

**AGENDA  
BOARD OF TRUSTEES  
DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES  
APRIL 19, 2011**

**Attachments to the items below can be viewed at the following link:  
[http://www.dep.state.fl.us/secretary/cab/public\\_notices.htm](http://www.dep.state.fl.us/secretary/cab/public_notices.htm)**

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**Item 1 Minutes**

Submittal of the Minutes from the October 26, 2011 and January 19, 2011 Cabinet Meetings.

**VOTING REQUIREMENT FOR APPROVAL:** Simple majority

(See Attachment 1 at [http://www.dep.state.fl.us/secretary/cab/public\\_notices.htm](http://www.dep.state.fl.us/secretary/cab/public_notices.htm))

**RECOMMEND APPROVAL**

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**Item 2 BOT Delegations Addition**

**REQUEST:** Consideration of delegation of authority to the Commissioner of Agriculture, or his designee, to renew aquaculture leases, on behalf of the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), for successive terms when the terms and conditions of the aquaculture lease agreement are not substantially altered.

**VOTING REQUIREMENT FOR APPROVAL:** Three votes

**LOCATION:** Statewide

**APPLICANT:** Florida Department of Agriculture and Consumer Services (the Department)

**STAFF REMARKS:** The Division of Aquaculture (Division) serves as staff to the Board of Trustees for the state's aquaculture program. The Board of Trustees has previously delegated authority to the Division to manage the program on a day-to-day basis. By statute, the Board of Trustees is prohibited from delegating the approval of new aquaculture lease areas, expanding existing aquaculture lease areas, issuing new leases or changing the approved activity within a lease.

Recently, the Division has encountered an issue where the existing delegation is unclear and is now seeking Board of Trustees' clarification of the delegation of authority in an effort to improve government efficiency. Previously, when the Board of Trustees has approved new aquaculture leases, it has issued a ten-year lease, with one renewal for a second ten-year term. There is no provision for renewal of a third ten-year term in the lease approved by the Board of Trustees and the lease will expire at the end of the second ten-year term. Even if all conditions of the lease are the same, authorizing an existing lessee to continue using the area for aquaculture production could be viewed as issuing a new lease, which the Florida Statutes require be done only by the Board of Trustees.

**Board of Trustees  
Dept. of Agriculture & Consumer Services  
Agenda - April 19, 2011  
Page Two**

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**Item 2, cont.**

The Department has received a request to renew an aquaculture lease for a third successive ten-year term (third term). This is the first of a series of aquaculture leases that were approved by the Board of Trustees which are expected to request a third term. Over the next two years, the Department expects to receive requests for renewal for a third term on a number of the original leases (three in 2011, one in 2012 and one hundred twenty-six in 2013).

In an effort to improve government efficiency, reduce staff time and shorten the application process for renewals, the Division is requesting a clarification in its delegation of authority that would allow the Department to renew aquaculture leases for successive terms when the leaseholders are in compliance with their lease agreement and the renewed lease agreement includes substantially the same terms and conditions as the existing lease agreement. Requests for new leasing areas, renewals that include substantial changes from the original lease agreement, or renewals that are determined to be of heightened public interest will continue to be brought before the Board of Trustees for consideration.

The limitation of two ten-year terms in aquaculture leases likely originated as part of an effort to end “in perpetuity” leases. The Board of Trustees has previously authorized the Department to modify, assign and re-issue existing aquaculture leases which are still in the first or second terms. Based on the Department’s experience with evaluating requests for renewals, we have a high degree of confidence in our due diligence and review processes to ensure sovereignty submerged lands are managed judiciously.

In addition to removing an existing layer of government bureaucracy, the requested delegation will help to provide Florida’s marine aquaculture producers with a stable business planning landscape, particularly important given their planting and production cycle can take several years.

To ensure that the state provides responsible policy to foster aquaculture development on sovereignty submerged lands, the Department requests that the Board of Trustees delegate authority to the Department to renew existing aquaculture leases, provided: a) the Board of Trustees has previously approved the use of the parcel for a specific aquaculture purpose; b) the specific purpose will not change substantially; c) the terms and conditions of the lease agreements are not substantially altered; d) the requested action is not determined to be controversial or of heightened public concern; and e) the affected acreage is not increased or does not exceed ten acres, more or less.

The renewal provision in aquaculture lease agreements will be amended to read: “If requested by Lessee and approved by the Board of Trustees, this lease shall be renewable for an additional term and upon such conditions as are acceptable to the parties hereto. The request for renewal must be in writing and delivered by Lessee to Lessor no later than 90 days before the expiration date of this lease. Upon receipt, staff shall transmit a request for comments and recommendations concerning the renewal of this lease. Upon receipt of those comments and

**Board of Trustees  
Dept. of Agriculture & Consumer Services  
Agenda - April 19, 2011  
Page Three**

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**Item 2, cont.**

recommendations, staff shall either take final action on behalf of the Board or submit the Lessee's request for renewal to the Board for final action.”

The specific statutory directive and supporting administrative code are currently in place and relevant to this request; no amendment to Florida Statutes or Florida Administrative Code will be required to implement the requested change in policy and delegation.

A consideration of the status of any local government comprehensive plans was not made for this item. The Department has determined that the proposed action is not subject to the local government planning process.

(See Attachment 2, Pages 1-11)

**RECOMMEND    APPROVAL TO DELEGATE AUTHORITY TO THE COMMISSIONER OF AGRICULTURE, OR HIS DESIGNEE, TO RENEW AQUACULTURE LEASES ON BEHALF OF THE BOARD OF TRUSTEES**