

Notice of Proposed Rule

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Office of the Secretary

RULE NOS.:RULE TITLES:

- 62S-7.010 Definitions
- 62S-7.011 Requirements of The State-Financed Constructor
- 62S-7.012 SLIP Study Standards
- 62S-7.014 Implementation of SLIP Study findings
- 62S-7.016 Enforcement by DEP
- 62S-7.020 Effective Date

PURPOSE AND EFFECT: The Department has proposed Rule 62S-7 pursuant to Chapter 161.551, F.S., Sea Level Impact Projection (SLIP) Studies for State Financed Coastal Construction The Chapter sets forth definitions and guidelines required by statute for state financed constructors to consider for the purpose of showing the impact of sea level changes on structures.

SUMMARY: The proposed rule implements s. 161.551, F.S. requiring a state-financed constructor to conduct and submit for review and publication to the Department a sea level impact projection (SLIP) study at least 30 days prior to commencing construction. The proposed rule establishes definitions, requirements of the state-financed constructor, and standards for SLIP studies. The proposed rule establishes the processes for submission, evaluation, and publication of the SLIP studies.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Information known to the Agency regarding the nature and costs of non-mandatory guidelines in the rule, and based on the expertise and experience of agency staff, it was determined that a SERC was not necessary and that the rule will not require legislative ratification. Any person who wishes to provide information regarding a statement of estimated regulatory costs or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

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RULEMAKING AUTHORITY: 161.551, FS.

LAW IMPLEMENTED: 161.551, FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: April 26, 2021, 10:00 a.m. – 12:00 p.m., (Eastern Time)

PLACE: This hearing will be broadcast via webinar. Parties can register to attend the webinar via their personal computers with audio by telephone (regular long-distance telephone charges will apply) or by speakers connected to their computer (no telephone charges will apply). Webinar registration is via <https://register.gotowebinar.com/register/3670596837682456332>

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 5 days before the workshop/meeting by contacting: Whitney Gray, Florida Department of Environmental Protection, Office of Resilience and Coastal Protection, Florida Resilient Coastlines Program, 3900 Commonwealth Blvd, Tallahassee, FL 32399, Telephone: (850)245 2098, E-mail: Whitney.Gray@FloridaDEP.gov. 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).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Whitney Gray, Program Administrator, Florida Resilient Coastlines Program, (850) 245 2098, Whitney.Gray@FloridaDEP.gov, Florida Department of Environmental Protection, Office of Coastal Resilience and Protection, 3900 Commonwealth Blvd., Tallahassee, FL 32399

THE FULL TEXT OF THE PROPOSED RULE IS:

62S-7.010 Definitions.

(1) “Coastal building zone” means

a. The land area from the seasonal high-water line landward to a line 1,500 feet landward from the coastal construction control line as established pursuant to s. 161.053, and, for those coastal areas fronting on the Gulf of Mexico, Atlantic Ocean, Florida Bay, or Straits of Florida and not included under s. 161.053, the land area seaward of the most landward velocity zone (V-zone) line as established by the Federal Emergency Management Agency (FEMA) and shown on flood insurance rate maps;

b. On coastal barrier islands, it shall be the land area from the seasonal high-water line to a line 5,000 feet landward from the coastal construction control line established pursuant to s. 161.053, or the entire island, whichever is less; and

c. All land area in the Florida Keys located within Monroe County shall be included in the coastal building zone.

(2) “Expected life” means the time when an element is supposed to function within its specified parameters; in other words, the life expectancy of the structure or project.

(3) “Flood depth” is the water level measured in feet above the ground at the project location.

(4) “Horizontal construction” means new construction of surface parking lots, highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction.

(5) “New coastal structure” means a major or nonhabitable major structure for which construction has not yet commenced beginning July 1, 2022 (one year after effective date of this rule). Projects that are rehabilitation or maintenance of existing structures, including related minor improvements shall not be considered new.

a. “Major Structures” are defined in s. 161.54(6)(a).

b. “Nonhabitable Major Structures” are defined in s. 161.54(6)(c).

(6) “Vertical construction” means the new construction of any building, structure or other improvement that is predominantly vertical, including, without limitation, a building, structure or improvement for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, and any improvement appurtenant thereto.

Rulemaking authority: 161.551(6), FS Implemented 161.551 FS History- New, _____.

62S-7.011 Requirements of The State-Financed Constructor

(1) Beginning July 1, 2022 (one year after effective date of this rule) a state-financed constructor, as defined in s. 161.551, F.S., must conduct a SLIP study that meets the standards and criteria in Rule 62S-7.012, F.A.C., prior to construction of a new coastal structure. A state-financed constructor may comply with this requirement by using the Department’s web-based tool, which was designed to meet the criteria in Rule 62S-7.012, F.A.C., for performing and submitting a SLIP study or conduct and submit a SLIP study by their own method that otherwise meets the standards and criteria established in Chapter 62S-7.012, F.A.C..

(2) The state-financed constructor may not commence construction of a new coastal structure until a SLIP study meeting the criteria in Rule 62S-7.012, F.A.C., has been submitted to the Department and has received notification from the Department via the web-based tool or email that the SLIP study has been published on the Department’s website for 30 days. The department encourages submission of the SLIP study during planning and design phases of the project.

(3) All SLIP studies will be maintained on the Department’s website for a minimum of 10 years.

Rulemaking authority: 161.551(6), FS Implemented 161.551 FS History- New, _____.

62S-7.012 SLIP Study Standards

(1) A SLIP study required under s. 161.551, F.S., shall meet the following standards and criteria, and the Department's web-based tool has been designed to meet these standards and criteria:

(a) Show the amount of sea level rise expected over 50 years or the expected life of the structure, whichever is less. When there are multiple project features that function as one combined project, as contemplated by s. 161.551(3), F.S., one SLIP study may be submitted, but the expected life shall be that of the highest Risk Category for all project features contemplated. The amount of sea level rise expected must be calculated using the following criteria:

1. The sea level rise scenarios used for analysis must, at a minimum, include the NOAA Intermediate-High sea level rise scenario from the National Oceanic and Atmospheric Administration (NOAA) report, "2017 NOAA Technical Report National Ocean Service Center for Operational Oceanographic Products and Services (NOS CO-OPS) 083, Global and Regional Sea Level Rise Scenarios for the United States," hereby incorporated by reference <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. Copies of these documents may be obtained by writing to the National Oceanic and Atmospheric Administration, National Ocean Service, Center for Operational Oceanographic Products and Services, Silver Spring, Maryland 20910.

2. The local sea level rise at the project's location must be interpolated (using the project's distance away from the gauges as the independent variable) between the two closest coastal tide gauges with NOAA sea level rise projections listed below.

- a) 8670870 Fort Pulaski, GA
- b) 8720030 Fernandina Beach, Florida
- c) 8720218 Mayport, Florida
- d) 8721604 Trident Pier, Florida
- e) 8723214 Virginia Key, Florida
- f) 8723970 Vaca Key, Florida
- g) 8724580 Key West, Florida
- h) 8725110 Naples, Florida
- i) 8725520 Fort Myers, Florida
- j) 8726520 St. Petersburg, Florida
- k) 8726724 Clearwater Beach, Florida
- l) 8727520 Cedar Key, Florida
- m) 8728690 Apalachicola, Florida
- n) 8729108 Panama City, Florida
- o) 8729840 Pensacola, Florida
- p) 8735180 Dauphin Island, AL

3. Flood depth must be calculated in North American Vertical Datum of 1988 (NAVD88) over the entirety of the project location out 50 years or the structure's expected life, whichever is less, for the NOAA Intermediate high sea level rise scenario, at a minimum.

4. The contribution of land subsidence to relative local sea level rise must be included. The land subsidence contribution is calculated by NOAA for each local tide gauge and is included in each of the NOAA sea level projections. This data (labeled VLM for Vertical Land Movement) is presented in the U.S. Army Corps of Engineers (USACE) sea level change calculator (Version 2019.21) found at https://cwbi-app.sec.usace.army.mil/rccslc/slcc_calc.html, hereby incorporated by reference <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>.

(b) Show the amount of flooding, inundation, and wave action damage risk expected over 50 years or the expected life of the structure, whichever is less. The amount of flooding and wave damage expected must be calculated using the following criteria:

1. FEMA storm surge water surface elevation for the 1% annual chance (100 year) flood event must be approximated in NAVD88 for the entire project location. Location-specific water surface elevations can be found within the SLIP tool or at the FEMA Flood Map Service Center <https://msc.fema.gov/portal/home>, hereby incorporated by reference <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. Copies of these

documents may be obtained by writing to the Office of Resilience and Coastal Protection, Mail Station 235, Department of Environmental Protection, Douglas Building, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000.

2. The FEMA 1% annual chance water surface elevation must be added to the NOAA 2017 Intermediate-High and any other chosen sea level rise scenario, and then compared to the project's critical elevations to assess flood risk. Critical elevations must be Finished First Floor Elevation (FFE), the Lowest Adjacent Grade (LAG) of the structure, or another critical design element which may be substantially damaged if flooded. Refer to the 2020 Florida Building Code, Section 1603.1.7, Flood Design Data, for assistance in defining the critical elevation at https://codes.iccsafe.org/content/FLBC2020P1/chapter-16-structural-design#FLBC2020P1_Ch16_Sec1603.1.7, hereby incorporated by reference <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. Copies of these documents may be obtained by writing to the Office of Resilience and Coastal Protection, Mail Station 235, Department of Environmental Protection, Douglas Building, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000.

3. Depth-Damage Curves from the 2015 North Atlantic Coast Comprehensive Study, titled "Resilient Adaptation to Increasing Risk: Physical Depth Damage Function Summary Report," must be used to estimate the cost of future flood damage, for vertical construction only, by assessing the approximate flood depth within the structure, using the comparison of the critical elevations to the previously calculated 1% annual chance water surface elevation added to the NOAA 2017 Intermediate-High and any other chosen local sea level rise scenarios.

(c) The state-financed constructor must show the risk to public safety and environmental impacts expected over 50 years or the expected life of the structure, whichever is less using the following criteria.

1. Each structure must be assigned a Risk Category using the 2020 Florida Building Code Table 1604.5, Risk Category of Buildings and Other Structures. The table can be found at https://codes.iccsafe.org/content/FLBC2020P1/chapter-16-structural-design#FLBC2020P1_Ch16_Sec1604.5, hereby incorporated by reference <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. Copies of these documents may be obtained by writing to the Office of Resilience and Coastal Protection, Mail Station 235, Department of Environmental Protection, Douglas Building, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000.

2. The ultimate design windspeed for the project location must be provided to define the risk of flying debris. This windspeed varies based on the Risk Category of the building and can be found in Figures 1609.3(1), 1609.3(2), 1609.3(3), and 1609.3(4) in the 2020 Florida Building Code at: https://codes.iccsafe.org/content/FLBC2020P1/chapter-16-structural-design#FLBC2020P1_Ch16_Sec1609.3, hereby incorporated by reference <http://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>. Copies of these documents may be obtained by writing to the Office of Resilience and Coastal Protection, Mail Station 235, Department of Environmental Protection, Douglas Building, 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000.

(d) Alternatives must be provided for the project's design and siting and the SLIP study must state how such alternatives would address public safety and environmental impacts, including but not limited to, leakage of pollutants, electrocution and explosion hazards, and hazards resulting from floating or flying structural debris as well as the risks and costs associated with construction, maintenance and repair of the structure.

(e) If a state-financed constructor chooses to conduct its own SLIP study and not use the Department's web-based tool, the SLIP study shall be submitted to the Department for publication via secure sign-in on the DEP-provided website. The study report shall be in an Americans with Disabilities Act (ADA) Section 508 compliant portable document format. The report contents shall include, but not be limited to, a description of the approach used in conducting the study, numbered references to the information used in the study, a narrative with graphic illustrations to demonstrate the application of the study approach to the information used, and a discussion of the assessments and alternatives.

Rulemaking authority: 161.551(6), FS Implemented 161.551 FS History- New, _____.

62S-7.014 Implementation of SLIP Study findings

The Department's intent in this rule is to inform and raise awareness with the state-financed constructor of the potential impacts of sea level rise and increased storm risk on coastal infrastructure. Implementation of the findings of the SLIP studies is at the discretion of the state-financed constructor.

Rulemaking authority: 161.551(6), FS Implemented 161.551 FS History- New, _____.

62S-7.016 Enforcement by DEP

Failure to comply with the SLIP study requirements may result in compliance or enforcement action by the Department, including but not limited to:

(a) Pursuit of injunctive relief to cease construction until the constructor comes into full compliance with the requirement;

(b) Recovery of all or a portion of state funds expended on the construction activity.

Rulemaking authority: 161.551(6), FS Implemented 161.551 FS History- New, _____.

62S-7.020 Effective Date

Any enforcement shall not proceed until 1 year after the rule takes effect.

Rulemaking authority: 161.551(6), FS Implemented 161.551 FS History- New, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Whitney Gray, Administrator, Florida Resilient Coastlines Program

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Noah Valenstein, DEP Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: March 25, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: January 4, 2021