

Specific Authority 560.105 FS. Law Implemented 112.011, 560.114, 560.1401, 560.141 FS. History–New

Section IV Emergency Rules

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

Section V

Petitions and Dispositions Regarding Rule Variance or Waiver

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

PUBLIC SERVICE COMMISSION

NOTICE IS HEREBY GIVEN THAT on February 12, 2009, the Florida Public Service Commission, received a petition for Emergency Variance or Waiver of the 60-day Notice Requirement In Rule 25-6.140, F.A.C. by Progress Energy Florida, Inc. in Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida.

Progress Energy Florida, Inc. has petitioned for emergency variance or waiver of the 60-day notice requirement in Rule 25-6.140, Florida Administrative Code (F.A.C.). Rule 25-6.140, F.A.C. provides in part:

(1) At least sixty (60) days prior to filing a petition for a general rate increase, a company shall notify the Commission in writing of its selected test year and filing date.

The full text of Progress's petition can be found at the Commission's website in Docket No. 090079.

Pursuant to Rule 28-104.005, F.A.C., the Commission must grant or deny a petition for emergency variance within 30 days of its receipt. The Commission received this petition on

February 12, 2009. The Commission will consider Progress's Petition for Variance or Waiver of the 60-Day Notice Requirement at the Commission's March 3, 2009 regularly scheduled Agenda Conference.

All interested persons have the right to submit written comments on the petition for emergency variance. Comments must be submitted within 5 days of the publication of this notice. The Commission notice was published on February 13, 2009, on the Commission website, and by electronic mail to interested persons of record. Written comments may be submitted to the Commission at: Commission Clerk, Attention Docket No. 090079, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850 or by electronic mail to the Commission Clerk: clerk@psc.state.fl.us and reference Docket No. 090079.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Office of the Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

WATER MANAGEMENT DISTRICTS

NOTICE IS HEREBY GIVEN THAT on February 12, 2009, the South Florida Water Management District (District or SFWMD) Governing Board has issued an order.

SFWMD Order No. 2009-033-DAO-ROW was issued pursuant to Section 120.542, Florida Statutes, to Paul Venturelli (Application No. 08-1205-1M). The petition for waiver was received by the SFWMD on December 5, 2008. Notice of receipt of the petition requesting the waiver was published in the Florida Administrative Weekly, Vol. 34, No. 51, December 19, 2008. No public comment was received. This Order provides a waiver of the District's criteria to allow existing landscaping consisting of palm trees, low lying planters and a paver stairway/walkway to remain within the northerly right of way of the C-51 Canal, located at the rear of 246 Arlington Road; Section 15, Township 44 South, Range 43 East, Palm Beach County. Specifically, the Order grants a waiver from subsections 40E-6.011(4) and (6), Florida Administrative Code, and the Basis of Review for Use or Occupancy of the Works or Lands of the District, incorporated by reference in subsection 40E-6.091(1), Florida Administrative Code, which governs the placement of permanent and/or semi-permanent above-ground encroachments within 40 feet of the top of the canal bank within Works or Lands of the District. Generally, the Order sets forth the basis of the Governing Board decision to grant the waiver, as follows: 1) the facilities will not significantly interfere with the District's current ability to perform necessary construction, alteration, operation, and routine maintenance activities; and 2) the Order granting a waiver from the subject rule would prevent Paul Venturelli from suffering a violation of the principles of fairness.

A copy of the Order may be obtained by contacting: Kathie Ruff, South Florida Water Management District, 3301 Gun Club Road, MSC 1410, West Palm Beach, FL 33406-4680, (561)682-6320 or by email: kruff@sfwmd.gov.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

NOTICE IS HEREBY GIVEN THAT on February 16, 2009, the Florida Department of Environmental Protection, Bureau of Beaches and Coastal Systems has issued an order.

The Department of Environmental Protection gives notice of its intent to grant a variance under Section 403.201, F.S., from the provisions of paragraph 62-4.244(5)(c), F.A.C., to the U.S. Army Corps of Engineers, Jacksonville District, 701 San Marco Blvd., Jacksonville, FL 32207, (File No. 158893-006-BV) to allow a temporary expanded mixing zone of 500 meters downcurrent from the point of sand discharge into the nearshore disposal area off of Estero Island, Lee County, Gulf of Mexico, Class III Waters. The project authorizes the restoration and maintenance dredging of portions of the Matanzas Pass Federal Navigation channel totaling approximately 219,100 cubic yards of sand. The dredge site is located at Matanzas Pass, Lee County, Section, 24 Township 46S, Range 23E, Gulf of Mexico, Class III Waters. The material will be placed in the nearshore seaward of the bar on Estero Island between DEP Reference Monuments R-182 and R-187A. The Department's file on this matter is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Bureau of Beaches and Coastal Systems, 5050 West Tennessee Street, Bldg. B, Tallahassee, FL 32304, (850)245-2542.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Mediation under Section 120.573 of the Florida Statutes is not available.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in a modification of the agency action or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this agency action automatically becomes only

proposed agency action on the application, subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities in accordance with this variance until the deadlines noted below for filing a petition for an administrative hearing, or request for an extension of time has expired.

Under subsections 28-106.111(3) and 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with subsection 28-106.111(2), paragraph 62-110.106(3)(a) and subsection (4), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

A petition that disputes the material facts on which the Department's action is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service

purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination; (c) A statement of when and how the petitioner received notice of the agency decision; (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate; (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action; and (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This variance constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, Florida Statutes, by the filing of a notice of appeal under Rule 9.110, Florida Rules of Appellate Procedure, with the: Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399 3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

A copy of the Order may be obtained by contacting: Molly Edson, 3900 Commonwealth Blvd. MS #300, Tallahassee, Florida 32399, (850)488-7708, molly.edson@dep.state.fl.us.

DEPARTMENT OF HEALTH

NOTICE IS HEREBY GIVEN THAT on February 13, 2009, the Board of Massage Therapy, received a petition for waiver or variance of Rule 64B7-25.001, F.A.C., filed by Beth S. Kraimer, with respect to the licensure requirement: that each applicant must pass a national examination approved by the Board.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Beth S. Kraimer. Comments on this petition should be filed with: Board of Massage Therapy, 4052 Bald Cypress Way, Bin #C06, Tallahassee, FL 32399-3256, within 14 days of publication of this notice.

NOTICE IS HEREBY GIVEN THAT on February 12, 2009, the Board of Medicine received a petition filed on behalf of Joseph J. Altieri, M.D., seeking a waiver or variance from paragraph 64B8-8.0011(6)(a), F.A.C., with regard to the provision which requires the monitoring physician to be located within 20 miles of the physician who is placed on probation by the Board. Comments on this petition should be filed with the Board of Medicine, 4052 Bald Cypress Way, Bin #C03, Tallahassee, Florida 32399-3053, within 14 days of publication of this notice.

For a copy of the petition, contact: Larry McPherson, Jr., Executive Director, Board of Medicine, at the above address, or telephone (850)245-4131.

NOTICE IS HEREBY GIVEN THAT on February 16, 2009, the Board of Optometry, received a petition for Variance or Waiver filed on February 16, 2009 on behalf of Marlyne Alcinor. Petitioner seeks a variance of unidentified Board rule governing the requirements prior to taking the examination.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Joe Baker, Jr., Executive Director, Board of Optometry, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257.

NOTICE IS HEREBY GIVEN THAT on January 9, 2009, the Board of Optometry, received a petition for Variance or Waiver filed on January 9, 2009 on behalf of Steven M. Wilson, O.D. Petitioner, a State of Georgia optometrist, seeks a variance of unidentified Rule. Specifically, the Petitioner, who has applied for an optometrist license in Florida, requests for reasons stated in the petition that the Board grant a variance of the TMOD requirement under the above-mentioned unidentified rule.

This petition will be considered by the Board at its March 6, 2009 meeting.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Joe Baker, Jr., Executive Director, Board of Optometry, 4052 Bald Cypress Way, Bin #C07, Tallahassee, Florida 32399-3257.

NOTICE IS HEREBY GIVEN THAT on February 11, 2009, the Board of Psychology, received a petition for Emily B. McNally, Ph.D., seeking a variance or waiver of paragraph 64B19-11.001(1)(c), F.A.C., which requires that the minimum passing score on EPPP shall be 70% for any examination taken prior to the October 2000.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Allen Hall, Executive Director, Board of Psychology, 4052 Bald Cypress Way, Bin #C05, Tallahassee, Florida 32399-3255. Comments on this petition should be filed with the Board of Psychology within 14 days of publication of this notice.

DEPARTMENT OF FINANCIAL SERVICES

NOTICE IS HEREBY GIVEN THAT on February 11, 2009, the Department of Financial Services, Division of Workers' Compensation, received a petition for variance or waiver which stated that Cotton States Mutual Insurance Company was seeking a waiver from the requirements of Rule Chapter 69L-56, Florida Administrative Code. On February 17, 2009, the Department of Financial Services, Division of Workers' Compensation received an amended petition for variance or waiver, from Cotton States Mutual Insurance Company, pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code. The Petitioner is requesting a variance or waiver from Rule 69L-56.300, Florida Administrative Code, which sets forth requirements for filing certain workers' compensation claims information with the Division of Workers' Compensation via electronic data interchange rather than by submitting paper forms. Cotton States Mutual Insurance Company requests the variance or waiver so that it may submit by paper the information for its one open Florida workers' compensation claim rather than being required to submit the information via electronic data interchange. The amended petition is a clarification of the original petition submitted on February 11, 2009, in that it specifies the precise provision of Rule Chapter 69L-56, Florida Administrative Code, of which a waiver is being sought. The petitioner has filed a statement with the Department withdrawing the original petition dated February 11, 2009. Therefore, the Department will only consider the Amended Petition filed on February 17, 2009.

Comments on this petition should be filed with: Department of Financial Services, Division of Workers' Compensation, 200 E. Gaines Street, Tallahassee, Florida 32399-4229, within 14 days of publication of this notice.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Andrew Sabolic, Assistant Division Director, Division of Workers' Compensation, 200 E. Gaines Street, Tallahassee, Florida 32399-4228, (850)413-1600.

NOTICE IS HEREBY GIVEN THAT on February 10, 2009, the Department of Financial Services, Division of Workers' Compensation, received a petition for variance and waiver from GMAC Insurance Company, requesting a waiver of Rule 69L-56.100, Florida Administrative Code. On February 16, 2009, the Department of Financial Services, Division of Workers' Compensation received an amended petition for variance or waiver, from GMAC Insurance Company, pursuant

to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code. The Petitioner is requesting a variance or waiver from Rule 69L-56.300, Florida Administrative Code, which sets forth requirements for filing certain workers' compensation claims information with the Division of Workers' Compensation via electronic data interchange rather than by submitting paper forms. GMAC Insurance Company requests the variance or waiver so that it may submit by paper the information for its two open Florida workers' compensation claims rather than being required to submit the information via electronic data interchange. On February 17, 2009, GMAC Insurance Company filed a request to withdraw the original petition, dated February 10, 2009, due to an incorrect rule citation. Therefore, the Department will only consider the amended petition filed on February 17, 2009. Comments on this petition should be filed with: Department of Financial Services, Division of Workers' Compensation, 200 E. Gaines Street, Tallahassee, Florida 32399-4229, within 14 days of publication of this notice.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Andrew Sabolic, Assistant Division Director, Division of Workers' Compensation, 200 E. Gaines Street, Tallahassee, Florida 32399-4228, (850)413-1600.

Section VI Notices of Meetings, Workshops and Public Hearings

DEPARTMENT OF STATE

The **Friends of Mission San Luis, Inc.** announces a public meeting to which all persons are invited.

DATE AND TIME: Thursday, March 12, 2009, 12:00 Noon

PLACE: Mission San Luis Archaeology Lab, Tallahassee, FL

GENERAL SUBJECT MATTER TO BE CONSIDERED: Business to be discussed will include fundraising and endowment activities, upcoming special events, the new Visitor Center and other board business.

A copy of the agenda may be obtained by contacting: Jessica Shiver.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Jessica Shiver. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.