

## MEMORANDUM

**TO:** Governing Board Members

**FROM:** Deena Reppen, Chief of Staff

**DATE:** September 8, 2011

**SUBJECT:** Resolution of the Governing Board of the South Florida Water Management District Choosing the Exemption from the Enhanced Biennial Review and Compliance Economic Review Pursuant to Subsection 120.745(9), Fla. Stat., Authorizing the Governing Board Chair to Execute a Certification of Claim of Exemption from Enhanced Biennial Review and Compliance Economic Review, and Authorizing Transmittal of the same to the Joint Administrative Procedures Committee

### Background

Chapter 2011-225, Laws of Florida (HB 993/HB 7239), effective June 24, 2011, amended the rulemaking provisions of the Administrative Procedures Act, Chapter 120, Florida Statutes (Fla. Stat.). The amendments require agencies to undertake additional rule reviews, unless an exemption applies. Specifically, section 120.745, Fla. Stat., is created and requires agencies to conduct, by December 1, 2011, an enhanced review of all rules in effect on or before November 16, 2010, as well as a compliance economic review. The enhanced rule review requires agencies to identify their revenue rules and data collection rules and whether any such rules can be repealed or amended to reduce economic impacts. Agencies are further required to conduct a compliance economic review of all rules for the purpose of identifying any rules which may have negative impacts on jobs, investment, business competitiveness and other economic factors. The reviews have detailed contents as well as procedures for publication and public comment. Agencies that fail to file any required rule review certification will have their rulemaking authority suspended until the required certifications are filed.

Subsection 120.745(9), Fla. Stat., of the new law also provides that an agency may be exempt from the enhanced rule review and compliance economic review if: (1) it has cooperated or cooperates with the Office of Fiscal Accountability and Regulatory Reform (OFARR) in a review of the agency's rules in a manner consistent with Executive Order 11-01 or any alternative review directed by OFARR; (2) the agency or OFARR identifies each data collection rule and each revenue rule; and (3) the information developed thereby becomes publicly available on the agency website by December 1, 2011. Such agencies are also exempt from the biennial review required in subsection 120.74(2), Fla. Stat., for the year 2011. This exemption does not apply unless the agency head certifies in writing to the Joint Administrative Procedures Committee (JAPC) on or before October 1, 2011, that the agency has chosen such exemption and has cooperated with OFARR in undertaking the review required by Executive Order 11-01 or an alternative review.

The District voluntarily complied with the mandates of Executive Order 11-01, and the superseding Executive Order 11-72, and timely submitted its rule review and regulatory plan to OFARR.

District staff has coordinated with the staff at the other water management districts and the Florida Department of Environmental Protection (FDEP) concerning this matter. All water management districts plan to recommend execution and submittal of the required certification of exemption status to JAPC before October 1, 2011

District staff requests the Governing Board authorize its Chair to execute and submit the required certification of exemption status to JAPC before October 1, 2011. The proposed certification is attached and incorporated in the associated Governing Board Resolution.

**How this helps meet the District's 10-year Strategic Plan**

Since the District has cooperated with OFARR, the District will identify its data collection and revenue rules, and will coordinate with OFARR to ensure this information is publicly available on the web. Choosing the section 120.745, Fla. Stat., exemption is expected to help implement the Strategic Plan goals by allowing staff to focus on implementation of the actions identified in the 2011 Regulatory Plan.

**Funding Source**

District staff time will be used to identify data collection and revenue rules and will coordinate with OFARR to ensure this information is publicly available on the web.

**This Board item impacts what areas of the District, both resource areas and geography**

The exemption impacts all areas of the District. Going forward, all District data collection and revenue rules will be identified and made publicly available.

**What concerns could this Board item raise?**

No issues are anticipated to be raised before the Governing Board.

**Why should the Governing Board approve this item?**

Authorizing the Governing Board Chair to execute a Certification of Claim of Exemption from Enhanced Biennial Review and Compliance Economic Review is a critical step to advising JAPC of the District's intent to claim the exemption and not undergo an extensive review of its existing rules. This action is undertaken in coordination with the Department of Environmental Protection, the other water management districts and OFARR.

If you have any questions, please do not hesitate to call me at ext. 6232.

EDR