



RICK SCOTT  
GOVERNOR

STATE OF FLORIDA

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

[www.flgov.com](http://www.flgov.com)  
850-488-7146  
850-487-0801 fax

## MEMORANDUM

**TO:** Agency Heads  
**FROM:** Rick Scott  
Governor, State of Florida  
**DATE:** June 10, 2011  
**RE:** Implementation of Executive Order 11-58

This memorandum is intended to provide further guidance on the implementation of Executive Order 11-58. That Order requires “agencies within the purview of the Governor to amend their drug-testing policies to provide for pre-employment drug testing for all prospective new hires and for random drug testing of all employees within each agency.” Since I promulgated that Order, agency personnel and staff within the Office of the Governor have consulted regarding the feasibility and logistical steps that would be involved in a multi-agency procurement of drug-testing services. Such a procurement would likely result in the lowest cost per test, but would also require significant coordination to account for varied needs of different agencies. As you are aware, while consultations about this issue were occurring, agencies were asked to withhold adoption and implementation of drug testing policies under Executive Order 11-58.

On May 31, 2011, a lawsuit was filed challenging the constitutionality of drug testing within the workplace. The plaintiffs have moved the Court to preliminarily enjoin implementation of Executive Order 11-58. While the United States Supreme Court has never ruled upon the constitutionality of a drug testing protocol identical to that mandated by Executive Order 11-58, I am confident that the drug testing called for in the Order is consistent with the Constitution, with the government’s rights as an employer, and with sensible practice to ensure a safe, effective, productive, and fiscally accountable workforce. An overwhelming majority of Floridians agree with this common-sense assessment.

Nonetheless, while the case is pending, it does not make sense for all agencies to move forward with the logistical issues involved in instituting the new policy. Accordingly, one agency, the Department of Corrections, shall proceed with implementing Executive Order 11-58. This will permit the legal issue to be resolved. Once that occurs, all agencies can then engage in a coordinated procurement of drug-testing services. In the meantime, the Department of

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Corrections' experiences with the new policy will help further inform the best method of proceeding with procurement and other logistical issues.

Therefore, for all agencies other than the Department of Corrections, the timelines established in Executive Order 11-58 are suspended, pending further notice from this Office. The Department of Corrections should proceed to take the steps necessary to implement Executive Order 11-58.