DMS has prepared a document establishing the step-by-step responsibilities of each constituent agency to accomplish and validate the People First agency data that must be loaded in order to migrate the agencies to DEO.
- Relocation planning is in progress; transition coordinators are in discussion with DMS.

The Transition Coordinators are pleased to report that SB 2156 does not cause any adverse impacts to agency programs. No agencies have failed to cooperate with the reorganization. On the contrary, all participating agencies have worked diligently and harmoniously to further the reorganization. It is expected that timelines will be met and all essential time-sensitive elements of the reorganization will be completed by October 1.

II. DEPARTMENT OF ECONOMIC OPPORTUNITY

The mission of the Department of Economic Opportunity is to assist the Governor in working with legislative leaders, state agencies, business leaders, and economic development professionals to formulate and implement clear and consistent policies and strategies to promote economic opportunities for all Floridians. The challenge for the Department is to integrate the state's economic development goals and policies, workforce development, community planning and development, and affordable housing. MGT has been instrumental in articulating structural guidelines, including:

- Assuring the agency establishes a single point of contact for economic and job growth initiatives for all of state government;
- Eliminating unnecessary duplication between EFI and the state;
- Dramatically reducing response time of state and local governments;
- Integrating the functions of the three agencies; and,
- Facilitating planning input from WFI and EFI and other growth partners.

The transition coordinators, in conjunction with interested public and private partners, are working to finalize the mission and structure of the Department, its constituent units, and statutory partners.

A. Department's FTE Composition

There are 1,672 FTE's available for transfer to the Department of Economic Opportunity. A detailed proposal for organizational structure and reductions will be included in the budget amendment submitted to the Legislative Budget Commission.

B. Responsibilities of the Department

Principal responsibilities of the Department are as follows:

- Overseeing and coordinating economic development, housing, community planning, community development, and unemployment compensation programs.
- Developing a single statewide five-year strategic plan to address the promotion of business formation, expansion, recruitment, and retention to create jobs for all regions of the state. The plan must address economic

development, marketing, and infrastructure development for rural communities.

- Submitting an annual report, with assistance from Enterprise Florida, Inc. and Workforce Florida, Inc., on the state's business climate and economic development.
- Establishing annual performance standards for Enterprise Florida, Workforce Florida, VISIT Florida, and Space Florida and annual reporting on compliance with the standards.
- Monitoring the activities of Enterprise Florida, Workforce Florida, the Florida Housing Finance Corporation, and other public-private partnerships.
- Promoting viable, sustainable communities by providing technical assistance and guidance on growth and development issues, grants, and other assistance to local communities.

C. Agency Head/Executive Offices

The Department of Economic Opportunity is headed by an Executive Director appointed by the Governor and is subject to Senate confirmation. In addition to the Executive Director's responsibility to administer the Department, Senate Bill 2156 envisions the Director will work cooperatively with Florida's Secretary of Commerce, Enterprise Florida, and Workforce Florida to accelerate the state's economic recovery, promote job growth and support the state's vision of a streamlined, more efficient and business-friendly government.

The following offices and functions are within the Office of the Executive Director:

- Office of the General Counsel
- Office of Information Technology
- Office of the Inspector General
- Office for Civil Rights¹

D. Agency Divisions

1. Division of Strategic Business Development - DSBD

This Division is composed of programs and personnel that have been operating as OTTED. This new alignment enables the State to provide a single point of entry for businesses interested in relocating to or expanding in Florida.

The Division's primary responsibilities will continue to be to assist government and businesses to formulate and implement consistent policies and strategies

¹ The U. S. Department of Labor requires the appointment of an Equal Employment Opportunity officer who reports directly to the highest level unemployment compensation agency official in order to ensure nondiscrimination and equal opportunity in employment, programs, and services within the agency's jurisdiction.

designed to provide economic opportunities for all Floridians. The Division of Strategic Business Development supports business owners in making informed, critical economic decisions. The Division offers Florida's new and expanding businesses a comprehensive package of financial and technical resources and assistance to support job creation and retention.

The Division's incentive programs include the following:

- Qualified Target Industry Tax Refund Program
- Quick Action Closing Fund
- Innovation Incentive
- Qualified Defense Contractors Tax Refund Program
- Economic Development Transportation Fund
- Capital Investment Tax Credit
- Rural Community Development Revolving Loan Program
- Florida First Business Bond Pool
- High Impact Performance Incentive Grants
- New Markets Development Program
- Rural Infrastructure Fund
- Rural and Urban Job Tax Credits
- Semiconductor, Space, and Defense Sales and Use Tax Exemption
- Enterprise Zone Program
- Brownfield Redevelopment Bonus
- Community Contribution Tax Credit Program
- Jobs for the Unemployed Tax Credit Program
- Local Government Distressed Area Matching Grant Program
- Manufacturing and Spaceport Investment Incentive Program

2. Division of Community Development (DCD)

The Division of Community Development is composed of the Division of Housing and Community Development of the Department of Community Affairs and the restructured Division of Community Planning from that Department. The Division will manage the state's land planning and community development responsibilities, ensuring that new growth fosters economic development while protecting resources of state significance and providing low-income Floridians with the skills and programs they need to better themselves and their communities. The Division is also responsible for the implementation of a number of grant programs designed to strengthen communities.

On the community planning side of this Division, primary responsibilities include working with and providing technical assistance to local governments, state agencies, and the private sector to ensure high quality growth and sustainable patterns of development across the state relating to:

- Local Government Comprehensive Plan Review

- Areas of Critical State Concern
- Developments of Regional Impact
- Hazard Mitigation Planning
- Post-disaster Redevelopment Planning
- Homeowners Association Covenant Revitalization

The housing and community development side of the Division provides grants to local governments for infrastructure, revitalization, disaster recovery, housing rehabilitation and economic development, as well as assisting citizens in meeting critical housing and utilities needs through the following programs:

- Community Development Block Grants
- Community Services Block Grants
- Low-Income Home Energy Assistance
- Weatherization Assistance
- Special District Information Program
- Front Porch Florida Initiative

3. Division of Workforce Services (DWS)

The Division of Workforce Services is composed of two former divisions of the Agency for Workforce Innovation—the Division of Workforce Services and the Division of Unemployment Compensation. This Division serves a vital role in the "Employ Florida Network," working with Workforce Florida and Florida's 24 Regional Workforce Boards to focus on strengthening the state's business climate by helping Floridians gain employment, remain employed, and advance in their careers by improving their skills.

By working with the U. S. Department of Labor, the Division implements the state's responsibilities under the federal unemployment insurance program, disburses federal workforce funds, and provides guidance to Regional Workforce Boards. Specifically, this Division will:

- Provide temporary wage replacement benefits to qualified individuals who are out of work through no fault of their own
- Process Disaster Unemployment Assistance following a disaster declared by the President
- Conduct hearings and issue decisions to resolve disputes related to unemployment compensation eligibility and the payment and collection of unemployment compensation taxes
- Oversee the Department of Revenue's assessment, payment, and collection of employer taxes that fund unemployment compensation benefits
- Provide program support to the 24 Regional Workforce Boards that operate the state's nearly 100 One-Stop Career Centers
- Provide grant opportunities to promote local and state partnerships
- Administer the Work Opportunity Tax Credit

- Administer Alien Labor Certification
- Administer Health Coverage Tax Credits
- Produce, analyze, and distribute labor market statistics through employer surveys, economic modeling, and administrative records
- Serve as the Census Data Center for Florida
- Manage the contract with Workforce Florida to ensure performance requirements and deliverables for the administration and coordination of workforce services are met

4. Division of Finance and Administration (DFA)

The Division of Finance and Administration will provide and promote integrated management, productivity, and accountability to help the Department achieve its mission, goals and objectives. This Division is composed of the similar divisions within the Agency for Workforce Innovation and the positions from the Department of Community Affairs necessary to ensure that all programs will be adequately served. The Division will include the following units:

- Human Resource Management
- Accounting
- Budget Management
- Grants Management
- General Services

E. Agency Partners

1. Secretary of Commerce

The President of Enterprise Florida, Inc., is designated as Florida's Secretary of Commerce. It is the responsibility of the Secretary of Commerce to lead the job creation and economic development mission in Florida. The Secretary of Commerce promotes sustainable development and improved standards of living for Floridians by working in partnership with businesses, universities, and community leaders. The Secretary is responsible for trade, entrepreneurship, and business development.

2. Enterprise Florida, Inc.

Enterprise Florida is responsible for coordinating economic development for the State of Florida. The corporation is a public-private partnership and its mission is to diversify the state's economy and create better-paying jobs for its citizens by supporting, attracting, and helping to create and sustain Florida businesses.

Through the incorporation of and/or the strategic alignment with the Florida Sports Foundation, the Black Business Investment Board, Space Florida, and

VISIT Florida, Enterprise Florida and the Secretary of Commerce provide the central point of contact for economic development.

3. Workforce Florida, Inc.

Workforce Florida is the statewide business-led workforce policy board. Charged with overseeing the policy governing the state's workforce system, Workforce Florida develops strategies to help Floridians enter and advance in the workforce, thus supporting economic development priorities and strengthening the state's business climate.

Workforce Florida, at the state level, and Regional Workforce Boards at the local level, are where business and the public sector collaborate to influence workforce policy and investment, while bolstering employment, training, and economic development.

4. Florida Housing Finance Corporation (FHFC)

The FHFC is the state's housing finance agency and administers federal and state resources to finance the development of affordable homeowner and rental housing and to assist homebuyers. Its purpose is to access federal housing initiatives, stabilize the flow of funds for affordable housing, promote affordable housing, and boost Florida's construction industry.

III. AGENCY REORGANIZATION PROGRESS

A. DEPARTMENT OF ECONOMIC OPPORTUNITY

Staffing/Structure

- Governor Scott announced Executive Director Doug Darling to head the Department effective October 1, 2011.
- MGT of America Inc., has been contracted by the Governor's Office for advice on establishing organizational charts and particularly to recommend a structure that will enhance the integration of the migrating units.

Finance and Accounting

- Operating Level Organization code for the Department has been selected and is in the process of being established in the state accounting system by the Department of Financial Services.
- DEO budget entity codes have been identified.
- Evaluation of DEO overhead costs by funding source is currently underway.
- The drafting of an all-encompassing comprehensive Legislative Budget Commission (LBC) amendment is in process.

Personnel

- FTE crosswalk of positions from AWI, DCA and OTTED has been completed
- Planning meetings are ongoing between AWI, DCA and DMS related to transfer of FTE positions to DEO
- DMS has prepared a document establishing the step-by-step responsibilities of each constituent agency to accomplish and validate the People First agency data that must be loaded in order to migrate the agencies to DEO
- Initial steps are underway to review position descriptions, titles, etc. for DEO

Physical Moves

- Relocation planning is in progress. Transition coordinators are in discussion with DMS. A primary consideration is co-locating functions and programs to maximize integration of the various units. To date, plans are for the executive offices of the Department to be located in the Caldwell Building, including the Executive Director, General Counsel, Inspector General, Information Technology, and Chief of Staff or Deputy Executive Directors. Workforce services, information technology, the Director's office, and administrative functions would remain in the Caldwell Building, and the community planning staff would move to the Caldwell Building.
- Space is available for the housing and community development side of the Division of Community Development in the Collins Building, just behind the Caldwell Building.
- Current plans have the Division of Strategic Business Development remain in OTTED's current Capitol offices.

DEO Business Plan

- A team is working with a facilitator to develop the business plan required by SB 2156. The team includes representatives from government, public-private partnerships and private industry.
- A timeline has been established to ensure the report is timely filed by September 1. Three meetings of the team have been held.

Enterprise Florida, Inc.

- The Enterprise Florida's Board of Directors has authorized Enterprise Florida management to complete merger transactions and seek an Attorney General's opinion on compliance with the reorganization statute.
- Legal issues relating to mergers have been evaluated for the Florida Black Business Investment Board and Florida Sports Foundation are being addressed.
- Enterprise Florida has completed necessary due diligence on benefit, insurance, accounting, auditing, information technology, and management systems to ensure a smooth merger and continuance of uninterrupted

operations for the Florida Black Business Investment Board and Florida Sports Foundation.

- Merger documents have been drafted for the Florida Black Business Investment Board transaction and have been delivered to the Florida Black Business Investment Board of Directors. Merger will immediately follow that approval. The Florida Black Business Investment Board staff will become employees of Enterprise Florida, and the Florida Minority Business Investment Corporation will become a wholly owned and controlled Enterprise Florida subsidiary.
- Merger documents have been partially crafted for the Florida Sports Foundation and Florida Sports Charitable Foundation. Not-for-profit tax considerations may alter the merger method for the Florida Sports Foundation, but are not expected to be an impediment to completion of transactions.
- Existing contracts between the Florida Sports Foundation and professional sports teams that contribute their logos for use on license tags (proceeds of which are used to support amateur sports in Florida) need to be preserved. Resolving this issue may require additional time before the merger can occur without jeopardizing the Florida Sports Foundation's key revenue source.
- Florida Sports Foundation employees will become employees of Enterprise Florida upon merger. Merger will be completed upon Sports Foundation approval of merger documents by its Board of Directors and obtaining consents as described above. The Florida Sports Foundation managing officer will become a fully participating senior officer of Enterprise Florida.
- In August 2011, Space Florida and Enterprise Florida had their first Board of Directors' meetings with appointed directors serving expanded roles mandated by reorganization.
- A draft Visit Florida contract is under review and will be in place prior to normal advances of appropriated monies.

Florida Ready-to-Work

- Contract with Worldwide Interactive Network, Inc. (WIN) has been executed.
- Contract was developed and negotiated in collaboration with the Florida Department of Education, AWI, and WIN.
- Currently coordinating with the transition team to ensure a smooth transfer of administrative and programmatic services.
- DOE is on schedule for the October 1, 2011, transfer to DEO.

Miscellaneous

- Chart of reports required in SB 2156 has been prepared.

B. MGT OF AMERICA, INC.

The Governor's office contracted with MGT of America, Inc., a national governmental organizational/management consulting firm, to analyze the

implementation of the new DEO and recommend an organizational structure for the merger of three agencies that will effectively and efficiently accomplish the Governor's and Legislature's economic and job growth goals.

MGT began its work on July 27, 2011. Since then, MGT's project team has:

- Studied state statutes establishing DEO to fully identify the statutory requirements for DEO.
- Interviewed key legislative staff in both the Senate and the House of Representatives to develop a more detailed understanding of the legislative intent and expectations for the Department.
- Interviewed the Executive Directors (CEOs) of DCA, AWI, and OTTED to develop a more detailed understanding of both how those agencies have functioned in the past and how they can alter or expand their programs to more effectively promote economic and job growth in Florida, while still fulfilling their other statutory and contractual requirements.
- Requested that the AWI and OTTED prepare detailed lists and summary descriptions of their current programs, organizational structures and staffing levels. Prepared a similar set of information for those units in DCA.
- Interviewed 35 managers and staff in OTTED, DCA, AWI and the Governor's office to gather information about current work processes and receive their input and ideas about how the new DEO should be structured so as to operate most efficiently and effectively. In addition to interviewing staff and managers in the program areas, MGT also interviewed managers and staff in the areas of: Financial Management, Inspector General, Information Technology, Human Resources, Purchasing, General Services, Public Relations, Legislative Affairs, Equal Opportunity Office, and Budgeting.
- Interviewed senior representatives from the Florida Chamber of Commerce and Associated Industries, both representing Florida's private businesses, to obtain their ideas about needed improvements in Florida's economic and job growth programs with emphasis on both the role of the new DEO and how the state's economic development organizations should work with other state, regional, and local economic development organizations
- Interviewed the Secretary of Commerce/President of Enterprise Florida to learn more about how Enterprise Florida and DEO could work together to more effectively promote state economic and job growth, with particular emphasis on the organizational structure of DEO.
- Interviewed the President of Workforce Florida to learn more about how they and DEO can work together more effectively to promote job and economic growth in Florida, again with particular emphasis on the organizational structure of DEO.
- Gathered information on the best organizational practices in other states with an emphasis on organizational structures.

- Based on the information collected and ideas expressed by those interviewed, MGT presented its views on organization structure to the Governor's Office on August 10, 2011.

C. EXECUTIVE OFFICE OF THE GOVERNOR (EOG) – Division of Emergency Management (DEM)

Staffing/Structure

- Regular meetings between DEM and the EOG are occurring to discuss and resolve all transition issues.
- Organizational chart has been completed.

Finance and Accounting

- Operating Level Organization code for the agency has been selected and discussions between the EOG, DEM and the Department of Financial Services are underway to begin the process of establishing the codes in the state accounting system.
- DEM budget entity codes have been identified.
- Regular meetings between DEM and the EOG are occurring to discuss and resolve issues relating to Finance, Accounting, and Budget.

Personnel

- Planning meetings are ongoing between DEM and DMS related to transfer of current FTE positions to the EOG. DEM will begin discussions on the transfer of the DCA positions to the EOG upon receiving final approval.
- Regular meetings between DEM and the EOG are occurring to discuss and resolve issues relating to personnel.

Physical Moves

- DEM is working with DMS to consolidate staff within the Sadowski Building and to identify contiguous vacant space for leasing to another entity.

D. DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION (DBPR) – Florida Building Codes and Standards Section

- Weekly reports are generated to follow tasks accomplished. Tasks accomplished to date include:
 - Migration of accounting functions with the Chief Financial Officer, EOG, and DMS has been coordinated.
 - Preliminary account code structure has been developed.
 - New organization codes and expansion options are established and titled.
 - Accounting code structure is established.
- Organizational chart has been completed.

- The Codes and Standards Section of DCA will likely move to DBPR in the beginning of 2012. The move has been delayed pending the build out of existing space at DBPR.

E. DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) – Florida Communities Trust

- Florida Communities Trust will be placed within DEP's Division of State Lands and will move to the Carr Building on Capital Circle.
- Regular meetings between FCT and DEP are occurring to discuss and resolve all transition issues.
- New organization codes have been developed.

F. DEPARTMENT OF EDUCATION (DOE) – Office of Early Learning (OEL)

- Organization chart has been completed.
- The OEL is proposed to relocate to the Lottery Building, where all OEL employees could be housed in one location.
- AWI staff is meeting regularly with DOE staff to establish the service level agreement for administrative support. Finance and accounting procedures are currently being discussed to ensure the Type 2 transfer is completed timely and the payment process to coalitions are seamless.
- OEL and AWI are developing a service level agreement for continued technical support by AWI. Until the Early Learning Information System (ELIS) is complete, maintaining existing processes will ensure continuity of service and will reduce administrative costs. OEL will draft an MOU between DOE and OEL regarding continuation of this partnership with AWI for non-strategic technology support.

IV. PROSPECTIVE EFFICIENCIES

- A. Changes underway in the Unemployment Compensation program are expected to improve government efficiency and provide a projected \$4.7 million savings annually in administrative costs (Internet UC claims system); other changes should save the state's employers an estimated \$103 million annually. These changes result from other 2011 legislation, but will be ultimately implemented by DEO.
- B. Due to the streamlining changes in Senate Bill 2156 and House Bill 7207, the state's growth management responsibilities can be administered with a budget reduced by \$1.7 million and a 50% reduction in land planners. Eliminating a requirement of the state to publish certain comprehensive planning notices in newspapers should result in a savings of approximately \$400,000 annually.
- C. The expedited comprehensive plan review process should be reduced by 71 days.

- D. Reorganization also allowed for a reduction in DCA executive and administrative staff positions, resulting in a savings of nearly \$2.5 million.
- E. Reorganization will promote the ability for economic development sectors of the agency to combine forces for greater results. Collaboration between the Division of Community Development, Regional Workforce Boards and Community Action Agencies can result in more targeted training for low-income Floridians. The job-creation elements of the Community Development Block Grant program will be enhanced with a closer relationship with the Regional Workforce Boards.
- F. Operational efficiencies have been implemented to maximize program access and effectiveness.
- G. It is expected that further efficiencies resulting from strategic alignment of OTTED with Workforce Florida, Enterprise Florida, Space Florida, the Florida Ports Council, the business community and other economic development stakeholders will be identified in the Business Plan due for submission September 1, 2011.
- H. Consolidation of Information Technology will reduce redundant staff, allow business process improvements, eliminate technology expenditures related to common services such as email, ERP/financial/human resource systems, security services, licensing, and basic peripheral devices (printers, facsimile machines, scanners, etc.).
- I. Cost savings would result by streamlining the process for submitting various fees to the Florida Building Commission and making the system fully automated. Co-locating the Codes and Standards Section with DBPR may allow for efficiencies to be realized in the Florida Building Commission Course Accreditation Program.
- J. The transition allows for the OEL to be located in a single building for the first time, providing opportunities for efficiencies in centralizing personnel, functions, duties, and operations.
- K. The move of the Florida Communities Trust unit to the Department of Environmental Protection will allow for a seamless process with a single application for land acquisition and park improvements, resulting in efficiencies for local governments. Further efficiencies will result from streamlining the overlapping functions of FCT and DEP in undertaking land acquisition responsibilities.

V. NEXT STEPS

A. Legislative Recommendations

Merging Agencies together to create a streamlined economic development effort has created an opportunity to review current law for further refinement. In the coming months, the Department of Economic Opportunity will be compiling suggestions for Legislative action this Session. Any proposed legislation will be geared toward furthering the State's streamlined economic development strategy.

B. Timelines

The Joint Legislative Budget Commission (LBC) is scheduled to meet September 7, 2011. The LBC will approve the transfer of the funds and FTE transferring from one agency to another. Preliminary consultation dates are set with Legislative staff for August 17th and August 27th.