



# The Florida Legislature

## OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



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### SUNSET MEMORANDUM

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Report No. 07-S29

## Department of Environmental Protection, Division of Air Resource Management Options for Legislative Consideration

February 12, 2008

### *Summary*

To support the Sunset Review process, the Legislature directed OPPAGA to assess activities conducted by the Department of Environmental Protection's Division of Air Resource Management. This memo provides information about the division's purpose, organization, responsibilities, resources, and performance.

OPPAGA assessed four policy options for the Legislature to consider regarding the state's air resource management activities. These options include retaining the Division of Air Resource Management and its current functions (Option 1), abolishing the division's Office of Policy Analysis and Program Management (Option 2), abolishing the entire Division of Air Resource Management (Option 3), and reducing or discontinuing general revenue funding for grant programs and a public awareness campaign administered by the Florida Energy Office (Option 4). The memo discusses the advantages and disadvantages of each option.

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Gary R. VanLandingham, Ph.D., Director

### *Purpose, Organization, and Responsibilities*

The Department of Environmental Protection's (DEP) Division of Air Resource Management administers the state's air pollution control program. Its mission is to protect human health and welfare by maintaining or improving the state's air quality. It carries out this mission by developing and implementing rules and programs to reduce outdoor air pollution such as smog.

The division is organized into two bureaus and two offices – the Bureau of Air Regulation, the Bureau of Air Monitoring, and the Office of Policy Analysis and Program Management, and the Florida Energy Office.

- **The Bureau of Air Regulation** coordinates statewide permitting, compliance assurance, and enforcement among the state's air programs, local air programs and the U. S. Environmental Protection Agency (EPA). The bureau also reviews and issues intents for all Prevention of Significant Deterioration permits and all Title V permits for sources subject to the acid rain rules and those certified under the Power Plant Siting Act. These permits are primarily for major stationary sources of pollution, such as electric power plants.
- **The Bureau of Air Monitoring and Mobile Sources** coordinates the statewide ambient air quality and emissions monitoring programs and various activities related to the control of air pollutant emissions from motor vehicles and area sources.
- **The Office of Policy Analysis and Program Management** develops air pollution rules as directed by the Florida Statutes and federal Clean Air Act; updates the State Implementation Plan as needed to ensure attainment and maintenance of national ambient air quality standards throughout Florida; coordinates all activities related to the compilation of statewide air pollutant emissions inventories; and assesses the effectiveness of Florida's air pollution control strategies through trend analysis and air quality modeling.
- **The Florida Energy Office** develops and implements Florida's energy policy and coordinates all federal energy programs delegated to the state. The office also is home to the Utility Siting Coordination Program which coordinates the interagency review and certification (licensing) process under four "Siting Acts" dealing with electrical power plants and transmission lines, natural gas pipelines, and hazardous waste facilities. It also administers programs related to energy conservation. The Solar Energy Systems Incentives Program provides rebates for purchase and installation of solar energy systems in homes and businesses. The Renewable Energy Technologies Grants Program provides renewable energy matching grants for demonstration, commercialization, research and development projects relating to renewable energy technologies. Although the Energy Office's budget is included in the division, the office has a director who reports to the deputy secretary of Regulatory Programs and Energy. The office is administratively and operationally separate from the division.

Most of the division's activities are conducted to support federal law. For example, the division implements requirements of the federal Clean Air Act as well as related state laws and regulations. The Clean Air Act requires each state to submit a State Implementation Plan to the U.S. Environmental Protection Agency (EPA) that describes how the state will enforce the Act within its boundaries.<sup>1</sup> State enforcement of the act is mandatory. The EPA will assume interim jurisdiction if a state chooses not to comply with the act, pending the reinstatement of required Clean Air Act functions by the state. States are granted flexibility to take into account local conditions in enforcing provisions of the act. States may also levy lower fees than

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<sup>1</sup> See Section [110](#) of the Clean Air Act.

those assessed by EPA. For example, the division currently charges permitted major air pollutant sources an annual fee of \$25 per ton of allowable pollutant emitted. In contrast, as of January 1, 2008, the EPA charged such sources \$41.96 per ton.<sup>2</sup>

A state's clean air program must meet federal standards, and failure to do so can result in the state losing federal transportation funds not related to safety or emission reductions.<sup>3</sup> The same sanctions would also apply if a state chose not to implement such a program. Major division activities related to Florida's Statewide Implementation Plan include operating a statewide ambient monitoring network that measures air quality throughout the state; issuing permits to new and modified sources of air pollutants; inspecting air pollution sources to ensure that they comply with permit requirements, such as emission limits; and assisting small business owners in complying with applicable air pollution laws and regulations.

The majority of the division's air quality activities involve controlling six "criteria" air pollutants identified by EPA: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead. The division also regulates air toxics, or hazardous air pollutants such as benzene and chloroform. These are chemicals known or suspected to cause cancer or other serious health problems, such as birth defects. Activities conducted by the Bureau of Air Regulation and Bureau of Air Monitoring involve controlling pollutants. These activities include permitting, compliance assurance and enforcement, and ambient air monitoring. Activities conducted by the Office of Policy Analysis and Program Management provide the regulatory basis for the permitting, compliance, and monitoring activities performed by the two bureaus. The office is also responsible for creating streamlined general permits.

### *Resources*

The Legislature appropriated the Division of Air Resource Management \$20,274,490 for Fiscal Year 2007-08. The division receives funding from the Air Pollution Control Trust Fund, which collects fees from license tag fees from sold, transferred, or replaced vehicle license registrations; emission fees from major sources of air pollution; a portion of the asbestos notification fees; and an air pollution control grant from the U.S. Environmental Protection Agency. The Legislature also appropriated the division 182 positions, with 85 assigned to the division's central office in Tallahassee and the remaining 97 assigned to district offices.

The Legislature appropriated the Florida Energy Office \$18,629,432 for Fiscal Year 2007-08. This included \$16,250,000 in non-recurring general revenue for the Renewable Energy Technologies Grant Program (\$12.5 million), the Solar Energy System Incentives Program (\$3.5 million), and a public awareness campaign to promote the efficient use of energy (\$250,000).<sup>4</sup> As of January 11, 2008, \$2,892,059 of the Solar Energy System Incentives Program funds had been expended, leaving an unexpended balance of \$607,941. None of the Renewable Energy Technologies Grant Program funds or public awareness campaign funds had been expended. The Legislature also appropriated 13 positions for office activities.

Taken together, the Legislature appropriated a total of \$38,903,922 and 195 positions for the Air Resource Management Division and Florida Energy Office (see Exhibit 1).

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<sup>2</sup> In January 2009, the division will increase its fee to \$30 per ton. Section 502 of the Clean Air Act requires that fees cover all reasonable direct and indirect costs of developing and administering the permit program.

<sup>3</sup> Federal funding provides approximately 25% of statewide funding for transportation in Florida.

<sup>4</sup> The Renewable Energy Technologies Grants Program provides renewable energy matching grants for demonstration, commercialization, research and development projects relating to renewable energy technologies. The Solar Energy Systems Incentives Program provides rebates for purchase and installation of solar energy systems in homes and businesses.

**Exhibit 1**

**The Legislature Appropriated a Total of \$38,903,922 and 195 Positions for the Air Resource Management Division and Florida Energy Office for Fiscal Year 2007-08.**

<b>Air Resource Management Division</b>					
<b>Major Activity</b>	<b>Trust Funds</b>	<b>General Revenue</b>	<b>Federal Funds</b>	<b>Total</b>	<b>Positions</b>
Air Assessment	\$ 7,509,954	\$0	\$1,363,164	\$ 8,873,118	51
Pollution Prevention	11,102,989	0	298,383	11,401,372	131
<b>Division Total</b>	<b>\$18,612,943</b>	<b>\$0</b>	<b>\$1,661,547</b>	<b>\$20,274,490</b>	<b>182</b>
<b>Florida Energy Office</b>					
Energy Office	\$ 0	\$16,250,000	\$1,924,832	\$18,174,832	7
Utility Siting Coordination	454,600	0	0	454,600	6
<b>Office Total</b>	<b>\$454,600</b>	<b>\$16,250,000</b>	<b>\$1,924,832</b>	<b>\$18,629,432</b>	<b>13</b>
<b>Grand Total</b>	<b>\$19,067,543</b>	<b>\$16,250,000</b>	<b>\$3,586,379</b>	<b>\$38,903,922</b>	<b>195</b>

Source: Department of Environmental Protection.

The Division Met Most Legislatively Established Performance Standards. Florida's air quality is generally good, and the Division of Air Resource Management met its performance standards for most of its approved performance measures in Fiscal Year 2006-07. The state continues to meet federal and state ambient air quality standards, and the department reports that citizens in Florida counties where air quality is monitored experienced good or moderate quality air 99% of the time in Fiscal Year 2006-07. The state's ongoing good to moderate air quality is largely associated with its geographical location and configuration (e.g., peninsula), weather conditions, and emission reductions at certain electrical power plants.<sup>5</sup>

The division achieved established performance standards for eight of its ten legislatively mandated outcome measures in Fiscal Year 2006-07 (measures achieving established standards are highlighted in Exhibit 2). In addition to meeting the legislative standard for breathing good or moderate quality air, the measures in Exhibit 2 show that the emission levels of four major pollutants (nitrous oxides, sulfur dioxide, carbon monoxide, and volatile organic compounds) have declined over the past five years. The largest reduction was for sulfur dioxide at 31.65% and the smallest was for volatile organic compounds at 4.5%. These reductions exceeded the performance standards that the pollutant levels slightly increase. Moreover, 97% of major (Title V) facilities were in significant compliance with state regulations, exceeding the legislative standard by 1%.

However, the division did not meet its standard for number of emission points reviewed and analyzed.<sup>6</sup> Specifically, the division analyzed over 2,000 fewer emission points (2,863) than anticipated by the legislative standard (4,884). According to department officials, the reviews were delayed because employees were working on the preliminary Greenhouse Gas Inventories and because new software expected to be ready in January 2007 was not available until April. In addition, the division did not meet the standard for percentage of electric generation capacity under coordinated siting oversight compared to 2002 baseline year.<sup>7</sup> Department officials report that they propose to revise this measure. The current measure compares

<sup>5</sup> Division managers say the EPA is expected to revise the ozone standard in 2008. Some areas of the state could be in violation of the new standard, thus requiring additional emission reductions.

<sup>6</sup> An emission point is a stack, vent, or other identifiable location at which air pollutants are discharged into the atmosphere. The emission points reviewed and analyzed were for the six "criteria" air pollutants: ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead.

<sup>7</sup> The Siting Coordination Office reviews applications for power plants, transmission lines, natural gas pipelines, and hazardous waste facilities, as well as coordinates certification of the plants. Certification involves an umbrella permit and the office coordinates the process that typically requires approval by numerous agencies.

the percentage of statewide electric generation capacity under the Siting Coordination Office’s oversight to the total statewide generation capacity in the baseline year, 2002. The revised measure would compare the annual percentage increase in megawatts under the office’s oversight to the new baseline year, 2006. The department believes this would better reflect the increasing service load on the office. The 2006 baseline year is the same as the baseline year for measures the department developed for the Florida Cabinet.<sup>8</sup>

In addition, the division proposes to add two performance measures that would demonstrate progress toward reducing greenhouse gases. In July 2007, the Governor by executive order directed the department to develop rules adopting standards for maximum allowable emission levels of greenhouse gases for electric utilities.<sup>9</sup> The executive order also directed the department to adopt California’s motor vehicle emission standards upon approval of the EPA and to adopt a statewide diesel engine idle reduction standard. The new performance measures would provide the Legislature with information about the percentage of change in pounds of carbon dioxide generated per megawatt from certified electrical power plants compared to 2006 and the total pounds of carbon dioxide generated per megawatt.

**Exhibit 2**  
**The Division of Air Resource Management Met Standards for 8 of Its 10 Performance Measures in Fiscal Year 2006-07**

Performance Measures		Standard Fiscal Year 2006-07	Actual Performance Fiscal Year 2006-07
Air Assessment	Percentage of population living in areas monitored for air quality	90%	91%
	Percentage of change in pounds of annual emissions of nitrous oxides per capita compared with the level five years ago <sup>1</sup>	2.50%	-22.16%
	Percentage of change in pounds of annual emissions of sulfur dioxide per capita compared with the level five years ago <sup>1</sup>	2.50%	-31.65%
	Percentage of change in pounds of annual emissions of carbon monoxide per capita compared with the level five years ago <sup>1</sup>	1.25%	-16.49%
	Percentage of change in pounds of annual emissions of volatile organic compounds per capita compared with the level five years ago <sup>1</sup>	2.50%	-4.50%
	Percentage of time population breathes good or moderate quality air <sup>1</sup>	99.1%	99.5%
	Number of emission points reviewed and analyzed	4884	2863
Air Pollution Prevention	Percentage of Title V facilities in significant compliance with state regulations	96%	97%
Utility Siting and Coordination	Percentage of electric generation capacity under coordinated Siting oversight compared to baseline year	65%	56%
	Percentage of electric transmission capacity under coordinated siting oversight compared to baseline year	11%	11%

<sup>1</sup> These measures are also included in Air Pollution Prevention.  
Source: The Florida Department of Environmental Protection.

<sup>8</sup> In April 2007, the Governor and Cabinet directed several agencies, including the Department of Environmental Protection, to develop performance measures for the purpose of assessing accountability. The Governor and Cabinet approved the department’s measures in July 2007.

<sup>9</sup> Governor’s Executive Order No. [07-127](#).

The Department Has Increased Its Focus on Greenhouse Gas Emissions and Climate Change. Consistent with the Governor's executive order, the Department of Environmental Protection has taken steps related to greenhouse gases and climate change. For example, it scheduled workshops in August and December 2007 to hear public comments and recommendations regarding the rule development mandated by the Governor's executive order. The department also has provided staff support and technical assistance to the Governor's Action Team on Energy and Climate Change that is developing an Energy and Climate Change Action Plan.<sup>10</sup> The action team is charged with developing a comprehensive strategy to achieve targets for statewide greenhouse gas reductions. The team's first report was published in November 2007 and made recommendations to increase energy efficiency and conservation; examine the potential for capturing, sequestering, and storing carbon; expand the production of renewable energy; and examine the role of nuclear energy in Florida.<sup>11</sup> The Phase II report is to include recommendations, including proposed legislation, to address

- adaptation strategies to combat adverse impacts to society, public health, the economy, and natural communities in Florida;
- policies to reduce the increases in greenhouse gas emissions from new growth;
- carbon capture and storage technologies;
- land use and management policies that improve the long term storage of carbon in Florida's biomass;
- strategic investments and public private partnerships in Florida to spur economic development around climate friendly industries and economic activity that reduces emissions in Florida; and
- strategies and mechanisms for the long-term coordination of Florida's public policy in the areas of economic development, university based research and technology development, energy, environmental protection, natural resource management, growth management, transportation, and other areas as needed to assure a future of prosperity for Floridians in reducing greenhouse gas emissions.

Publication of the second report is expected by October 1, 2008. Although the action team has discussed several aspects of reducing greenhouse emissions, the first report does not discuss developing performance measures that could be used to assess progress toward achieving that goal. However, division managers reported that they might develop performance measures when a greenhouse gas reduction program is adopted. When adopted, the program would include strategies for reducing greenhouse gas emissions, such as determining how much reduction is required, the schedule for achieving these reductions, the sources of the emissions, and resources necessary to implement the program. Meanwhile, the division plans to update the data in its greenhouse gas emissions inventory.

### *Options for Legislative Consideration*

The Department of Environmental Protection's Division of Air Resource Management conducts numerous activities to support federal law (the Clean Air Act), including developing and implementing rules and programs to reduce outdoor air pollution such as smog. Most of the division's activities are supported by trust funds, with the Florida Energy Office receiving the division's entire general revenue appropriation (\$16,250,000).

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<sup>10</sup> The 21-member action team includes legislators, energy experts, environmentalists, academicians, and business representatives. The secretary of the Department of Environmental Protection chairs the action team.

<sup>11</sup> [\*Phase I Report: Florida's Energy and Climate Change Action Plan Pursuant to Executive Order 07-128\*](#), Governor's Action Team on Energy and Climate Change, November 1, 2007.



Exhibit 3 presents four options the Legislature may wish to consider to reduce state costs and responsibilities for this function. These options include retaining the Division of Air Resource Management and its current functions (Option 1), abolishing the division’s Office of Policy Analysis and Program Management (Option 2), abolishing the entire Division of Air Resource Management and transferring responsibility for enforcing the federal Clean Air Act to the U.S. Environmental Protection Agency (Option 3), and reducing or discontinuing general revenue funding for grant programs and a public awareness campaign administered by the Florida Energy Office (Option 4). The exhibit identifies the advantages and disadvantages associated with each option.

**Exhibit 3**

**The Legislature Could Consider Four Options for Modifying the Division of Air Resource Management**

Option	Advantages	Disadvantages
<b>Option 1 – Retain the Division of Air Resource Management and its current functions</b>		
Retain the Division of Air Resource Management and its current functions related to permitting, enforcement, monitoring, and data assessment	<ul style="list-style-type: none"> <li>▪ Helps ensure that the state is in compliance with the federal Clean Air Act and Florida’s air quality is protected</li> <li>▪ Enables the state to maintain flexibility to consider local conditions in enforcing provisions of the federal Clean Air Act</li> <li>▪ Helps ensure the continued receipt of federal transportation funds associated with state implementation of the federal Clean Air Act</li> </ul>	<ul style="list-style-type: none"> <li>▪ Florida incurs costs associated with operating program at the state level</li> </ul>
<b>Option 2 – Abolish the division’s Office of Policy Analysis and Program Management</b>		
Abolish the division’s Office of Policy Analysis and Program Management, transferring some activities to other entities within the Department of Environmental Protection and privatizing other activities through contracting. Activities that could be transferred or privatized updating the State Implementation Plan, rule making, and data analysis and modeling.	<ul style="list-style-type: none"> <li>▪ Would save an undetermined amount in salaries and benefits currently paid from trust funds</li> </ul>	<ul style="list-style-type: none"> <li>▪ Could delay certain activities such as rule making and State Implementation Plan revisions</li> <li>▪ Could make it more difficult for the division to obtain and analyze data related to pollution control</li> <li>▪ Could result in higher costs in fees paid to consultants, who may be needed to conduct data collection and analysis activities currently performed by the office</li> </ul>

Option	Advantages	Disadvantages
<b>Option 3 – Abolish the Division of Air Resource Management</b>		
Abolish the Division of Air Resource Management and transfer responsibility for enforcing the federal Clean Air Act in Florida to the U.S. Environmental Protection Agency	<ul style="list-style-type: none"> <li>▪ Would save approximately \$5.4 million in salaries and benefits currently paid from trust funds</li> <li>▪ Would reduce costs for administrative and support functions; according to division managers, this may be minimal since the division's budget is not significant in proportion to the department's budget</li> </ul>	<ul style="list-style-type: none"> <li>▪ According to EPA, would put state out of compliance with the federal Clean Air Act</li> <li>▪ Would jeopardize federal transportation funds, or approximately 25% of statewide transportation funding</li> <li>▪ Florida would lose flexibility to take local conditions into account in developing enforcement programs</li> <li>▪ Would result in higher permit fees for some stakeholders</li> <li>▪ No other state has relied upon the U.S. Environmental Protection Agency to implement the Clean Air Act, so effects on Florida citizens and industry are unclear</li> </ul>
<b>Option 4 – Discontinue or reduce general revenue funding for grant programs and a public awareness campaign administered by the Florida Energy Office</b>		
Reduce or discontinue general revenue funding for grant programs and a public awareness campaign administered by the Florida Energy Office. These programs were appropriated \$16,250,000 in non-recurring general revenue for Fiscal Year 2007-08.	<ul style="list-style-type: none"> <li>▪ Would allow for the use non-recurring general revenue for other purposes and activities</li> <li>▪ Would decrease the office's activities related to administering grants and incentives, which may result in a reduction in department's administrative costs</li> </ul>	<ul style="list-style-type: none"> <li>▪ Could delay achieving the legislative goal of developing renewable energy technologies and energy efficiency initiatives</li> </ul>

Source: OPPAGA analysis.