

**CHAPTER 373  
WATER RESOURCES**

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**373.012 Topographic mapping.—**

(1) In order to accelerate topographic mapping in this state by the United States Geological Survey, the Department of Transportation is hereby authorized and directed to set aside, to pledge, and to make available annually out of its State Transportation Trust Fund the sum of \$30,000; and the Board of Trustees of the Internal Improvement Trust Fund is hereby authorized and directed to set aside, to pledge and to make available annually out of the Land Acquisition Trust Fund the sum of \$10,000; and the South Florida Water Management District out of its funds to be

derived out of the proceeds of special assessments of its flood control taxes, is authorized and directed to set aside, to pledge and to make available annually such sum as may be required to meet the needs for topographic mapping of areas affecting said district. Such sums shall be delivered to the Treasurer of the United States or to other proper officer, to be applied by the Department of the Interior, United States Geological Survey, as to said Department of Transportation and to said Board of Trustees of the Internal Improvement Trust Fund, toward the payment of not exceeding one-half the cost of standard topographic mapping in this state conducted by the United States Geological Survey and as to said flood control district to be applied toward the payment of such proportion or part of such cost as said district may determine. Provided, however, that said sums authorized in this section for the Department of Transportation and for the Board of Trustees of the Internal Improvement Trust Fund shall not prevent either of said agencies from providing additional amounts for topographic mapping of areas which either agency may consider of priority status in the interest of said agencies.

(2) To further accelerate the rate at which topographic mapping may be carried on in Florida, any state agency having funds available for the purpose, any county or drainage or reclamation or flood control district organized under the laws of this state, any person, firm or corporation, is authorized to contribute to the cost of such mapping by depositing with the Department of Transportation such amounts as may be determined to be applied in like manner toward topographic mapping in this state as set forth in subsection (1).

(3) The Department of Transportation, the Board of Trustees of the Internal Improvement Trust Fund of this state, and the South Florida Water Management District are hereby authorized to make such arrangements or enter into such agreements with the United States as may be necessary to carry out the purposes of this section.

(4) The Board of Trustees of the Internal Improvement Trust Fund, as and when copies of topographic maps are made available to it, shall file such maps in the same manner as other maps and plats of land surveys by the United States, and the maps shall be available for examination by any interested person.

**History.**—ss. 1, 2, 3, 4, ch. 57-775; s. 2, ch. 61-119; s. 1, ch. 65-475; ss. 23, 27, 35, ch. 69-106; ss. 2, 3, ch. 73-57; s. 35, ch. 79-65.

**373.013 Short title.**—This chapter shall be known as the “Florida Water Resources Act of 1972.”

**History.**—s. 1, part I, ch. 72-299.

**373.016 Declaration of policy.**—

(1) The waters in the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.

(2) The department and the governing board shall take into account cumulative impacts on water resources and manage those resources in a manner to ensure their sustainability.

(3) It is further declared to be the policy of the Legislature:

(a) To provide for the management of water and related land resources;

(b) To promote the conservation, replenishment, recapture, enhancement, development, and proper utilization of surface and ground water;

(c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;

(d) To promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;

(e) To prevent damage from floods, soil erosion, and excessive drainage;

(f) To minimize degradation of water resources caused by the discharge of stormwater;

(g) To preserve natural resources, fish, and wildlife;

(h) To promote the public policy set forth in s. 403.021;

(i) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and

(j) Otherwise to promote the health, safety, and general welfare of the people of this state.

In implementing this chapter, the department and the governing board shall construe and apply the policies in this subsection as a whole, and no specific policy is to be construed or applied in isolation from the other policies in this subsection.

(4)(a) Because water constitutes a public resource benefiting the entire state, it is the policy of the Legislature that the waters in the state be managed on a state and regional basis. Consistent with this directive, the Legislature

recognizes the need to allocate water throughout the state so as to meet all reasonable-beneficial uses. However, the Legislature acknowledges that such allocations have in the past adversely affected the water resources of certain areas in this state. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the department and the water management districts to encourage the use of water from sources nearest the area of use or application whenever practicable. Such sources shall include all naturally occurring water sources and all alternative water sources, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery. Reuse of potable reclaimed water and stormwater shall not be subject to the evaluation described in s. 373.223(3)(a)-(g). However, this directive to encourage the use of water, whenever practicable, from sources nearest the area of use or application shall not apply to the transport and direct and indirect use of water within the area encompassed by the Central and Southern Florida Flood Control Project, nor shall it apply anywhere in the state to the transport and use of water supplied exclusively for bottled water as defined in s. 500.03(1)(d), nor shall it apply to the transport and use of reclaimed water for electrical power production by an electric utility as defined in section 366.02(2).

(b) In establishing the policy outlined in paragraph (a), the Legislature realizes that under certain circumstances the need to transport water from distant sources may be necessary for environmental, technical, or economic reasons.

(5) The Legislature recognizes that the water resource problems of the state vary from region to region, both in magnitude and complexity. It is therefore the intent of the Legislature to vest in the Department of Environmental Protection or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts. The department may exercise any power herein authorized to be exercised by a water management district; however, to the greatest extent practicable, such power should be delegated to the governing board of a water management district.

(6) It is further declared the policy of the Legislature that each water management district, to the extent consistent with effective management practices, shall approximate its fiscal and budget policies and procedures to those of the state.

**History.**—s. 2, part I, ch. 72-299; s. 36, ch. 79-65; s. 70, ch. 83-310; s. 5, ch. 89-279; s. 20, ch. 93-213; s. 250, ch. 94-356; s. 1, ch. 97-160; s. 1, ch. 98-88.

**373.019 Definitions.**—When appearing in this chapter or in any rule, regulation, or order adopted pursuant thereto, the following words shall, unless the context clearly indicates otherwise, mean:

(1) “Coastal waters” means waters of the Atlantic Ocean or the Gulf of Mexico within the jurisdiction of the state.

(2) “Department” means the Department of Environmental Protection or its successor agency or agencies.

(3) “District water management plan” means the regional water resource plan developed by a governing board under s. 373.036.

(4) “Domestic use” means the use of water for the individual personal household purposes of drinking, bathing, cooking, or sanitation. All other uses shall not be considered domestic.

(5) “Florida water plan” means the state-level water resource plan developed by the department under s. 373.036.

(6) “Governing board” means the governing board of a water management district.

(7) “Groundwater” means water beneath the surface of the ground, whether or not flowing through known and definite channels.

(8) “Impoundment” means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth’s surface and having a discernible shoreline.

(9) “Independent scientific peer review” means the review of scientific data, theories, and methodologies by a panel of independent, recognized experts in the fields of hydrology, hydrogeology, limnology, and other scientific disciplines relevant to the matters being reviewed under s. 373.042.

(10) “Nonregulated use” means any use of water which is exempted from regulation by the provisions of this chapter.

(11) “Other watercourse” means any canal, ditch, or other artificial watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted.

(12) “Person” means any and all persons, natural or artificial, including any individual, firm, association, organization, partnership, business trust, corporation, company, the United States of America, and the state and all political subdivisions, regions, districts, municipalities, and public agencies thereof. The enumeration herein is not intended to be exclusive or exhaustive.

(13) “Reasonable-beneficial use” means the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

(14) “Regional water supply plan” means a detailed water supply plan developed by a governing board under s. 373.0361.

(15) “Stream” means any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some part of the bed or channel has been dredged or improved does not prevent the watercourse from being a stream.

(16) “Surface water” means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth’s surface.

(17) “Water” or “waters in the state” means any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

(18) “Water management district” means any flood control, resource management, or water management district operating under the authority of this chapter.

(19) “Water resource development” means the formulation and implementation of regional water resource management strategies, including the collection and evaluation of surface water and groundwater data; structural and nonstructural programs to protect and manage water resources; the development of regional water resource implementation programs; the construction, operation, and maintenance of major public works facilities to provide for flood control, surface and underground water storage, and groundwater recharge augmentation; and related technical assistance to local governments and to government-owned and privately owned water utilities.

(20) “Water resource implementation rule” means the rule authorized by s. 373.036, which sets forth goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives. The waters of the state are among its most basic resources. Such waters should be managed to conserve and protect water resources and to realize the full beneficial use of these resources.

(21) “Water supply development” means the planning, design, construction, operation, and maintenance of public or private facilities for water collection, production, treatment, transmission, or distribution for sale, resale, or end use.

(22) For the sole purpose of serving as the basis for the unified statewide methodology adopted pursuant to s. 373.421(1), as amended, “wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. Upon legislative ratification of the methodology adopted pursuant to s. 373.421(1), as amended, the limitation contained herein regarding the purpose of this definition shall cease to be effective.

(23) “Works of the district” means those projects and works, including, but not limited to, structures, impoundments, wells, streams, and other watercourses, together with the appurtenant facilities and accompanying lands, which have been officially adopted by the governing board of the district as works of the district.

**History.**—s. 3, part I, ch. 72-299; s. 37, ch. 79-65; s. 1, ch. 80-259; s. 5, ch. 82-101; s. 6, ch. 89-279; s. 21, ch. 93-213; s. 15, ch. 94-122; s. 251, ch. 94-356; s. 1, ch. 96-339; s. 1, ch. 96-370; s. 2, ch. 97-160.

### **373.023 Scope and application.—**

(1) All waters in the state are subject to regulation under the provisions of this chapter unless specifically exempted by general or special law.

(2) No state or local government agency may enforce, except with respect to water quality, any special act, rule, regulation, or order affecting the waters in the state controlled under the provisions of this act, whether enacted or promulgated before or after the effective date of this act, until such special act, rule, regulation, or order has been filed with the department. However, any agency empowered to issue emergency orders affecting such waters may enforce such emergency orders prior to filing such orders with the department. Any rule or regulation in effect on the effective

date of this act which is not filed with the department within 180 days after the effective date of this act shall be deemed repealed if the notice hereinafter called for shall have been received by the state or local agency issuing such rule or regulation. The department is directed to notify by certified or registered mail every state or local government agency known to be authorized to enforce any special act, rule, regulation or order affecting the waters of the state regarding the provisions of this subsection. The department is directed to review periodically such special acts, rules, regulations, and orders and to recommend to the appropriate agencies or the Legislature the amendment, consolidation, or revocation of inconsistencies or duplications therein.

(3) Any state or local governmental agency or other person having the power of eminent domain or condemnation under the laws of this state must notify the department or the governing board of a water management district prior to exercising that power.

**History.**—s. 4, part I, ch. 72-299; s. 1, ch. 73-190.

**373.026 General powers and duties of the department.**—The department, or its successor agency, shall be responsible for the administration of this chapter at the state level. However, it is the policy of the state that, to the greatest extent possible, the department may enter into interagency or interlocal agreements with any other state agency, any water management district, or any local government conducting programs related to or materially affecting the water resources of the state. All such agreements shall be subject to the provisions of s. 373.046. In addition to its other powers and duties, the department shall, to the greatest extent possible:

(1) Conduct, independently or in cooperation with other agencies, topographic surveys, research, and investigations into all aspects of water use and water quality.

(2) Be the central repository for all scientific and factual information generated by local governments, water management districts, and state agencies relating to water resources and, to that end, collect, maintain, and make available such information to public and private users within the state and assist in the acquisition of scientific and factual data from water management districts, local governments, and the United States Geological Survey. All local governments, water management districts, and state agencies are directed to cooperate with the department or its agents in making available to it for this purpose such scientific and factual data as they may have, generate, or possess, as the department deems necessary. The department is authorized to prescribe the format and ensure quality control for all data collected or submitted.

(a) Additionally, the department shall annually publish a bibliography of all water resource investigations conducted in the state.

(b) The department is additionally directed to establish priorities for the development of a computerized groundwater database upon the following principles:

1. Regions deemed prone to groundwater contamination due to land use.

2. Regions that have an identifiable direct connection with any confined aquifer utilized as a drinking water aquifer.

3. Any region dependent on a single-source aquifer.

(3) Cooperate with other state agencies, water management districts, and regional, county, or other local governmental organizations or agencies created for the purpose of utilizing and conserving the waters in this state; assist such organizations and agencies in coordinating the use of their facilities; and participate in an exchange of ideas, knowledge, and data with such organizations and agencies. For this purpose, the department may maintain an advisory staff of experts.

(4) Prepare and provide for dissemination to the public of current and useful information relating to the water resources of the state.

(5) Identify by continuing study those areas of the state where saltwater intrusion is a threat to freshwater resources and report its findings to the water management districts, boards of county commissioners, and public concerned.

(6) Conduct, either independently or in cooperation with any person or governmental agency, a program of study, research, and experimentation and evaluation in the field of weather modification.

(7) Exercise general supervisory authority over all water management districts. The department may exercise any power herein authorized to be exercised by a water management district.

(8)(a) Provide such coordination, cooperation, or approval necessary to the effectuation of any plan or project of the Federal Government in connection with or concerning the waters in the state. Unless otherwise provided by state or federal law, the department shall, subject to confirmation by the Legislature, have the power to approve or disapprove such federal plans or projects on behalf of the state. If such plan or project is for a coastal inlet, the department shall first determine the impact of the plan or project on the sandy beaches in the state. If the department determines that the

plan will have a significant adverse impact on the sandy beaches, the department may not approve the plan or project unless it is revised to mitigate those impacts.

(b) To ensure to the greatest extent possible that project components will go forward as planned, the department shall collaborate with the district in the restudy. Before any project component is submitted to Congress for authorization or receives an additional appropriation of state funds, the department must approve, or approve with amendments, each project component within 60 days following formal submittal of the project component to the department. Department approval shall be based upon a determination of the district's compliance with s. 373.1501(5). Once a project component is approved, all requests for an additional appropriation of state funds needed to implement the project component shall be submitted to the department and such requests shall be included in the department's annual request to the Governor.

(c) Notwithstanding paragraph (b), the use of state funds for land purchases from willing sellers is authorized for projects within the district's approved 5-year plan of acquisition pursuant to s. 373.59.

(d) The Executive Office of the Governor, pursuant to its duties under s. 373.536(5) to approve or disapprove, in whole or in part, the budget of each water management district, shall review all proposed expenditures for project components in the district's budget.

(e) The department, subject to confirmation by the Legislature, shall act on behalf of the state in the negotiation and consummation of any agreement or compact with another state or states concerning waters of the state.

(9)(a) Hold annually a conference on water resources developmental programs. Each agency, commission, district, municipality, or political subdivision of the state responsible for a specific water resources development program requiring federal assistance shall present at such conference its programs and projects and the needs thereof. Notice of the time and place of the annual conference on water resources developmental programs shall be extended by mail at least 30 days prior to the date of such conference to any person who has filed a written request for notification with the department. Adequate opportunity shall be afforded for participation at the conference by interested members of the general public.

(b) Upon termination of the water conference, the department shall select those projects for presentation in the Florida program of public works which best represent the public welfare and interest of the people of the state as required for the proper development, use, conservation, and protection of the waters of the state and land resources affected thereby. Thereafter, the department shall present to the appropriate committees and agencies of the Federal Government a program of public works for Florida, requesting authorization for funds for each project.

**History.**—s. 5, part I, ch. 72-299; s. 4, ch. 74-114; s. 38, ch. 79-65; s. 2, ch. 83-310; s. 11, ch. 86-138; s. 21, ch. 87-97; s. 7, ch. 89-279; s. 252, ch. 94-356; s. 26, ch. 97-160; s. 2, ch. 99-143.

### **373.033 Saltwater barrier line.—**

(1) The department may, at the request of the board of county commissioners of any county, at the request of the governing board of any water management district, or any municipality or water district responsible for the protection of a public water supply, or, having determined by adoption of an appropriate resolution that saltwater intrusion has become a matter of emergency proportions, by its own initiative, establish generally along the seacoast, inland from the seashore and within the limits of the area within which the petitioning board has jurisdiction, a saltwater barrier line inland of which no canal shall be constructed or enlarged, and no natural stream shall be deepened or enlarged, which shall discharge into tidal waters without a dam, control structure or spillway at or seaward of the saltwater barrier line, which shall prevent the movement of salt water inland of the saltwater barrier line. Provided, however, that the department is authorized, in cases where saltwater intrusion is not a problem, to waive the requirement of a barrier structure by specific permit to construct a canal crossing the saltwater barrier line without a protective device and provided, further that the agency petitioning for the establishment of the saltwater barrier line shall concur in the waiver.

(2) Application by a board of county commissioners or by the governing board of a water management district, a municipality or a water district for the establishment of a saltwater barrier line shall be made by adoption of an appropriate resolution, agreeing to:

(a) Reimburse the department the cost of necessary investigation, including, but not limited to, subsurface exploration by drilling, to determine the proper location of the saltwater barrier line in that county or in all or part of the district over which the applying agency has jurisdiction.

(b) Require compliance with the provisions of this law by county or district forces under their control; by those individuals or corporations filing plats for record and by individuals, corporations or agencies seeking authority to discharge surface or subsurface drainage into tidal waters.

(3) The board of county commissioners of any county or the governing board of any water management district, municipality or water district desiring to establish a saltwater barrier line is authorized to reimburse the department for any expense entailed in making an investigation to determine the proper location of the saltwater barrier line, from any funds available to them for general administrative purposes.

(4) The department, any board of county commissioners, and the governing board of any water management district, municipality, or water district having competent jurisdiction over an area in which a saltwater barrier is established shall be charged with the enforcement of the provisions of this section, and authority for the maintenance of actions set forth in s. 373.129 shall apply to this section.

(5) The board of county commissioners of a county, or the governing board of a water management district, a municipality, or a water district having jurisdiction over an area in which a saltwater barrier line is established, may expend funds from any available source for the purpose of constructing saltwater barrier dams, dikes, and spillways within existing canals and streams in conformity with the purpose and intent of the board in establishing the saltwater barrier line.

**History.**—s. 2, ch. 63-210; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 14, ch. 78-95; s. 40, ch. 79-65; s. 85, ch. 79-164; s. 10, ch. 2000-212.

**Note.**—Former s. 373.194.

### **373.036 Florida water plan; district water management plans.—**

(1) FLORIDA WATER PLAN.—In cooperation with the water management districts, regional water supply authorities, and others, the department shall develop the Florida water plan. The Florida water plan shall include, but not be limited to:

(a) The programs and activities of the department related to water supply, water quality, flood protection and floodplain management, and natural systems.

(b) The water quality standards of the department.

(c) The district water management plans.

(d) Goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives. The state water policy rule, renamed the water resource implementation rule pursuant to s. 373.019(20), shall serve as this part of the plan. Amendments or additions to this part of the Florida water plan shall be adopted by the department as part of the water resource implementation rule. In accordance with s. 373.114, the department shall review rules of the water management districts for consistency with this rule. Amendments to the water resource implementation rule must be adopted by the secretary of the department and be submitted to the President of the Senate and the Speaker of the House of Representatives within 7 days after publication in the Florida Administrative Weekly. Amendments shall not become effective until the conclusion of the next regular session of the Legislature following their adoption.

(2) DISTRICT WATER MANAGEMENT PLANS.—

(a) Each governing board shall develop a district water management plan for water resources within its region, which plan addresses water supply, water quality, flood protection and floodplain management, and natural systems. The district water management plan shall be based on at least a 20-year planning period, shall be developed and revised in cooperation with other agencies, regional water supply authorities, units of government, and interested parties, and shall be updated at least once every 5 years. The governing board shall hold a public hearing at least 30 days in advance of completing the development or revision of the district water management plan.

(b) The district water management plan shall include, but not be limited to:

1. The scientific methodologies for establishing minimum flows and levels under s. 373.042, and all established minimum flows and levels.

2. Identification of one or more water supply planning regions that singly or together encompass the entire district.

3. Technical data and information prepared under ss. 373.0391 and 373.0395.

4. A districtwide water supply assessment, to be completed no later than July 1, 1998, which determines for each water supply planning region:

a. Existing legal uses, reasonably anticipated future needs, and existing and reasonably anticipated sources of water and conservation efforts; and

b. Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for all existing legal uses and reasonably anticipated future needs and to sustain the water resources and related natural systems.

5. Any completed regional water supply plans.

(c) If necessary for implementation, the governing board shall adopt by rule or order relevant portions of the district water management plan, to the extent of its statutory authority.

(d) In the formulation of the district water management plan, the governing board shall give due consideration to:

1. The attainment of maximum reasonable-beneficial use of water resources.
2. The maximum economic development of the water resources consistent with other uses.
3. The management of water resources for such purposes as environmental protection, drainage, flood control, and water storage.

4. The quantity of water available for application to a reasonable-beneficial use.

5. The prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources.

6. Presently exercised domestic use and permit rights.

7. The preservation and enhancement of the water quality of the state.

8. The state water resources policy as expressed by this chapter.

(3) The department and governing board shall give careful consideration to the requirements of public recreation and to the protection and procreation of fish and wildlife. The department or governing board may prohibit or restrict other future uses on certain designated bodies of water which may be inconsistent with these objectives.

(4) The governing board may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the governing board may deny a permit.

(5) The governing board may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in the event of competing applications under the permitting systems authorized by this chapter.

(6) The department, in cooperation with the Executive Office of the Governor, or its successor agency, may add to the Florida water plan any other information, directions, or objectives it deems necessary or desirable for the guidance of the governing boards or other agencies in the administration and enforcement of this chapter.

**History.**—s. 6, part I, ch. 72-299; ss. 2, 3, ch. 73-190; s. 122, ch. 79-190; s. 3, ch. 97-160; s. 7, ch. 98-88; s. 164, ch. 99-13.

### **373.0361 Regional water supply planning.—**

(1) By October 1, 1998, the governing board shall initiate water supply planning for each water supply planning region identified in the district water management plan under s. 373.036, where it determines that sources of water are not adequate for the planning period to supply water for all existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems. The planning must be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water utilities, self-suppliers, and other affected and interested parties. A determination by the governing board that initiation of a regional water supply plan for a specific planning region is not needed pursuant to this section shall be subject to s. 120.569. The governing board shall reevaluate such a determination at least once every 5 years and shall initiate a regional water supply plan, if needed, pursuant to this subsection.

(2) Each regional water supply plan shall be based on at least a 20-year planning period and shall include, but not be limited to:

(a) A water supply development component that includes:

1. A quantification of the water supply needs for all existing and reasonably projected future uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses shall be based upon meeting those needs for a 1-in-10-year drought event.

2. A list of water source options for water supply development, including traditional and alternative sources, from which local government, government-owned and privately owned utilities, self-suppliers, and others may choose, which will exceed the needs identified in subparagraph 1.

3. For each option listed in subparagraph 2., the estimated amount of water available for use and the estimated costs of and potential sources of funding for water supply development.

4. A list of water supply development projects that meet the criteria in s. 373.0831(4).

(b) A water resource development component that includes:

1. A listing of those water resource development projects that support water supply development.

2. For each water resource development project listed:

- a. An estimate of the amount of water to become available through the project.

- b. The timetable for implementing or constructing the project and the estimated costs for implementing, operating, and maintaining the project.
- c. Sources of funding and funding needs.
- d. Who will implement the project and how it will be implemented.
- (c) The recovery and prevention strategy described in s. 373.0421(2).
- (d) A funding strategy for water resource development projects, which shall be reasonable and sufficient to pay the cost of constructing or implementing all of the listed projects.
- (e) Consideration of how the options addressed in paragraphs (a) and (b) serve the public interest or save costs overall by preventing the loss of natural resources or avoiding greater future expenditures for water resource development or water supply development. However, unless adopted by rule, these considerations do not constitute final agency action.
- (f) The technical data and information applicable to the planning region which are contained in the district water management plan and are necessary to support the regional water supply plan.
- (g) The minimum flows and levels established for water resources within the planning region.
- (3) Regional water supply plans initiated or completed by July 1, 1997, shall be revised, if necessary, to include a water supply development component and a water resource development component as described in paragraphs (2)(a) and (b).
- (4) Governing board approval of a regional water supply plan shall not be subject to the rulemaking requirements of chapter 120. However, any portion of an approved regional water supply plan which affects the substantial interests of a party shall be subject to s. 120.569.
- (5) By November 15, 1997, and annually thereafter, the department shall submit to the Governor and the Legislature a report on the status of regional water supply planning in each district. The report shall include:
  - (a) A compilation of the estimated costs of and potential sources of funding for water resource development and water supply development projects, as identified in the water management district regional water supply plans.
  - (b) A description of each district's progress toward achieving its water resource development objectives, as directed by s. 373.0831(3), including the district's implementation of its 5-year water resource development work program.
  - (6) Nothing contained in the water supply development component of the district water management plan shall be construed to require local governments, government-owned or privately owned water utilities, self-suppliers, or other water suppliers to select a water supply development option identified in the component merely because it is identified in the plan. However, this subsection shall not be construed to limit the authority of the department or governing board under part II.

**History.**—s. 4, ch. 97-160.

**373.0391 Technical assistance to local governments.—**

- (1) The water management districts shall assist local governments in the development and future revision of local government comprehensive plan elements or public facilities report as required by s. 189.415, related to water resource issues.
- (2) By July 1, 1991, each water management district shall prepare and provide information and data to assist local governments in the preparation and implementation of their local government comprehensive plans or public facilities report as required by s. 189.415, whichever is applicable. Such information and data shall include, but not be limited to:
  - (a) All information and data required in a public facilities report pursuant to s. 189.415.
  - (b) A description of regulations, programs, and schedules implemented by the district.
  - (c) Identification of regulations, programs, and schedules undertaken or proposed by the district to further the State Comprehensive Plan.
  - (d) A description of surface water basins, including regulatory jurisdictions, flood-prone areas, existing and projected water quality in water management district operated facilities, as well as surface water runoff characteristics and topography regarding flood plains, wetlands, and recharge areas.
  - (e) A description of groundwater characteristics, including existing and planned wellfield sites, existing and anticipated cones of influence, highly productive groundwater areas, aquifer recharge areas, deep well injection zones, contaminated areas, an assessment of regional water resource needs and sources for the next 20 years, and water quality.
  - (f) The identification of existing and potential water management district land acquisitions.

(g) Information reflecting the minimum flows for surface watercourses to avoid harm to water resources or the ecosystem and information reflecting the minimum water levels for aquifers to avoid harm to water resources or the ecosystem.

**History.**—s. 55, ch. 89-169; s. 8, ch. 89-279.

**373.0395 Groundwater basin resource availability inventory.**—Each water management district shall develop a groundwater basin resource availability inventory covering those areas deemed appropriate by the governing board. This inventory shall include, but not be limited to, the following:

- (1) A hydrogeologic study to define the groundwater basin and its associated recharge areas.
- (2) Site specific areas in the basin deemed prone to contamination or overdraft resulting from current or projected development.
- (3) Prime groundwater recharge areas.
- (4) Criteria to establish minimum seasonal surface and ground water levels.
- (5) Areas suitable for future water resource development within the groundwater basin.
- (6) Existing sources of wastewater discharge suitable for reuse as well as the feasibility of integrating coastal wellfields.
- (7) Potential quantities of water available for consumptive uses.

Upon completion, a copy of the groundwater basin availability inventory shall be submitted to each affected municipality, county, and regional planning agency. This inventory shall be reviewed by the affected municipalities, counties, and regional planning agencies for consistency with the local government comprehensive plan and shall be considered in future revisions of such plan. It is the intent of the Legislature that future growth and development planning reflect the limitations of the available groundwater or other available water supplies.

**History.**—s. 6, ch. 82-101.

**373.0397 Floridan and Biscayne aquifers; designation of prime groundwater recharge areas.**—Upon preparation of an inventory of prime groundwater recharge areas for the Floridan or Biscayne aquifers as a part of the requirements of s. 373.0395(3), but prior to adoption by the governing board, the water management district shall publish a legal notice of public hearing on the designated areas for the Floridan and Biscayne aquifers, with a map delineating the boundaries of the areas, in newspapers defined in chapter 50 as having general circulation within the area to be affected. The notice shall be at least one-fourth page and shall read as follows:

NOTICE OF PRIME RECHARGE  
AREA DESIGNATION

The (name of taxing authority) proposes to designate specific land areas as areas of prime recharge to the (name of aquifer) Aquifer.

All concerned citizens are invited to attend a public hearing on the proposed designation to be held on (date and time) at (meeting place).

A map of the affected areas follows.

The governing board of the water management district shall adopt a designation of prime groundwater recharge areas to the Floridan and Biscayne aquifers by rule within 120 days after the public hearing, subject to the provisions of chapter 120.

**History.**—s. 2, ch. 85-42.

**373.042 Minimum flows and levels.**—

- (1) Within each section, or the water management district as a whole, the department or the governing board shall establish the following:
  - (a) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.
  - (b) Minimum water level. The minimum water level shall be the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.

The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and levels may be calculated to reflect seasonal variations. The department and the governing board shall also consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and levels.

(2) By July 1, 1996, the Southwest Florida Water Management District shall amend and submit to the department for review and approval its priority list for the establishment of minimum flows and levels and delineating the order in which the governing board shall establish the minimum flows and levels for surface watercourses, aquifers, and surface water in the counties of Hillsborough, Pasco, and Pinellas. By November 15, 1997, and annually thereafter, each water management district shall submit to the department for review and approval a priority list and schedule for the establishment of minimum flows and levels for surface watercourses, aquifers, and surface waters within the district. The priority list shall also identify those water bodies for which the district will voluntarily undertake independent scientific peer review. By January 1, 1998, and annually thereafter, each water management district shall publish its approved priority list and schedule in the Florida Administrative Weekly. The priority list shall be based upon the importance of the waters to the state or region and the existence of or potential for significant harm to the water resources or ecology of the state or region, and shall include those waters which are experiencing or may reasonably be expected to experience adverse impacts. The priority list and schedule shall not be subject to any proceeding pursuant to chapter 120. Except as provided in subsection (3), the development of a priority list and compliance with the schedule for the establishment of minimum flows and levels pursuant to this subsection shall satisfy the requirements of subsection (1).

(3) Minimum flows or levels for priority waters in the counties of Hillsborough, Pasco, and Pinellas shall be established by October 1, 1997. Where a minimum flow or level for the priority waters within those counties has not been established by the applicable deadline, the secretary of the department shall, if requested by the governing body of any local government within whose jurisdiction the affected waters are located, establish the minimum flow or level in accordance with the procedures established by this section. The department's reasonable costs in establishing a minimum flow or level shall, upon request of the secretary, be reimbursed by the district.

(4)(a) Upon written request to the department or governing board by a substantially affected person, or by decision of the department or governing board, prior to the establishment of a minimum flow or level and prior to the filing of any petition for administrative hearing related to the minimum flow or level, all scientific or technical data, methodologies, and models, including all scientific and technical assumptions employed in each model, used to establish a minimum flow or level shall be subject to independent scientific peer review. Independent scientific peer review means review by a panel of independent, recognized experts in the fields of hydrology, hydrogeology, limnology, biology, and other scientific disciplines, to the extent relevant to the establishment of the minimum flow or level.

(b) If independent scientific peer review is requested, it shall be initiated at an appropriate point agreed upon by the department or governing board and the person or persons requesting the peer review. If no agreement is reached, the department or governing board shall determine the appropriate point at which to initiate peer review. The members of the peer review panel shall be selected within 60 days of the point of initiation by agreement of the department or governing board and the person or persons requesting the peer review. If the panel is not selected within the 60-day period, the time limitation may be waived upon the agreement of all parties. If no waiver occurs, the department or governing board may proceed to select the peer review panel. The cost of the peer review shall be borne equally by the district and each party requesting the peer review, to the extent economically feasible. The panel shall submit a final report to the governing board within 120 days after its selection unless the deadline is waived by agreement of all parties. Initiation of peer review pursuant to this paragraph shall toll any applicable deadline under chapter 120 or other law or district rule regarding permitting, rulemaking, or administrative hearings, until 60 days following submittal of the final report. Any such deadlines shall also be tolled for 60 days following withdrawal of the request or following agreement of the parties that peer review will no longer be pursued. The department or the governing board shall give significant weight to the final report of the peer review panel when establishing the minimum flow or level.

(c) If the final data, methodologies, and models, including all scientific and technical assumptions employed in each model upon which a minimum flow or level is based, have undergone peer review pursuant to this subsection, by request or by decision of the department or governing board, no further peer review shall be required with respect to that minimum flow or level.

(d) No minimum flow or level adopted by rule or formally noticed for adoption on or before May 2, 1997, shall be subject to the peer review provided for in this subsection.

(5) If a petition for administrative hearing is filed under chapter 120 challenging the establishment of a minimum flow or level, the report of an independent scientific peer review conducted under subsection (4) is admissible as evidence in the final hearing, and the administrative law judge must render the order within 120 days after the filing of

the petition. The time limit for rendering the order shall not be extended except by agreement of all the parties. To the extent that the parties agree to the findings of the peer review, they may stipulate that those findings be incorporated as findings of fact in the final order.

**History.**—s. 6, part I, ch. 72-299; s. 2, ch. 73-190; s. 2, ch. 96-339; s. 5, ch. 97-160.

**Note.**—Former s. 373.036(7).

### **373.0421 Establishment and implementation of minimum flows and levels.—**

#### **(1) ESTABLISHMENT.—**

(a) *Considerations.*—When establishing minimum flows and levels pursuant to s. 373.042, the department or governing board shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer, provided that nothing in this paragraph shall allow significant harm as provided by s. 373.042(1) caused by withdrawals.

#### **(b) Exclusions.—**

1. The Legislature recognizes that certain water bodies no longer serve their historical hydrologic functions. The Legislature also recognizes that recovery of these water bodies to historical hydrologic conditions may not be economically or technically feasible, and that such recovery effort could cause adverse environmental or hydrologic impacts. Accordingly, the department or governing board may determine that setting a minimum flow or level for such a water body based on its historical condition is not appropriate.

2. The department or the governing board is not required to establish minimum flows or levels pursuant to s. 373.042 for surface water bodies less than 25 acres in area, unless the water body or bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value.

3. The department or the governing board shall not set minimum flows or levels pursuant to s. 373.042 for surface water bodies constructed prior to the requirement for a permit, or pursuant to an exemption, a permit, or a reclamation plan which regulates the size, depth, or function of the surface water body under the provisions of this chapter, chapter 378, or chapter 403, unless the constructed surface water body is of significant hydrologic value or is an essential element of the water resources of the area.

The exclusions of this paragraph shall not apply to the Everglades Protection Area, as defined in s. 373.4592(2)(h).

(2) If the existing flow or level in a water body is below, or is projected to fall within 20 years below, the applicable minimum flow or level established pursuant to s. 373.042, the department or governing board, as part of the regional water supply plan described in s. 373.0361, shall expeditiously implement a recovery or prevention strategy, which includes the development of additional water supplies and other actions, consistent with the authority granted by this chapter, to:

- (a) Achieve recovery to the established minimum flow or level as soon as practicable; or
- (b) Prevent the existing flow or level from falling below the established minimum flow or level.

The recovery or prevention strategy shall include phasing or a timetable which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals, consistent with the provisions of this chapter.

(3) The provisions of this section are supplemental to any other specific requirements or authority provided by law. Minimum flows and levels shall be reevaluated periodically and revised as needed.

**History.**—s. 6, ch. 97-160.

**373.043 Adoption and enforcement of rules by the department.**—The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

**History.**—s. 8, part I, ch. 72-299; s. 5, ch. 74-114; s. 81, ch. 98-200.

**373.044 Rules; enforcement; availability of personnel rules.**—The governing board of the district is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Rules and orders may be enforced by mandatory injunction or other appropriate action in the courts of the state. Rules relating to

personnel matters shall be made available to the public and affected persons at no more than cost but need not be published in the Florida Administrative Code or the Florida Administrative Weekly.

**History.**—s. 4, ch. 29790, 1955; s. 25, ch. 73-190; s. 3, ch. 84-341; s. 82, ch. 98-200.

**Note.**—Former s. 378.151.

### **373.046 Interagency agreements.—**

(1) The department may enter into interagency agreements with or among any other state agencies conducting programs or exercising powers related to or affecting the water resources of the state. Such agreements may establish principal-agency or contract relationships; provide for cross-deputization of enforcement personnel; provide for consolidation of facilities, equipment, or personnel; or provide such other relationships as may be deemed beneficial to the public interest. Such interagency agreements shall be promulgated in the same manner as rules and regulations, subject to chapter 120. All state agencies conducting programs or exercising powers relating to or affecting the water resources of the state are hereby authorized to delegate such authority to the department or any of the several water management districts pursuant to such interagency agreements.

(2) The St. Johns River Water Management District and the Southwest Florida Water Management District shall enter into an interagency agreement allowing the Southwest Florida Water Management District to process all permit applications for activities within Polk County requiring a permit from the St. Johns River Water Management District.

(3) Each water management district is authorized to adopt rules or enter into interagency agreements with the Department of Environmental Protection providing that the water management districts shall have an opportunity to review and comment upon matters within the jurisdiction of each district that are addressed by reclamation activities subject to the provisions of ss. 378.201-378.212 or s. 378.601. Activities covered by such rules or interagency agreements shall not be subject to the permitting requirement of part IV of this chapter. However, to the extent that any dam, impoundment, dike, levee, work, or appurtenant work remains after completion of all reclamation activities, such facilities shall be subject to the requirements of part IV of this chapter pertaining to operation, maintenance, and abandonment. A water management district, upon entering into such interagency agreement with the Department of Environmental Protection, shall provide notice of such action by publication in a newspaper having general circulation in the affected area.

(4) The Legislature recognizes and affirms the division of responsibilities between the department and the water management districts as set forth in ss. III. and X. of each of the operating agreements codified as rules 17-101.040(12)(a)3., 4., and 5., Florida Administrative Code. Section IV.A.2.a. of each operating agreement regarding individual permit oversight is rescinded. The department shall be responsible for permitting those activities under part IV of this chapter which, because of their complexity and magnitude, need to be economically and efficiently evaluated at the state level, including, but not limited to, mining, hazardous waste management facilities and solid waste management facilities that do not qualify for a general permit under chapter 403. With regard to postcertification information submittals for activities authorized under chapters 341 and 403 siting act certifications, the department, after consultation with the appropriate water management district and other agencies having applicable regulatory jurisdiction, shall be responsible for determining the permittee's compliance with conditions of certification which were based upon the nonprocedural requirements of part IV of this chapter. The Legislature authorizes the water management districts and the department to modify the division of responsibilities referenced in this section and enter into further interagency agreements by rulemaking, including incorporation by reference, pursuant to chapter 120, to provide for greater efficiency and to avoid duplication in the administration of part IV of this chapter by designating certain activities which will be regulated by either the water management districts or the department. In developing such interagency agreements, the water management districts and the department should take into consideration the technical and fiscal ability of each water management district to implement all or some of the provisions of part IV of this chapter. Nothing herein rescinds or restricts the authority of the districts to regulate silviculture and agriculture pursuant to part IV of this chapter or s. 403.927. By December 10, 1993, the secretary of the department shall submit a report to the President of the Senate and the Speaker of the House of Representatives regarding the efficiency of the procedures and the division of responsibilities contemplated by this subsection and regarding progress toward the execution of further interagency agreements and the integration of permitting with sovereignty lands approval. The report also will consider the feasibility of improving the protection of the environment through comprehensive criteria for protection of natural systems.

(5) Notwithstanding the provisions of s. 403.927, when any operating agreement is developed pursuant to subsection (4), the department shall have regulatory responsibility under part IV of this chapter for aquaculture activities that meet or exceed the thresholds for aquaculture general permits authorized pursuant to ss. 370.26 and 403.814.

(6) When the geographic area of a project or local government crosses water management district boundaries, the affected districts may designate a single affected district by interagency agreement to implement in that area, under the rules of the designated district, all or part of the applicable regulatory responsibilities under this chapter. Interagency agreements entered into under this subsection which apply to the geographic area of a local government must have the concurrence of the affected local government. The application under this subsection, by rule, of any existing district rule that was adopted or formally noticed for adoption on or before May 11, 1995, is not subject to s. 70.001.

**History.**—s. 9, part I, ch. 72-299; s. 3, ch. 85-211; s. 41, ch. 89-279; s. 22, ch. 93-213; s. 253, ch. 94-356; s. 16, ch. 96-247; s. 7, ch. 97-160; s. 20, ch. 98-333; s. 17, ch. 2000-364.

**373.047 Cooperation between districts.**—Any water management district is authorized to advise flood control districts or other water management districts of the state in processing matters with the federal government and to render such technical assistance as may be helpful to the efficient operation of such other districts.

**History.**—s. 1, ch. 61-245; s. 25, ch. 73-190; s. 2, ch. 86-22.

**Note.**—Former s. 378.52.

**373.056 State agencies, counties, drainage districts, municipalities, or governmental agencies or public corporations authorized to convey or receive land from water management districts.**—

(1)(a) When it is found to be in the public interest and for the public convenience and welfare, and for the public benefit, and necessary for carrying out the works or improvement of any water management district referred to in this chapter for the protection of property and the inhabitants in the district against the effects of water, either from its surplus or deficiency, and for assisting the district in acquiring land for the purposes of the district at least public expense, any state agency, any county, any drainage district, any municipality, or any governmental agency or public corporation in this state holding title to land is hereby authorized, in the discretion of the proper officer or officers, the county commissioners of any county, or the governing board of any agency referred to in this section, to convey the title to or to dedicate land, title to which is in such agency, including tax-reverted land, or to grant use rights therein to any water management district.

(b) The land to which this section applies shall be located within the boundaries of the water management district.

(2) Land granted or conveyed to the district or dedicated to the purposes thereof, or use rights in such land granted thereto, shall be for the public purposes of the district, and may be made subject to the condition that in the event such land is not so used, or if used and subsequently its use for such purpose is abandoned, that granted shall cease as to the district and shall automatically revert to the granting agency.

(3) Any county, municipality, drainage district, or other taxing agency holding title to land through tax reversion, foreclosure, or forfeiture, or through other procedure by which tax title vested in such agency, may, pending the determination of needs of such district, withhold from sale or other disposition from time to time such land as in the judgment of such agency may be needed or helpful in facilitating the purposes of this chapter. In the event more than one taxing agency holds tax title to the same land, resulting in multiple reversion, each of the agencies may grant to such district such right, title, or interest as it may have in such land.

(4) Any water management district within this chapter shall have authority to convey to any other agency described herein or to the United States Government, including its agencies, land or rights in land owned by such district not required for its purposes, under such terms and conditions as the governing board of such district may determine.

(5) Any land granted or conveyed to such district, or dedicated to the purposes thereof, or the use right of which has been granted thereto shall not be subject to the district taxes or other taxes or special assessments so long as such title or such rights remain in such district.

(6) All rights-of-way of a water management district which are within the boundaries of a drainage district shall not be liable for maintenance taxes of the drainage district.

**History.**—ss. 1, 2, 3, 4, 5, ch. 25213, 1949; s. 6, ch. 61-497; s. 25, ch. 73-190; s. 3, ch. 86-22.

**Note.**—Former s. 378.46.

**373.069 Creation of water management districts.**—

(1) At 11:59 p.m. on December 31, 1976, the state shall be divided into the following water management districts:

(a) Northwest Florida Water Management District.

- (b) Suwannee River Water Management District.
- (c) St. Johns River Water Management District.
- (d) Southwest Florida Water Management District.
- (e) South Florida Water Management District.

(2) Notwithstanding the provisions of any other special or general act to the contrary, the boundaries of the respective districts named in subsection (1) shall include the areas within the following boundaries:

(a) *Northwest Florida Water Management District.*—Begin at the point where the section line between Sections 26 and 27, Township 4 South, Range 3 East intersects the Gulf of Mexico; thence north along the section line to the northwest corner of Section 2, Township 1 South, Range 3 East; thence east along the Tallahassee Base Line to the southeast corner of Section 36, Township 1 North, Range 4 East; thence north along the range line to the northwest corner of Section 6, Township 1 North, Range 5 East; thence east along the township line to the southeast corner of Section 36, Township 2 North, Range 5 East; thence north along the range line to the northeast corner of Section 24, Township 2 North, Range 5 East; thence west along the section line to the southwest corner of the east  $\frac{1}{2}$  of Section 13, Township 2 North, Range 5 East; thence north to the northwest corner of the east  $\frac{1}{2}$  of Section 13, Township 2 North, Range 5 East; thence east along the section line to the southeast corner of Section 12, Township 2 North, Range 5 East; thence north along the range line to the northeast corner of Section 24, Township 3 North, Range 5 East; thence west along the Watson Line to the southwest corner of Lot Number 168; thence north along the line between Lot Numbers 168 and 169, 154 and 155 to the Georgia line; thence westward along the Georgia-Florida line to the intersection of the south boundary of the State of Alabama; thence west along the Alabama-Florida line to the intersection of the northwest corner Alabama-Florida Boundary; thence south along the Alabama-Florida line to the Gulf of Mexico; thence east along the Gulf of Mexico, including the waters of said Gulf within the jurisdiction of the State of Florida, to the Point of Beginning.

(b) *Suwannee River Water Management District.*—Begin in the Gulf of Mexico on the section line between Sections 29 and 32, Township 15 South, Range 15 East; thence east along the section lines to the southwest corner of Section 27, Township 15 South, Range 17 East; thence north along the section line to the northwest corner of Section 3, Township 15 South, Range 17 East; thence east along the section line to the easterly right-of-way line of State Road No. 337; thence northerly along said easterly right-of-way line of State Road No. 337 to the southerly right-of-way line of State Road No. 24; thence northeasterly along said southerly right-of-way line of State Road No. 24 to the Levy-Alachua county line; thence south along the Levy-Alachua county line, also being the range line between Range 17 and 18 East to the southeast corner of Section 36, Township 11 South, Range 17 East; thence easterly along the Levy-Alachua county line, also being the township line between Townships 11 and 12 South, to the southeast corner of Section 36, Township 11 South, Range 18 East; thence north along the range line to the northwest corner of Section 19, Township 9 South, Range 19 East; thence east along the section line to the southeast corner of Section 13, Township 9 South, Range 19 East; thence north along the range line to the northwest corner of Section 6, Township 9 South, Range 20 East; thence eastward along the township line to the southeast corner of Section 36, Township 8 South, Range 20 East; thence north along the township line to the northwest corner of Section 18, Township 8 South, Range 21 East; thence east along the section line to the northeast corner of Section 15, Township 8 South, Range 21 East; thence south along the section line to the southwest corner of Section 23, Township 8 South, Range 21 East; thence east along the section line to the northeast corner of Section 26, Township 8 South, Range 21 East; thence south along the section line to the southwest corner of the north  $\frac{1}{2}$  of Section 25, Township 8 South, Range 21 East; thence east along a line to the northeast corner of the south half of Section 25, Township 8 South, Range 21 East; thence south along the range line to the southwest corner of Section 30, Township 8 South, Range 22 East; thence east along the section line to the northeast corner of Section 32, Township 8 South, Range 22 East; thence south along the section line to the southwest corner of Section 16, Township 9 South, Range 22 East; thence eastward along the section line to the southeast corner of the west  $\frac{1}{8}$  of Section 18, Township 9 South, Range 23 East; thence northward to the northeast corner of the west  $\frac{1}{8}$  of Section 18, Township 9 South, Range 23 East; thence west to the southwest corner of Section 7, Township 9 South, Range 23 East; thence northward along the Bradford-Clay County line to the northeast corner of Section 36, Township 8 South, Range 22 East; thence west along the section line to the southwest corner of the east  $\frac{1}{2}$  of Section 25, Township 8 South, Range 22 East; thence north to the northeast corner of the west  $\frac{1}{2}$  of Section 24, Township 8 South, Range 22 East; thence west along the section line to the southwest corner of Section 13, Township 8 South, Range 22 East; thence north along the section line to the northwest corner of Section 25, Township 7 South, Range 22 East; thence east along the section line to the southeast corner of Section 24, Township 7 South, Range 22 East; thence north along the Bradford-Clay County line to the intersection of the south boundary of Baker County; thence west along the Baker-Bradford County line to the intersection of the east boundary of Union County; thence west along the Union-Baker County line to the southwest corner of Section 18, Township 4 South, Range 20 East; thence north along the range line to the northeast corner of Section 1, Township 3 South, Range 19 East; thence west along the township line

to the intersection of the east boundary of Columbia County; thence north along the Baker-Columbia County line to the intersection of the north boundary line of the State of Florida; thence westward along the Georgia-Florida line to the northwest corner of Lot Number 155; thence south along the line between Lot Number 154 and 155, 168 and 169 to the Watson Line; thence east along the Watson Line to the northeast corner of Section 24, Township 3 North, Range 5 East; thence south along the range line between Ranges 5 and 6 East to the southeast corner of Section 12, Township 2 North, Range 5 East; thence west along the section line to the northwest corner of the east  $\frac{1}{2}$  of Section 13, Township 2 North, Range 5 East; thence south to the southwest corner of the east  $\frac{1}{2}$  of Section 13, Township 2 North, Range 5 East; thence east along the section line to the northeast corner of Section 24, Township 2 North, Range 5 East; thence south along the range line between Ranges 5 and 6 East to the southeast corner of Section 36, Township 2 North, Range 5 East; thence west along the township line between Townships 1 and 2 North to the northwest corner of Section 6, Township 1 North, Range 5 East; thence south along the range line between Ranges 4 and 5 East to the southeast corner of Section 36, Township 1 North, Range 4 East; thence west along the Tallahassee Base Line to the northwest corner of Section 2, Township 1 South, Range 3 East; thence south along the section line to the Gulf of Mexico; thence along the shore of the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the point of the beginning.

(c) *St. Johns River Water Management District.*—Begin at the intersection of the south boundary of Indian River County with the Atlantic Ocean; thence west along the Indian River-St. Lucie County line to the intersection of the west boundary of St. Lucie County; thence south along the Okeechobee-St. Lucie County line to the southeast corner of Section 1, Township 34 South, Range 36 East; thence west along the section line to the northwest corner of Section 10, Township 34 South, Range 36 East; thence south along the section line to the southeast corner of Section 9, Township 34 South, Range 36 East; thence west along the section line to the northwest corner of Section 18, Township 34 South, Range 36 East; thence south along the range line between Ranges 35 and 36 East to the southeast corner of Section 12, Township 34 South, Range 35 East; thence west along the section line to the northwest corner of Section 13, Township 34 South, Range 35 East; thence south along the section line to the southeast corner of Section 35, Township 34 South, Range 35 East; thence west along the township line between Townships 34 and 35 south to the southwest corner of Section 35, Township 34 South, Range 34 East; thence north along the section line to the Okeechobee-Osceola County line; thence west along the Okeechobee-Osceola County line to the southwest corner of Section 34, Township 32 South, Range 33 East; thence north along the section line to the northwest corner of Section 3, Township 31 South, Range 33 East; thence east along the township line between Townships 30 and 31 South to the southeast corner of Section 36, Township 30 South, Range 33 East; thence north along the range line between Ranges 33 and 34 East to the northeast corner of Section 1, Township 30 South, Range 33 East; thence west along the township line between Townships 29 and 30 south to the southwest corner of Section 31, Township 29 South, Range 33 East; thence north along the range line between Ranges 32 and 33 East to the northwest corner of Section 6, Township 28 South, Range 33 East; thence east along the township line between Townships 27 and 28 south to the southeast corner of Section 36, Township 27 South, Range 32 East; thence north along the range line between Ranges 32 and 33 East to the northeast corner of Section 1, Township 26 South, Range 32 East; thence west along the township line between Townships 25 and 26 South to the southwest corner of Section 33, Township 25 South, Range 32 East; thence north along the section line to the Orange-Osceola County line; thence westerly along the Orange-Osceola County line to the Southwest corner of Section 31, Township 24 South, Range 32 East; thence north along the range line to the intersection with the northerly right-of-way line of State Road 528, also known as the Bee Line Expressway; thence westerly along the northerly right-of-way line of State Road 528 to the intersection with the northerly right-of-way line of State Road 528A; thence westerly along the northerly right-of-way line of State Road 528A to the westerly right-of-way line of U.S. Highway 441; thence northerly along the right-of-way line to the section line between sections 22 and 27 of Township 22 South, Range 29 East; thence west along the section lines to the Northeast corner of Section 25, Township 22 South, Range 28 East; thence south along the range line between Ranges 28 and 29 East to the Southeast corner of Section 36, Township 22 South, Range 28 East; thence west along the township line between Townships 22 and 23 South to the Northeast corner of Section 2, Township 23 South, Range 27 East; thence south to the Southeast corner of Section 11, Township 23 South, Range 27 East; thence west along the section lines to the Southwest corner of Section 7, Township 23 South, Range 27 East, also being the Lake-Orange County line; thence south along the range line between Ranges 26 and 27 East to the southwest corner of Section 18, Township 26 South, Range 27 East; thence east along the section line to the northeast corner of Section 19, township 26 South, Range 27 East; thence south along the section line to the southwest corner of Section 32, Township 26 South, Range 27 East; thence east along the township line between Townships 26 and 27 South to the northeast corner of Section 5, Township 27 South, Range 27 East; thence south along the section lines to the southerly right-of-way line of State Road 600; thence westerly along the southerly right-of-way line of said State Road No. 600 to the west boundary of Section 27, Township 27 South, Range 26 East; thence north along the section lines to the northeast corner of Section 16, Township 25 South, Range 26

East; thence west along the section line to the southwest corner of Section 9, Township 25 South, Range 26 East; thence north along the section lines to the Lake-Polk County line; thence west along the county line to the southwest corner of Section 32, Township 24 South, Range 26 East; thence into Lake County, north along the section lines to the northeast corner of Section 30, Township 24 South, Range 26 East; thence west along the section lines to the northeast corner of Section 28, Township 24 South, Range 25 East; thence north along the section lines to the northeast corner of Section 16, Township 24 South, Range 25 East; thence west along the section line to the northwest corner of Section 16, Township 24 South, Range 25 East; thence north along the section line to the northeast corner of Section 8, Township 24 South, Range 25 East; thence west along the section lines to the range line between Ranges 24 and 25; thence north along the range line to the northeast corner of Section 1, Township 23 South, Range 24 East, also being on the township line between Townships 22 and 23 South; thence west along the township line to the northwest corner of Section 6, Township 23 South, Range 24 East, also being on the Sumter-Lake County line; thence north along the Sumter-Lake County line, also being the range line between Ranges 23 and 24 East, to the northeast corner of Section 1, Township 18 South, Range 23 East, and the Marion County line; thence west along the Sumter-Marion County line, also being the township line between Townships 17 and 18 South, to the westerly right-of-way line of Interstate Highway 75; thence northerly along the westerly right-of-way line of Interstate Highway 75 to the Alachua-Marion County line, said line also being the township line between Townships 11 and 12 South; thence west along the Alachua-Marion County line to the northwest corner of Section 3, Township 12 South, Range 19 East, and the Levy County line; thence westerly along the Levy-Alachua County line, also being the township line between Townships 11 and 12 South, to the southeast corner of Section 36, Township 11 South, Range 18 East; thence north along the range line between Ranges 18 and 19 East to the northwest corner of Section 19, Township 9 South, Range 19 East; thence east along the section line to the southeast corner of Section 13, Township 9 South, Range 19 East; thence north along the range line between Ranges 19 and 20 East to the northwest corner of Section 6, Township 9 South, Range 20 East; thence easterly along the township line between Townships 8 and 9 South to the southeast corner of Section 36, Township 8 South, Range 20 East; thence north along the range line between Ranges 20 and 21 East to the northwest corner of Section 18, Township 8 South, Range 21 East; thence east along the section line to the northeast corner of Section 15, Township 8 South, Range 21 East; thence south along the section line to the southwest corner of Section 23, Township 8 South, Range 21 East; thence east along the section line to the northeast corner of Section 26, Township 8 South, Range 21 East; thence south along the section line to the southwest corner of the north  $\frac{1}{2}$  of Section 25, Township 8 South, Range 21 East; thence east to the northeast corner of the south  $\frac{1}{2}$  of Section 25, Township 8 South, Range 21 East; thence south along the range line between Ranges 21 and 22 East to the southwest corner of Section 30, Township 8 South, Range 22 East; thence east along the section line to the northeast corner of Section 32, Township 8 South, Range 22 East; thence south along the section line to the southwest corner of Section 16, Township 9 South, Range 22 East; thence eastward along the section line to the southeast corner of the west  $\frac{1}{8}$  of Section 18, Township 9 South, Range 23 East; thence northward to the northeast corner of the west  $\frac{1}{8}$  of Section 18, Township 9 South, Range 23 East; thence west to the southwest corner of Section 7, Township 9 South, Range 23 East; thence northward along the Bradford-Clay County line to the northeast corner of Section 36, Township 8 South, Range 22 East; thence west along the section line to the southwest corner of the east  $\frac{1}{2}$  of Section 25, Township 8 South, Range 22 East; thence north to the northeast corner of the west  $\frac{1}{2}$  of Section 24, Township 8 South, Range 22 East; thence west along the section line to the southwest corner of Section 13, Township 8 South, Range 22 East; thence north along the section line to the northwest corner of Section 25, Township 7 South, Range 22 East; thence east along the section line to the Bradford-Clay County line; thence north along the Bradford-Clay County line to the intersection of the south boundary of Baker County; thence west along the Baker-Bradford County line to the intersection of the east boundary of Union County; thence west along the Baker-Union County line to the southwest corner of Section 18, Township 4 South, Range 20 East; thence north along the range line between Ranges 19 and 20 East to the northeast corner of Section 1, Township 3 South, Range 19 East; thence west along the township line between Townships 2 and 3 South to the Baker-Columbia County line; thence north along the Baker-Columbia County line to the north boundary line of the State of Florida; thence easterly along the Florida-Georgia line to the Atlantic Ocean; thence southerly along the Atlantic Ocean, including the waters of said ocean within the jurisdiction of the State of Florida to the point of beginning.

(d) *Southwest Florida Water Management District.*—Begin at the intersection of the north boundary of Lee County with the Gulf of Mexico; thence eastward along the Lee-Charlotte County line to the Southeast corner of Section 33, Township 42 South, Range 24 East; thence North into Charlotte County, along the section lines to the Northeast corner of Section 4, Township 42 South, Range 24 East; thence East along the township line between Townships 41 and 42 South to the Southeast corner of Section 36, Township 41 South, Range 25 East; thence north along the section line to the northwest corner of Section 6, Township 41 South, Range 26 East; thence east along the section line to the southeast corner of Section 36, Township 40 South, Range 26 East; thence North along the range line

between Ranges 26 and 27 to the Northeast corner of Section 1, Township 40 South, Range 26 East, and the Charlotte-Desoto County line; thence east along the Charlotte-Desoto County line to the southeast corner of Section 36, Township 39 South, Range 27 East; thence north along the DeSoto-Highlands County line to the intersection of the South boundary of Hardee County; thence north along the Hardee-Highlands County line to the southwest corner of Township 35 South, Range 28 East; thence east along the north boundary of Township 36 South to the northeast corner of Section 1, Township 36 South, Range 28 East; thence south along the range line to the southeast corner of Section 12, Township 37 South, Range 28 East; thence east along the section line to the northeast corner of Section 15, Township 37 South, Range 29 East; thence south along the section line to the southeast corner of Section 34, Township 37 South, Range 29 East; thence east along the township line to the northeast corner of Section 1, Township 38 South, Range 29 East; thence south along the range line to the southeast corner of Section 1, Township 39 South, Range 29 East; thence east along the section line to the northwest corner of Section 11, Township 39 South, Range 30 East; thence north along the section line to the southwest corner of Section 35, Township 38 South, Range 30 East; thence east along the township line to the southeast corner of the west  $\frac{1}{4}$  of Section 35, Township 38 South, Range 30 East; thence north along the  $\frac{1}{4}$ -section line of Sections 35, 26, and 23, Township 38 South, Range 30 East to the northeast corner of the west  $\frac{1}{4}$  section of Section 23, Township 38 South, Range 30 East; thence west along the section line to the northwest corner of Section 23, Township 38 South, Range 30 East; thence north along the section line to the northwest corner of Section 2, Township 37 South, Range 30 East; thence west along the township line to the southwest corner of Section 34, Township 36 South, Range 30 East; thence north along the section line to the northwest corner of Section 3, Township 36 South, Range 30 East; thence west along the township line to the southwest corner of Section 31, Township 35 South, Range 30 East; thence north along the range line between Ranges 29 and 30 East, through Townships 35, 34, and 33 South, to the northeast corner of Township 33 South, Range 29 East, being on the Highlands-Polk County line; thence west along the Highlands-Polk County line to the southeast corner of Township 32 South, Range 28 East; thence north along the range line between Ranges 28 and 29 East, in Townships 32 and 31 South, to the northeast corner of Section 12 in Township 31 South, Range 28 East; thence east along the section line to the northeast corner of Section 7, Township 31 South, Range 29 East; thence north along the section line to the northwest corner of Section 17, Township 30 South, Range 29 East; thence east along the section line to the northeast corner of the west  $\frac{1}{2}$  of Section 17, Township 30 South, Range 29 East; thence north along the  $\frac{1}{2}$ -section line to the northeast corner of the west  $\frac{1}{2}$  of Section 5, Township 30 South, Range 29 East; thence west along the section line to the southwest corner of Section 32, Township 29 South, Range 29 East; thence north along the section line to the northeast corner of Section 19 in Township 29 South, Range 29 East; thence west along the north boundaries of Section 19, Township 29 South, Range 29 East, and Sections 24, 23, 22, 21, and 20, Township 29 South, Range 28 East, to the northwest corner of said Section 20; thence north along the section line to the intersection of said section line with the west shore line of Lake Pierce in Township 29 South, Range 28 East; thence following the west shore of Lake Pierce to its intersection again with the west section line of Section 5, Township 29 South, Range 28 East; thence north along the section line to the northwest corner of Section 5, Township 29 South, Range 28 East; thence east along the township line to the southwest corner of Section 33, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of the southwest  $\frac{1}{4}$  of the southwest  $\frac{1}{4}$  of Section 28, Township 28 South, Range 28 East; thence east along the  $\frac{1}{4}$ -section line to the intersection of said  $\frac{1}{4}$ -section line with Lake Pierce; thence follow the shore line northeasterly to its intersection with the  $\frac{1}{2}$ -section line of Section 28, Township 28 South, Range 28 East; thence north on the  $\frac{1}{2}$ -section line to the northwest corner of the southeast  $\frac{1}{4}$  of Section 28, Township 28 South, Range 28 East; thence east to the northeast corner of the southeast  $\frac{1}{4}$  of Section 28, Township 28 South, Range 28 East; thence south along the section line to the northwest corner of Section 3, Township 29 South, Range 28 East; thence east along the section line to the northeast corner of Section 3, Township 29 South, Range 28 East; thence north along the section line to the northwest corner of Section 23, Township 28 South, Range 28 East; thence west along the section line to the southwest corner of Section 16, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of Section 16, Township 28 South, Range 28 East; thence west along the section line to the southwest corner of Section 8, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of Section 5, Township 28 South, Range 28 East; thence west along the township line to the intersection of said township line with Lake Marion; thence following the south shore line of Lake Marion to its intersection again with said township line; thence west along the township line to the southeast corner of Section 36, Township 37 South, Range 27 East; thence north along the range line between Ranges 27 and 28 East to the intersection of said range line with Lake Marion; thence following the west shore of Lake Marion to its intersection again with the range line between Ranges 27 and 28 East; thence north along said range line, in Townships 27 and 26 South, to the northeast corner of Township 26 South, Range 27 East, being on the Polk-Osceola County line; thence west along the Polk-Osceola County line to the northwest corner of Township 26 South, Range 27 East; thence south along the range line between Ranges 26 and 27 East to the southwest corner of Section 18 in Township 26 South, Range 27 East; thence east along the section line to

the southeast corner of said Section 18; thence south along the section lines to the southwest corner of Section 32 in Township 26 South, Range 27 East; thence east along the section line to the southeast corner of said Section 32; thence south along the section lines to the southerly right-of-way line of State Road 600 (U.S. Route 17 and 92) in Township 27 South, Range 27 East; thence westerly along the southerly right-of-way line of said State Road No. 600 to the West boundary of Section 27, Township 27 South, Range 26 East; thence north along the section line to the northeast corner of Section 16, Township 25 South, Range 26 East; thence west along the section line to the southwest corner of Section 9, Township 25 South, Range 26 East; thence north along the section line to the Lake-Polk County line; thence west along the county line to the southwest corner of Section 32, Township 24 South, Range 26 East; thence into Lake County, north along the section lines to the northeast corner of Section 30, Township 24 South, Range 26 East; thence west along the section lines to the northeast corner of Section 28, Township 24 South, Range 25 East; thence north along the section lines to the northeast corner of Section 16, Township 24 South, Range 25 East; thence west along the section line to the northwest corner of Section 16, Township 24 South, Range 25 East; thence north along the section line to the northeast corner of Section 8, Township 24 South, Range 25 East; thence west along the section lines to the range line between Ranges 24 and 25; thence north along the range line to the northeast corner of Section 1, Township 23 South, Range 24 East, also being on the township line between Townships 22 and 23 South; thence west along the township line to the northwest corner of Section 6, Township 23 South, Range 24 East also being on the Sumter-Lake County line; thence north along the Sumter-Lake County line, also being the range line between Ranges 23 and 24, to the northeast corner of Section 1, Township 18 South, Range 23 East and the Marion County line; thence west, along the Sumter-Marion County line, also being the township line between Townships 17 and 18 South, to the westerly right-of-way line of Interstate Highway 75; thence northerly along the westerly right-of-way line of Interstate Highway 75 to the Alachua-Marion County line, said line also being the township line between Townships 11 and 12 South; thence west along the Alachua-Marion County line to the northwest corner of Section 3, Township 12 South, Range 19 East and the Levy County line; thence westerly along the Levy-Alachua County line, also being the township line between Townships 11 and 12 South, to the southeast corner of Section 36, Township 11 South, Range 17 East; thence north along the Levy-Alachua County line, also being the range line between Ranges 17 and 18 East, to the southerly right-of-way line of State Road No. 24; thence southwesterly along said southerly right-of-way line to the easterly right-of-way line of State Road No. 337; thence southerly, along said easterly right-of-way line of State Road No. 337, to the south line of Section 35, Township 14 South, Range 17 East; thence west along the section line to the northwest corner of Section 3, Township 15 South, Range 17 East; thence south along the section lines to the southwest corner of Section 27, Township 15 South, Range 17 East; thence west to the Gulf of Mexico; thence south along the Gulf of Mexico, including the waters of said gulf within the jurisdiction of the State of Florida, to the point of beginning.

(e) *South Florida Water Management District*.—Begin at the intersection of the north boundary of Lee County with the Gulf of Mexico; thence easterly along the Lee-Charlotte County line to the southwest corner of Section 34, Township 42 South, Range 24 East; thence northerly along the section lines to the northwest corner of Section 3, Township 42 South, Range 24 East; thence easterly along the Township line between Townships 41 and 42 South to the southwest corner of Section 31, Township 41 South, Range 26 East; thence northerly along the Range line between Ranges 25 and 26 East to the northwest corner of Section 6, Township 41 South, Range 26 East; thence easterly along the Township line between Townships 40 and 41 South to the southwest corner of Section 31, Township 40 South, Range 27 East; thence northerly along the Range line between Ranges 26 and 27 East to the Charlotte-DeSoto County line; thence easterly along the Charlotte-Desoto County line to the west line of Highlands County; thence northerly along the Highlands-Desoto County line and along the Highlands-Hardee County line to the northwest corner of Township 36 South, Range 28 East; thence east along the north boundary of Township 36 South to the northeast corner of Section 1, Township 36 South, Range 28 East; thence south along the range line to the southeast corner of Section 12, Township 37 South, Range 28 East; thence east along the section line to the northeast corner of Section 15, Township 37 South, Range 29 East; thence south along the section line to the southeast corner of Section 34, Township 37 South, Range 29 East; thence east along the township line to the northeast corner of Section 1, Township 38 South, Range 29 East; thence south along the range line to the southeast corner of Section 1, Township 39 South, Range 29 East; thence east along the section line to the northwest corner of Section 11, Township 39 South, Range 30 East; thence north along the section line to the southwest corner of Section 35, Township 38 South, Range 30 East; thence east along the township line to the southeast corner of the west  $\frac{1}{4}$  of Section 35, Township 38 South, Range 30 East; thence north along the  $\frac{1}{4}$ -section line of Sections 35, 26, and 23, Township 38 South, Range 30 East to the northeast corner of the west  $\frac{1}{4}$  section of Section 23, Township 38 South, Range 30 East; thence west along the section line to the northwest corner of Section 23, Township 38 South, Range 30 East; thence north along the section line to the northwest corner of Section 2, Township 37 South, Range 30 East; thence west along the township line to the southwest corner of Section 34, Township 36 South, Range 30 East; thence north along the section line to the northwest corner of Section 3, Township 36 South, Range 30 East; thence west along the township line to the southwest corner of

Section 31, Township 35 South, Range 30 East; thence north along the range line between Ranges 29 and 30 East, through Townships 35, 34, and 33 South, to the northwest corner of Township 33 South, Range 30 East, being on the Highlands-Polk County line; thence west along the Highlands-Polk County line to the southwest corner of Township 32 South, Range 29 East; thence north along the range line between Ranges 28 and 29 East, in Townships 32 and 31 South, to the northwest corner of Section 7 in Township 31 South, Range 29 East; thence east along the section line to the northeast corner of Section 7, Township 31 South, Range 29 East; thence north along the section line to the northwest corner of Section 17, Township 30 South, Range 29 East; thence east along the section line to the northeast corner of the west  $\frac{1}{2}$  of Section 17, Township 30 South, Range 29 East; thence north along the  $\frac{1}{2}$ -section line to the northeast corner of the west  $\frac{1}{2}$  of Section 5, Township 30 South, Range 29 East; thence west along the section line to the southwest corner of Section 32, Township 29 South, Range 29 East; thence north along the section line to the northeast corner of Section 19 in Township 29 South, Range 29 East; thence west along the south boundaries of Section 18, Township 29 South, Range 29 East and Sections 13, 14, 15, 16, and 17 in Township 29 South, Range 28 East, to the southwest corner of said Section 17; thence north along the section line to the intersection of said section line with the west shore line of Lake Pierce in Township 29 South, Range 28 East; thence following the west shore of Lake Pierce to its intersection again with the west section line of Section 5, Township 29 South, Range 28 East; thence north along the section line to the northwest corner of Section 5, Township 29 South, Range 28 East; thence east along the township line to the southwest corner of Section 33, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of the southwest  $\frac{1}{4}$  of the southwest  $\frac{1}{4}$  of Section 28, Township 28 South, Range 28 East; thence east along the  $\frac{1}{4}$ -section line to the intersection of said  $\frac{1}{4}$ -section line with Lake Pierce; thence follow the shore line northeasterly to its intersection with the  $\frac{1}{2}$ -section line of Section 28, Township 28 South, Range 28 East; thence north on the  $\frac{1}{2}$ -section line to the northwest corner of the southeast  $\frac{1}{4}$  of Section 28, Township 28 South, Range 28 East; thence east along the  $\frac{1}{2}$ -section line to the northeast corner of the southeast  $\frac{1}{4}$  of Section 28, Township 28 South, Range 28 East; thence south along the section line to the northwest corner of Section 3, Township 29 South, Range 28 East; thence east along the section line to the northeast corner of Section 3, Township 29 South, Range 28 East; thence north along the section line to the northwest corner of Section 23, Township 28 South, Range 28 East; thence west along the section line to the southwest corner of Section 16, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of Section 16, Township 28 South, Range 28 East; thence west along the section line to the southwest corner of Section 8, Township 28 South, Range 28 East; thence north along the section line to the northwest corner of Section 5, Township 28 South, Range 28 East; thence west along the township line to the intersection of said township line with Lake Marion; thence following the south shore line of Lake Marion to its intersection again with said township line; thence west along the township line to the southeast corner of Section 36, Township 27 South, Range 27 East; thence north along the range line between Ranges 27 and 28 East to the intersection of said range line with Lake Marion; thence following the west shore of Lake Marion to its intersection again with the range line between Ranges 27 and 28 East; thence north along said range line, in Townships 27 and 26 South, to the northwest corner of Township 26 South, Range 28 East, being on the Polk-Osceola County line; thence west along the Polk-Osceola County line to the southwest corner of Township 25 South, Range 27 East; thence northerly along the range line between Ranges 26 and 27 East to the northwest corner of Section 18, Township 23 South, Range 27 East; thence easterly along the section lines to the southwest corner of Section 12, Township 23 South, Range 27 East; thence northerly along the section lines to the northwest corner of Section 1, Township 23 South, Range 27 East; thence easterly along the Township line between Townships 22 and 23 South to the southwest corner of Section 31, Township 22 South, Range 29 East; thence northerly along the Range line between Ranges 28 and 29 East to the northwest corner of Section 30, Township 22 South, Range 29 East; thence easterly along the section lines to the westerly right-of-way line of U.S. Highway 441; thence southerly along the westerly right-of-way line to the intersection with the northerly right-of-way line of State Road 528A; thence easterly along the northerly right-of-way line to the intersection with the northerly right-of-way line of State Road 528, also known as the Bee Line Expressway; thence easterly along the northerly right-of-way line of State Road 528 to the intersection with the range line between Township 23 South, Range 31 East and Township 23 South, Range 32 East; thence southerly along the Range line between Ranges 31 and 32 East to the Orange-Osceola County line; thence easterly along said county line between Townships 24 and 25 South to the northeast corner of Section 5, Township 25 South, Range 32 East; thence southerly along the section lines to the southeast corner of Section 32, Township 25 South, Range 32 East; thence easterly along the Township line between Townships 25 and 26 South to the northeast corner of Section 1, Township 26 South, Range 32 East; thence southerly along the Range line between Ranges 32 and 33 East to the southeast corner of Section 36, Township 27 South, Range 32 East; thence westerly along the township line between Townships 27 and 28 South, to the northeast corner of Section 1, Township 28 South, Range 32 East; thence southerly along the Range line between Ranges 32 and 33 East to the southeast corner of Section 36, Township 29 South, Range 32 East; thence easterly along the Township line between Townships 29 and 30 South to the northeast corner of Section 1, Township 30 South, Range

33 East; thence southerly along the Range line between Ranges 33 and 34 East to the southeast corner of Section 36, Township 30 South, Range 33 East; thence westerly along the Township line between Townships 30 and 31 South to the northeast corner of Section 4, Township 31 South, Range 33 East; thence southerly along the section lines to the Osceola-Okeechobee County line; thence easterly along said county line to the northeast corner of Section 3, Township 33 South, Range 34 East; thence southerly along the section lines to the southeast corner of Section 34, Township 34 South, Range 34 East; thence easterly along the Township line between Townships 34 and 35 South to the southwest corner of Section 36, Township 34 South, Range 35 East; thence northerly along the section lines to the northwest corner of Section 13, Township 34 South, Range 35 East; thence easterly along the section line to the Range line between Ranges 35 and 36 East; thence northerly along said Range line to the northwest corner of Section 18, Township 34 South, Range 36 East; thence easterly along the section lines to the southwest corner of Section 10, Township 34 south, Range 36 East; thence northerly along the section line to the northwest corner of said Section 10; thence easterly along the section lines to the Okeechobee-St. Lucie County line; thence northerly along said county line to the south line of Indian River County; thence easterly along the St. Lucie-Indian River County line to the Atlantic Ocean; thence southerly along the Atlantic Ocean to the Gulf of Mexico; thence northerly along the Gulf of Mexico, including the waters of said Ocean and of said Gulf and the islands therein within the jurisdiction of the State of Florida, to the point of beginning.

**History.**—s. 12, part 1, ch. 72-299; s. 6, ch. 73-190; s. 1, ch. 75-125; s. 1, ch. 76-243; s. 113, ch. 77-104; s. 1, ch. 78-65.

### **373.0691 Transfer of areas.—**

(1) At the time of change of boundaries of the respective districts under s. 373.069(3), 1976 Supplement to Florida Statutes 1975, all contractual obligations with respect to an area being transferred to another district shall be assumed by the district receiving such area; all real property interests owned by a district within an area to be transferred shall be conveyed to the district receiving such area; and all equipment, vehicles, other personal property, and records owned, located, and used by a district solely within an area being transferred shall be delivered to the district receiving such area. However, if an area is transferred from a district with a contractual obligation to the United States of America for the operation and maintenance of works within such area, then the deliveries and conveyances required in this section shall be deferred until the United States has approved the assumption of the contractual obligations by the receiving district.

(2) The change of boundaries shall not affect the continuing authority, obligations, and commitments of the water management districts, except as set forth in this section.

**History.**—s. 2, ch. 76-243; s. 165, ch. 99-13.

### **373.0693 Basins; basin boards.—**

(1)(a) Any areas within a district may be designated by the district governing board as subdistricts or basins. The designations of such basins shall be made by the district governing board by resolutions thereof. The governing board of the district may change the boundaries of such basins, or create new basins, by resolution.

(b) No subdistrict or basin in the St. Johns River Water Management District other than established by this act shall become effective until approved by the Legislature.

(2) Each basin shall be under the control of a basin board which shall be composed of not less than three members, but shall include one representative from each of the counties included in the basin.

(3) Each member of the various basin boards shall serve for a period of 3 years or until a successor is appointed, except that the board membership of each new basin shall be divided into three groups as equally as possible, with members in such groups to be appointed for 1, 2, and 3 years, respectively. Each basin board shall choose a vice chair and a secretary to serve for a period of 1 year. The term of office of a basin board member shall be construed to commence on March 2 preceding the date of appointment and to terminate March 1 of the year of the end of a term.

(4) Members of basin boards shall be appointed by the Governor, subject to confirmation by the Senate at the next regular session of the Legislature; and the refusal or failure of the Senate to confirm an appointment shall create a vacancy in the office to which the appointment was made.

(5) Basin board members shall receive no compensation for services as such; but, while officially on work for the district, they shall receive their actual travel expenses between their respective places of residence and the place where official district business is conducted, subsistence, lodging, and other expenses in the amount actually incurred. These expenses may not exceed the statutory amount allowed state officers and employees. This subsection applies retroactively to the effective date of the creation of each of the five separate water management districts.

(6)(a) Notwithstanding the provisions of any other general or special law to the contrary, a member of the governing board of the district residing in the basin or, if no member resides in the basin, a member of the governing board designated by the chair of the governing board shall be the ex officio chair of the basin board. The ex officio chair shall preside at all meetings of the basin board, except that the vice chair may preside in his or her absence. The ex officio chair shall have no official vote, except in case of a tie vote being cast by the members, but shall be the liaison officer of the district in all affairs in the basin and shall be kept informed of all such affairs.

(b) Basin boards within the Southwest Florida Water Management District shall meet regularly as determined by a majority vote of the basin board members. Subject to notice requirements of chapter 120, special meetings, both emergency and nonemergency, may be called either by the ex officio chair or the elected vice chair of the basin board or upon request of two basin board members. The district staff shall include on the agenda of any basin board meeting any item for discussion or action requested by a member of that basin board. The district staff shall notify any basin board, as well as their respective counties, of any vacancies occurring in the district governing board or their respective basin boards.

(7) At 11:59 p.m. on December 31, 1976, the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District, which is annexed to the Southwest Florida Water Management District by change of its boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the Southwest Florida Water Management District, subject to the same provisions as the other basins in such district. Such subdistrict shall be designated initially as the Manasota Basin. The members of the governing board of the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District shall become members of the governing board of the Manasota Basin of the Southwest Florida Water Management District.

(8)(a) At 11:59 p.m. on June 30, 1988, the area transferred from the Southwest Florida Water Management District to the St. Johns River Water Management District by change of boundaries pursuant to chapter 76-243, Laws of Florida, shall cease to be a subdistrict or basin of the St. Johns River Water Management District known as the Oklawaha River Basin and said Oklawaha River Basin shall cease to exist. However, any recognition of an Oklawaha River Basin or an Oklawaha River Hydrologic Basin for regulatory purposes shall be unaffected. The area formerly known as the Oklawaha River Basin shall continue to be part of the St. Johns River Water Management District. There shall be established by the governing board of the St. Johns River Water Management District the Oklawaha River Basin Advisory Council to receive public input and advise the St. Johns River Water Management District's governing board on water management issues affecting the Oklawaha River Basin. The Oklawaha River Basin Advisory Council shall be appointed by action of the St. Johns River Water Management District's governing board and shall include one representative from each county which is wholly or partly included in the Oklawaha River Basin. The St. Johns River Water Management District's governing board member currently serving pursuant to s. 373.073(2)(c)3. shall serve as chair of the Oklawaha River Basin Advisory Council. Members of the Oklawaha River Basin Advisory Council shall receive no compensation for their services but are entitled to be reimbursed for per diem and travel expenses as provided in s. 112.061.

(b) Also, the entire area of the St. Johns River Water Management District, less those areas formerly in the Oklawaha Basin, shall cease to be a subdistrict or basin of the St. Johns River Water Management District known as the Greater St. Johns River Basin and said Greater St. Johns River Basin shall cease to exist. The area formerly known as the Greater St. Johns River Basin shall continue to be part of the St. Johns River Water Management District.

(c) As of 11:59 p.m. on June 30, 1988, assets and liabilities of the former Oklawaha River and Greater St. Johns River Basins shall be assets and liabilities of the St. Johns River Water Management District. Any contracts, plans, orders, or agreements of such basins shall continue to be in effect, but may be modified or repealed by the St. Johns River Water Management District in accordance with law. For all purposes for assessing and levying the millage rate authorized under s. 373.503, subsequent to December 31, 1987, including the purposes of certifying the millage rate for fiscal year 1988-1989, pursuant to chapter 200, said millage rate shall be levied retroactive to January 1, 1988.

(9) At 11:59 p.m. on December 31, 1976, a portion of the Big Cypress Basin of the Ridge and Lower Gulf Coast District which is being annexed into the South Florida Water Management District by change of boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the South Florida Water Management District. Such portion shall be designated as the Big Cypress Basin. On or before December 31, 1976, the Governor shall appoint not fewer than five persons residing in the area to serve as members of the governing board of the basin, effective at the time of transfer and subject to confirmation by the Senate as provided in subsection (4).

(a) The initial boundaries of the Big Cypress Basin shall be established by resolution of the governing board of Central and Southern Florida Flood Control District, after notice and hearing, and generally shall encompass the Big Cypress Swamp and southwestern coastal area hydrologic cataloging unit, as indicated on River Basin and Hydrologic Unit Map of Florida—1975, Florida Department of Natural Resources, Bureau of Geology Map Series No. 72.

(b) If the governing board shall fail to establish the initial boundaries on or before December 31, 1976, the initial boundaries shall be the same boundaries as described for the Big Cypress Basin of the Ridge and Lower Gulf Coast District.

(c) The governing board of the South Florida Water Management District subsequently may change the boundaries of the basin, but may not abolish the basin.

(10) At 11:59 p.m. on December 31, 1976, the entire area of the South Florida Water Management District, including all areas being annexed into the district pursuant to chapter 76-243, Laws of Florida, but less those areas in the Big Cypress Basin, shall be formed into a subdistrict or basin of the South Florida Water Management District. Such area shall be designated as the Okeechobee Basin.

(a) The governing board of the South Florida Water Management District shall also serve as the governing board of the Okeechobee Basin.

(b) The governing board of the South Florida Water Management District may change the boundaries of the Okeechobee Basin or may subdivide the basin into smaller basins to be governed by basin boards to be appointed by the Governor, subject to confirmation by the Senate as provided in subsection (4). However, the basin may not be enlarged to include the area included within the initial boundaries of the Big Cypress Basin.

(c) The local effort required in connection with construction, operation, and maintenance of the cooperative federal project referred to as the Central and Southern Florida Flood Control Project, which remains after the upper St. Johns portion is transferred to the St. Johns River Water Management District, shall be funded by tax levies on all taxable property within the Okeechobee Basin. In the event the Okeechobee Basin is subdivided into smaller basins, as authorized in paragraph (b), the governing board shall ascertain the equitable pro rata share for each smaller basin and charge back such share so as to ensure that the portion of the Central and Southern Florida Flood Control Project remaining in the South Florida Water Management District shall continue to be funded on an equal basis throughout the entire Okeechobee Basin as initially described on December 31, 1976.

(11)(a) Basins existing within the Southwest Florida Water Management District, as described in rule 40D-0.061, Florida Administrative Code, may not be abolished or combined without the approval of the Legislature, except that the entire area lying to the East of the Hillsborough County line and presently located within the Hillsborough Basin is hereby annexed into the Peace River Basin. Within the Southwest Florida Water Management District, the entire area lying to the East of the Hillsborough County line and presently located within the Alafia Basin is hereby annexed into the Peace River Basin.

(b) Assets or liabilities of the basin located in those areas transferred from the Hillsborough and Alafia Basins into the Peace River Basin pursuant to this section, including funds held in trust, shall be transferred to the Peace River Basin.

**History.**—s. 6, ch. 73-190; s. 3, ch. 76-243; s. 1, ch. 77-382; s. 1, ch. 79-50; s. 1, ch. 82-46; s. 1, ch. 82-64; s. 4, ch. 84-341; s. 1, ch. 85-146; ss. 6, 25, 26, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 595, ch. 95-148; s. 20, ch. 97-100; s. 8, ch. 97-160.

### **373.0695 Duties of basin boards; authorized expenditures.—**

(1) The various boards shall be responsible for discharging the following described functions in their respective basins:

(a) The preparation of engineering plans for development of the water resources of the basin and the conduct of public hearings on such plans.

(b) The development and preparation of overall basin plan of secondary water control facilities for the guidance of subdrainage districts and private land owners in the development of their respective systems of water control which will be connected to the primary works of the basin to complement the engineering plan of primary works for the basin.

(c) The preparation of the annual budget for the basin and the submission of such budget to the governing board of the district for inclusion in the district budget.

(d) The consideration and prior approval of final construction plans of the district for works to be constructed in the basin.

(e) The administration of the affairs of the basin.

(f) Planning for and, upon request by a county, municipality, private utility, or regional water supply authority, providing water supply and transmission facilities for the purpose of assisting such counties, municipalities, private utilities, or regional water supply authorities within or serving the basin.

(2) Basin board moneys shall be utilized for:

(a) Engineering studies of works of the basin.

- (b) Payment for the preparation of final plans and specifications for construction of basin works executed by the district.
  - (c) Payment of costs of construction of works of the basin executed by the district.
  - (d) Payment for maintenance and operation of basin works as carried out by the district.
  - (e) Administrative and regulatory activities of the basin.
  - (f) Payment for real property interests for works of the basin.
  - (g) Payment of costs of road, bridge, railroad, and utilities modifications and changes resulting from basin works.
- (3) The works of the basin shall be those adopted by the respective basin boards. Such works may be adopted jointly with other basins and may be within or without the area of the basin.
- (4) In the exercise of the duties and powers granted herein, the basin boards shall be subject to all the limitations and restrictions imposed on the water management districts in s. 373.1961.

**History.**—s. 6, ch. 73-190; s. 3, ch. 74-114; s. 1, ch. 82-46; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 9, ch. 95-323.

**373.0697 Basin taxes.**—The respective basins may, pursuant to s. 9(b), Art. VII of the State Constitution, by resolution request the governing board of the district to levy ad valorem taxes within such basin. Upon receipt of such request, a basin tax levy shall be made by the governing board of the district to finance basin functions enumerated in s. 373.0695, notwithstanding the provisions of any other general or special law to the contrary, and subject to the provisions of s. 373.503(3).

(1) The amount of money to be raised by said tax levy shall be determined by the adoption of an annual budget by the district board of governors, and the average millage for the basin shall be that amount required to raise the amount called for by the annual budget when applied to the total assessment of the basin as determined for county taxing purposes. However, no such tax shall be levied within the basin unless and until the annual budget and required tax levy shall have been approved by formal action of the basin board, and no county in the district shall be taxed under this provision at a rate to exceed 1 mill.

(2) The taxes provided for in this section shall be extended by the county property appraiser on the county tax roll in each county within, or partly within, the basin and shall be collected by the tax collector in the same manner and time as county taxes, and the proceeds therefrom paid to the district for basin purposes. Said taxes shall be a lien, until paid, on the property against which assessed and enforceable in like manner as county taxes. The property appraisers, tax collectors, and clerks of the circuit court of the respective counties shall be entitled to compensation for services performed in connection with such taxes at the same rates as apply to county taxes.

(3) It is hereby determined that the taxes authorized by this subsection are in proportion to the benefits to be derived by the several parcels of real estate within the basin from the works authorized herein.

**History.**—s. 6, ch. 73-190; s. 2, ch. 75-125; s. 5, ch. 76-243.

**373.0698 Creation and operation of basin boards; other laws superseded.**—The provisions of ss. 373.0693-373.0697 shall govern the creation and operation of basin boards within any water management district, the provisions of any other general or special law to the contrary notwithstanding.

**History.**—s. 5, ch. 84-341.

### **373.073 Governing board.**—

(1)(a) The governing board of each water management district shall be composed of 9 members who shall reside within the district, except that the Southwest Florida Water Management District shall be composed of 11 members who shall reside within the district. Members of the governing boards shall be appointed by the Governor, subject to confirmation by the Senate at the next regular session of the Legislature, and the refusal or failure of the Senate to confirm an appointment creates a vacancy in the office to which the appointment was made. The term of office for a governing board member is 4 years and commences on March 2 of the year in which the appointment is made and terminates on March 1 of the fourth calendar year of the term. Terms of office of governing board members shall be staggered to help maintain consistency and continuity in the exercise of governing board duties and to minimize disruption in district operations.

(b) Commencing January 1, 1999, the Governor shall appoint the following number of governing board members in each year of the Governor's 4-year term of office:

1. In the first year of the Governor's term of office, the Governor shall appoint three members to the governing board of each district.

2. In the second year of the Governor's term of office, the Governor shall appoint three members to the governing board of the Southwest Florida Water Management District and two members to the governing board of each other district.

3. In the third year of the Governor's term of office, the Governor shall appoint three members to the governing board of the Southwest Florida Water Management District and two members to the governing board of each other district.

4. In the fourth year of the Governor's term of office, the Governor shall appoint two members to the governing board of each district.

For any governing board vacancy that occurs before the date scheduled for the office to be filled under this paragraph, the Governor shall appoint a person meeting residency requirements of subsection (2) for a term that will expire on the date scheduled for the term of that office to terminate under this subsection. In addition to the residency requirements for the governing boards as provided by subsection (2), the Governor shall consider appointing governing board members to represent an equitable cross section of regional interests and technical expertise.

(2) Membership on governing boards shall be selected from candidates who have significant experience in one or more of the following areas, including, but not limited to: agriculture, the development industry, local government, government-owned or privately owned water utilities, law, civil engineering, environmental science, hydrology, accounting, or financial businesses. Notwithstanding the provisions of any other general or special law to the contrary, vacancies in the governing boards of the water management districts shall be filled according to the following residency requirements, representing areas designated by the United States Water Resources Council in United States Geological Survey, River Basin and Hydrological Unit Map of Florida—1975, Map Series No. 72:

(a) Northwest Florida Water Management District:

1. One member shall reside in the area generally designated as the "Perdido River Basin-Perdido Bay Coastal Area-Lower Conecuh River-Escambia River Basin" hydrologic units and that portion of the "Escambia Bay Coastal Area" hydrologic unit which lies west of Pensacola Bay and Escambia Bay.

2. One member shall reside in the area generally designated as the "Blackwater River Basin-Yellow River Basin-Choctawhatchee Bay Coastal Area" hydrologic units and that portion of the "Escambia Bay Coastal Area" hydrologic unit which lies east of Pensacola Bay and Escambia Bay.

3. One member shall reside in the area generally designated as the "Choctawhatchee River Basin-St. Andrews Bay Coastal Area" hydrologic units.

4. One member shall reside in the area generally designated as the "Lower Chattahoochee-Apalachicola River-Chipola River Basin-Coastal Area between Ochlockonee River Apalachicola Rivers-Apalachicola Bay coastal area and offshore islands" hydrologic units.

5. One member shall reside in the area generally designated as the "Ochlockonee River Basin-St. Marks and Wakulla Rivers and coastal area between Aucilla and Ochlockonee River Basin" hydrologic units.

6. Four members shall be appointed at large, except that no county shall have more than two members on the governing board.

(b) Suwannee River Water Management District:

1. One member shall reside in the area generally designated as the "Aucilla River Basin" hydrologic unit.

2. One member shall reside in the area generally designated as the "Coastal Area between Suwannee and Aucilla Rivers" hydrologic unit.

3. One member shall reside in the area generally designated as the "Withlacoochee River Basin-Alapaha River Basin-Suwannee River Basin above the Withlacoochee River" hydrologic units.

4. One member shall reside in the area generally designated as the "Suwannee River Basin below the Withlacoochee River excluding the Santa Fe River Basin" hydrologic unit.

5. One member shall reside in the area generally designated as the "Santa Fe Basin-Waccasassa River and coastal area between Withlacoochee and Suwannee River" hydrologic units.

6. Four members shall be appointed at large, except that no county shall have more than two members on the governing board.

(c) St. Johns River Water Management District:

1. One member shall reside in the area generally designated as the "St. Mary River Basin-Coastal area between St. Marys and St. Johns Rivers" hydrologic units.

2. One member shall reside in the area generally designated as the "St. Johns River Basin below Oklawaha River-Coastal area between the St. Johns River and Ponce de Leon Inlet" hydrologic units.

3. One member shall reside in the area generally designated as the "Oklawaha River Basin" hydrologic unit.

4. One member shall reside in the area generally designated as the “St. Johns River Basin above the Oklawaha River” hydrologic unit.

5. One member shall reside in the area generally designated as the “Coastal area between Ponce de Leon Inlet and Sebastian Inlet-Coastal area Sebastian Inlet to St. Lucie River” hydrologic units.

6. Four members shall be appointed at large, except that no county shall have more than two members on the governing board.

(d) South Florida Water Management District:

1. Two members shall reside in Dade County.

2. One member shall reside in Broward County.

3. One member shall reside in Palm Beach County.

4. One member shall reside in Collier County, Lee County, Hendry County, or Charlotte County.

5. One member shall reside in Glades County, Okeechobee County, Highlands County, Polk County, Orange County, or Osceola County.

6. Two members, appointed at large, shall reside in an area consisting of St. Lucie, Martin, Palm Beach, Broward, Dade, and Monroe Counties.

7. One member, appointed at large, shall reside in an area consisting of Collier, Lee, Charlotte, Hendry, Glades, Osceola, Okeechobee, Polk, Highlands, and Orange Counties.

8. No county shall have more than three members on the governing board.

(e) Southwest Florida Water Management District:

1. Two members shall reside in Hillsborough County.

2. One member shall reside in the area consisting of Hillsborough and Pinellas Counties.

3. Two members shall reside in Pinellas County.

4. One member shall reside in Manatee County.

5. One member shall reside in Polk County.

6. One member shall reside in Pasco County.

7. One member shall be appointed at large from Levy, Marion, Citrus, Sumter, Hernando, and Lake Counties.

8. One member shall be appointed at large from Sarasota, Hardee, DeSoto, Charlotte, and Highlands Counties.

9. One member shall be appointed at large from Levy, Marion, Citrus, Sumter, Hernando, Lake, Sarasota, Hardee, DeSoto, Charlotte, and Highlands Counties.

No county described in subparagraph 7., subparagraph 8., or subparagraph 9. shall have more than one member on the governing board.

**History.**—s. 13, part I, ch. 72-299; s. 11, ch. 75-22; s. 6, ch. 76-243; s. 1, ch. 77-72; s. 3, ch. 80-259; s. 226, ch. 81-259; s. 1, ch. 82-46; ss. 1, 7, 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 1, ch. 91-18; s. 9, ch. 97-160.

### **373.076 Vacancies in the governing board; removal from office.—**

(1) Vacancies occurring in the governing board of a district prior to the expiration of the affected term shall be filled for the unexpired term.

(2) The Governor shall have authority to remove from office any officer of said district in the manner and for cause defined by the laws of this state applicable to situations which may arise in said district.

**History.**—s. 14, part I, ch. 72-299; s. 1, ch. 82-46; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217.

### **373.079 Members of governing board; oath of office; staff.—**

(1) Each member of the governing board of the district, before entering upon his or her official duties, shall take and subscribe to an oath, before some officer authorized by law to administer oaths, that the member will honestly, faithfully, and impartially perform the duties devolving upon him or her in office as member of the governing board of the district to which the member was appointed and that he or she will not neglect any of the duties imposed upon him or her by this chapter.

(2) Immediately after their appointment, and every 2 years thereafter, the governing board shall meet at some convenient place and choose some suitable person, who may or may not be a member of the governing board, and who may be required to execute bond for the faithful performance of his or her duties as the governing board may determine, as secretary. Such board shall adopt a seal with a suitable device and shall keep a well-bound book entitled, in effect, “Record of Governing Board of \_\_\_\_\_ District,” in which shall be recorded minutes of all meetings,

resolutions, proceedings, certificates, bonds given by all employees, and any and all corporate acts, which book shall at reasonable times be open to the inspection of any citizen of this state or taxpayer in the district or his or her agent or attorney.

(3) The chair and members of the board shall receive no compensation for services as such; but, while officially on work for the district, they shall receive their actual travel expenses between their respective places of residence and the place where official district business is conducted, subsistence, lodging, and other expenses in the actual amount incurred therefor. These expenses may not exceed the statutory amount allowed state officers and employees. Payment or reimbursement to governing board members for the use of private or charter aircraft may be no greater than that allowed for commercial air travel for equivalent distances. This subsection applies retroactively to the effective date of the creation of each of the five separate water management districts.

(4)(a) The governing board of the district is authorized to employ an executive director, ombudsman, and such engineers, other professional persons, and other personnel and assistants as it deems necessary and under such terms and conditions as it may determine and to terminate such employment. The appointment of an executive director by the governing board is subject to approval by the Governor and must be initially confirmed by the Florida Senate. The governing board may delegate all or part of its authority under this paragraph to the executive director. The executive director must be confirmed by the Senate upon employment and must be confirmed or reconfirmed by the Senate during the second regular session of the Legislature following a gubernatorial election.

(b)1. The governing board of each water management district shall employ an inspector general, who shall report directly to the board. However, the governing boards of the Suwannee River Water Management District and the Northwest Florida Water Management District may jointly employ an inspector general, or provide for inspector general services by interagency agreement with a state agency or water management district inspector general.

2. An inspector general must have the qualifications prescribed and perform the applicable duties of state agency inspectors general as provided in s. 20.055.

3. Within 45 days of the adoption of the final budget, the governing board shall submit a 5-year capital improvement plan and fiscal report for the district to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Secretary of Environmental Protection. The capital improvement plan must include expected sources of revenue for planned improvements and shall be prepared in a manner comparable to the fixed capital outlay format set forth in s. 216.043. The fiscal report shall cover the preceding fiscal year and shall include a summary statement of the financial operations of the district.

(5) The governing board may employ a legal staff for the purposes of:

(a) Providing legal counsel to the governing board on matters relating to the exercise of its powers and duties and to the executive director and district staff on matters relating to the day-to-day operations of the district;

(b) Representing it in all proceedings of an administrative or judicial nature; and

(c) Otherwise assisting in the administration of the provisions of this chapter.

Attorneys employed by the district must represent the legal interest or position of the governing board.

(6) By resolution the governing board may determine the location of its principal office and provide for the change thereof.

(7) The governing board shall meet at least once a month and upon call of the chair.

**History.**—s. 15, part I, ch. 72-299; s. 1, ch. 82-46; ss. 6, 12, ch. 84-341; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 23, ch. 93-213; s. 8, ch. 94-235; s. 254, ch. 94-356; s. 1006, ch. 95-148; s. 10, ch. 97-160.

### **373.0795 Severance pay for water management district employees.—**

(1) As used in this section, “severance pay” means the actual or constructive compensation, in salary, benefits, or perquisites, of an officer or employee of a water management district, or any subdivision or agency thereof, for employment services yet to be rendered for a term greater than 4 weeks before or immediately following termination of employment. The term does not include:

(a) Earned and accrued annual, sick, compensatory, and administrative leave.

(b) Early retirement provisions established in an actuarially funded pension plan subject to part VII of chapter 112.

(2) After July 1, 1997, a water management district, or any agency or subdivision thereof, may not pay to any of its officers or employees severance pay, except under any of the following conditions:

(a) The severance pay is authorized in an employment contract or collective bargaining agreement providing for it and in effect on July 1, 1997. Collective bargaining agreements or employment contracts extended or entered on or after July 1, 1997, may not contain any provision for severance pay. However, employees classified as managerial,

executive, or exempt in the district's personnel plan who serve at the convenience of the district are subject to the provisions of this section beginning July 1, 1997.

(b) The severance pay is paid from wholly private funds available to the district in the ordinary course of business, the payment and receipt of which would not otherwise violate any provision of part III of chapter 112.

(c) The severance pay is administered under the auspices of part II of chapter 112 on behalf of an agency outside this state and would be permitted under that agency's personnel system.

(d) The severance pay represents the settlement of an employment dispute; however, such a settlement may not contain any provisions that limit the ability of any party to the settlement to discuss the dispute or settlement.

(3) This section does not operate to create an entitlement to severance pay in the absence of its authorization by a water management district.

**History.**—s. 33, ch. 97-160.

**373.083 General powers and duties of the governing board.**—In addition to other powers and duties allowed it by law, the governing board is authorized to:

(1) Contract with public agencies, private corporations, or other persons; sue and be sued; and appoint and remove agents and employees, including specialists and consultants.

(2) Issue orders to implement or enforce any of the provisions of this chapter or regulations thereunder.

(3) Make surveys and investigations of the water supply and resources of the district and cooperate with other governmental agencies in similar activities.

(4) Accept donations or grants of funds or services from both public and private sources for the planning and implementation of district undertakings and delegations, including, but not limited to, projects, programs, works, and studies.

(5) Execute any of the powers, duties, and functions vested in the governing board through a member or members thereof, the executive director, or other district staff as designated by the governing board. The governing board may establish the scope and terms of any delegation. However, if the governing board delegates the authority to take final action on permit applications under part II or part IV, or petitions for variances or waivers of permitting requirements under part II or part IV, the governing board shall provide a process for referring any denial of such application or petition to the governing board to take final action. The authority in this subsection is supplemental to any other provision of this chapter granting authority to the governing board to delegate specific powers, duties, or functions.

**History.**—s. 16, part I, ch. 72-299; s. 1, ch. 82-46; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 1, ch. 97-70; s. 1, ch. 2000-133.

**373.0831 Water resource development; water supply development.**—

(1) The Legislature finds that:

(a) The proper role of the water management districts in water supply is primarily planning and water resource development, but this does not preclude them from providing assistance with water supply development.

(b) The proper role of local government, regional water supply authorities, and government-owned and privately owned water utilities in water supply is primarily water supply development, but this does not preclude them from providing assistance with water resource development.

(c) Water resource development and water supply development must receive priority attention, where needed, to increase the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems.

(2) It is the intent of the Legislature that:

(a) Sufficient water be available for all existing and future reasonable-beneficial uses and the natural systems, and that the adverse effects of competition for water supplies be avoided.

(b) Water management districts take the lead in identifying and implementing water resource development projects, and be responsible for securing necessary funding for regionally significant water resource development projects.

(c) Local governments, regional water supply authorities, and government-owned and privately owned water utilities take the lead in securing funds for and implementing water supply development projects. Generally, direct beneficiaries of water supply development projects should pay the costs of the projects from which they benefit, and water supply development projects should continue to be paid for through local funding sources.

(d) Water supply development be conducted in coordination with water management district regional water supply planning and water resource development.

(3) The water management districts shall fund and implement water resource development as defined in s. 373.019. Each governing board shall include in its annual budget the amount needed for the fiscal year to implement water resource development projects, as prioritized in its regional water supply plans.

(4)(a) Water supply development projects which are consistent with the relevant regional water supply plans and which meet one or more of the following criteria shall receive priority consideration for state or water management district funding assistance:

1. The project supports establishment of a dependable, sustainable supply of water which is not otherwise financially feasible;

2. The project provides substantial environmental benefits by preventing or limiting adverse water resource impacts, but requires funding assistance to be economically competitive with other options; or

3. The project significantly implements reuse, storage, recharge, or conservation of water in a manner that contributes to the sustainability of regional water sources.

(b) Water supply development projects which meet the criteria in paragraph (a) and also bring about replacement of existing sources in order to help implement a minimum flow or level shall be given first consideration for state or water management district funding assistance.

**History.**—s. 11, ch. 97-160.

**373.084 District works, operation by other governmental agencies.**—The district may permit governing bodies of water conservation districts, drainage and other improvement districts, and federal, state and local governments, authorities or agencies to operate and maintain the works of the district under conditions which the governing board may deem advisable.

**History.**—s. 4, ch. 29790, 1955; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217.

**Note.**—Former s. 378.161.

**373.085 Use of works or land by other districts or private persons.**—

(1) The governing board has authority to prescribe the manner in which local works provided by other districts or by private persons will connect with and make use of the works or land of the district, to issue permits therefor, and to cancel the permits for noncompliance with the conditions thereof or for other cause. It is unlawful to connect with or make use of the works or land of the district without consent in writing from its governing board, and the board has authority to prevent or, if done, estop or terminate the same. The use of the works or land of the district for access is governed by this section and is not subject to the provisions of s. 704.01. However, any land or works of the district which have historically been used for public access to the ocean by means of the North New River Canal and its tributaries may not be closed for this purpose unless the district can demonstrate that significant harm to the resource would result from such public use.

(2) Damage resulting from unlawful use of such works, or from violations of the conditions of permit issued by the board shall, if made by other than a public agency, be subject to such penalty as is or may be prescribed by law and in addition thereto by a date and in a manner prescribed by the board, repair of said damage to the satisfaction of said board, or deposit with said board a sum sufficient therefor, and if by a public agency, then at the expense of such agency the repair of said damage to the satisfaction of the board or the deposit with said board of a sum sufficient therefor.

**History.**—s. 17, ch. 25209, 1949; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 7, ch. 84-341; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217.

**Note.**—Former s. 378.17.

**373.086 Providing for district works.**—

(1) In order to carry out the works for the district, and for effectuating the purposes of this chapter, the governing board is authorized to clean out, straighten, enlarge, or change the course of any waterway, natural or artificial, within or without the district; to provide such canals, levees, dikes, dams, sluiceways, reservoirs, holding basins, floodways, pumping stations, bridges, highways, and other works and facilities which the board may deem necessary; to establish, maintain, and regulate water levels in all canals, lakes, rivers, channels, reservoirs, streams, or other bodies of water owned or maintained by the district; to cross any highway or railway with works of the district and to hold, control, and acquire by donation, lease, or purchase, or to condemn any land, public or private, needed for rights-of-way or other

purposes, and may remove any building or other obstruction necessary for the construction, maintenance, and operation of the works; and to hold and have full control over the works and rights-of-way of the district.

(2) The works of the district shall be those adopted by the governing board of the district. The district may require or take over for operation and maintenance such works of other districts as the governing board may deem advisable under agreement with such districts.

(3)(a) Notwithstanding the provisions of chapter 120, the temporary construction, operation, or maintenance of water supply backpumping facilities to be used for storage of surplus water shall not require a permit under this chapter, chapter 253, or chapter 403 from the Department of Environmental Protection if the governing board issues an order declaring a water emergency which order is approved by the Secretary of Environmental Protection. Such approval may be given by telephone and confirmed by appropriate order at a later date. The temporary construction, operation, or maintenance of the facilities shall cease when the governing board or the secretary issues an order declaring that the emergency no longer exists. If the district intends to operate any such facilities permanently under nonemergency conditions, it shall apply for the appropriate required permits from the Department of Environmental Protection within 30 days of rescinding the emergency order.

(b) Notwithstanding the provisions of chapter 120, emergency orders issued pursuant to this subsection shall be valid for a period of 90 days and may be renewed for a single 90-day period.

**History.**—s. 16, ch. 25209, 1949; s. 2, ch. 29790, 1955; s. 1, ch. 61-147; s. 3, ch. 61-497; s. 2, ch. 63-224; s. 1, ch. 67-206; s. 1, part VI, ch. 72-299; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 4, ch. 82-101; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 255, ch. 94-356.

**Note.**—Former s. 378.16.

**373.087 District works using aquifer for storage and supply.**—The governing board may establish works of the district for the purpose of introducing water into, or drawing water from, the underlying aquifer for storage or supply. However, only water of a compatible quality shall be introduced directly into such aquifer.

**History.**—s. 1, ch. 72-318; s. 1, ch. 82-46; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217.

**373.088 Application fees for certain real estate transactions.**—The governing board may adopt rules to provide for the assessment and collection of reasonable fees for the processing of applications for sale, easement, lease, exchange, release, nonuse commitment, disclaimer, quitclaim deed, or reissuance or correction of deed with respect to any interest in lands, such fees to be commensurate with the actual cost of processing such applications.

**History.**—s. 3, ch. 82-101; s. 34, ch. 83-218; s. 2, ch. 89-279; s. 11, ch. 90-217.

**373.089 Sale or exchange of lands, or interests or rights in lands.**—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Any lands, or interests or rights in lands, determined by the governing board to be surplus may be sold by the district, at any time, for the highest price obtainable; however, in no case shall the selling price be less than the appraised value of the lands, or interests or rights in lands, as determined by a certified appraisal obtained within 120 days before the sale.

(2) All sales of land, or interests or rights in land, shall be for cash or upon terms and security to be approved by the governing board, but a deed therefor shall not be executed and delivered until full payment is made.

(3) Before selling any surplus land, or interests or rights in land, it shall be the duty of the district to cause a notice of intention to sell to be published in a newspaper published in the county in which the land, or interests or rights in the land, is situated once each week for 3 successive weeks (three insertions being sufficient), the first publication of which shall be not less than 30 days nor more than 45 days prior to any sale, which notice shall set forth a description of lands, or interests or rights in lands, to be offered for sale.

(4) The governing board of a district may exchange lands, or interests or rights in lands, owned by, or lands, or interests or rights in lands, for which title is otherwise vested in, the district for other lands, or interests or rights in lands, within the state owned by any person. The governing board shall fix the terms and conditions of any such exchange and may pay or receive any sum of money that the board considers necessary to equalize the values of exchanged properties. Land, or interests or rights in land, acquired under s. 373.59 may be exchanged only for lands, or interests or rights in lands, that otherwise meet the requirements of that section for acquisition.

(5) Any lands the title to which is vested in the governing board of a water management district may be surplused pursuant to the procedures set forth in this section and s. 373.056 and the following:

(a) For those lands designated as acquired for conservation purposes, the governing board shall make a determination that the lands are no longer needed for conservation purposes and may dispose of them by a two-thirds vote.

(b) For all other lands, the governing board shall make a determination that such lands are no longer needed and may dispose of them by majority vote.

(c) For the purposes of this subsection, all lands for which title has vested in the governing board prior to July 1, 1999, shall be deemed to have been acquired for conservation purposes.

(d) For any lands acquired on or after July 1, 1999, for which title is vested in the governing board, the governing board shall determine which parcels shall be designated as having been acquired for conservation purposes.

**History.**—s. 4, ch. 29790, 1955; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 9, ch. 82-101; s. 2, ch. 85-347; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 2, ch. 91-288; s. 4, ch. 94-212; s. 5, ch. 94-240; s. 32, ch. 99-247.

**Note.**—Former s. 378.48.

**373.093 Lease of lands or interest in land.**—The governing board of the district may lease any lands or interest in land, including but not limited to oil and mineral rights, to which the district has acquired title, or to which it may hereafter acquire title in the following manner, as long as the lease is consistent with the purposes for which the lands or any interest in land was acquired:

(1) For the best price and terms obtainable, to be determined by the board.

(2) Before leasing any land, or interest in land including but not limited to oil and mineral rights, the district shall cause a notice of intention to lease to be published in a newspaper published in the county in which said land is situated and such other places as the board may determine once each week for 3 successive weeks (three insertions being sufficient), the first publication of which shall be not less than 30 nor more than 45 days prior to any lease, which said notice shall set forth the time and place of leasing and a description of the lands to be leased.

(3) It shall not be necessary to publish the notice as provided by subsection (2) where the lease is made to a person in connection with land acquisition by the district and the lease results in a diminution of the cost to the district in the acquisition of the land.

**History.**—s. 4, ch. 29790, 1955; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 11, ch. 92-288.

**Note.**—Former s. 378.49.

**373.096 Releases.**—The governing board of the district may release any canal easement, reservation or right-of-way interests, conveyed to it for which it has no present or apparent future use under terms and conditions determined by the board.

**History.**—s. 4, ch. 29790, 1955; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217.

**Note.**—Former s. 378.50.

**373.099 Execution of instruments.**—Any instruments of sale, lease, release, or conveyance executed pursuant to the provisions of this chapter shall be executed in the name of the district by its governing board acting by the chair or vice chair of said board and shall have the corporate seal of the board affixed thereto attested by its secretary and any such instrument shall be effective to pass the title or interest of the district in the property conveyed; provided, the district shall not warrant the title to any property sold, leased, released, or conveyed.

**History.**—s. 4, ch. 29790, 1955; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 25, ch. 88-242; ss. 1, 2, ch. 89-279; ss. 11, 12, ch. 90-217; s. 596, ch. 95-148.

**Note.**—Former s. 378.51.

**373.103 Powers which may be vested in the governing board at the department's discretion.**—In addition to the other powers and duties allowed it by law, the governing board of a water management district may be specifically authorized by the department to:

(1) Administer and enforce all provisions of this chapter, including the permit systems established in parts II, III, and IV of this chapter, consistent with the water resource implementation rule.

(2) Cooperate with the United States in the manner provided by Congress for flood control, reclamation, conservation, and allied purposes in protecting the inhabitants, the land, and other property within the district from the

effects of a surplus or a deficiency of water when the same may be beneficial to the public health, welfare, safety, and utility.

(3) Plan, construct, operate, and maintain works of the district as defined in this chapter.

(4) Determine, establish, and control the level of waters to be maintained in all canals, lakes, rivers, channels, reservoirs, streams, or other bodies of water controlled by the district; to maintain such waters at the levels so determined and established by means of dams, locks, floodgates, dikes, and other structures; and to regulate the discharge into, or withdrawal from, the canals, lakes, rivers, channels, reservoirs, streams, or other bodies of water controlled by the district or which are a work of the district, including review of small watershed projects (Pub. L. No. 83-566).

(5) Expend, at the discretion of the governing board, for purposes of promotion, advertisement, and improvement of the program and objectives of the district, a yearly sum not to exceed 0.25 percent of the moneys collected by taxation within the district.

(6) Exercise such additional power and authority compatible with this chapter and other statutes and federal laws affecting the district as may be necessary to perform such duties and acts and to decide such matters and dispose of the same as are not specifically defined in or covered by statute.

(7) Prepare, in cooperation with the department, that part of the Florida water plan applicable to the district.

(8) Delegate to a local government by rule or agreement the power and duty to administer and enforce any of the statutes, rules, or regulations relating to stormwater permitting or surface water management which the district is authorized or required to administer, including those delegated by a state agency to the district, if the governing board determines that such a delegation is necessary or desirable. Such a delegation shall be made only if the governing board determines that the local government's program for administering the delegated statute, rule, or regulation:

(a) Provides by ordinance, regulation, or local law for requirements compatible with or stricter or more extensive than those imposed by the statute or the rules and regulations adopted pursuant thereto;

(b) Provides for the enforcement of such requirements by appropriate administrative and judicial processes; and

(c) Provides for administrative organization, staff, and financial and other resources necessary to effectively and efficiently enforce such requirements.

The governing board shall give prior notice of its intention to enter into an agreement described in this subsection. At a minimum, such notice shall be published in the Florida Administrative Weekly at least 21 days in advance of the governing board's action. At least once every 6 months, the district shall update its rules to include a list of the agreements adopted pursuant to this subsection to which the district is a party. The list shall identify the parties to, and the date and location of each agreement, and shall specify the nature of the authority delegated by the agreement.

**History.**—s. 17, part I, ch. 72-299; s. 7, ch. 73-190; s. 2, ch. 80-259; s. 1, ch. 82-46; ss. 3, 25, ch. 88-242; ss. 1, 2, 9, ch. 89-279; ss. 11, 12, ch. 90-217; s. 1, ch. 91-231; s. 3, ch. 91-288; s. 20, ch. 97-160.

### **373.106 Permit required for construction involving underground formation.—**

(1) No construction may be begun on a project involving artificial recharge or the intentional introduction of water into any underground formation except as permitted in chapter 377, without the written permission of the governing board of any water management district within which the construction will take place. Such application shall contain the detailed plans and specifications for the construction of the project.

(2) Each water management district has the exclusive authority to process and issue permits under this section and permits and licenses delegated under s. 403.812, except permits required by the department pursuant to 42 U.S.C. s. 300h until delegated by the department to the districts.

(3) A water management district may do any act necessary to replenish the groundwater of the district. The district may, among other things, for the purposes of replenishing the groundwater supplies within the district:

(a) Buy water;

(b) Exchange water;

(c) Distribute water to persons in exchange for ceasing or reducing groundwater extractions;

(d) Spread, sink, and inject water into the underground;

(e) Store, transport, recapture, reclaim, purify, treat, or otherwise manage and control water for the beneficial use of persons or property within the district; and

(f) Build the necessary works to achieve groundwater replenishment.

**History.**—s. 18, part I, ch. 72-299; s. 14, ch. 78-95; s. 71, ch. 83-310; s. 2, ch. 84-338; s. 1, ch. 84-341.

**373.107 Citation of rule.**—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

**History.**—s. 3, ch. 79-161.

**373.109 Permit application fees.**—When a water management district governing board, the department, or a local government implements a regulatory system under this chapter or one which has been delegated pursuant to chapter 403, it may establish a schedule of fees for filing applications for the required permits. Such fees shall not exceed the cost to the district, the department, or the local government for processing, monitoring, and inspecting for compliance with the permit.

(1) All moneys received under the provisions of this section shall be allocated for the use of the water management district, the department, or the local government, whichever processed the permit, and shall be in addition to moneys otherwise appropriated in any general appropriation act. All moneys received by the department under the provisions of this section shall be deposited in the Florida Permit Fee Trust Fund established by s. 403.0871 and shall be used by the department as provided therein. Moneys received by a water management district or the department under the provisions of this section shall be in addition to moneys otherwise appropriated in any general appropriation act.

(2) The failure of any person to pay the fees established hereunder constitutes grounds for revocation or denial of the permit.

**History.**—s. 19, part I, ch. 72-299; s. 7, ch. 76-243; s. 8, ch. 84-341; s. 27, ch. 87-225; s. 10, ch. 89-279; s. 25, ch. 93-213.

**373.113 Adoption of rules by the governing board.**—In administering the provisions of this chapter the governing board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring powers or duties upon it.

**History.**—s. 20, part I, ch. 72-299; s. 83, ch. 98-200.

**373.1131 Consolidated action on permits.**—

(1) Whenever the implementation of specific authority granted by this chapter, or whenever delegation of another program requiring permits or other authorizations, would result in the department or a water management district processing two or more separate permits or other authorizations for the same activity or project, the department or governing board may procedurally consolidate such separate permits or other authorizations by establishing a single application, permit application fee, noticing procedure, schedule for agency review, and final agency action on the consolidated permit or other authorization.

(2) Procedures to consolidate permitting actions under this section do not constitute rules within the meaning of s. 120.52.

(3) Whenever two or more permits or other authorizations for aquaculture activities have been consolidated into a single process, responsibility for permitting or authorizing such activities shall not be delegated to any unit of local government pursuant to s. 373.103.

**History.**—s. 17, ch. 96-247.

**373.114 Land and Water Adjudicatory Commission; review of district rules and orders; department review of district rules.**—

(1) Except as provided in subsection (2), the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission, have the exclusive authority to review any order or rule of a water management district, other than a rule relating to an internal procedure of the district, to ensure consistency with the provisions and purposes of this chapter. Subsequent to the legislative ratification of the delineation methodology pursuant to s. 373.421(1), this subsection also shall apply to an order of the department, or a local government exercising delegated authority, pursuant to ss. 373.403-373.443, except an order pertaining to activities or operations subject to conceptual plan approval pursuant to chapter 378.

(a) Such review may be initiated by the department or by a party to the proceeding below by filing a request for review with the Land and Water Adjudicatory Commission and serving a copy on the department and on any person named in the rule or order within 20 days after adoption of the rule or the rendering of the order. For the purposes of

this section, the term “party” means any affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for the rule or order that are cognizable within the scope of the provisions and purposes of this chapter, or any person who participated as a party in a proceeding instituted pursuant to chapter 120. In order for the commission to accept a request for review initiated by a party below, with regard to a specific order, four members of the commission must determine on the basis of the record below that the activity authorized by the order would substantially affect natural resources of statewide or regional significance. Review of an order may also be accepted if four members of the commission determine that the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from the standpoint of agency precedent. The party requesting the commission to review an order must allege with particularity, and the commission must find, that:

1. The order is in conflict with statutory requirements; or
2. The order is in conflict with the requirements of a duly adopted rule.

(b) Review by the Land and Water Adjudicatory Commission is appellate in nature and shall be based solely on the record below. If there was no evidentiary administrative proceeding below, the facts contained in the proposed agency action, including any technical staff report, shall be deemed undisputed. The matter shall be heard by the commission not more than 60 days after receipt of the request for review, unless waived by the parties.

(c) If the Land and Water Adjudicatory Commission determines that a rule of a water management district is not consistent with the provisions and purposes of this chapter, it may require the water management district to initiate rulemaking proceedings to amend or repeal the rule. If the commission determines that an order is not consistent with the provisions and purposes of this chapter, the commission may rescind or modify the order or remand the proceeding for further action consistent with the order of the Land and Water Adjudicatory Commission only if the commission determines that the activity authorized by the order would substantially affect natural resources of statewide or regional significance. In the case of an order which does not itself substantially affect natural resources of statewide or regional significance, but which raises issues of policy that have regional or statewide significance from the standpoint of agency precedent, the commission may direct the district to initiate rulemaking to amend its rules to assure that future actions are consistent with the provisions and purposes of this chapter without modifying the order.

(d) In a review under this section of a construction permit issued pursuant to a conceptual permit under part IV, which conceptual permit is issued after July 1, 1993, a party to the review may not raise an issue which was or could have been raised in a review of the conceptual permit under this section.

(e) A request for review under this section shall not be a precondition to the seeking of judicial review pursuant to s. 120.68 or the seeking of an administrative determination of rule validity pursuant to s. 120.56.

(f) The Florida Land and Water Adjudicatory Commission may adopt rules to set forth its procedures for reviewing an order or rule of a water management district consistent with the provisions of this section.

(g) For the purpose of this section, it shall be presumed that activity authorized by an order will not affect resources of statewide or regional significance if the proposed activity:

1. Occupies an area less than 10 acres in size, and
2. Does not create impervious surfaces greater than 2 acres in size, and
3. Is not located within 550 feet of the shoreline of a named body of water designated as Outstanding Florida Waters, and
4. Does not adversely affect threatened or endangered species.

This paragraph shall not operate to hold that any activity that exceeds these limits is presumed to affect resources of statewide or regional significance. The determination of whether an activity will substantially affect resources of statewide or regional significance shall be made on a case-by-case basis, based upon facts contained in the record below.

(2) The department shall have the exclusive authority to review rules of the water management districts, other than rules relating to internal management of the districts, to ensure consistency with the water resource implementation rule as set forth in the rules of the department. Within 30 days after adoption or revision of any water management district rule, the department shall initiate a review of such rule pursuant to this section.

(a) Within 30 days after adoption of a rule, any affected person may request that a hearing be held before the secretary of the department, at which hearing evidence and argument may be presented relating to the consistency of the rule with the water resource implementation rule, by filing a request for hearing with the department and serving a copy on the water management district.

(b) If the department determines that the rule is inconsistent with the water resource implementation rule, it may order the water management district to initiate rulemaking proceedings to amend or repeal the rule.

(c) An order of the department requiring amendment or repeal of a rule may be appealed to the Land and Water Adjudicatory Commission by the water management district or any other party to the proceeding before the secretary.

**History.**—s. 11, ch. 75-22; s. 72, ch. 83-310; s. 26, ch. 93-213; s. 21, ch. 97-160; s. 7, ch. 98-146.

**373.116 Procedure for water use and impoundment construction permit applications.—**

(1) Applications for water use permits, under part II of this chapter; for permits for construction or alteration of dams, impoundments, reservoirs, and appurtenant works, under part IV of this chapter; and for permits under s. 403.812 shall be filed with the water management district on appropriate forms provided by the governing board.

(2) Upon receipt of an application for a permit of the type referred to in subsection (1), the governing board shall cause a notice thereof to be published in a newspaper having general circulation within the affected area. In addition, the governing board shall send, by regular mail, a copy of such notice to any person who has filed a written request for notification of any pending applications affecting this particular designated area. Upon written request, notice of application for the consumptive use of water shall be mailed by regular mail to the county and appropriate city government from which boundaries the withdrawal is proposed to be made.

**History.**—s. 21, part I, ch. 72-299; s. 14, ch. 78-95; s. 73, ch. 83-310; s. 3, ch. 96-339.

**373.117 Certification by professional engineer.—**

(1) If an application for a permit or license to conduct an activity regulated under this chapter requires the services of a professional engineer as regulated and defined by chapter 471, the department or governing board of a water management district may require, as a condition of granting a permit or license, that a professional engineer licensed under chapter 471 certify upon completion of the permitted or licensed activity that such activity has been completed in substantial conformance with the plans and specifications approved by the department or board.

(2) The cost of such certification by a professional engineer shall be borne by the permittee.

(3) No permitted or licensed activity which is required to be so certified shall be placed into use or operation until the professional engineer's certificate is filed with the department or board.

**History.**—s. 4, ch. 79-160.

**373.118 General permits.—**

(1) The governing board may adopt rules establishing a general permit system under this chapter for projects, or categories of projects, which have, either singly or cumulatively, a minimal adverse impact on the water resources of the district. Such rules shall specify design or performance criteria which, if applied, would result in compliance with the conditions for issuance of permits established in this chapter and district rules.

(2) A general permit system relating to water use may provide for the granting of permits for the use of water in specified amounts within identified areas of the district. General permits for water use shall be subject to all the provisions of part II except the provisions of s. 373.229.

(3) In lieu of the publication of notice requirements of ss. 373.116, 373.229, and 373.413, the governing board may establish alternative notice requirements for general permits, which requirements take into account the nature and scope of the projects permitted and the effect the proposed activity may have on other persons.

(4) To provide for greater efficiency, the governing board may delegate by rule its powers and duties pertaining to general permits to the executive director. The executive director may execute such delegated authority through designated staff. However, when delegating the authority to take final action on permit applications under part II or part IV or petitions for variances or waivers of permitting requirements under part II or part IV, the governing board shall provide a process for referring any denial of such application or petition to the governing board to take such final action.

**History.**—s. 1, ch. 83-169; s. 1, ch. 2000-319.

**373.119 Administrative enforcement procedures; orders.—**

(1) Whenever the executive director of a water management district has reason to believe that a violation of any provision of this chapter or any regulation promulgated thereunder or permits or order issued pursuant thereto has occurred, is occurring, or is about to occur, the executive director may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provision or provisions of this chapter or regulation or permit or order alleged to be violated or about to be violated and the facts alleged to constitute a violation thereof, and may order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such

order shall become final unless the person or persons named therein request by written petition a hearing no later than 14 days after the date such order is served.

(2) Whenever the executive director, with the concurrence and advice of the governing board, finds that an emergency exists requiring immediate action to protect the public health, safety, or welfare; the health of animals, fish or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural or other reasonable uses, the executive director may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the executive director deems necessary to meet the emergency.

(3) Any person to whom an emergency order is directed pursuant to subsection (2) shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

**History.**—s. 22, part I, ch. 72-299; s. 14, ch. 78-95.

**373.123 Penalty.**—Any person, real or artificial, that shall construct or enlarge, or cause to be constructed or enlarged, a canal or shall enlarge or deepen a natural stream in such a manner as to permit salt water to move inland of an established saltwater barrier line, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each day such movement of salt water shall continue, shall constitute a separate offense of the provisions of this law.

**History.**—s. 3, ch. 63-210; s. 324, ch. 71-136; s. 25, ch. 73-190.

**Note.**—Former s. 373.195.

**373.129 Maintenance of actions.**—The department, the governing board of any water management district, any local board, or a local government to which authority has been delegated pursuant to s. 373.103(8), is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:

(1) To enforce rules, regulations, and orders adopted or issued pursuant to this law.

(2) To enjoin or abate violations of the provisions of this law or rules, regulations, and orders adopted pursuant hereto.

(3) To protect and preserve the water resources of the state.

(4) To defend all actions and proceedings involving its powers and duties pertaining to the water resources of the state.

(5) To recover a civil penalty for each offense in an amount not to exceed \$10,000 per offense. Each date during which such violation occurs constitutes a separate offense.

(a) A civil penalty recovered pursuant to this subsection shall be deposited in the Water Management Lands Trust Fund established under s. 373.59 and used exclusively by the water management district that deposits the money into the fund. Any such civil penalty recovered after the expiration of such fund shall be deposited in the Ecosystem Management and Restoration Trust Fund and used exclusively within the water management district that deposits the money into the fund.

(b) A local government that is delegated authority pursuant to s. 373.103(8) may deposit a civil penalty recovered pursuant to this subsection into a local water pollution control program trust fund, notwithstanding the provisions of paragraph (a). However, civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violations of state water quality standards may be used only to restore water quality in the area that was the subject of the action, and civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violation of requirements relating to water quantity may be used only to purchase lands and make capital improvements associated with surface water management, or other purposes consistent with the requirements of this chapter for the management and storage of surface water.

(6) To recover investigative costs, court costs, and reasonable attorney's fees.

(7) Enforce the provisions of part IV of this chapter in the same manner and to the same extent as provided in ss. 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

**History.**—s. 16, ch. 57-380; s. 16, ch. 63-336; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 42, ch. 79-65; s. 9, ch. 84-341; s. 2, ch. 91-231; s. 4, ch. 91-288; s. 27, ch. 93-213; s. 38, ch. 96-321.

**Note.**—Former s. 373.221.

**373.136 Enforcement of regulations and orders.**—

(1) The governing board may enforce its regulations and orders adopted pursuant to this chapter, by suit for injunction or other appropriate action in the courts of the state.

(2) The court may award to the prevailing party or parties reasonable attorney's fees for services rendered in actions at law and all appellate proceedings resulting therefrom under the provisions of this chapter. In addition to the above, the court may award all costs and charges incident to such actions.

(3) Any action by a citizen of the state to seek judicial enforcement of any of the provisions of this chapter shall be governed by the Florida Environmental Protection Act, s. 403.412.

**History.**—s. 25, part I, ch. 72-299; s. 7, ch. 99-353.

**373.139 Acquisition of real property.—**

(1) The Legislature declares it to be necessary for the public health and welfare that water and water-related resources be conserved and protected. The acquisition of real property for this objective shall constitute a public purpose for which public funds may be expended.

(2) The governing board of the district is empowered and authorized to acquire in fee or less than fee title to real property, and easements therein, by purchase, gift, devise, lease, eminent domain, or otherwise for flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development, and preservation of wetlands, streams, and lakes. Eminent domain powers may be used only for acquiring real property for flood control and water storage or for curing title defects or encumbrances to real property to be acquired from a willing seller.

(3) The initial 5-year work plan and any subsequent modifications or additions thereto shall be adopted by each water management district after a public hearing. Each water management district shall provide at least 14 days' advance notice of the hearing date and shall separately notify each county commission within which a proposed work plan project or project modification or addition is located of the hearing date.

(a) Title information, appraisal reports, offers, and counteroffers are confidential and exempt from the provisions of s. 119.07(1) until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board. However, each district may, at its discretion, disclose appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques, if the district determines that disclosure of such reports will bring the proposed acquisition to closure. In the event that negotiation is terminated by the district, the title information, appraisal report, offers, and counteroffers shall become available pursuant to s. 119.07(1). Notwithstanding the provisions of this section and s. 259.041, a district and the Division of State Lands may share and disclose title information, appraisal reports, appraisal information, offers, and counteroffers when joint acquisition of property is contemplated. A district and the Division of State Lands shall maintain the confidentiality of such title information, appraisal reports, appraisal information, offers, and counteroffers in conformance with this section and s. 259.041, except in those cases in which a district and the division have exercised discretion to disclose such information.

(b) The Secretary of Environmental Protection shall release moneys from the appropriate account or trust fund to a district for preacquisition costs within 30 days after receipt of a resolution adopted by the district's governing board which identifies and justifies any such preacquisition costs necessary for the purchase of any lands listed in the district's 5-year work plan. The district shall return to the department any funds not used for the purposes stated in the resolution, and the department shall deposit the unused funds into the appropriate account or trust fund.

(c) The Secretary of Environmental Protection shall release acquisition moneys from the appropriate account or trust fund to a district following receipt of a resolution adopted by the governing board identifying the lands being acquired and certifying that such acquisition is consistent with the 5-year work plan of acquisition and other provisions of this section. The governing board also shall provide to the Secretary of Environmental Protection a copy of all certified appraisals used to determine the value of the land to be purchased. Each parcel to be acquired must have at least one appraisal. Two appraisals are required when the estimated value of the parcel exceeds \$500,000. However, when both appraisals exceed \$500,000 and differ significantly, a third appraisal may be obtained. If the purchase price is greater than the appraisal price, the governing board shall submit written justification for the increased price. The Secretary of Environmental Protection may withhold moneys for any purchase that is not consistent with the 5-year plan or the intent of this section or that is in excess of appraised value. The governing board may appeal any denial to the Land and Water Adjudicatory Commission pursuant to s. 373.114.

(4) The governing board of the district may purchase tax certificates or tax deeds issued in accordance with chapter 197 relating to property eligible for purchase under this section.

(5) This section shall not limit the exercise of similar powers delegated by statute to any state or local governmental agency or other person.

(6) A district may dispose of land acquired under this section pursuant to s. 373.056 or s. 373.089. However, no such disposition of land shall be made if it would have the effect of causing all or any portion of the interest on any

revenue bonds issued pursuant to s. 259.101 or s. 259.105 to fund the acquisition programs detailed in this section to lose the exclusion from gross income for purposes of federal income taxation. Revenue derived from such disposition may not be used for any purpose except the purchase of other lands meeting the criteria specified in this section or payment of debt service on revenue bonds or notes issued under s. 373.584.

(7) The districts have the authority to promulgate rules that include the specific process by which land is acquired; the selection and retention of outside appraisers, surveyors, and acquisition agents; and public notification. Rules adopted pursuant to this subsection shall be submitted to the President of the Senate and the Speaker of the House of Representatives, for review by the Legislature, no later than 30 days prior to the 2001 Regular Session and shall become effective only after legislative review. In its review, the Legislature may reject, modify, or take no action relative to such rules. The districts shall conform such rules to changes made by the Legislature, or, if no action was taken by the Legislature, such rules shall become effective.

**History.**—s. 26, part I, ch. 72-299; s. 1, ch. 72-318; s. 3, ch. 85-347; s. 7, ch. 86-294; s. 4, ch. 89-117; s. 5, ch. 91-288; s. 6, ch. 94-240; s. 16, ch. 96-389; s. 173, ch. 96-406; s. 12, ch. 97-160; s. 13, ch. 97-164; s. 33, ch. 99-247; s. 13, ch. 2000-170.

### **373.1391 Management of real property.—**

(1)(a) Lands titled to the governing boards of the districts shall be managed and maintained, to the extent practicable, in such a way as to ensure a balance between public access, general public recreational purposes, and restoration and protection of their natural state and condition. Except when prohibited by a covenant or condition described in s. 373.056(2), lands owned, managed, and controlled by the district may be used for multiple purposes, including, but not limited to, agriculture, silviculture, and water supply, as well as boating and other recreational uses.

(b) Whenever practicable, such lands shall be open to the general public for recreational uses. General public recreational purposes shall include, but not be limited to, fishing, hunting, horseback riding, swimming, camping, hiking, canoeing, boating, diving, birding, sailing, jogging, and other related outdoor activities to the maximum extent possible considering the environmental sensitivity and suitability of those lands. These public lands shall be evaluated for their resource value for the purpose of establishing which parcels, in whole or in part, annually or seasonally, would be conducive to general public recreational purposes. Such findings shall be included in management plans which are developed for such public lands. These lands shall be made available to the public for these purposes, unless the district governing board can demonstrate that such activities would be incompatible with the purposes for which these lands were acquired.

(c) In developing or reviewing land management plans when a dispute arises that has not been resolved by a water management district's final agency action, that dispute must be resolved under chapter 120.

(d) For any fee simple acquisition of a parcel which is or will be leased back for agricultural purposes, or for any acquisition of a less-than-fee interest in lands that is or will be used for agricultural purposes, the district governing board shall first consider having a soil and water conservation district created pursuant to chapter 582 manage and monitor such interest.

(2) Interests in real property acquired by the districts under this section with funds other than those appropriated under the Florida Forever Act may be used for permissible water resource development and water supply development purposes under the following conditions: the minimum flows and levels of priority water bodies on such lands have been established; the project complies with all conditions for issuance of a permit under part II of this chapter; and the project is compatible with the purposes for which the land was acquired.

(3) Each district is encouraged to use volunteers to provide land management and other services. Volunteers shall be covered by liability protection and workers' compensation in the same manner as district employees, unless waived in writing by such volunteers or unless such volunteers otherwise provide equivalent insurance.

(4) Each water management district is authorized and encouraged to enter into cooperative land management agreements with state agencies or local governments to provide for the coordinated and cost-effective management of lands to which the water management districts, the Board of Trustees of the Internal Improvement Trust Fund, or local governments hold title. Any such cooperative land management agreement must be consistent with any applicable laws governing land use, management duties, and responsibilities and procedures of each cooperating entity. Each cooperating entity is authorized to expend such funds as are made available to it for land management on any such lands included in a cooperative land management agreement.

(5) The following additional uses of lands acquired pursuant to the Florida Forever program and other state-funded land purchase programs shall be authorized, upon a finding by the governing board, if they meet the criteria specified in paragraphs (a)-(e): water resource development projects, water supply development projects, stormwater

management projects, linear facilities, and sustainable agriculture and forestry. Such additional uses are authorized where:

- (a) Not inconsistent with the management plan for such lands;
- (b) Compatible with the natural ecosystem and resource values of such lands;
- (c) The proposed use is appropriately located on such lands and where due consideration is given to the use of other available lands;
- (d) The using entity reasonably compensates the titleholder for such use based upon an appropriate measure of value; and
- (e) The use is consistent with the public interest.

A decision by the governing board pursuant to this subsection shall be given a presumption of correctness. Moneys received from the use of state lands pursuant to this subsection shall be returned to the lead managing agency in accordance with the provisions of s. 373.59.

(6) The districts have the authority to adopt rules that specify: allowable activities on district-owned lands; the amount of fees, licenses, or other charges for users of district-owned lands; the application and reimbursement process for payments in lieu of taxes; the use of volunteers for management activities; and the processes related to entering into or severing cooperative land management agreements. Rules promulgated pursuant to the subsection shall become effective only after submitted to the President of the Senate and Speaker of the House of Representatives for review by the Legislature not later than 30 days prior to the next regular session. In its review, the Legislature may reject, modify, or take no action relative to such rules. The districts shall conform such rules to changes made by the Legislature, or, if no action is taken, such rules shall become effective.

**History.**—s. 34, ch. 99-247; s. 14, ch. 2000-170.

**373.1395 Limitation on liability of water management district with respect to areas made available to the public for recreational purposes without charge.—**

(1) The purpose of this section is to encourage water management districts to make available land, water areas, and park areas to the public for outdoor recreational purposes by limiting their liability to persons going thereon and to third persons who may be damaged by the acts or omissions of persons going thereon.

(2) Except as provided in subsection (4), a water management district that provides the public with a park area or other land for outdoor recreational purposes, or allows access over district lands for recreational purposes, owes no duty of care to keep that park area or land safe for entry or use by others or to give warning to persons entering or going on that park area or land of any hazardous conditions, structures, or activities thereon. A water management district that provides the public with a park area or other land for outdoor recreational purposes does not, by providing that park area or land, extend any assurance that such park area or land is safe for any purpose, does not incur any duty of care toward a person who goes on that park area or land, and is not responsible for any injury to persons or property caused by an act or omission of a person who goes on that park area or land. This subsection does not apply if there is any charge made or usually made for entering or using the park area or land, or if any commercial or other activity from which profit is derived from the patronage of the public is conducted on such park area or land or any part thereof.

(3)(a) Except as provided in subsection (4), a water management district that leases any land or water area to the state for outdoor recreational purposes, or for access to outdoor recreational purposes, owes no duty of care to keep that land or water area safe for entry or use by others or to give warning to persons entering or going on that land or water of any hazardous conditions, structures, or activities thereon. A water management district that leases a land or water area to the state for outdoor recreational purposes does not, by giving such lease, extend any assurance that such land or water area is safe for any purpose, incur any duty of care toward a person who goes on the leased land or water area, and is not responsible for any injury to persons or property caused by an act or omission of a person who goes on the leased land or water area.

(b) This subsection applies to any person going on the leased land or water area whether the person goes as an invitee, licensee, trespasser, or otherwise.

(4) This section does not relieve any water management district of any liability that would otherwise exist for gross negligence or a deliberate, willful, or malicious injury to a person or property. This section does not create or increase the liability of any water management district or person beyond that which is authorized by s. 768.28.

(5) The term “outdoor recreational purposes,” as used in this section, includes activities such as, but not limited to, horseback riding, hunting, fishing, bicycling, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites.

**History.**—s. 12, ch. 92-288; s. 1, ch. 94-144; s. 7, ch. 94-240; s. 1007, ch. 95-148.

**373.1401 Management of lands of water management districts.**—The governing board of each water management district may contract with a federal or state agency, a county, a municipality, or any other governmental entity or environmental nonprofit organization to provide for the improvement, management, or maintenance of any real property owned by or under the control of the district.

**History.**—s. 6, ch. 91-288.

**373.146 Publication of notices, process, and papers.**—

(1) Whenever in this chapter the publication of any notice, process, or paper is required or provided for, unless otherwise provided by law, the publication thereof in some newspaper or newspapers as defined in chapter 50 having general circulation within the area to be affected shall be taken and considered as being sufficient.

(2) Notwithstanding any other provision of law to the contrary, and except in the case of emergency meetings, water management districts may provide reasonable notice of public meetings held to evaluate responses to solicitations issued by the water management district, by publication in a newspaper of general paid circulation in the county where the principal office of the water management district is located, or in the county or counties where the public work will be performed, no less than 7 days before such meeting.

**History.**—s. 44, ch. 25209, 1949; s. 27, part I, ch. 72-299; s. 25, ch. 73-190; s. 14, ch. 78-95; s. 35, ch. 99-247.

**Note.**—Former s. 378.44.

**373.149 Existing districts preserved.**—The enactment of this act shall not affect the existence of the Central and Southern Florida Flood Control District created by chapter 25270, 1949, Laws of Florida, or the Southwest Florida Water Management District, created by chapter 61-691, Laws of Florida, or any contract or obligation of such districts entered into prior to the effective date of this act. The two districts shall continue to exercise the taxing powers authorized to them in the territories within their respective boundaries, except that nothing herein shall limit the department in considering and recommending to the 1973 session of the Legislature changes in the boundaries and transfers of funds, appropriations, personnel, property, or equipment between or among the existing districts and districts created by this chapter. The two districts shall continue to exercise the powers presently authorized by chapter 378 and this chapter, notwithstanding provisions contained to the contrary in this chapter, until any such powers shall be specifically revoked or modified by the department pursuant to this chapter, except that the provisions of s. 373.139 relating to acquisition of real property shall apply.

**History.**—s. 28, part I, ch. 72-299.

**373.1501 South Florida Water Management District as local sponsor.**—

(1) As used in this section and s. 373.026(8), the term:

(a) “C-111 Project” means the project identified in the Central and Southern Florida Flood Control Project, Real Estate Design Memorandum, Canal 111, South Dade County, Florida.

(b) “Department” means the Department of Environmental Protection.

(c) “District” means the South Florida Water Management District.

(d) “Kissimmee River Restoration Project” means the project identified in the Project Cooperation Agreement between the United States Department of the Army and the South Florida Water Management District dated March 22, 1994.

(e) “Pal-Mar Project” means the Pal-Mar (West Jupiter Wetlands) lands identified in the Save Our Rivers 2000 Land Acquisition and Management Plan approved by the South Florida Water Management District on September 9, 1999 (Resolution 99-94).

(f) “Project” means the Central and Southern Florida Project.

(g) “Project component” means any structural or operational change, resulting from the restudy, to the Central and Southern Florida Project as it existed and was operated as of January 1, 1999.

(h) “Restudy” means the Comprehensive Review Study of the Central and Southern Florida Project, for which federal participation was authorized by the federal Water Resources Development Acts of 1992 and 1996 together with related Congressional resolutions and for which participation by the South Florida Water Management District is authorized by this section. The term includes all actions undertaken pursuant to the aforementioned authorizations which will result in recommendations for modifications or additions to the Central and Southern Florida Project.

(i) “Southern Corkscrew Regional Ecosystem Watershed Project” means the area described in the Critical Restoration Project Contract C-9906 Southern Corkscrew Regional Ecosystem Watershed Project Addition/Imperial River Flowway and approved by the South Florida Water Management District on August 12, 1999.

(j) "Water Preserve Areas" means those areas located only within Palm Beach and Broward counties that are designated as Water Preserve Areas, as approved by the South Florida Water Management District Governing Board on September 11, 1997, and shall also include all of those lands within Cell II of the East Coast Buffer in Broward County as delineated in the boundary survey prepared by Stoner and Associates, Inc., dated January 31, 2000, SWFWMD #10953.

(k) "Ten Mile Creek Project" means the Ten Mile Creek Water Preserve Area identified in the Central and Southern Florida Ecosystem Critical Project Letter Report dated April 13, 1998.

(2) The Legislature finds that the restudy is important for restoring the Everglades ecosystem and sustaining the environment, economy, and social well-being of South Florida. It is the intent of the Legislature to facilitate and support the restudy through a process concurrent with Federal Government review and Congressional authorization. Nothing in this section is intended in any way to limit federal agencies or Congress in the exercise of their duties and responsibilities. It is further the intent of the Legislature that all project components be implemented through the appropriate processes of this chapter and be consistent with the balanced policies and purposes of this chapter, specifically s. 373.016.

(3) The Legislature declares that the Kissimmee River Project, the Ten Mile Creek Project, the Water Preserve Areas, the Southern Corkscrew Regional Ecosystem Watershed Project, the Pal-Mar Project, and the C-111 Project are in the public interest, for a public purpose, and necessary for the public health and welfare. The governing board of the district is empowered and authorized to acquire fee title or easement by eminent domain for the limited purposes of implementing the Kissimmee River Project, the Ten Mile Creek Project, the Water Preserve Areas, the Southern Corkscrew Regional Ecosystem Watershed Project, the Pal-Mar Project, and the C-111 Project. Any acquisition of real property, including by eminent domain, for those objectives constitutes a public purpose for which it is in the public interest to expend public funds. Notwithstanding any provision of law to the contrary, such properties shall not be removed from the district's plan of acquisition, and the use of state funds for these properties is authorized. In the absence of willing sellers, any land necessary for implementing the projects in this subsection shall be acquired in accordance with state condemnation law pursuant to chapters 73 and 74.

(4) The district is authorized to act as local sponsor of the project for those project features within the district as provided in this subsection and subject to the oversight of the department as further provided in s. 373.026. The district may:

(a) Act as local sponsor for all project features previously authorized by Congress;

(b) Continue data gathering, analysis, research, and design of project components, participate in preconstruction engineering and design documents for project components, and further refine the Comprehensive Plan of the restudy as a guide and framework for identifying other project components;

(c) Construct pilot projects that will assist in determining the feasibility of technology included in the Comprehensive Plan of the restudy; and

(d) Act as local sponsor for project components.

(5) In its role as local sponsor for the project, the district shall comply with its responsibilities under this chapter and implement project components through appropriate provisions of this chapter. In the development of project components, the district shall:

(a) Analyze and evaluate all needs to be met in a comprehensive manner and consider all applicable water resource issues, including water supply, water quality, flood protection, threatened and endangered species, and other natural system and habitat needs;

(b) Determine with reasonable certainty that all project components are feasible based upon standard engineering practices and technologies and are the most efficient and cost-effective of feasible alternatives or combination of alternatives, consistent with restudy purposes, implementation of project components, and operation of the project;

(c) Determine with reasonable certainty that all project components are consistent with applicable law and regulations, and can be permitted and operated as proposed. For purposes of such determination:

1. The district shall convene a preapplication conference with all state and federal agencies with applicable regulatory jurisdiction;

2. State agencies with applicable regulatory jurisdiction shall participate in the preapplication conference and provide information necessary for the district's determination; and

3. The district shall request that federal agencies with applicable regulatory jurisdiction participate in the preapplication conference and provide information necessary for the district's determination;

(d) Consistent with this chapter, the purposes for the restudy provided in the Water Resources Development Act of 1996, and other applicable federal law, provide reasonable assurances that the quantity of water available to existing legal users shall not be diminished by implementation of project components so as to adversely impact existing legal users, that existing levels of service for flood protection will not be diminished outside the geographic area of the

project component, and that water management practices will continue to adapt to meet the needs of the restored natural environment.

(e) Ensure that implementation of project components is coordinated with existing utilities and public infrastructure and that impacts to and relocation of existing utility or public infrastructure are minimized.

(6) The department and the district shall expeditiously pursue implementation of project modifications previously authorized by Congress or the Legislature, including the Everglades Construction Project. Project components should complement and should not delay project modifications previously authorized.

(7) Notwithstanding any provision of this section, nothing herein shall be construed to modify or supplant the authority of the district or the department to prevent harm to the water resources as provided in this chapter.

(8) Final agency action with regard to any project component subject to s. 373.026(8)(b) shall be taken by the department. Actions taken by the district pursuant to subsection (5) shall not be considered final agency action. Any petition for formal proceedings filed pursuant to ss. 120.569 and 120.57 shall require a hearing under the summary hearing provisions of s. 120.574, which shall be mandatory. The final hearing under this section shall be held within 30 days after receipt of the petition by the Division of Administrative Hearings.

**History.**—s. 1, ch. 99-143; s. 15, ch. 2000-170.

### **373.171 Rules.—**

(1) In order to obtain the most beneficial use of the water resources of the state and to protect the public health, safety, and welfare and the interests of the water users affected, governing boards, by action not inconsistent with the other provisions of this law and without impairing property rights, may:

(a) Adopt rules or issue orders affecting the use of water, as conditions warrant, and forbidding the construction of new diversion facilities or wells, the initiation of new water uses, or the modification of any existing uses, diversion facilities, or storage facilities within the affected area.

(b) Regulate the use of water within the affected area by apportioning, limiting, or rotating uses of water or by preventing those uses which the governing board finds have ceased to be reasonable or beneficial.

(c) Issue orders and adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(2) In adopting rules and issuing orders under this law, the governing board shall act with a view to full protection of the existing rights to water in this state insofar as is consistent with the purpose of this law.

(3) No rule or order shall require any modification of existing use or disposition of water in the district unless it is shown that the use or disposition proposed to be modified is detrimental to other water users or to the water resources of the state.

(4) All rules adopted by the governing board shall be filed with the Department of State as provided in chapter 120. An information copy will be filed with the Department of Environmental Protection.

**History.**—s. 11, ch. 57-380; s. 8, ch. 63-336; ss. 10, 25, 35, ch. 69-106; s. 8, ch. 76-243; s. 1, ch. 77-117; s. 14, ch. 78-95; s. 256, ch. 94-356; s. 84, ch. 98-200.

**373.1725 Notice of intent by publication.**—In addition to rulemaking procedures required pursuant to chapter 120, the water management districts, when proposing to adopt, amend, or repeal any rule, shall provide notice of intent by publication in a newspaper of general circulation in the affected area. The publication notice shall summarize the proposed rule and shall occur at least 14 days prior to the intended action.

**History.**—s. 12, ch. 91-288.

### **373.175 Declaration of water shortage; emergency orders.—**

(1) The governing board of the district may by order declare that a water shortage exists within all or part of the district when insufficient ground or surface water is available to meet the needs of the users or when conditions are such as to require temporary reduction in total use within the area to protect water resources from serious harm.

(2) The governing board may impose such restrictions on one or more users of the water resource as may be necessary to protect the water resources of the area from serious harm.

(3) When a water shortage is declared, the governing board shall cause notice thereof to be published in a prominent place within a newspaper of general circulation throughout the area. Publication of such notice shall serve as notice to all users in the area of the condition of water shortage.

(4) If an emergency condition exists due to a water shortage within any area of the district and the executive director of the district, with the concurrence of the governing board, finds that the exercise of powers under this section

is not sufficient to protect the public health, safety, or welfare, the health of animals, fish, or aquatic life, a public water supply, or recreational, commercial, industrial, agricultural, or other reasonable uses, the executive director may, pursuant to the provisions of chapter 120, issue emergency orders reciting the existence of such an emergency and requiring that such action, including, but not limited to, apportioning, rotating, limiting, or prohibiting the use of the water resources of the district, be taken as the executive director, with the concurrence of the governing board, deems necessary to meet the emergency.

**History.**—s. 1, ch. 72-730; s. 25, ch. 73-190; s. 1, ch. 73-295; s. 14, ch. 78-95; s. 35, ch. 83-218; s. 597, ch. 95-148.

**Note.**—Former s. 378.152.

### **373.185 Local Xeriscape ordinances.—**

(1) As used in this section, the term:

(a) “Local government” means any county or municipality of the state.

(b) “Xeriscape” means a landscaping method that maximizes the conservation of water by the use of site-appropriate plants and an efficient watering system. The principles of Xeriscape include planning and design, appropriate choice of plants, soil analysis which may include the use of solid waste compost, efficient irrigation, practical use of turf, appropriate use of mulches, and proper maintenance.

(2) Each water management district shall design and implement an incentive program to encourage all local governments within its district to adopt new ordinances or amend existing ordinances to require Xeriscape landscaping for development permitted after the effective date of the new ordinance or amendment. Each district shall adopt rules governing the implementation of its incentive program and governing the review and approval of local government Xeriscape ordinances or amendments which are intended to qualify a local government for the incentive program. Each district shall assist the local governments within its jurisdiction by providing a model Xeriscape code and other technical assistance. A local government Xeriscape ordinance or amendment, in order to qualify the local government for a district’s incentive program, must include, at a minimum:

(a) Landscape design, installation, and maintenance standards that result in water conservation. Such standards shall address the use of plant groupings, soil analysis including the promotion of the use of solid waste compost, efficient irrigation systems, and other water-conserving practices.

(b) Identification of prohibited invasive exotic plant species.

(c) Identification of controlled plant species, accompanied by the conditions under which such plants may be used.

(d) A provision specifying the maximum percentage of turf and the maximum percentage of impervious surfaces allowed in a xeriscaped area and addressing the practical selection and installation of turf.

(e) Specific standards for land clearing and requirements for the preservation of existing native vegetation.

(f) A monitoring program for ordinance implementation and compliance.

The districts also shall work with local governments to promote, through educational programs and publications, the use of Xeriscape practices, including the use of solid waste compost, in existing residential and commercial development. This section may not be construed to limit the authority of the districts to require Xeriscape ordinances or practices as a condition of any consumptive use permit.

**History.**—s. 3, ch. 91-41; s. 3, ch. 91-68.

### **373.196 Legislative findings.—**

(1) It is the finding of the Legislature that cooperative efforts between municipalities, counties, water management districts, and the Department of Environmental Protection are mandatory in order to meet the water needs of rapidly urbanizing areas in a manner which will supply adequate and dependable supplies of water where needed without resulting in adverse effects upon the areas from whence such water is withdrawn. Such efforts should utilize all practical means of obtaining water, including, but not limited to, withdrawals of surface water and groundwater, recycling of waste water, and desalinization, and will necessitate not only cooperation but also well-coordinated activities. The purpose of this act is to provide additional statutory authority for such cooperative and coordinated efforts.

(2) Municipalities and counties are encouraged to create regional water supply authorities as authorized herein. It is further the intent that municipalities, counties, and regional water supply authorities are to have the primary responsibility for water supply, and water management districts and their basin boards are to engage only in those

functions that are incidental to the exercise of their flood control and water management powers or that are related to water resource development pursuant to s. 373.0831.

(3) Nothing herein shall be construed to preclude the various municipalities and counties from continuing to operate existing water production and transmission facilities or to enter into cooperative agreements with other municipalities and counties for the purpose of meeting their respective needs for dependable and adequate supplies of water, provided the obtaining of water through such operations shall not be done in a manner which results in adverse effects upon the areas from whence such water is withdrawn.

**History.**—s. 1, ch. 74-114; s. 43, ch. 79-65; s. 257, ch. 94-356; s. 2, ch. 98-88.

### **373.1961 Water production.—**

(1) In the performance of, and in conjunction with, its other powers and duties, the governing board of a water management district existing pursuant to this chapter:

(a) Shall engage in planning to assist counties, municipalities, private utilities, or regional water supply authorities in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas. As used in this section, regional water supply authorities are regional water authorities created under s. 373.1962 or other laws of this state.

(b) Shall assist counties, municipalities, private utilities, or water supply authorities in meeting water supply needs in such manner as will give priority to encouraging conservation and reducing adverse environmental effects of improper or excessive withdrawals of water from concentrated areas.

(c) May establish, design, construct, operate, and maintain water production and transmission facilities for the purpose of supplying water to counties, municipalities, private utilities, or regional water supply authorities. The permit required by part II of this chapter for a water management district engaged in water production and transmission shall be granted, denied, or granted with conditions by the department.

(d) Shall not engage in local distribution.

(e) Shall not deprive, directly or indirectly, any county wherein water is withdrawn of the prior right to the reasonable and beneficial use of water which is required to supply adequately the reasonable and beneficial needs of the county or any of the inhabitants or property owners therein.

(f) May provide water and financial assistance to regional water supply authorities, but may not provide water to counties and municipalities which are located within the area of such authority without the specific approval of the authority or, in the event of the authority's disapproval, the approval of the Governor and Cabinet sitting as the Land and Water Adjudicatory Commission. The district may supply water at rates and upon terms mutually agreed to by the parties or, if they do not agree, as set by the governing board and specifically approved by the Governor and Cabinet sitting as the Land and Water Adjudicatory Commission.

(g) May acquire title to such interest as is necessary in real property, by purchase, gift, devise, lease, eminent domain, or otherwise, for water production and transmission consistent with this section. However, the district shall not use any of the eminent domain powers herein granted to acquire water and water rights already devoted to reasonable and beneficial use or any water production or transmission facilities owned by any county, municipality, or regional water supply authority. The district may exercise eminent domain powers outside of its district boundaries for the acquisition of pumpage facilities, storage areas, transmission facilities, and the normal appurtenances thereto, provided that at least 45 days prior to the exercise of eminent domain, the district notifies the district where the property is located after public notice and the district where the property is located does not object within 45 days after notification of such exercise of eminent domain authority.

(h) In addition to the power to issue revenue bonds pursuant to s. 373.584, may issue revenue bonds for the purposes of paying the costs and expenses incurred in carrying out the purposes of this chapter or refunding obligations of the district issued pursuant to this section. Such revenue bonds shall be secured by, and be payable from, revenues derived from the operation, lease, or use of its water production and transmission facilities and other water-related facilities and from the sale of water or services relating thereto. Such revenue bonds may not be secured by, or be payable from, moneys derived by the district from the Water Management Lands Trust Fund or from ad valorem taxes received by the district. All provisions of s. 373.584 relating to the issuance of revenue bonds which are not inconsistent with this section shall apply to the issuance of revenue bonds pursuant to this section. The district may also issue bond anticipation notes in accordance with the provisions of s. 373.584.

(i) May join with one or more other water management districts, counties, municipalities, private utilities, or regional water supply authorities for the purpose of carrying out any of its powers, and may contract with such other entities to finance acquisitions, construction, operation, and maintenance. The contract may provide for contributions to

be made by each party thereto, for the division and apportionment of the expenses of acquisitions, construction, operation, and maintenance, and for the division and apportionment of the benefits, services, and products therefrom. The contracts may contain other covenants and agreements necessary and appropriate to accomplish their purposes.

(2) The Legislature finds that, due to a combination of factors, vastly increased demands have been placed on natural supplies of fresh water, and that, absent increased development of alternative water supplies, such demands may increase in the future. The Legislature also finds that potential exists in the state for the production of significant quantities of alternative water supplies, including reclaimed water, and that water production includes the development of alternative water supplies, including reclaimed water, for appropriate uses. It is the intent of the Legislature that utilities develop reclaimed water systems, where reclaimed water is the most appropriate alternative water supply option, to deliver reclaimed water to as many users as possible through the most cost-effective means, and to construct reclaimed water system infrastructure to their owned or operated properties and facilities where they have reclamation capability. It is also the intent of the Legislature that the water management districts which levy ad valorem taxes for water management purposes should share a percentage of those tax revenues with water providers and users, including local governments, water, wastewater, and reuse utilities, municipal, industrial, and agricultural water users, and other public and private water users, to be used to supplement other funding sources in the development of alternative water supplies. The Legislature finds that public moneys or services provided to private entities for such uses constitute public purposes which are in the public interest. In order to further the development and use of alternative water supply systems, including reclaimed water systems, the Legislature provides the following:

(a) The governing boards of the water management districts where water resource caution areas have been designated shall include in their annual budgets an amount for the development of alternative water supply systems, including reclaimed water systems, pursuant to the requirements of this subsection. Beginning in 1996, such amounts shall be made available to water providers and users no later than December 31 of each year, through grants, matching grants, revolving loans, or the use of district lands or facilities pursuant to the requirements of this subsection and guidelines established by the districts.

(b) It is the intent of the Legislature that for each reclaimed water utility, or any other utility, which receives funds pursuant to this subsection, the appropriate rate-setting authorities should develop rate structures for all water, wastewater, and reclaimed water and other alternative water supply utilities in the service area of the funded utility, which accomplish the following:

1. Provide meaningful progress toward the development and implementation of alternative water supply systems, including reclaimed water systems;
2. Promote the conservation of fresh water withdrawn from natural systems;
3. Provide for an appropriate distribution of costs for all water, wastewater, and alternative water supply utilities, including reclaimed water utilities, among all of the users of those utilities; and
4. Prohibit rate discrimination within classes of utility users.

(c) In order to be eligible for funding pursuant to this subsection, a project must be consistent with a local government comprehensive plan and the governing body of the local government must require all appropriate new facilities within the project's service area to connect to and use the project's alternative water supplies. The appropriate local government must provide written notification to the appropriate district that the proposed project is consistent with the local government comprehensive plan.

(d) Any and all revenues disbursed pursuant to this subsection shall be applied only for the payment of capital or infrastructure costs for the construction of alternative water supply systems that provide alternative water supplies for uses within one or more water resource caution areas.

(e) By January 1 of each year, the governing boards shall make available written guidelines for the disbursement of revenues pursuant to this subsection. Such guidelines shall include at minimum:

1. An application process and a deadline for filing applications annually.
2. A process for determining project eligibility pursuant to the requirements of paragraphs (c) and (d).
3. A process and criteria for funding projects pursuant to this subsection that cross district boundaries or that serve more than one district.

(f) The governing board of each water management district shall establish an alternative water supplies grants advisory committee to recommend to the governing board projects for funding pursuant to this subsection. The advisory committee members shall include, but not be limited to, one or more representatives of county, municipal, and investor-owned private utilities, and may include, but not be limited to, representatives of agricultural interests and environmental interests. Each committee member shall represent his or her interest group as a whole and shall not represent any specific entity. The committee shall apply the guidelines and project eligibility criteria established by the governing board in reviewing proposed projects. After one or more hearings to solicit public input on eligible projects,

the committee shall rank the eligible projects and shall submit them to the governing board for final funding approval. The advisory committee may submit to the governing board more projects than the available grant money would fund.

(g) All revenues made available annually pursuant to this subsection must be disbursed annually by the governing board if it approves projects sufficient to expend the available revenues.

(h) For purposes of this subsection, alternative water supplies are supplies of water that have been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses, or are supplies of stormwater, or brackish or salt water, that have been treated in accordance with applicable rules and standards sufficient to supply the intended use.

(i) This subsection shall not be subject to the rulemaking requirements of chapter 120.

(j) By January 30 of each year, each water management district shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which accounts for the disbursal of all budgeted amounts pursuant to this subsection. Such report shall describe all projects funded and shall account separately for moneys provided through grants, matching grants, revolving loans, and the use of district lands or facilities.

**History.**—s. 2, ch. 74-114; s. 14, ch. 76-243; s. 7, ch. 82-101; s. 2, ch. 87-347; s. 7, ch. 95-323.

### **373.1962 Regional water supply authorities.—**

(1) By agreement between local governmental units created or existing pursuant to the provisions of Art. VIII of the State Constitution, pursuant to the Florida Interlocal Cooperation Act of 1969, s. 163.01, and upon the approval of the Secretary of Environmental Protection to ensure that such agreement will be in the public interest and complies with the intent and purposes of this act, regional water supply authorities may be created for the purpose of developing, recovering, storing, and supplying water for county or municipal purposes in such a manner as will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas. In approving said agreement the Secretary of Environmental Protection shall consider, but not be limited to, the following:

(a) Whether the geographic territory of the proposed authority is of sufficient size and character to reduce the environmental effects of improper or excessive withdrawals of water from concentrated areas.

(b) The maximization of economic development of the water resources within the territory of the proposed authority.

(c) The availability of a dependable and adequate water supply.

(d) The ability of any proposed authority to design, construct, operate, and maintain water supply facilities in the locations, and at the times necessary, to ensure that an adequate water supply will be available to all citizens within the authority.

(e) The effect or impact of any proposed authority on any municipality, county, or existing authority or authorities.

(f) The existing needs of the water users within the area of the authority.

(2) In addition to other powers and duties agreed upon, and notwithstanding the provisions of s. 163.01, such authority may:

(a) Upon approval of the electors residing in each county or municipality within the territory to be included in any authority, levy ad valorem taxes, not to exceed 0.5 mill, pursuant to s. 9(b), Art. VII of the State Constitution. No tax authorized by this paragraph shall be levied in any county or municipality without an affirmative vote of the electors residing in such county or municipality.

(b) Acquire water and water rights; develop, store, and transport water; provide, sell and deliver water for county or municipal uses and purposes; provide for the furnishing of such water and water service upon terms and conditions and at rates which will apportion to parties and nonparties an equitable share of the capital cost and operating expense of the authority's work to the purchaser.

(c) Collect, treat, and recover wastewater.

(d) Not engage in local distribution.

(e) Exercise the power of eminent domain in the manner provided by law for the condemnation of private property for public use to acquire title to such interest in real property as is necessary to the exercise of the powers herein granted, except water and water rights already devoted to reasonable and beneficial use or any water production or transmission facilities owned by any county or municipality.

(f) Issue revenue bonds in the manner prescribed by the Revenue Bond Act of 1953, as amended, part I, chapter 159, to be payable solely from funds derived from the sale of water by the authority to any county or municipality. Such bonds may be additionally secured by the full faith and credit of any county or municipality, as provided by s. 159.16 or by a pledge of excise taxes, as provided by s. 159.19. For the purpose of issuing revenue bonds, an authority

shall be considered a “unit” as defined in s. 159.02(2) and as that term is used in the Revenue Bond Act of 1953, as amended. Such bonds may be issued to finance the cost of acquiring properties and facilities for the production and transmission of water by the authority to any county or municipality, which cost shall include the acquisition of real property and easements therein for such purposes. Such bonds may be in the form of refunding bonds to take up any outstanding bonds of the authority or of any county or municipality where such outstanding bonds are secured by properties and facilities for production and transmission of water, which properties and facilities are being acquired by the authority. Refunding bonds may be issued to take up and refund all outstanding bonds of said authority that are subject to call and termination, and all bonds of said authority that are not subject to call or redemption, when the surrender of said bonds can be procured from the holder thereof at prices satisfactory to the authority. Such refunding bonds may be issued at any time when, in the judgment of the authority, it will be to the best interest of the authority financially or economically by securing a lower rate of interest on said bonds or by extending the time of maturity of said bonds or, for any other reason, in the judgment of the authority, advantageous to said authority.

(g) Sue and be sued in its own name.

(h) Borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness.

(i) Join with one or more other public corporations for the purpose of carrying out any of its powers and for that purpose to contract with such other public corporation or corporations for the purpose of financing such acquisitions, construction, and operations. Such contracts may provide for contributions to be made by each party thereto, for the division and apportionment of the expenses of such acquisitions and operations, and for the division and apportionment of the benefits, services, and products therefrom. Such contract may contain such other and further covenants and agreements as may be necessary and convenient to accomplish the purposes hereof.

(3) A regional water supply authority is authorized to develop, construct, operate, maintain, or contract for alternative sources of potable water, including desalinated water, and pipelines to interconnect authority sources and facilities, either by itself or jointly with a water management district; however, such alternative potable water sources, facilities, and pipelines may also be privately developed, constructed, owned, operated, and maintained, in which event an authority and a water management district are authorized to pledge and contribute their funds to reduce the wholesale cost of water from such alternative sources of potable water supplied by an authority to its member governments.

(4) When it is found to be in the public interest, for the public convenience and welfare, for a public benefit, and necessary for carrying out the purpose of any regional water supply authority, any state agency, county, water control district existing pursuant to chapter 298, water management district existing pursuant to this chapter, municipality, governmental agency, or public corporation in this state holding title to any interest in land is hereby authorized, in its discretion, to convey the title to or dedicate land, title to which is in such entity, including tax-reverted land, or to grant use-rights therein, to any regional water supply authority created pursuant to this section. Land granted or conveyed to such authority shall be for the public purposes of such authority and may be made subject to the condition that in the event said land is not so used, or if used and subsequently its use for said purpose is abandoned, the interest granted shall cease as to such authority and shall automatically revert to the granting entity.

(5) Each county or municipality which is a party to an agreement pursuant to subsection (1) shall have a preferential right to purchase water from the regional water supply authority for use by such county or municipality.

(6) In carrying out the provisions of this section, any county wherein water is withdrawn by the authority shall not be deprived, directly or indirectly, of the prior right to the reasonable and beneficial use of water which is required adequately to supply the reasonable and beneficial needs of the county or any of the inhabitants or property owners therein.

(7) Upon a resolution adopted by the governing body of any county or municipality, the authority may, subject to a majority vote of its voting members, include such county or municipality in its regional water supply authority upon such terms and conditions as may be prescribed.

(8) The authority shall design, construct, operate, and maintain facilities in the locations and at the times necessary to ensure that an adequate water supply will be available to all citizens within the authority.

(9) Where a water supply authority exists pursuant to this section or s. 373.1963 under a voluntary interlocal agreement that is consistent with requirements in s. 373.1963(1)(b) and receives or maintains consumptive use permits under this voluntary agreement consistent with the water supply plan, if any, adopted by the governing board, such authority shall be exempt from consideration by the governing board or department of the factors specified in s. 373.223(3)(a)-(g) and the submissions required by s. 373.229(3). Such exemptions shall apply only to water sources within the jurisdictional areas of such voluntary water supply interlocal agreements.

**History.**—s. 7, ch. 74-114; s. 1, ch. 77-174; s. 35, ch. 79-5; s. 1, ch. 86-22; s. 258, ch. 94-356; s. 29, ch. 97-160; s. 3, ch. 98-88.

**373.1963 Assistance to West Coast Regional Water Supply Authority.—**

(1) It is the intent of the Legislature to authorize the implementation of changes in governance recommended by the West Coast Regional Water Supply Authority in its reports to the Legislature dated February 1, 1997, and January 5, 1998. The authority and its member governments may reconstitute the authority's governance and rename the authority under a voluntary interlocal agreement with a term of not less than 20 years. The interlocal agreement must comply with this subsection as follows:

(a) The authority and its member governments agree that cooperative efforts are mandatory to meet their water needs in a manner that will provide adequate and dependable supplies of water where needed without resulting in adverse environmental effects upon the areas from which the water is withdrawn or otherwise produced.

(b) In accordance with s. 4, Art. VIII of the State Constitution and notwithstanding s. 163.01, the interlocal agreement may include the following terms, which are considered approved by the parties without a vote of their electors, upon execution of the interlocal agreement by all member governments and upon satisfaction of all conditions precedent in the interlocal agreement:

1. All member governments shall relinquish to the authority their individual rights to develop potable water supply sources, except as otherwise provided in the interlocal agreement;

2. The authority shall be the sole and exclusive wholesale potable water supplier for all member governments; and

3. The authority shall have the absolute and unequivocal obligation to meet the wholesale needs of the member governments for potable water.

4. A member government may not restrict or prohibit the use of land within a member's jurisdictional boundaries by the authority for water supply purposes through use of zoning, land use, comprehensive planning, or other form of regulation.

5. A member government may not impose any tax, fee, or charge upon the authority in conjunction with the production or supply of water not otherwise provided for in the interlocal agreement.

6. The authority may use the powers provided in part II of chapter 159 for financing and refinancing water treatment, production, or transmission facilities, including, but not limited to, desalinization facilities. All such water treatment, production, or transmission facilities are considered a "manufacturing plant" for purposes of s. 159.27(5) and serve a paramount public purpose by providing water to citizens of the state.

7. A member government and any governmental or quasi-judicial board or commission established by local ordinance or general or special law where the governing membership of such board or commission is shared, in whole or in part, or appointed by a member government agreeing to be bound by the interlocal agreement shall be limited to the procedures set forth therein regarding actions that directly or indirectly restrict or prohibit the use of lands or other activities related to the production or supply of water.

(c) The authority shall acquire full or lesser interests in all regionally significant member government wholesale water supply facilities and tangible assets and each member government shall convey such interests in the facilities and assets to the authority, at an agreed value.

(d) The authority shall charge a uniform per gallon wholesale rate to member governments for the wholesale supply of potable water. All capital, operation, maintenance, and administrative costs for existing facilities and acquired facilities, authority master water plan facilities, and other future projects must be allocated to member governments based on water usage at the uniform per gallon wholesale rate.

(e) The interlocal agreement may include procedures for resolving the parties' differences regarding water management district proposed agency action in the water use permitting process within the authority. Such procedures should minimize the potential for litigation and include alternative dispute resolution. Any governmental or quasi-judicial board or commission established by local ordinance or general or special law where the governing members of such board or commission is shared, in whole or in part, or appointed by a member government, may agree to be bound by the dispute resolution procedures set forth in the interlocal agreement.

(f) Upon execution of the voluntary interlocal agreement provided for herein, the authority shall jointly develop with the Southwest Florida Water Management District alternative sources of potable water and transmission pipelines to interconnect regionally significant water supply sources and facilities of the authority in amounts sufficient to meet the needs of all member governments for a period of at least 20 years and for natural systems. Nothing herein, however, shall preclude the authority and its member governments from developing traditional water sources pursuant to the voluntary interlocal agreement. Development and construction costs for alternative source facilities, which may include a desalination facility and significant regional interconnects, must be borne as mutually agreed to by both the authority and the Southwest Florida Water Management District. Nothing herein shall preclude authority or district cost sharing with private entities for the construction or ownership of alternative source facilities. By December 31, 1997, the authority and the Southwest Florida Water Management District shall:

1. Enter into a mutually acceptable agreement detailing the development and implementation of directives contained in this paragraph; or
2. Jointly prepare and submit to the President of the Senate and the Speaker of the House of Representatives a report describing the progress made and impediments encountered in their attempts to implement the water resource development and water supply development directives contained in this paragraph.

Nothing in this section shall be construed to modify the rights or responsibilities of the authority or its member governments, except as otherwise provided herein, or of the Southwest Florida Water Management District or the department pursuant to this chapter or chapter 403 and as otherwise set forth by statutes.

(g) Unless otherwise provided in the interlocal agreement, the authority shall be governed by a board of commissioners consisting of nine voting members, all of whom must be elected officers, as follows:

1. Three members from Hillsborough County who must be selected by the county commission; provided, however, that one member shall be selected by the Mayor of Tampa in the event that the City of Tampa elects to be a member of the authority;
2. Three members from Pasco County, two of whom must be selected by the county commission and one of whom must be selected by the City Council of New Port Richey;
3. Three members from Pinellas County, two of whom must be selected by the county commission and one of whom must be selected by the City Council of St. Petersburg.

Except as otherwise provided in this section or in the voluntary interlocal agreement between the member governments, a majority vote shall bind the authority and its member governments in all matters relating to the funding of wholesale water supply, production, delivery, and related activities.

(2) The provisions of this section supersede any conflicting provisions contained in all other general or special laws or provisions thereof as they may apply directly or indirectly to the exclusivity of water supply or withdrawal of water, including provisions relating to the environmental effects, if any, in conjunction with the production and supply of potable water, and the provisions of this section are intended to be a complete revision of all laws related to a regional water supply authority created under s. 373.1962 and this section.

(3) In lieu of the provisions in s. 373.1962(2)(a), the Southwest Florida Water Management District shall assist the West Coast Regional Water Supply Authority for a period of 5 years, terminating December 31, 1981, by levying an ad valorem tax, upon request of the authority, of not more than 0.05 mill on all taxable property within the limits of the authority. During such period the corresponding basin board ad valorem tax levies shall be reduced accordingly.

(4) The authority shall prepare its annual budget in the same manner as prescribed for the preparation of basin budgets, but such authority budget shall not be subject to review by the respective basin boards or by the governing board of the district.

(5) The annual millage for the authority shall be the amount required to raise the amount called for by the annual budget when applied to the total assessment on all taxable property within the limits of the authority, as determined for county taxing purposes.

(6) The authority may, by resolution, request the governing board of the district to levy ad valorem taxes within the boundaries of the authority. Upon receipt of such request, together with formal certification of the adoption of its annual budget and of the required tax levy, the authority tax levy shall be made by the governing board of the district to finance authority functions.

(7) The taxes provided for in this section shall be extended by the property appraiser on the county tax roll in each county within, or partly within, the authority boundaries and shall be collected by the tax collector in the same manner and time as county taxes, and the proceeds therefrom paid to the district which shall forthwith pay them over to the authority. Until paid, such taxes shall be a lien on the property against which assessed and enforceable in like manner as county taxes. The property appraisers, tax collectors, and clerks of the circuit court of the respective counties shall be entitled to compensation for services performed in connection with such taxes at the same rates as apply to county taxes.

(8) The governing board of the district shall not be responsible for any actions or lack of actions by the authority.

**History.**—s. 13, ch. 76-243; s. 1, ch. 77-174; s. 4, ch. 96-339; s. 30, ch. 97-160; s. 2, ch. 98-402.

### **373.199 Florida Forever Water Management District Work Plan.—**

(1) Over the years, the Legislature has created numerous programs and funded several initiatives intended to restore, conserve, protect, and manage Florida's water resources and the lands and ecosystems associated with them.

Although these programs and initiatives have yielded individual successes, the overall quality of Florida's water resources continues to degrade; natural systems associated with surface waters continue to be altered or have not been restored to a fully functioning level; and sufficient quantities of water for current and future reasonable beneficial uses and for natural systems remain in doubt.

(2) Therefore, in order to further the goals of the Florida Forever Act each water management district shall develop a 5-year work plan that identifies projects that meet the criteria in subsections (3), (4), and (5).

(3) In developing the list, each water management district shall:

(a) Integrate its existing surface water improvement and management plans, Save Our Rivers land acquisition lists, stormwater management projects, proposed water resource development projects, proposed water body restoration projects, proposed capital improvement projects necessary to promote reclamation, storage, or recovery of water, and other properties or activities that would assist in meeting the goals of Florida Forever.

(b) Work cooperatively with the applicable ecosystem management area teams and other citizen advisory groups, the Department of Environmental Protection and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, the Department of Community Affairs, the Department of Transportation, other state agencies, and federal agencies, where applicable.

(4) The list submitted by the districts shall include, where applicable, the following information for each project:

(a) A description of the water body system, its historical and current uses, and its hydrology; a history of the conditions which have led to the need for restoration or protection; and a synopsis of restoration efforts that have occurred to date, if applicable.

(b) An identification of all governmental units that have jurisdiction over the water body and its drainage basin within the approved surface water improvement and management plan area, including local, regional, state, and federal units.

(c) A description of land uses within the project area's drainage basin, and of important tributaries, point and nonpoint sources of pollution, and permitted discharge activities associated with that basin.

(d) A description of strategies and potential strategies, including improved stormwater management, for restoring or protecting the water body to Class III or better surface water quality status.

(e) A listing and synopsis of studies that are being or have been prepared for the water body, stormwater management project, or water resource development project.

(f) A description of the measures needed to manage and maintain the water body once it has been restored and to prevent future degradation, to manage and maintain the stormwater management system, or to manage and maintain the water resource development project.

(g) A schedule for restoration and protection of the water body, implementation of the stormwater management project, or development of the water resource development project.

(h) An estimate of the funding needed to carry out the restoration, protection, or improvement project, or the development of new water resources, where applicable, and the projected sources of the funding.

(i) Numeric performance measures for each project. Each performance measure shall include a baseline measurement, which is the current situation; a performance standard, which water management district staff anticipates the project will achieve; and the performance measurement itself, which should reflect the incremental improvements the project accomplishes towards achieving the performance standard. These measures shall reflect the relevant goals detailed in s. 259.105(4).

(j) A discussion of permitting and other regulatory issues related to the project.

(k) An identification of the proposed public access for projects with land acquisition components.

(l) An identification of those lands which require a full fee simple interest to achieve water management goals and those lands which can be acquired using alternatives to fee simple acquisition techniques and still achieve such goals. In their evaluation of which lands would be appropriate for acquisition through alternatives to fee simple, district staff shall consider criteria including, but not limited to, acquisition costs, the net present value of future land management costs, the net present value of ad valorem revenue loss to the local government, and potential for revenue generated from activities compatible with acquisition objectives.

(m) An identification of lands needed to protect or recharge groundwater and a plan for their acquisition as necessary to protect potable water supplies. Lands which serve to protect or recharge groundwater identified pursuant to this paragraph shall also serve to protect other valuable natural resources or provide space for natural resource based recreation.

(5) The list of projects shall indicate the relative significance of each project within the particular water management district's boundaries, and the schedule of activities and sums of money earmarked should reflect those rankings as much as possible over a 5-year planning horizon.

(6) Each district shall remove the property of an unwilling seller from its 5-year work plan at the next scheduled update of the plan, if in receipt of a request to do so by the property owner.

(7) By June 1, 2001, each district shall file with the President of the Senate, the Speaker of the House of Representatives, and the Secretary of Environmental Protection the initial 5-year work plan as required under subsection (2). By January 1 of each year thereafter, each district shall file with the President of the Senate, the Speaker of the House of Representatives, and the Secretary of Environmental Protection a report of acquisitions completed during the year together with modifications or additions to its 5-year work plan. Included in the report shall be:

(a) A description of land management activity for each property or project area owned by the water management district.

(b) A list of any lands surplus and the amount of compensation received.

(c) The progress of funding, staffing, and resource management of every project funded pursuant to s. 259.101, s. 259.105, or s. 373.59 for which the district is responsible.

The secretary shall submit the report referenced in this subsection to the Board of Trustees of the Internal Improvement Trust Fund together with the Acquisition and Restoration Council's project list as required under s. 259.105.

**History.**—s. 36, ch. 99-247; s. 16, ch. 2000-170.

**373.1995 Florida Forever performance measures.**—The five water management districts shall jointly provide a report by December 15, 2000, to the Secretary of Environmental Protection, which shall establish specific goals and performance measures that may be used to analyze activities funded pursuant to s. 259.105(3)(a). The report shall, at a minimum, be based on those goals and performance measures identified in s. 259.105(4). The secretary shall forward the report to the Board of Trustees of the Internal Improvement Trust Fund for their approval. After approval by the board of trustees, the secretary shall forward the approved report to the President of the Senate and the Speaker of the House of Representatives, prior to the beginning of the 2001 Regular Legislative Session, for review by the substantive legislative committee from which the Florida Forever Act originated, or its successor. The Legislature may reject, modify, or take no action relative to the goals and performance measures established by the report. If no action is taken, the goals and performance measures established in the report shall be implemented.

**History.**—s. 17, ch. 2000-170.

**373.200 Seminole Tribe Water Rights Compact.**—Pursuant to the provisions of s. 285.165, the South Florida Water Management District is authorized to act in accordance with the Seminole Tribe Water Rights Compact incorporated by reference therein.

**History.**—s. 6, ch. 2000-133.

## PART II PERMITTING OF CONSUMPTIVE USES OF WATER

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**373.203 Definitions.—**

- (1) “Abandoned artesian well” is defined as an artesian well:
  - (a) That does not have a properly functioning valve;
  - (b) The use of which has been permanently discontinued;
  - (c) That does not meet current well construction standards;
  - (d) That is discharging water containing greater than 500 milligrams per liter of chlorides into a drinking water aquifer;
  - (e) That is in such a state of disrepair that it cannot be used for its intended purpose without having an adverse impact upon an aquifer which serves as a source of drinking water or which is likely to be such a source in the future; or
  - (f) That does not have proper flow control on or below the land surface.

(2) An “artesian well” is defined as an artificial hole in the ground from which water supplies may be obtained and which penetrates any water-bearing rock, the water in which is raised to the surface by natural flow, or which rises to an elevation above the top of the water-bearing bed. “Artesian wells” are defined further to include all holes, drilled as a source of water, that penetrate any water-bearing beds that are a part of the artesian water system of Florida, as determined by representatives of the Florida Geological Survey or the Department of Environmental Protection.

(3) “Plugging” is defined as plugging, capping, or otherwise controlling a well as deemed appropriate by the department or by the appropriate water management district.

(4) “Waste” is defined to be the causing, suffering, or permitting any water flowing from, or being pumped from, an artesian well to run into any river, creek, or other natural watercourse or channel, or into any bay or pond (unless used thereafter for the beneficial purposes of irrigation of land, mining, or other industrial purposes of domestic use), or into any street, road or highway, or upon the land of any person, or upon the public lands of the United States or of the state, unless it is used thereon for the beneficial purposes of the irrigation thereof, industrial purposes, domestic use, or the propagation of fish. The use of any water flowing from an artesian well for the irrigation of land shall be restricted to a minimum by the use of proper structural devices in the irrigation system.

**History.**—ss. 3, 4, ch. 28253, 1953; s. 1, ch. 59-248; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 44, ch. 79-65; s. 6, ch. 83-310; s. 261, ch. 94-356.

**Note.**—Former ss. 370.051, 373.021.

**373.206 Artesian wells; flow regulated.**—Every person, stock company, association, corporation, county, or municipality owning or controlling the real estate upon which is located a flowing artesian well in this state shall, within 90 days after June 15, 1953, provide each such well with a valve capable of controlling the discharge from the well and shall keep the valve so adjusted that only a supply of water is available which is necessary for ordinary use by the owner, tenant, occupant, or person in control of the land for personal use and for conducting his or her business. Upon the determination by the Department of Environmental Protection or the appropriate water management district that the water in an artesian well is of such poor quality as to have an adverse impact upon an aquifer or other water body which serves as a source of public drinking water or which is likely to be such a source in the future, such well shall be plugged in accordance with department or appropriate water management district specifications for well plugging.

**History.**—s. 1, ch. 28253, 1953; s. 1, ch. 65-460; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 45, ch. 79-65; s. 7, ch. 83-310; s. 262, ch. 94-356; s. 1009, ch. 95-148.

**Note.**—Former ss. 370.052, 373.031.

**373.207 Abandoned artesian wells.—**

- (1) Each water management district shall develop a work plan which identifies the location of all known abandoned artesian wells within its jurisdictional boundaries and defines the actions which the district must take in order to ensure that each such well is plugged on or before January 1, 1992. The work plan shall include the following:
  - (a) An initial inventory which accounts for all known abandoned artesian wells in the district.
  - (b) The location and owner of each known abandoned well.
  - (c) The methodology proposed by the district to accomplish the plugging of all known abandoned wells within the district on or before January 1, 1992.
  - (d) Data relating to costs to be incurred for the plugging of all wells, including the per-well cost and personnel costs.
  - (e) A schedule of priority for the plugging of wells, which schedule is established to mitigate damage to the groundwater resource due to water quality degradation.
- (2) Each water management district shall submit an annual update of its work plan to the Secretary of Environmental Protection by January 1 of each year, until all wells identified by the plan are plugged.

**History.**—s. 8, ch. 83-310; s. 263, ch. 94-356.

**373.209 Artesian wells; penalties for violation.—**

- (1) No owner, tenant, occupant, or person in control of an artesian well shall knowingly and intentionally:
  - (a) Allow the well to flow continuously without a valve or mechanical device for checking or controlling the flow.
  - (b) Permit the water to flow unnecessarily.
  - (c) Pump a well unnecessarily.
  - (d) Permit the water from the well to go to waste.
- (2) A well is exempt from the provisions of this section unless the Department of Environmental Protection can show that the uncontrolled flow of water from the well does not have a reasonable-beneficial use, as defined in s. 373.019.
- (3) Any person who violates any provision of this section shall be subject to either:
  - (a) The remedial measures provided for in s. 373.436; or
  - (b) A civil penalty of \$100 a day for each and every day of such violation and for each and every act of violation. The civil penalty may be recovered by the water management board of the water management district in which the well is located or by the department in a suit in a court of competent jurisdiction in the county where the defendant resides, in the county of residence of any defendant if there is more than one defendant, or in the county where the violation took place. The place of suit shall be selected by the board or department, and the suit, by direction of the board or department, shall be instituted and conducted in the name of the board or department by appropriate counsel. The payment of any such damages does not impair or abridge any cause of action which any person may have against the person violating any provision of this section.
- (4) The penalties provided by this section shall apply notwithstanding any provisions of law to the contrary.

**History.**—s. 2, ch. 28253, 1953; s. 323, ch. 71-136; s. 25, ch. 73-190; s. 1, ch. 74-279; s. 46, ch. 79-65; s. 146, ch. 79-400; s. 264, ch. 94-356; s. 93, ch. 95-143; s. 8, ch. 98-88.

**Note.**—Former ss. 370.053, 373.041.

**373.213 Certain artesian wells exempt.—**Nothing in ss. 373.203, 373.206, 373.209, or this section shall be construed to apply to an artesian well feeding a lake already in existence prior to June 15, 1953, which lake is used or intended to be used for public bathing and/or the propagation of fish, where the continuous flow of water is necessary to maintain its purity for bathing and the water level of said lake for fish.

**History.**—s. 6, ch. 28253, 1953; s. 25, ch. 73-190; s. 167, ch. 99-13.

**Note.**—Former ss. 370.055, 373.061.

**373.216 Implementation of program for regulating the consumptive use of water.—**The governing board of each water management district shall, no later than October 31, 1983, implement a program for the issuance of permits authorizing the consumptive use of particular quantities of water covering those areas deemed appropriate by the governing board. Appropriate monitoring efforts shall be a part of any such program implemented. Notice of any required hearing on the proposed implementation of these regulations shall be published at least once a week for 2 weeks in a newspaper of general circulation in the area to be affected by such regulations, the last notice appearing no less than 10 days prior to the date of the public hearing, in addition to any notice required by chapter 120.

**History.**—s. 1, part II, ch. 72-299; s. 8, ch. 73-190; s. 14, ch. 78-95; s. 8, ch. 82-101.

**373.217 Superseded laws and regulations.—**

(1) It is the intent of the Legislature to provide a means whereby reasonable programs for the issuance of permits authorizing the consumptive use of particular quantities of water may be authorized by the Department of Environmental Protection, subject to judicial review and also subject to review by the Governor and Cabinet, sitting as the Land and Water Adjudicatory Commission as provided in s. 373.114.

(2) It is the further intent of the Legislature that Part II of the Florida Water Resources Act of 1972, as amended, as set forth in ss. 373.203-373.249, shall provide the exclusive authority for requiring permits for the consumptive use of water and for authorizing transportation thereof pursuant to s. 373.223(2).

(3) If any provision of Part II of the Florida Water Resources Act of 1972, as amended, as set forth in ss. 373.203-373.249, is in conflict with any other provision, limitation, or restriction which is now in effect under any law or ordinance of this state or any political subdivision or municipality, or any rule or regulation promulgated thereunder, Part II shall govern and control, and such other law or ordinance or rule or regulation promulgated thereunder shall be deemed superseded for the purpose of regulating the consumptive use of water. However, this section shall not be construed to supersede the provisions of the Florida Electrical Power Plant Siting Act.

(4) Other than as provided in subsection (3) of this section, Part II of the Florida Water Resources Act of 1972, as amended, preempts the regulation of the consumptive use of water as defined in this act.

**History.**—s. 9, ch. 76-243; s. 1, ch. 77-174; s. 265, ch. 94-356.

**373.219 Permits required.—**

(1) The governing board or the department may require such permits for consumptive use of water and may impose such reasonable conditions as are necessary to assure that such use is consistent with the overall objectives of the district or department and is not harmful to the water resources of the area. However, no permit shall be required for domestic consumption of water by individual users.

(2) In the event that any person shall file a complaint with the governing board or the department that any other person is making a diversion, withdrawal, impoundment, or consumptive use of water not expressly exempted under the provisions of this chapter and without a permit to do so, the governing board or the department shall cause an investigation to be made, and if the facts stated in the complaint are verified the governing board or the department shall order the discontinuance of the use.

**History.**—s. 2, part II, ch. 72-299; s. 9, ch. 73-190.

**373.223 Conditions for a permit.—**

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

- (a) Is a reasonable-beneficial use as defined in s. 373.019;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

(2) The governing board or the department may authorize the holder of a use permit to transport and use ground or surface water beyond overlying land, across county boundaries, or outside the watershed from which it is taken if the governing board or department determines that such transport and use is consistent with the public interest, and no local government shall adopt or enforce any law, ordinance, rule, regulation, or order to the contrary.

(3) Except for the transport and use of water supplied by the Central and Southern Florida Flood Control Project, and anywhere in the state when the transport and use of water is supplied exclusively for bottled water as defined in s. 500.03(1)(d), any water use permit applications pending as of April 1, 1998, with the Northwest Florida Water Management District and self-suppliers of water for which the proposed water source and area of use or application are located on contiguous private properties, when evaluating whether a potential transport and use of ground or surface water across county boundaries is consistent with the public interest, pursuant to paragraph (1)(c), the governing board or department shall consider:

- (a) The proximity of the proposed water source to the area of use or application.
- (b) All impoundments, streams, groundwater sources, or watercourses that are geographically closer to the area of use or application than the proposed source, and that are technically and economically feasible for the proposed transport and use.

(c) All economically and technically feasible alternatives to the proposed source, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery.

(d) The potential environmental impacts that may result from the transport and use of water from the proposed source, and the potential environmental impacts that may result from use of the other water sources identified in paragraphs (b) and (c).

(e) Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for existing legal uses and reasonably anticipated future needs of the water supply planning region in which the proposed water source is located.

(f) Consultations with local governments affected by the proposed transport and use.

(g) The value of the existing capital investment in water-related infrastructure made by the applicant.

Where districtwide water supply assessments and regional water supply plans have been prepared pursuant to ss. 373.036 and 373.0361, the governing board or the department shall use the applicable plans and assessments as the basis for its consideration of the applicable factors in this subsection.

(4) The governing board or the department, by regulation, may reserve from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review and revision in the light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

**History.**—s. 3, part II, ch. 72-299; s. 10, ch. 73-190; s. 10, ch. 76-243; s. 35, ch. 85-81; s. 4, ch. 98-88.

**373.2235 Effect of prior land acquisition on consumptive use permitting.**—The fact that any applicant has acquired, by the exercise of eminent domain or otherwise, any land for the specific purpose of serving as a site for a wellfield or right-of-way prior to obtaining a consumptive use permit from a water management district does not create any presumption of entitlement to a consumptive use permit. Evidence relating to such prior acquisition of land or right-of-way by any applicant is not admissible in any proceeding related to consumptive use permitting and has no bearing upon any water management district's determination of reasonable beneficial use in the permitting process. In the event that any applicant elects to acquire land prior to obtaining a consumptive use permit from a water management district, such action shall be considered a voluntary risk assumed by the applicant, and the fact of such prior acquisition shall not be admissible in any administrative or judicial proceeding relating to consumptive use permitting under this chapter, including any appeal taken from a water management district decision.

**History.**—s. 85, ch. 83-310.

**373.224 Existing permits.**—Any permits or permit agreements for consumptive use of water executed or issued by an existing flood control, water management, or water regulatory district pursuant to this chapter or chapter 378 prior to December 31, 1976, shall remain in full force and effect in accordance with their terms until otherwise modified or revoked as authorized herein.

**History.**—s. 11, ch. 73-190; s. 3, ch. 75-125.

**373.226 Existing uses.**—

(1) All existing uses of water, unless otherwise exempted from regulation by the provisions of this chapter, may be continued after adoption of this permit system only with a permit issued as provided herein.

(2) The governing board or the department shall issue an initial permit for the continuation of all uses in existence before the effective date of implementation of this part if the existing use is a reasonable-beneficial use as defined in s. 373.019 and is allowable under the common law of this state.

(3) Application for permit under the provisions of subsection (2) must be made within a period of 2 years from the effective date of implementation of these regulations in an area. Failure to apply within this period shall create a conclusive presumption of abandonment of the use, and the user, if he or she desires to revive the use, must apply for a permit under the provisions of s. 373.229.

**History.**—s. 4, part II, ch. 72-299; s. 12, ch. 73-190; s. 598, ch. 95-148; s. 9, ch. 98-88.

**373.229 Application for permit.**—

(1) All permit applications filed with the governing board or the department under this part and notice thereof required under s. 373.116 shall contain:

(a) The name of the applicant and his or her address or, in the case of a corporation, the address of its principal business office;

(b) The date of filing;

(c) The date set for a hearing, if any;

(d) The source of the water supply;

(e) The quantity of water applied for;

(f) The use to be made of the water and any limitation thereon;

(g) The place of use;

(h) The location of the well or point of diversion; and

(i) Such other information as the governing board or the department may deem necessary.

(2) The notice shall state that written objections to the proposed permit may be filed with the governing board or the department by a specified date. The governing board or the department, at its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses.

(3) In addition to the information required in subsection (1), all permit applications filed with the governing board or the department which propose the transport and use of water across county boundaries shall include information pertaining to factors to be considered, pursuant to s. 373.223(3), unless exempt under s. 373.1962(9).

(4) If the proposed application is for less than 100,000 gallons per day, the governing board or the department may consider the application and any objections thereto without a hearing. If the proposed application is for 100,000 gallons per day or more and no objection is received, the governing board or the department, after proper investigation by its staff, may, at its discretion, approve the application without a hearing.

**History.**—s. 5, part II, ch. 72-299; s. 13, ch. 73-190; s. 11, ch. 76-243; s. 1, ch. 77-174; s. 599, ch. 95-148; s. 5, ch. 98-88.

### **373.2295 Interdistrict transfers of groundwater.—**

(1) As used in this section, “interdistrict transfer and use” means a consumptive water use which involves the withdrawal of groundwater from a point within one water management district for use outside the boundaries of that district.

(2) To obtain a permit for an interdistrict transfer and use of groundwater, an applicant must file an application in accordance with s. 373.229 with the water management district having jurisdiction over the area from which the applicant proposes to withdraw groundwater and submit a copy of the application to the water management district having jurisdiction over the area where the water is to be used.

(3) The governing board of the water management district where the groundwater is proposed to be withdrawn shall review the application in accordance with this part, the rules of the district which relate to consumptive water use permitting, and other applicable provisions of this chapter.

(4) In determining if an application is consistent with the public interest as required by s. 373.223, the projected populations, as contained in the future land use elements of the comprehensive plans adopted pursuant to chapter 163 by the local governments within which the withdrawal areas and the proposed use areas are located, will be considered together with other evidence presented on future needs of those areas. If the proposed interdistrict transfer of groundwater meets the requirements of this chapter, and if the needs of the area where the use will occur and the specific area from which the groundwater will be withdrawn can be satisfied, the permit for the interdistrict transfer and use shall be issued.

(5) In addition to other requirements contained in this part, the water management district where the groundwater is proposed to be withdrawn shall:

(a) Furnish copies of any application, information, correspondence, or other related material to the water management district having jurisdiction over the area where the water is to be used; and

(b) Request comments on the application and the future water needs of the proposed use area from the water management district having jurisdiction over the area where the water is to be used. If comments are received, they must be attached to the preliminary notice of intended agency action and may not create a point of entry for review whether issued by the governing board or district staff.

(6) Upon completion of review of the application, the water management district where the groundwater is proposed to be withdrawn shall prepare a notice of preliminary intended agency action which shall include an evaluation of the application and a recommendation of approval, denial, or approval with conditions. The notice shall be furnished to the district where the water is to be used, the applicant, the Department of Environmental Protection,

the local governments having jurisdiction over the area from which the groundwater is to be withdrawn and where the water is to be used, and any person requesting a copy of the notice.

(a) Any interested person may, within the time specified in the notice, notify in writing the district from where the groundwater is to be withdrawn of such person's position and comments or objections, if any, to the preliminary intended action.

(b) The filing of the notice of intended agency action shall toll the time periods contained in s. 120.60 for the granting or denial of a permit for an interdistrict transfer and use of groundwater.

(c) The preliminary intended agency action and any comments or objections of interested persons made pursuant to paragraph (a) shall be considered by the governing board of the water management district where the groundwater is proposed to be withdrawn. Following such consideration, the governing board shall issue a notice of intended agency action.

(d) Any substantially affected person who submitted a notification pursuant to paragraph (a) may request review by the department within 14 days after the filing of the notice of intended agency action. If no request for review is filed, the notice of intended agency action shall become the final order of the governing board.

(7) Notwithstanding the provisions of chapter 120, the department shall, within 30 days after its receipt of a request for review of the water management district's action, approve, deny, or modify the water management district's action on the proposed interdistrict transfer and use of groundwater. The department shall issue a notice of its intended action. Any substantially affected person who requested review pursuant to paragraph (6)(a) may request an administrative hearing pursuant to chapter 120 within 14 days after notice of the department's intended action. The parties to such proceeding shall include, at a minimum, the affected water management districts and the applicant. The proceedings initiated by a petition under ss. 120.569 and 120.57, following the department's issuance of a notice of intended agency action, is the exclusive proceeding authorized for the review of agency action on the interdistrict transfer and use of groundwater. This procedure is to give effect to the legislative intent that this section provide a single, efficient, simplified, coordinated permitting process for the interdistrict transfer and use of groundwater.

(8) The department shall issue a final order which is subject to review pursuant to s. 120.68 or s. 373.114.

(9) In administering this part, the department or the water management districts may enter into interagency agreements. However, such agreements are not subject to the provisions of s. 373.046 and chapter 120.

(10) The state hereby preempts any regulation of the interdistrict transfer and use of groundwater. If any provision of this section is in conflict with any other provision or restriction under any law, administrative rule, or ordinance, this section shall govern and such law, rule, or ordinance shall be deemed superseded for the purposes of this section. A water management district or the department may not adopt special rules which prohibit or restrict interdistrict transfer and use of groundwater in a manner inconsistent with this section.

(11) If, after the final order of the department or final agency action under this section, the proposed use of the site designated in the application for groundwater production, treatment, or transmission facilities does not conform with the existing zoning ordinances, a rezoning application may be submitted. If local authorities deny the application for rezoning, the applicant may appeal this decision to the Land and Water Adjudicatory Commission, which shall authorize a variance or nonconforming use to the existing comprehensive plan and zoning ordinances, unless the commission determines after notice and hearing that such variance or nonconforming use is contrary to the public interest.

(12) The permit required under this section and other sections of this chapter and chapter 403 are the sole permits required for interdistrict transfer and use of groundwater, and such permits are in lieu of any license, permit, or similar document required by any state agency or political subdivision pursuant to chapter 163, chapter 380, or chapter 381, and the Florida Transportation Code.

(13) When a consumptive use permit under this section is granted for water use beyond the boundaries of a local government from which or through which the groundwater is withdrawn or transferred and a local government denies a permit required under chapter 125 or chapter 153 for a facility or any infrastructure which produces, treats, transmits, or distributes such groundwater, the person or unit of government applying for the permit under chapter 125 or chapter 153 may appeal the denial to the Land and Water Adjudicatory Commission. The commission shall review the local government action for consistency with this chapter and the interdistrict groundwater transfer permit and may reverse, modify, or approve the local government's action.

**History.**—s. 1, ch. 87-347; s. 266, ch. 94-356; s. 99, ch. 96-410; s. 11, ch. 2000-212.

**373.232 Citation of rule.**—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or

such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

**History.**—s. 4, ch. 79-161.

**373.233 Competing applications.—**

(1) If two or more applications which otherwise comply with the provisions of this part are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, the governing board or the department shall have the right to approve or modify the application which best serves the public interest.

(2) In the event that two or more competing applications qualify equally under the provisions of subsection (1), the governing board or the department shall give preference to a renewal application over an initial application.

**History.**—s. 6, part II, ch. 72-299.

**373.236 Duration of permits; compliance reports.—**

(1) Permits shall be granted for a period of 20 years, if requested for that period of time, if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, permits may be issued for shorter durations which reflect the period for which such reasonable assurances can be provided. The governing board or the department may base the duration of permits on a reasonable system of classification according to source of supply or type of use, or both.

(2) The governing board or the department may authorize a permit of duration of up to 50 years in the case of a municipality or other governmental body or of a public works or public service corporation where such a period is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities.

(3) Where necessary to maintain reasonable assurance that the conditions for issuance of a 20-year permit can continue to be met, the governing board or department, in addition to any conditions required pursuant to s. 373.219, may require a compliance report by the permittee every 5 years during the term of a permit. This report shall contain sufficient data to maintain reasonable assurance that the initial conditions for permit issuance are met. Following review of this report, the governing board or the department may modify the permit to ensure that the use meets the conditions for issuance. Permit modifications pursuant to this subsection shall not be subject to competing applications, provided there is no increase in the permitted allocation or permit duration, and no change in source, except for changes in source requested by the district. This subsection shall not be construed to limit the existing authority of the department or the governing board to modify or revoke a consumptive use permit.

**History.**—s. 7, part II, ch. 72-299; s. 13, ch. 97-160.

**373.239 Modification and renewal of permit terms.—**

(1) A permittee may seek modification of any terms of an unexpired permit.

(2) If the proposed modification involves water use of 100,000 gallons or more per day, the application shall be treated under the provisions of s. 373.229 in the same manner as the initial permit application. Otherwise, the governing board or the department may at its discretion approve the proposed modification without a hearing, provided the permittee establishes that:

(a) A change in conditions has resulted in the water allowed under the permit becoming inadequate for the permittee's need, or

(b) The proposed modification would result in a more efficient utilization of water than is possible under the existing permit.

(3) All permit renewal applications shall be treated under this part in the same manner as the initial permit application.

**History.**—s. 8, part II, ch. 72-299; s. 14, ch. 73-190.

**373.243 Revocation of permits.—**The governing board or the department may revoke a permit as follows:

(1) For any material false statement in an application to continue, initiate, or modify a use, or for any material false statement in any report or statement of fact required of the user pursuant to the provisions of this chapter, the governing board or the department may revoke the user's permit, in whole or in part, permanently.

(2) For willful violation of the conditions of the permit, the governing board or the department may permanently or temporarily revoke the permit, in whole or in part.

(3) For violation of any provision of this chapter, the governing board or the department may revoke the permit, in whole or in part, for a period not to exceed 1 year.

(4) For nonuse of the water supply allowed by the permit for a period of 2 years or more, the governing board or the department may revoke the permit permanently and in whole unless the user can prove that his or her nonuse was due to extreme hardship caused by factors beyond the user's control.

(5) The governing board or the department may revoke a permit, permanently and in whole, with the written consent of the permittee.

**History.**—s. 9, part II, ch. 72-299; s. 14, ch. 78-95; s. 600, ch. 95-148.

#### **373.244 Temporary permits.—**

(1) The governing board of a water management district may issue, or may authorize its executive director to issue, temporary permits for the consumptive use of water while an application is pending for a permit pursuant to ss. 373.219 and 373.229.

(2) Such a temporary permit shall be issued for a period of time to expire on the day following the next regular meeting of the governing board. At such meeting, the governing board shall consider whether it appears that the proposed use meets the criteria set forth in s. 373.223(1) and that such temporary permit is necessary for consumptive use of water prior to final action on an application for a permit pursuant to ss. 373.219 and 373.229.

(3) The governing board may summarily extend the term of a temporary permit for subsequent periods of time to expire on or before the day following the next regular meeting of the governing board.

(4) The board shall review temporary permits at each regular meeting and may terminate a temporary permit or refuse to extend it further upon a finding that the water use does not meet the criteria set forth in s. 373.223(1) or that adverse effects are occurring as a result of water use under the temporary permit or that the water authorized to be used under such permit is no longer required by the permitholder.

(5) The notice and hearing that might otherwise be required pursuant to s. 373.116(2) and chapter 120 shall not be required prior to issuance or extension of a temporary permit pursuant to the provisions of this section.

(6) Issuance of a temporary permit pursuant to the provisions of this section shall not in any way be construed as a commitment to issue a permit pursuant to ss. 373.219 and 373.229. No action taken by the governing board, or by the executive director if so authorized, shall be construed to estop the governing board from subsequently denying an application for a permit pursuant to ss. 373.219 and 373.229.

**History.**—s. 1, ch. 79-160.

**373.245 Violations of permit conditions.**—Holders of consumptive use permits who violate conditions of such permits shall be liable to abutting consumptive use permitholders for damages caused by such permit violations. No cause of action shall accrue under this section until the complainant has first applied for and then been denied relief by the water management district for the permit violations complained of. The provisions of this section are supplemental, and nothing in this section is intended to preclude the use of any other existing cause of action, remedy, or procedure.

**History.**—s. 10, ch. 82-101.

#### **373.246 Declaration of water shortage or emergency.—**

(1) The governing board or the department by regulation shall formulate a plan for implementation during periods of water shortage. As a part of this plan the governing board or the department shall adopt a reasonable system of water-use classification according to source of water supply; method of extraction, withdrawal, or diversion; or use of water or a combination thereof. The plan may include provisions for variances and alternative measures to prevent undue hardship and ensure equitable distribution of water resources.

(2) The governing board or the department by order may declare that a water shortage exists for a source or sources within all or part of the district when insufficient water is or will be available to meet the present and anticipated requirements of the users or when conditions are such as to require temporary reduction in total use within the area to protect water resources from serious harm. Such orders will be final agency action.

(3) In accordance with the plan adopted under subsection (1), the governing board or the department may impose such restrictions on one or more classes of water uses as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

(4) A declaration of water shortage and any measures adopted pursuant thereto may be rescinded by the governing board or the department.

(5) When a water shortage is declared, the governing board or the department shall cause notice thereof to be published in a prominent place within a newspaper of general circulation throughout the area. Publication of such notice will serve as notice to all users in the area of the condition of water shortage.

(6) The governing board or the department shall notify each permittee in the district by regular mail of any change in the condition of his or her permit or any suspension of his or her permit or of any other restriction on the permittee's use of water for the duration of the water shortage.

(7) If an emergency condition exists due to a water shortage within any area of the district, and if the department, or the executive director of the district with the concurrence of the governing board, finds that the exercise of powers under subsection (1) is not sufficient to protect the public health, safety, or welfare; the health of animals, fish, or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural, or other reasonable uses, it or he or she may, pursuant to the provisions of s. 373.119, issue emergency orders reciting the existence of such an emergency and requiring that such action, including, but not limited to, apportioning, rotating, limiting, or prohibiting the use of the water resources of the district, be taken as the department or the executive director deems necessary to meet the emergency.

(8) An affected party to whom an emergency order is directed under subsection (7) shall comply immediately, but may challenge such an order in the manner set forth in s. 373.119.

**History.**—s. 10, part II, ch. 72-299; s. 14, ch. 78-95; s. 11, ch. 82-101; s. 10, ch. 84-341; s. 601, ch. 95-148; s. 168, ch. 99-13.

**373.249 Existing regulatory districts preserved.**—The enactment of this chapter shall not affect any existing water regulatory districts pursuant to chapter 373, or orders issued by said regulatory districts, unless specifically revoked, modified, or amended by such regulatory district or by the department.

**History.**—s. 11, part II, ch. 72-299.

#### **373.250 Reuse of reclaimed water.**—

(1) The encouragement and promotion of water conservation and reuse of reclaimed water, as defined by the department, are state objectives and considered to be in the public interest. The Legislature finds that the use of reclaimed water provided by domestic wastewater treatment plants permitted and operated under a reuse program approved by the department is environmentally acceptable and not a threat to public health and safety.

(2)(a) For purposes of this section, “uncommitted” means the average amount of reclaimed water produced during the three lowest-flow months minus the amount of reclaimed water that a reclaimed water provider is contractually obligated to provide to a customer or user.

(b) Reclaimed water may be presumed available to a consumptive use permit applicant when a utility exists which provides reclaimed water, which has uncommitted reclaimed water capacity, and which has distribution facilities, which are initially provided by the utility at its cost, to the site of the affected applicant's proposed use.

(3) The water management district shall, in consultation with the department, adopt rules to implement this section. Such rules shall include, but not be limited to:

(a) Provisions to permit use of water from other sources in emergency situations or if reclaimed water becomes unavailable, for the duration of the emergency or the unavailability of reclaimed water. These provisions shall also specify the method for establishing the quantity of water to be set aside for use in emergencies or when reclaimed water becomes unavailable. The amount set aside is subject to periodic review and revision. The methodology shall take into account the risk that reclaimed water may not be available in the future, the risk that other sources may be fully allocated to other uses in the future, the nature of the uses served with reclaimed water, the extent to which the applicant intends to rely upon reclaimed water and the extent of economic harm which may result if other sources are not available to replace the reclaimed water. It is the intent of this paragraph to ensure that users of reclaimed water have the same access to ground or surface water and will otherwise be treated in the same manner as other users of the same class not relying on reclaimed water.

(b) A water management district shall not adopt any rule which gives preference to users within any class of use established under s. 373.246 who do not use reclaimed water over users within the same class who use reclaimed water.

(4) Nothing in this section shall impair a water management district's authority to plan for and regulate consumptive uses of water under this chapter.

(5) This section applies to new consumptive use permits and renewals of existing consumptive use permits.

**History.**—s. 2, ch. 94-243; s. 35, ch. 97-160; s. 18, ch. 97-164; s. 37, ch. 99-247.

### **PART III REGULATION OF WELLS**

373.302 Legislative findings.

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**373.302 Legislative findings.**—The Legislature recognizes that the practice of constructing, repairing, and abandoning water wells, if conducted by incompetent contractors, is potentially threatening to the health of the public and to the environment. The Legislature finds that a threat to the public and the environment exists if water resources become contaminated as a result of wells drilled by incompetent or dishonest contractors, and that to prevent contamination, it is necessary to regulate the construction, repair, and abandonment of wells, and the persons and businesses responsible therefor.

**History.**—s. 9, ch. 88-242.

**373.303 Definitions.**—As used in this part, the term:

(1) “Abandoned water well” means a well the use of which has been permanently discontinued. Any well shall be deemed abandoned which is in such a state of disrepair, as determined by a representative of the department, that continued use for the purpose of obtaining groundwater or disposing of water or liquid wastes is impracticable.

(2) “Construction of water wells” means all parts necessary to obtain groundwater by wells, including the location and excavation of the well, but excluding the installation of pumps and pumping equipment.

(3) “Department” means the Department of Environmental Protection.

(4) “Political subdivision” means a city, town, county, district, or other public body created by or pursuant to state law, or any combination thereof acting cooperatively or jointly.

(5) “Repair” means any action which involves the physical alteration or replacement of any part of a well, but does not include the alteration or replacement of any portion of a well which is above ground surface.

(6) “Water well contractor” means a person who is responsible for the construction, repair, or abandonment of a water well and who is licensed under this part to engage in the business of construction, repair, or abandonment of water wells.

(7) “Well” means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, acquisition, development, or artificial recharge of groundwater, but such term does not include any well for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying; for inserting media to dispose of oil brines or to repressure oil-bearing or natural gas-bearing formation; for storing petroleum, natural gas, or other products; or for temporary dewatering of subsurface formations for mining, quarrying, or construction purposes.

(8) “Well seal” means an approved arrangement or device to prevent contaminants from entering the well at the upper terminal.

**History.**—s. 1, part III, ch. 72-299; s. 228, ch. 81-259; ss. 74, 75, ch. 83-310; ss. 10, 24, ch. 88-242; s. 4, ch. 91-429; s. 267, ch. 94-356.

**373.306 Scope.**—No person shall construct, repair, abandon, or cause to be constructed, repaired, or abandoned, any water well contrary to the provisions of this part and applicable rules and regulations. This part shall not apply to equipment used temporarily for dewatering purposes or to the process used in dewatering.

**History.**—s. 2, part III, ch. 72-299; s. 15, ch. 73-190.

**373.308 Implementation of programs for regulating water wells.**—

(1) The department shall authorize the governing board of a water management district to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells.

(2) The department shall authorize the governing board of a water management district to exercise any power authorized to be exercised by the department under ss. 373.309, 373.313, 373.316, 373.319, 373.323, 373.329, and 373.333 and shall encourage the district to fully exercise such powers as soon as practicable.

(3) Delegations pursuant to subsections (1) and (2) and ss. 373.323 and 373.333 may be rescinded only if the secretary determines that such delegations are not being carried out in accordance with the rules of the department.

(4) Notwithstanding the provision in this section for delegation of authority to a water management district, the department may prescribe minimum standards for the location, construction, repair, and abandonment of water wells throughout all or parts of the state, as may be determined by the department.

**History.**—s. 2, ch. 79-160; s. 76, ch. 83-310; s. 11, ch. 88-242.

**373.309 Authority to adopt rules and procedures.**—

(1) The department shall adopt, and may from time to time amend, rules governing the location, construction, repair, and abandonment of water wells and shall be responsible for the administration of this part. With respect thereto, the department shall:

(a) Enforce the provisions of this part and any rules adopted pursuant thereto.

(b) Delegate, by interagency agreement adopted pursuant to s. 373.046, to water management districts, the Department of Health, or any other political subdivision any of its authority under this part in the administration of the rules adopted hereunder under such terms and conditions as may be agreed upon, and may rescind such delegation upon a determination that the program is not being adequately administered.

(c) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this part.

(d) Require at its discretion the making and filing of logs, and the saving of cuttings and cores, which shall be delivered to the department.

(e) Encourage prevention of potable water well contamination and promote cost-effective remediation of contaminated potable water supplies by use of the Water Quality Assurance Trust Fund as provided in s. 376.307(1)(e) and establish by rule:

1. Delineation of areas of groundwater contamination for implementation of well location and construction, testing, permitting, and clearance requirements as set forth in subparagraphs 2., 3., 4., 5., and 6. The department shall make available to water management districts, regional planning councils, the Department of Health, and county building and zoning departments, maps or other information on areas of contamination, including areas of ethylene dibromide contamination. Such maps or other information shall be made available to property owners, realtors, real estate associations, property appraisers, and other interested persons upon request and upon payment of appropriate costs.

2. Requirements for testing for suspected contamination in areas of known contamination, as a prerequisite for clearance of a water well for drinking purposes. The department is authorized to establish criteria for acceptance of water quality testing results from the Department of Health and laboratories certified by the Department of Health, and is authorized to establish requirements for sample collection quality assurance.

3. Requirements for mandatory connection to available potable water systems in areas of known contamination, wherein the department may prohibit the permitting and construction of new potable water wells.

4. Location and construction standards for public and all other potable water wells permitted in areas of contamination. Such standards shall be designed to minimize the effects of such contamination.

5. A procedure for permitting all potable water wells in areas of known contamination. Any new water well that is to be used for drinking water purposes and that does not meet construction standards pursuant to subparagraph 4. must be abandoned and plugged by the owner. Water management districts shall implement, through delegation from the department, the permitting and enforcement responsibilities of this subparagraph.

6. A procedure for clearing for use all potable water wells, except wells that serve a public water supply system, in areas of known contamination. If contaminants are found upon testing pursuant to subparagraph 2., a well may not

be cleared for use without a filter or other means of preventing the users of the well from being exposed to deleterious amounts of contaminants. The Department of Health shall implement the responsibilities of this subparagraph.

7. Fees to be paid for well construction permits and clearance for use. The fees shall be based on the actual costs incurred by the water management districts, the Department of Health, or other political subdivisions in carrying out the responsibilities related to potable water well permitting and clearance for use. The fees shall provide revenue to cover all such costs and shall be set according to the following schedule:

- a. The well construction permit fee may not exceed \$500.
- b. The clearance fee may not exceed \$50.

8. Procedures for implementing well-location, construction, testing, permitting, and clearance requirements as set forth in subparagraphs 2.-6. within areas that research or monitoring data indicate are vulnerable to contamination with nitrate, or areas in which the department provides a subsidy for restoration or replacement of contaminated drinking water supplies through extending existing water lines or developing new water supply systems pursuant to s. 376.307(1)(e). The department shall consult with the Florida Ground Water Association in the process of developing rules pursuant to this subparagraph.

All fees and funds collected by each delegated entity pursuant to this part shall be deposited in the appropriate operating account of that entity.

(f) Issue such additional regulations and take such other actions as may be necessary to carry out the provisions of this part.

(2) Notwithstanding ss. 373.219 and 373.326 or any other provision of this chapter or any rule adopted pursuant to this chapter, in any area identified by department rule pursuant to subparagraph (1)(e)1. as an area of known groundwater contamination, the department may by rule require a permit to construct or use any well which is or may be used as a source of drinking water. Rules adopted pursuant to paragraph (1)(e) shall specifically provide for uniformity in permitting of potable water wells in areas of groundwater contamination and shall be adopted by each delegated party.

**History.**—s. 3, part III, ch. 72-299; s. 229, ch. 81-259; s. 5, ch. 88-393; s. 9, ch. 91-305; s. 9, ch. 94-311; s. 39, ch. 96-321; s. 32, ch. 97-160; s. 67, ch. 99-8.

**373.313 Prior permission and notification.—**

(1) Taking into consideration other applicable state laws, in any geographical area where the department determines such permission to be reasonably necessary to protect the groundwater resources, prior permission shall be obtained from the department for each of the following:

- (a) The construction of any water well;
- (b) The repair of any water well; or
- (c) The abandonment of any water well.

However, in any area where undue hardship might arise by reason of such requirement, prior permission will not be required.

(2) The department shall be notified of any of the following whenever prior permission is not required:

- (a) The construction of any water well;
- (b) The repair of any water well; or
- (c) The abandonment of any water well.

**History.**—s. 4, part III, ch. 72-299.

**373.314 Citation of rule.**—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

**History.**—s. 5, ch. 79-161.

**373.316 Existing installations.**—No well in existence on the effective date of this part shall be required to conform to the provisions of s. 373.313 or any rules or regulations adopted pursuant thereto. However, any well now or hereafter abandoned or repaired as defined in this part shall be brought into compliance with the requirements of this

part and any applicable rules or regulations with respect to abandonment of wells, and any well which is determined by the department to be a hazard to the groundwater resources must comply with the provisions of this part and applicable rules and regulations within a reasonable time after notification of such determination has been given.

**History.**—s. 5, part III, ch. 72-299.

### **373.319 Inspections.—**

(1) The department is authorized to inspect any water well or abandoned water well. Duly authorized representatives of the department may at reasonable times enter upon and shall be given access to any premises for the purpose of such inspection.

(2) If upon the basis of such inspections the department finds applicable laws, rules, or regulations have not been complied with, it shall disapprove the well. If disapproved, no well shall thereafter be used until brought into compliance with the rules and regulations promulgated under this law.

**History.**—s. 6, part III, ch. 72-299; s. 14, ch. 78-95.

### **373.323 Licensure of water well contractors; application, qualifications, and examinations; equipment identification.—**

(1) Every person who wishes to engage in business as a water well contractor shall obtain from the water management district a license to conduct such business.

(2) Each person desiring to be licensed as a water well contractor shall apply to take the licensure examination. Application shall be made to the water management district in which the applicant resides or in which his or her principal place of business is located. A resident of another state shall apply to the water management district in which most of the business of the applicant will take place. Application shall be made on forms provided by the water management district.

(3) An applicant who meets the following requirements shall be entitled to take the licensure examination to practice water well contracting:

- (a) Is at least 18 years of age.
- (b) Has at least 2 years of experience in constructing, repairing, or abandoning wells.
- (c) Has completed the application form and remitted a nonrefundable application fee.

(4) The department shall prepare an examination which shall test an applicant's knowledge of rules and regulations adopted under this part; ability to construct, repair, and abandon a well; and ability to supervise, direct, manage, and control the contracting activities of a water well contracting business. The department shall provide each water management district and representatives of the water well contracting industry with meaningful opportunity to participate in the development of the examination.

(5) The water management district shall issue a water well contracting license to any applicant who receives a passing grade on the examination, has paid the initial application fee, and has complied with the requirements of this section. A passing grade on the examination shall be as established by the department by rule. A license issued by any water management district shall be valid in every water management district in the state.

(6) An employee of a political subdivision or of a governmental entity engaged in water well drilling shall be licensed pursuant to this part but shall be exempt from paying fees required pursuant to this part.

(7) When a water management district has probable cause to believe that any person not licensed as a water well contractor has violated any provision of this part or any statute that relates to the construction, repair, or abandonment of water wells, or any rule adopted pursuant thereto, the water management district may issue and deliver to such person a notice to cease and desist from such violation. In addition, the water management district may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed construction, repair, or abandonment of a water well by employing an unlicensed person. For the purpose of enforcing a cease and desist order, a water management district may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of such order.

(8) The department shall adopt rules which specifically provide for uniformity among all water management districts for the application process and qualifications for licensure, providing each water management district and representatives of the water well contracting industry with meaningful opportunity to participate in the development of the rules as they are drafted. The rules shall be adopted by each water management district.

(9) Each piece of drilling equipment owned, leased, or operated by a water well contractor shall have the water well contractor's license number prominently displayed thereon.

**History.**—s. 7, part III, ch. 72-299; s. 114, ch. 77-104; s. 14, ch. 78-95; s. 77, ch. 83-310; s. 1, ch. 84-94; ss. 12, 23, 24, ch. 88-242; s. 4, ch. 91-429; s. 602, ch. 95-148.

**373.324 License renewal.—**

(1) A water well contractor shall submit an application for renewal of a license to the water management district which issued the license.

(2) The water management district shall renew a license upon receipt of the renewal application and renewal fee.

(3) The department shall adopt rules establishing a procedure for the biennial renewal of licenses, which shall be adopted by each water management district.

(4) A license which is not renewed at the end of the biennium prescribed by the department shall automatically revert to inactive status. Such license may be reactivated only if the licensee meets the qualifications for reactivation in s. 373.325.

(5) At least 60 days prior to the automatic reversion of a license to inactive status, the water management district shall mail a notice of such reversion to the last known address of the licensee.

**History.**—ss. 13, 24, ch. 88-242; s. 4, ch. 91-429.

**373.325 Inactive status.**—A license which has become inactive pursuant to s. 373.324 may be renewed or reactivated upon application to the water management district, as follows:

(1) A license which has been inactive for 1 year or less after the end of the biennium prescribed by the department may be renewed pursuant to s. 373.324 upon application to the water management district and upon payment of the renewal and penalty fees as provided in s. 373.329. Such renewed license shall expire 2 years after the date the license automatically reverted to inactive status.

(2) A license which has been inactive for more than 1 year may be reactivated upon application to the water management district for licensure pursuant to the requirements of s. 373.323.

**History.**—ss. 14, 24, ch. 88-242; s. 4, ch. 91-429.

**373.326 Exemptions.—**

(1) When the water management district finds that compliance with all requirements of this part would result in undue hardship, an exemption from any one or more such requirements may be granted by the water management district to the extent necessary to ameliorate such undue hardship and to the extent such exemption can be granted without impairing the intent and purpose of this part.

(2) Nothing in this part shall prevent a person who has not obtained a license pursuant to s. 373.323 from constructing a well that is 2 inches or under in diameter, on the person's own or leased property, intended for use only in a single-family house which is his or her residence, or intended for use only for farming purposes on the person's farm, and when the waters to be produced are not intended for use by the public or any residence other than his or her own, provided that such person complies with all local and state rules and regulations relating to the construction of water wells.

**History.**—s. 8, part III, ch. 72-299; s. 1, ch. 84-94; ss. 15, 23, 24, ch. 88-242; s. 4, ch. 91-429; s. 603, ch. 95-148.

**373.329 Fees for licensure.**—The department by rule shall establish fees to be paid for application for licensure, application for license renewal, and the penalty fee for renewal of a license which has been inactive for 1 year or less. The fees shall be based on the actual costs incurred by the water management districts in carrying out the responsibilities related to licensure of water well contractors as derived from estimates provided by the water management districts of the revenue required to implement this part, but shall not exceed the following amounts:

(1) Application for initial licensure, \$150.

(2) Biennial license renewal, \$50.

(3) Penalty for renewal of a license which has been inactive for 1 year or less, \$75.

All fees and other moneys collected by a water management district pursuant to this part shall be deposited in the general operating fund of the water management district.

**History.**—s. 9, part III, ch. 72-299; s. 16, ch. 73-190; s. 1, ch. 84-94; ss. 16, 23, 24, ch. 88-242; s. 4, ch. 91-429.

**373.333 Disciplinary guidelines; adoption and enforcement; license suspension or revocation.—**

(1) The department shall adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the water management districts, providing each water management district and representatives of the water well contracting industry with meaningful opportunity to participate in the development of

the disciplinary guideline rules as they are drafted. The disciplinary guidelines shall be adopted by each water management district. The guideline rules shall be consistently applied by the water management districts and shall:

- (a) Specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses.
- (b) Distinguish minor violations from those which endanger public health, safety, and welfare or contaminate the water resources.
- (c) Inform the public of likely penalties which may be imposed for proscribed conduct.

A specific finding of mitigating or aggravating circumstances shall allow a water management district to impose a penalty other than that provided in the guidelines. Disciplinary action may be taken by any water management district, regardless of where the contractor's license was issued.

(2) Whenever the water management district has reasonable grounds for believing that there has been a violation of this part or any rule or regulation adopted pursuant hereto, it shall give written notice to the person alleged to be in violation. Such notice shall identify the provision of this part or regulation issued hereunder alleged to be violated and the facts alleged to constitute such violation.

(3) Such notice shall be served in the manner required by law for the service of process upon a person in a civil action or by registered United States mail to the last known address of the person. The water management district shall send copies of such notice only to persons who have specifically requested such notice or to entities with which the water management district has formally agreed to provide such notice. Notice alleging a violation of a rule setting minimum standards for the location, construction, repair, or abandonment of wells shall be accompanied by an order of the water management district requiring remedial action which, if taken within the time specified in such order, will effect compliance with the requirements of this part and regulations issued hereunder. Such order shall become final unless a request for hearing as provided in chapter 120 is made within 30 days from the date of service of such order. Upon compliance, notice shall be served by the water management district in a timely manner upon each person and entity who received notice of a violation, stating that compliance with the order has been achieved.

(4) The following acts constitute grounds for which disciplinary actions specified in subsection (5) may be taken by a water management district:

- (a) Attempting to obtain, obtaining, or renewing a license under this part by bribery or fraudulent misrepresentation.
- (b) Being convicted or found guilty, regardless of adjudication, of fraud or deceit; or of gross negligence, incompetency, or misconduct in the performance of work; or of a crime in any jurisdiction which directly relates to the practice of water well contracting or the ability to practice water well contracting. A plea of nolo contendere shall create a presumption of guilt to the underlying criminal charges, and the water management district shall allow the person being disciplined to present any evidence relevant to the underlying charges and the circumstances surrounding his or her plea.
- (c) Allowing any other person to use the license.
- (d) Violating or refusing to comply with any provision of this part or a rule adopted by the department or water management district, or any order of the water management district previously entered in a disciplinary hearing.
- (e) Constructing, repairing, or abandoning a water well without first obtaining all applicable permits.
- (f) Having had administrative or disciplinary action relating to water well construction, repair, or abandonment taken by any municipality or county or by any state agency, which action shall be reviewed by the water management district before the water management district takes any disciplinary action of its own.
- (g) Practicing with a revoked, suspended, or inactive license.

(5) When the water management district finds a person guilty of any of the grounds set forth in subsection (4), it may enter an order imposing one or more of the following disciplinary actions:

- (a) Denial of an application for licensure or for renewal of a license.
  - (b) Revocation or suspension of a license.
  - (c) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.
  - (d) Placement of the water well contractor on probation for a period of time subject to such conditions as the water management district may specify.
  - (e) Restriction of the licensee's authorized scope of practice.
- (6) When disciplinary action is taken against a contractor which results in suspension or revocation of the contractor's license, a water management district shall notify each water management district of such action.

(7) The water management district shall reissue the license of a contractor whose license has been suspended or revoked upon determination by the water management district that the disciplined person has complied with all of the terms and conditions set forth in the final order.

**History.**—s. 10, part III, ch. 72-299; s. 78, ch. 83-310; s. 1, ch. 84-94; s. 3, ch. 84-338; s. 2, ch. 84-341; ss. 17, 23, 24, ch. 88-242; s. 4, ch. 91-429; s. 604, ch. 95-148.

**373.335 Clearinghouse.**—The department, in conjunction with the water management districts, shall establish a statewide clearinghouse which will allow each water management district to access information regarding water well contractor licensees and their license numbers, any violation by any such licensee, and any disciplinary action taken by a water management district.

**History.**—ss. 18, 24, ch. 88-242; s. 4, ch. 91-429.

**373.336 Unlawful acts; penalties.**—

- (1) It is unlawful for any person to:
  - (a) Practice water well contracting without an active license issued pursuant to this part.
  - (b) Construct, repair, or abandon a water well, or operate drilling equipment for such purpose, unless employed by or under the supervision of a licensed water well contractor or exempt under s. 373.326.
  - (c) Give false or forged evidence to obtain a license.
  - (d) Present as his or her own the license of another.
  - (e) Use or attempt to use a license to practice water well contracting which license has been suspended, revoked, or placed on inactive status.
  - (f) Engage in willful or repeated violation of this part or of any department rule or regulation or water management district or state agency rule or regulation relating to water wells which endangers the public health, safety, and welfare.
- (2) It is unlawful for a business entity to engage in water well contracting or to perform any activity for which a license as a water well contractor is required unless a licensed water well contractor is responsible for supervising such activity of the business entity.
- (3) Any person who violates any provision of this part or regulation or order issued hereunder shall, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Continuing violation after an order or conviction shall constitute a separate violation for each day so continued.

**History.**—s. 11, part III, ch. 72-299; s. 17, ch. 73-190; s. 1, ch. 84-94; ss. 19, 23, 24, ch. 88-242; s. 57, ch. 91-224; s. 4, ch. 91-429; s. 605, ch. 95-148.

**373.337 Rules.**—The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part, providing each water management district and representatives of the water well contracting industry with meaningful opportunity to participate in the development of the rules as they are drafted. The rules shall be adopted by each water management district.

**History.**—ss. 20, 24, ch. 88-242; s. 4, ch. 91-429; s. 85, ch. 98-200.

**373.342 Permits.**—

- (1) The governing board of any water management district which, pursuant to the authority delegated to it by the department under s. 373.308 or s. 373.309, regulates water wells may in its discretion authorize its executive director to issue permits for the construction, repair, or modification of any water well.
- (2) In granting authority to its executive director under subsection (1), the governing board shall prescribe those certain circumstances in which such a permit may be issued.

**History.**—s. 3, ch. 79-160; s. 1, ch. 84-94; ss. 21, 23, ch. 88-242; s. 10, ch. 91-305.

**PART IV  
MANAGEMENT AND STORAGE  
OF SURFACE WATERS**

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**373.403 Definitions.**—When appearing in this part or in any rule, regulation, or order adopted pursuant thereto, the following terms mean:

(1) “Dam” means any artificial or natural barrier, with appurtenant works, raised to obstruct or impound, or which does obstruct or impound, any of the surface waters of the state.

(2) “Appurtenant works” means any artificial improvements to a dam which might affect the safety of such dam or, when employed, might affect the holding capacity of such dam or of the reservoir or impoundment created by such dam.

(3) “Impoundment” means any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth’s surface and having a discernible shoreline.

(4) “Reservoir” means any artificial or natural holding area which contains or will contain the water impounded by a dam.

(5) “Works” means all artificial structures, including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state.

(6) “Closed system” means any reservoir or works located entirely within agricultural lands owned or controlled by the user and which requires water only for the filling, replenishing, and maintaining the water level thereof.

(7) “Alter” means to extend a dam or works beyond maintenance in its original condition, including changes which may increase or diminish the flow or storage of surface water which may affect the safety of such dam or works.

(8) “Maintenance” or “repairs” means remedial work of a nature as may affect the safety of any dam, impoundment, reservoir, or appurtenant work or works, but excludes routine custodial maintenance.

(9) “Drainage basin” means a subdivision of a watershed.

(10) “Stormwater management system” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

(11) “State water quality standards” means water quality standards adopted pursuant to chapter 403.

(12) “Watershed” means the land area which contributes to the flow of water into a receiving body of water.

(13) “Dredging” means excavation, by any means, in surface waters or wetlands, as delineated in s. 373.421(1). It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated in s. 373.421(1), directly or via an excavated water body or series of water bodies.

(14) “Filling” means the deposition, by any means, of materials in surface waters or wetlands, as delineated in s. 373.421(1).

(15) “Estuary” means a semienclosed, naturally existing coastal body of water which has a free connection with the open sea and within which seawater is measurably diluted with fresh water derived from riverine systems.

(16) “Lagoon” means a naturally existing coastal zone depression which is below mean high water and which has permanent or ephemeral communications with the sea, but which is protected from the sea by some type of naturally existing barrier.

(17) “Seawall” means a manmade wall or encroachment, except riprap, which is made to break the force of waves and to protect the shore from erosion.

(18) “Ecological value” means the value of functions performed by uplands, wetlands, and other surface waters to the abundance, diversity, and habitats of fish, wildlife, and listed species. These functions include, but are not limited to, providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhances fish, wildlife, and listed species utilization.

(19) “Mitigation bank” means a project permitted under s. 373.4136 undertaken to provide for the withdrawal of mitigation credits to offset adverse impacts authorized by a permit under this part.

(20) “Mitigation credit” means a standard unit of measure which represents the increase in ecological value resulting from restoration, enhancement, preservation, or creation activities.

(21) “Mitigation service area” means the geographic area within which mitigation credits from a mitigation bank may be used to offset adverse impacts of activities regulated under this part.

(22) “Offsite regional mitigation” means mitigation on an area of land off the site of an activity permitted under this part, where an applicant proposes to mitigate the adverse impacts of only the applicant’s specific activity as a

requirement of the permit, which provides regional ecological value, and which is not a mitigation bank permitted under s. 373.4136.

**History.**—s. 1, part IV, ch. 72-299; s. 18, ch. 73-190; s. 4, ch. 80-259; s. 1, ch. 82-101; s. 11, ch. 89-279; s. 28, ch. 93-213; s. 4, ch. 96-371.

**373.406 Exemptions.**—The following exemptions shall apply:

(1) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any natural person to capture, discharge, and use water for purposes permitted by law.

(2) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land for purposes consistent with the practice of such occupation. However, such alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.

(3) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to be applicable to construction, operation, or maintenance of any agricultural closed system. However, part II of this chapter shall be applicable as to the taking and discharging of water for filling, replenishing, and maintaining the water level in any such agricultural closed system. This subsection shall not be construed to eliminate the necessity to meet generally accepted engineering practices for construction, operation, and maintenance of dams, dikes, or levees.

(4) All rights and restrictions set forth in this section shall be enforced by the governing board or the Department of Environmental Protection or its successor agency, and nothing contained herein shall be construed to establish a basis for a cause of action for private litigants.

(5) The department or the governing board may by rule establish general permits for stormwater management systems which have, either singularly or cumulatively, minimal environmental impact. The department or the governing board also may establish by rule exemptions or general permits that implement interagency agreements entered into pursuant to s. 373.046, s. 378.202, s. 378.205, or s. 378.402.

(6) Any district or the department may exempt from regulation under this part those activities that the district or department determines will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district. The district and the department are authorized to determine, on a case-by-case basis, whether a specific activity comes within this exemption. Requests to qualify for this exemption shall be submitted in writing to the district or department, and such activities shall not be commenced without a written determination from the district or department confirming that the activity qualifies for the exemption.

(7) Nothing in this part, or in any rule or order adopted under this part, may be construed to require a permit for mining activities for which an operator receives a life-of-the-mine permit under s. 378.901.

(8) Certified aquaculture activities which apply appropriate best management practices adopted pursuant to s. 597.004 are exempt from this part.

(9) Implementation of measures having the primary purpose of environmental restoration or water quality improvement on agricultural lands are exempt from regulation under this part where these measures or practices are determined by the district or department, on a case-by-case basis, to have minimal or insignificant individual and cumulative adverse impact on the water resources of the state. The district or department shall provide written notification as to whether the proposed activity qualifies for the exemption within 30 days after receipt of a written notice requesting the exemption. No activity under this exemption shall commence until the district or department has provided written notice that the activity qualifies for the exemption.

(10) Implementation of interim measures or best management practices adopted pursuant to s. 403.067 that are by rule designated as having minimal individual or cumulative adverse impacts to the water resources of the state are exempt from regulation under this part.

**History.**—s. 2, part IV, ch. 72-299; s. 47, ch. 79-65; s. 5, ch. 80-259; s. 2, ch. 82-101; s. 12, ch. 89-279; s. 268, ch. 94-356; s. 2, ch. 95-215; s. 2, ch. 96-370; s. 15, ch. 98-203; s. 21, ch. 98-333; s. 2, ch. 2000-130.

**373.409 Headgates, valves, and measuring devices.**—

(1) The department or the governing board may, by regulation, require the owner of any dam, impoundment, reservoir, appurtenant work, or works subject to the provisions of this part to install and maintain a substantial and serviceable headgate or valve at the point designated by the department or the governing board to measure the water discharged or diverted.

(2) If any owner shall not have constructed or installed such headgate or valve or such measuring device within 60 days after the governing board or department has ordered its construction, the governing board or department shall have such headgate, valve, or measuring device constructed or installed, and the costs of installing the headgate, valve,

or measuring device shall be a lien against the owner's land upon which such installation takes place until the governing board or department is reimbursed in full.

(3) No person shall alter or tamper with a measuring device so as to cause it to register other than the actual amount of water diverted, discharged, or taken. Violation of this subsection shall be a misdemeanor of the second degree, punishable under s. 775.082(4)(b).

**History.**—s. 3, part IV, ch. 72-299; s. 28, ch. 87-225; s. 49, ch. 91-221.

### **373.413 Permits for construction or alteration.—**

(1) Except for the exemptions set forth herein, the governing board or the department may require such permits and impose such reasonable conditions as are necessary to assure that the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto and will not be harmful to the water resources of the district. The department or the governing board may delineate areas within the district wherein permits may be required.

(2) A person proposing to construct or alter a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works subject to such permit shall apply to the governing board or department for a permit authorizing such construction or alteration. The application shall contain the following:

(a) Name and address of the applicant.

(b) Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land.

(c) Location of the work.

(d) Sketches of construction pending tentative approval.

(e) Name and address of the person who prepared the plans and specifications of construction.

(f) Name and address of the person who will construct the proposed work.

(g) General purpose of the proposed work.

(h) Such other information as the governing board or department may require.

(3) After receipt of an application for a permit, the governing board or department shall publish notice of the application by sending a notice to any persons who have filed a written request for notification of any pending applications affecting the particular designated area. Such notice may be sent by regular mail. The notice shall contain the name and address of the applicant; a brief description of the proposed activity, including any mitigation; the location of the proposed activity, including whether it is located within an Outstanding Florida Water or aquatic preserve; a map identifying the location of the proposed activity subject to the application; a depiction of the proposed activity subject to the application; a name or number identifying the application and the office where the application can be inspected; and any other information required by rule.

(4) In addition to the notice required by subsection (3), the governing board or department may publish, or require an applicant to publish at the applicant's expense, in a newspaper of general circulation within the affected area, a notice of receipt of the application and a notice of intended agency action. This subsection does not limit the discretionary authority of the department or the governing board of a water management district to publish, or to require an applicant to publish at the applicant's expense, any notice under this chapter. The governing board or department shall also provide notice of this intended agency action to the applicant and to persons who have requested a copy of the intended agency action for that specific application.

(5) The governing board or department may charge a subscription fee to any person who has filed a written request for notification of any pending applications to cover the cost of duplication and mailing charges.

**History.**—s. 4, part IV, ch. 72-299; s. 19, ch. 73-190; s. 14, ch. 78-95; s. 13, ch. 89-279; s. 500, ch. 94-356.

### **373.4135 Mitigation banks and offsite regional mitigation.—**

(1) The Legislature finds that the adverse impacts of activities regulated under this part may be offset by the creation, maintenance, and use of mitigation banks and offsite regional mitigation. Mitigation banks and offsite regional mitigation can enhance the certainty of mitigation and provide ecological value due to the improved likelihood of environmental success associated with their proper construction, maintenance, and management. Therefore, the department and the water management districts are directed to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation. Mitigation banks and offsite regional mitigation should emphasize the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through restoration of ecological communities that were historically present.

(a) The Legislature intends that the provisions for establishing mitigation banks apply equally to both public and private entities, except that the rules of the department and water management districts may set forth different measures governing financial responsibility, and different measures governing legal interest, needed to ensure the construction and perpetual protection of a mitigation bank.

(b) It is the further intent of the Legislature that mitigation banks and offsite regional mitigation be considered appropriate and a permissible mitigation option under the conditions specified by the rules of the department and water management districts.

(c) Offsite mitigation, including offsite regional mitigation, may be located outside the regional watershed in which the adverse impacts of an activity regulated under this part are located, if such adverse impacts are offset by the offsite mitigation.

(d) The department or water management district may allow the use of a mitigation bank or offsite regional mitigation alone or in combination with other forms of mitigation to offset adverse impacts of activities regulated under this part.

(e) When an applicant for a permit under the provisions of this part other than this section and s. 373.4136 submits more than one mitigation proposal to the department or a water management district, the department or water management district shall, in evaluating each proposal, ensure that such proposal adequately offsets the adverse impacts.

(2) Local governments shall not deny the use of a mitigation bank or offsite regional mitigation due to its location outside of the jurisdiction of the local government.

(3) Nothing in this section or s. 373.4136 shall be construed to eliminate or diminish any of the regulatory requirements applicable to applicants seeking permits pursuant to other provisions of this part.

(4) Except as otherwise provided herein, nothing in this section or s. 373.4136 shall be construed to diminish or limit the existing authority of the department, water management districts, or local governments.

(5) Nothing in this section or s. 373.4136 shall be construed to limit the consideration of forms of mitigation other than mitigation banks and offsite regional mitigation.

(6) An environmental creation, preservation, enhancement, or restoration project, including regional offsite mitigation areas, for which money is donated or paid as mitigation, that is sponsored by the department, a water management district, or a local government and provides mitigation for five or more applicants for permits under this part, or for 35 or more acres of adverse impacts, shall be established and operated under a memorandum of agreement. The memorandum of agreement shall be between the governmental entity proposing the mitigation project and the department or water management district, as appropriate. Such memorandum of agreement need not be adopted by rule. For the purposes of this subsection, one creation, preservation, enhancement, or restoration project shall mean one or more parcels of land with similar ecological communities that are intended to be created, preserved, enhanced, or restored under a common scheme.

(a) For any ongoing creation, preservation, enhancement, or restoration project and regional offsite mitigation area sponsored by the department, a water management district, or a local government, for which money was or is paid as mitigation, that was begun prior to the effective date of this subsection and has operated as of the effective date of this subsection, or is anticipated to operate, in excess of the mitigation thresholds provided in this subsection, the governmental entity sponsoring such project shall submit a draft memorandum of agreement to the water management district or department by October 1, 2000. The governmental entity sponsoring such project shall make reasonable efforts to obtain the final signed memorandum of agreement within 1 year after such submittal. The governmental entity sponsoring such project may continue to receive moneys donated or paid toward the project as mitigation, provided the requirements of this paragraph are met.

(b) The memorandum of agreement shall establish criteria that each environmental creation, preservation, enhancement, or restoration project must meet. These criteria must address the elements listed in paragraph (c). The entity sponsoring such project, or category of projects, shall submit documentation or other evidence to the water management district or department that the project meets, or individual projects within a category meet, the specified criteria.

(c) At a minimum, the memorandum of agreement must address the following for each project authorized:

1. A description of the work that will be conducted on the site and a timeline for completion of such work.
2. A timeline for obtaining any required environmental resource permit.
3. The environmental success criteria that the project must achieve.
4. The monitoring and long-term management requirements that must be undertaken for the project.
5. An assessment of the project in accordance with s. 373.4136(4)(a)-(i), until the adoption of the uniform wetland mitigation assessment method pursuant to s. 373.414(18).
6. A designation of the entity responsible for the successful completion of the mitigation work.

7. A definition of the geographic area where the project may be used as mitigation established using the criteria of s. 373.4136(6).

8. Full cost accounting of the project, including annual review and adjustment.

9. Provision and a timetable for the acquisition of any lands necessary for the project.

10. Provision for preservation of the site.

11. Provision for application of all moneys received solely to the project for which they were collected.

12. Provision for termination of the agreement and cessation of use of the project as mitigation if any material contingency of the agreement has failed to occur.

(d) A single memorandum of understanding may authorize more than one environmental creation, preservation, enhancement, or restoration project, or category of projects, as long as the elements listed in paragraph (c) are addressed for each project.

(e) Projects governed by this subsection, except for projects established pursuant to subsection (7), shall be subject to the provisions of s. 373.414(1)(b)1.

(f) The provisions of this subsection shall not apply to mitigation areas established to implement the provisions of s. 373.4137.

(g) The provisions of this subsection shall not apply when the department, water management district, or local government establishes, or contracts with a private entity to establish, a mitigation bank permitted under s. 373.4136. The provisions of this subsection shall not apply to other entities that establish offsite regional mitigation as defined in this section and s. 373.403.

(7) The department, water management districts, and local governments may elect to establish and manage mitigation sites, including regional offsite mitigation areas, or contract with permitted mitigation banks, to provide mitigation options for private single-family lots or homeowners. The department, water management districts, and local governments shall provide a written notice of their election under this <sup>1</sup>subsection by United States mail to those individuals who have requested, in writing, to receive such notice. The use of mitigation options established under this subsection are not subject to the full-cost-accounting provision of s. 373.414(1)(b)1. To use a mitigation option established under this subsection, the applicant for a permit under this part must be a private, single-family lot or homeowner, and the land upon which the adverse impact is located must be intended for use as a single-family residence by the current owner. The applicant must not be a corporation, partnership, or other business entity. However, the provisions of this subsection shall not apply to other entities that establish offsite regional mitigation as defined in this section and s. 373.403.

**History.**—s. 29, ch. 93-213; s. 6, ch. 96-371; s. 2, ch. 2000-133.

<sup>1</sup>**Note.**—Substituted by the editors for the word “paragraph.” Subsection (7) is not divided into paragraphs.

### **373.4136 Establishment and operation of mitigation banks.—**

(1) **MITIGATION BANK PERMITS.**—The department and the water management districts may require permits to authorize the establishment and use of mitigation banks. A mitigation bank permit shall also constitute authorization to construct, alter, operate, maintain, abandon, or remove any surface water management system necessary to establish and operate the mitigation bank. To obtain a mitigation bank permit, the applicant must provide reasonable assurance that:

(a) The proposed mitigation bank will improve ecological conditions of the regional watershed;

(b) The proposed mitigation bank will provide viable and sustainable ecological and hydrological functions for the proposed mitigation service area;

(c) The proposed mitigation bank will be effectively managed in perpetuity;

(d) The proposed mitigation bank will not destroy areas with high ecological value;

(e) The proposed mitigation bank will achieve mitigation success;

(f) The proposed mitigation bank will be adjacent to lands that will not adversely affect the perpetual viability of the mitigation bank due to unsuitable land uses or conditions;

(g) Any surface water management system to be constructed, altered, operated, maintained, abandoned, or removed within the mitigation bank will meet the requirements of this part and the rules adopted thereunder;

(h) It has sufficient legal or equitable interest in the property to ensure perpetual protection and management of the land within a mitigation bank; and

(i) It can meet the financial responsibility requirements prescribed for mitigation banks.

(2) **MITIGATION BANK PHASES.**—A mitigation bank may be established and operated in phases if each phase independently meets the requirements for the establishment and operation of a mitigation bank. The number of mitigation credits assigned to a phase of a mitigation bank may be less than would be assigned to that phase upon

completion of all phases of the mitigation bank. In such case, the department or water management districts shall increase the number of mitigation credits awarded to subsequent phases of the mitigation bank.

(3) **ADDITION OF LANDS.**—The department or water management district shall authorize the addition of land to a permitted mitigation bank when it is appropriate to do so and the addition of the land results in an increase in the ecological value of the existing mitigation bank. Any such addition shall be accomplished through a modification to the permit which reflects the corresponding increase in the total number of mitigation credits assigned to the bank.

(4) **MITIGATION CREDITS.**—After evaluating the information submitted by the applicant for a mitigation bank permit and assessing the proposed mitigation bank pursuant to the criteria in this section, the department or water management district shall award a number of mitigation credits to a proposed mitigation bank or phase of such mitigation bank. An entity establishing and operating a mitigation bank may apply to modify the mitigation bank permit to seek the award of additional mitigation credits if the mitigation bank results in an additional increase in ecological value over the value contemplated at the time of the original permit issuance, or the most recent modification thereto involving the number of credits awarded. The number of credits awarded shall be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank as determined using a functional assessment methodology. In determining the degree of improvement in ecological value, each of the following factors, at a minimum, shall be evaluated:

- (a) The extent to which target hydrologic regimes can be achieved and maintained.
- (b) The extent to which management activities promote natural ecological conditions, such as natural fire patterns.
- (c) The proximity of the mitigation bank to areas with regionally significant ecological resources or habitats, such as national or state parks, Outstanding National Resource Waters and associated watersheds, Outstanding Florida Waters and associated watersheds, and lands acquired through governmental or nonprofit land acquisition programs for environmental conservation; and the extent to which the mitigation bank establishes corridors for fish, wildlife, or listed species to those resources or habitats.
- (d) The quality and quantity of wetland or upland restoration, enhancement, preservation, or creation.
- (e) The ecological and hydrological relationship between wetlands and uplands in the mitigation bank.
- (f) The extent to which the mitigation bank provides habitat for fish and wildlife, especially habitat for species listed as threatened, endangered, or of special concern, or provides habitats that are unique for that mitigation service area.
- (g) The extent to which the lands that are to be preserved are already protected by existing state, local, or federal regulations or land use restrictions.
- (h) The extent to which lands to be preserved would be adversely affected if they were not preserved.
- (i) Any special designation or classification of the affected waters and lands.

(5) **SCHEDULE FOR CREDIT RELEASE.**—After awarding mitigation credits to a mitigation bank, the department or the water management district shall set forth a schedule for the release of those credits in the mitigation bank permit. A mitigation credit that has been released may be sold or used to offset adverse impacts from an activity regulated under this part.

(a) The department or the water management district shall allow a portion of the mitigation credits awarded to a mitigation bank to be released for sale or use prior to meeting all of the performance criteria specified in the mitigation bank permit. The department or the water management district shall allow release of all of a mitigation bank's awarded mitigation credits only after the bank meets the mitigation success criteria specified in the permit.

(b) The number of credits and schedule for release shall be determined by the department or water management district based upon the performance criteria for the mitigation bank and the success criteria for each mitigation activity. The release schedule for a specific mitigation bank or phase thereof shall be related to the actions required to implement the bank, such as site protection, site preparation, earthwork, removal of wastes, planting, removal or control of nuisance and exotic species, installation of structures, and annual monitoring and management requirements for success. In determining the specific release schedule for a bank, the department or water management district shall consider, at a minimum, the following factors:

1. Whether the mitigation consists solely of preservation or includes other types of mitigation.
2. The length of time anticipated to be required before a determination of success can be achieved.
3. The ecological value to be gained from each action required to implement the bank.
4. The financial expenditure required for each action to implement the bank.

(c) Notwithstanding the provisions of this subsection, no credit shall be released for freshwater wetland creation until the success criteria included in the mitigation bank permit are met.

(d) The withdrawal of mitigation credits from a mitigation bank shall be accomplished as a minor modification of the mitigation bank permit. A processing fee shall not be required by the department or water management district for this minor modification.

(6) **MITIGATION SERVICE AREA.**—The department or water management district shall establish a mitigation service area for each mitigation bank permit. The department or water management district shall notify and consider comments received on the proposed mitigation service area from each local government within the proposed mitigation service area. Except as provided herein, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts. Mitigation service areas may overlap, and mitigation service areas for two or more mitigation banks may be approved for a regional watershed.

(a) In determining the boundaries of the mitigation service area, the department or the water management district shall consider the characteristics, size, and location of the mitigation bank and, at a minimum, the extent to which the mitigation bank:

1. Contributes to a regional integrated ecological network;
2. Will significantly enhance the water quality or restoration of an offsite receiving water body that is designated as an Outstanding Florida Water, a Wild and Scenic River, an aquatic preserve, a water body designated in a plan adopted pursuant to s. 373.456 of the Surface Water Improvement and Management Act, or a nationally designated estuarine preserve;
3. Will provide for the long-term viability of endangered or threatened species or species of special concern;
4. Is consistent with the objectives of a regional management plan adopted or endorsed by the department or water management districts; and
5. Can reasonably be expected to offset specific types of wetland impacts within a specific geographic area. A mitigation bank need not be able to offset all expected impacts within its service area.

(b) The department and water management districts shall use regional watersheds to guide the establishment of mitigation service areas. Drainage basins established pursuant to s. 373.414(8) may be used as regional watersheds when they are established based on the hydrological or ecological characteristics of the basin. A mitigation service area may extend beyond the regional watershed in which the bank is located into all or part of other regional watersheds when the mitigation bank has the ability to offset adverse impacts outside that regional watershed. Similarly, a mitigation service area may be smaller than the regional watershed in which the mitigation bank is located when adverse impacts throughout the regional watershed cannot reasonably be expected to be offset by the mitigation bank because of local ecological or hydrological conditions.

(c) Once a mitigation bank service area has been established by the department or a water management district for a mitigation bank, such service area shall be accepted by all water management districts, local governments, and the department.

(d) If the requirements in s. 373.414(1)(b) and (8) are met, the following projects or activities regulated under this part shall be eligible to use a mitigation bank, regardless of whether they are located within the mitigation service area:

1. Projects with adverse impacts partially located within the mitigation service area.
2. Linear projects, such as roadways, transmission lines, distribution lines, pipelines, or railways.
3. Projects with total adverse impacts of less than 1 acre in size.

(7) **ACCOUNTING.**—The department or the water management district shall provide for the accounting of the award, release, and use of mitigation credits from a mitigation bank.

(8) **AUTHORITY OF LOCAL GOVERNMENTS.**—Local governments may not require permits or otherwise impose regulations governing the operation of a mitigation bank. However, this section shall not be construed to limit the authority of a local government to require an applicant for a mitigation bank to obtain any authorization required by a local ordinance for the construction activities associated with a mitigation bank.

(9) **PRIOR APPLICATIONS.**—An application for a mitigation bank conceptual approval or mitigation bank permit which is pending with, and determined complete by, the department or a water management district on or before the effective date of this act, or a mitigation bank conceptual approval or mitigation bank permit issued on or before the effective date of this act, shall continue to be subject to the rules adopted pursuant to s. 373.4135 which were in effect on the effective date of this act, unless the applicant or permittee elects to be subject to the rules governing mitigation banks adopted after that date.

(10) **MODIFICATION WITH RESPECT TO PRIOR APPLICATIONS.**—Any application for a modification of a mitigation bank conceptual approval or mitigation bank permit which was pending with, and determined complete by, the department or water management district on or before the effective date of this act, shall continue to be subject to the rules adopted pursuant to s. 373.4135 in effect on the effective date of this act, unless the permittee elects to be

subject to the rules governing mitigation banks adopted after that date. Any modification to a mitigation bank conceptual approval or mitigation bank permit issued on or before the effective date of this act, which is applied for within 20 years of the effective date of this act, and which does not involve the addition of new land that was not previously included in the mitigation bank conceptual approval or mitigation bank permit, shall be subject to the rules adopted pursuant to s. 373.4135 which were in effect before the effective date of this act, unless the permittee elects to be subject to the rules governing mitigation banks adopted after that date.

(11) RULES.—The department and water management district may adopt rules to implement the provisions of s. 373.4135 and this section, which shall include, but not be limited to, provisions:

(a) Requiring financial responsibility for the construction, operation, and long-term management of a mitigation bank;

(b) For the perpetual protection and management of mitigation banks; and

(c) Establishing a system and methodology for the valuation, assessment, and award of mitigation credits.

**History.**—s. 7, ch. 96-371; s. 3, ch. 2000-133.

### **373.4137 Mitigation requirements.—**

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by the Department of Environmental Protection and the water management districts, including the use of mitigation banks established pursuant to this part.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation shall be developed as follows:

(a) By May 1 of each year, the Department of Transportation shall submit to the Department of Environmental Protection and the water management districts a copy of its adopted work program and an inventory of habitats addressed in the rules tentatively, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted by its plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation may also include in its inventory the habitat impacts of any future transportation project identified in the tentative work program.

(b) The environmental impact inventory shall include a description of these habitat impacts, including their location, acreage, and type; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a survey of threatened species, endangered species, and species of special concern affected by the proposed project.

(3) To fund the mitigation plan for the projected impacts identified in the inventory described in subsection (2), the Department of Transportation shall identify funds quarterly in an escrow account within the State Transportation Trust Fund for the environmental mitigation phase of projects budgeted by the Department of Transportation for the current fiscal year. The escrow account will be maintained by the Department of Transportation for the benefit of the Department of Environmental Protection and the water management districts. Any interest earnings from the escrow account shall remain with the Department of Transportation. The Department of Environmental Protection or water management districts may request a transfer of funds from the escrow account no sooner than 30 days prior to the date the funds are needed to pay for activities associated with development or implementation of the approved mitigation plan described in subsection (4) for the current fiscal year, including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation and the Department of Environmental Protection by November 1 of each year with the plan. The conceptual plan preparation costs of each water management district will be paid based on the amount approved on the mitigation plan and allocated to the current fiscal year projects identified by the water management district. The amount transferred to the escrow account each year by the Department of Transportation shall correspond to a cost per acre of \$75,000 multiplied by the projected acres of impact identified in the inventory described in subsection (2). However, the \$75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions nor is the cost admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. At the end of each year, the projected acreage of impact shall be reconciled with the acreage of impact of projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act,

33 U.S.C. s. 1344. The subject year's transfer of funds shall be adjusted accordingly to reflect the overtransfer or undertransfer of funds from the preceding year. The Department of Transportation is authorized to transfer such funds from the escrow account to the Department of Environmental Protection and the water management districts to carry out the mitigation programs.

(4) Prior to December 1 of each year, each water management district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted pursuant to this part and 33 U.S.C. s. 1344. This plan shall also address significant invasive plant problems within wetlands and other surface waters. In developing such plans, the districts shall utilize sound ecosystem management practices to address significant water resource needs and shall focus on activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) waterbodies and lands identified for potential acquisition for preservation, restoration, and enhancement, to the extent that such activities comply with the mitigation requirements adopted under this part and 33 U.S.C. s. 1344. In determining the activities to be included in such plans, the districts shall also consider the purchase of credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include such purchase as a part of the mitigation plan when such purchase would offset the impact of the transportation project, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option. The mitigation plan shall be preliminarily approved by the water management district governing board and shall be submitted to the secretary of the Department of Environmental Protection for review and final approval. The preliminary approval by the water management district governing board does not constitute a decision that affects substantial interests as provided by s. 120.569. At least 30 days prior to preliminary approval, the water management district shall provide a copy of the draft mitigation plan to any person who has requested a copy.

(a) For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent practicable.

(b) Specific projects may be excluded from the mitigation plan and shall not be subject to this section upon the agreement of the Department of Transportation, the Department of Environmental Protection, and the appropriate water management district that the inclusion of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process, or the Department of Environmental Protection and the water management district are unable to identify mitigation that would offset the impacts of the project.

(c) Surface water improvement and management or invasive plant control projects undertaken using the \$12 million advance transferred from the Department of Transportation to the Department of Environmental Protection in fiscal year 1996-1997 which meet the requirements for mitigation under this part and 33 U.S.C. s. 1344 shall remain available for mitigation until the \$12 million is fully credited up to and including fiscal year 2004-2005. When these projects are used as mitigation, the \$12 million advance shall be reduced by \$75,000 per acre of impact mitigated. For any fiscal year through and including fiscal year 2004-2005, to the extent the cost of developing and implementing the mitigation plans is less than the amount transferred pursuant to subsection (3), the difference shall be credited towards the \$12 million advance. Except as provided in this paragraph, any funds not directed to implement the mitigation plan should, to the greatest extent possible, be directed to fund invasive plant control within wetlands and other surface waters.

(5) The water management district shall be responsible for ensuring that mitigation requirements pursuant to 33 U.S.C. s. 1344 are met for the impacts identified in the inventory described in subsection (2), by implementation of the approved plan described in subsection (4) to the extent funding is provided by the Department of Transportation. During the federal permitting process, the water management district may deviate from the approved mitigation plan in order to comply with federal permitting requirements.

(6) The mitigation plan shall be updated annually to reflect the most current Department of Transportation work program and may be amended throughout the year to anticipate schedule changes or additional projects which may arise. Each update and amendment of the mitigation plan shall be submitted to the secretary of the Department of Environmental Protection for approval. However, such approval shall not be applicable to a deviation as described in subsection (5).

(7) Upon approval by the secretary of the Department of Environmental Protection, the mitigation plan shall be deemed to satisfy the mitigation requirements under this part and any other mitigation requirements imposed by local, regional, and state agencies for impacts identified in the inventory described in subsection (2). The approval of the secretary shall authorize the activities proposed in the mitigation plan, and no other state, regional, or local permit or approval shall be necessary.

(8) This section shall not be construed to eliminate the need for the Department of Transportation to comply with the requirement to implement practicable design modifications, including realignment of transportation projects, to reduce or eliminate the impacts of its transportation projects on wetlands and other surface waters as required by rules adopted pursuant to this part, or to diminish the authority under this part to regulate other impacts, including water quantity or water quality impacts, or impacts regulated under this part that are not identified in the inventory described in subsection (2).

**History.**—s. 1, ch. 96-238; s. 36, ch. 99-385; s. 1, ch. 2000-261.

**373.4138 High Speed Rail Project; determination of mitigation requirements and costs.**—With respect to the High Speed Rail Project, any mitigation requirements and associated costs shall be determined by negotiation between the Department of Environmental Protection and the Department of Transportation, but if agreement on mitigation costs cannot be reached, the project may proceed at the rates determined under s. 373.4137(3).

**History.**—s. 5, ch. 96-238.

**373.414 Additional criteria for activities in surface waters and wetlands.**—

(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. 403.031(13) will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest.

(a) In determining whether an activity, which is in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), and is regulated under this part, is not contrary to the public interest or is clearly in the public interest, the governing board or the department shall consider and balance the following criteria:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

(b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or the department, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under s. 373.4136. It shall be the responsibility of the applicant to choose the form of mitigation. The mitigation must offset the adverse effects caused by the regulated activity.

1. The department or water management districts may accept the donation of money as mitigation only where the donation is specified for use in a duly noticed environmental creation, preservation, enhancement, or restoration project, endorsed by the department or the governing board of the water management district, which offsets the impacts of the activity permitted under this part. However, the provisions of this subsection shall not apply to projects undertaken pursuant to s. 373.4137 or chapter 378. Where a permit is required under this part to implement any project endorsed by the department or a water management district, all necessary permits must have been issued prior to the acceptance of any cash donation. After the effective date of this act, when money is donated to either the department or a water management district to offset impacts authorized by a permit under this part, the department or the water management district shall accept only a donation that represents the full cost to the department or water management district of undertaking the project that is intended to mitigate the adverse impacts. The full cost shall include all direct and indirect costs, as applicable, such as those for land acquisition, land restoration or enhancement, perpetual land management, and general overhead consisting of costs such as staff time, building, and vehicles. The department or the water management district may use a multiplier or percentage to add to other direct or indirect costs to estimate general

overhead. Mitigation credit for such a donation shall be given only to the extent that the donation covers the full cost to the agency of undertaking the project that is intended to mitigate the adverse impacts. However, nothing herein shall be construed to prevent the department or a water management district from accepting a donation representing a portion of a larger project, provided that the donation covers the full cost of that portion and mitigation credit is given only for that portion. The department or water management district may deviate from the full cost requirements of this subparagraph to resolve a proceeding brought pursuant to chapter 70 or a claim for inverse condemnation. Nothing in this section shall be construed to require the owner of a private mitigation bank, permitted under s. 373.4136, to include the full cost of a mitigation credit in the price of the credit to a purchaser of said credit.

2. The department and each water management district shall report to the Executive Office of the Governor by January 31 of each year all cash donations accepted under subparagraph 1. during the preceding calendar year for wetland mitigation purposes. The report shall exclude those contributions pursuant to s. 373.4137. The report shall include a description of the endorsed mitigation projects and, except for projects governed by s. 373.4135(6), shall address, as applicable, success criteria, project implementation status and timeframe, monitoring, long-term management, provisions for preservation, and full cost accounting.

3. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.

4. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts shall be controlled by the permit issued under this part.

(c) Where activities for a single project regulated under this part occur in more than one local government jurisdiction, and where permit conditions or regulatory requirements are imposed by a local government for these activities which cannot be reconciled with those imposed by a permit under this part for the same activities, the permit conditions or regulatory requirements shall be controlled by the permit issued under this part.

(2) The governing board or the department is authorized to establish by rule specific permitting criteria in addition to the other criteria in this part which provides:

(a) One or more size thresholds of isolated wetlands below which impacts on fish and wildlife and their habitats will not be considered. These thresholds shall be based on biological and hydrological evidence that shows the fish and wildlife values of such areas to be minimal.

(b) Criteria for the protection of threatened and endangered species in isolated wetlands regardless of size and land use.

(3) It is the intent of the Legislature to provide for the use of certain wetlands as a natural means of stormwater management and to incorporate these waters into comprehensive stormwater management when such use is compatible with the ecological characteristics of such waters and with sound resource management. To accomplish this, the governing board or the department is authorized to establish by rule performance standards for the issuance of permits for the use of certain wetlands for stormwater management. The compliance with such standards creates a presumption that the discharge from the stormwater management system meets state water quality standards.

(4) It is the intent of the Legislature to provide for the use of certain wetlands to receive and treat domestic wastewater that at a minimum has been treated to secondary standards. The department may by rule establish criteria for this activity, which criteria protect the type, nature, and function of the wetlands receiving the wastewater.

(5)(a) It is the intent of the Legislature to protect estuaries and lagoons from the damage created by construction of vertical seawalls and to encourage construction of environmentally desirable shore protection systems, such as riprap and gently sloping shorelines which are planted with suitable aquatic and wetland vegetation.

(b) No permit under this part to create a vertical seawall may be issued by the governing board or the department unless one of the following conditions exists:

1. The proposed construction is located within a port as defined in s. 315.02 or s. 403.021;
2. The proposed construction is necessary for the creation of a marina, the vertical seawalls are necessary to provide access to watercraft, or the proposed construction is necessary for public facilities;
3. The proposed construction is located within an existing manmade canal and the shoreline of such canal is currently occupied in whole or in part by vertical seawalls; or
4. The proposed construction is to be conducted by a public utility when such utility is acting in the performance of its obligation to provide service to the public.

(c) When considering an application for a permit to repair or replace an existing vertical seawall, the governing board or the department shall generally require such seawall to be faced with riprap material, or to be replaced entirely with riprap material unless a condition specified in paragraph (b) exists.

(d) This subsection shall in no way hinder any activity previously exempt or permitted or those activities permitted pursuant to chapter 161.

(6)(a) The Legislature recognizes that some mining activities that may occur in waters of the state must leave a deep pit as part of the reclamation. Such deep pits may not meet the established water quality standard for dissolved oxygen below the surficial layers. Where such mining activities otherwise meet the permitting criteria contained in this section, such activities may be eligible for a variance from the established water quality standard for dissolved oxygen within the lower layers of the reclaimed pit.

(b) Wetlands reclamation activities for phosphate and heavy minerals mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this part if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities.

(c) Wetlands reclamation activities for fuller's earth mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this part if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities, unless the site features make such reclamation impracticable, in which case the reclamation must offset the regulated activities' adverse impacts on surface waters and wetlands.

(d) Onsite reclamation of the mine pit for limerock and sand mining shall be conducted in accordance with the requirements of chapter 378.

1. Mitigation activities for limerock and sand mining must offset the regulated activities' adverse impacts on surface waters and wetlands. Mitigation activities shall be located on site, unless onsite mitigation activities are not feasible, in which case, offsite mitigation as close to the activities as possible shall be required. However, mitigation banking may be an acceptable form of mitigation, whether on or off site, as judged on a case-by-case basis.

2. The ratio of mitigation-to-wetlands loss shall be determined on a case-by-case basis and shall be based on the quality of the wetland to be impacted and the type of mitigation proposed.

(7) This section shall not be construed to diminish the jurisdiction or authority granted prior to the effective date of this act to the water management districts or the department pursuant to this part, including their jurisdiction and authority over isolated wetlands. The provisions of this section shall be deemed supplemental to the existing jurisdiction and authority under this part.

(8)(a) The governing board or the department, in deciding whether to grant or deny a permit for an activity regulated under this part shall consider the cumulative impacts upon surface water and wetlands, as delineated in s. 373.421(1), within the same drainage basin as defined in s. 373.403(9), of:

1. The activity for which the permit is sought.

2. Projects which are existing or activities regulated under this part which are under construction or projects for which permits or determinations pursuant to s. 373.421 or <sup>1</sup>s. 403.914 have been sought.

3. Activities which are under review, approved, or vested pursuant to s. 380.06, or other activities regulated under this part which may reasonably be expected to be located within surface waters or wetlands, as delineated in s. 373.421(1), in the same drainage basin as defined in s. 373.403(9), based upon the comprehensive plans, adopted pursuant to chapter 163, of the local governments having jurisdiction over the activities, or applicable land use restrictions and regulations.

(b) If an applicant proposes mitigation within the same drainage basin as the adverse impacts to be mitigated, and if the mitigation offsets these adverse impacts, the governing board and department shall consider the regulated activity to meet the cumulative impact requirements of paragraph (a). However, this paragraph may not be construed to prohibit mitigation outside the drainage basin which offsets the adverse impacts within the drainage basin.

(9) The department and the governing boards, on or before July 1, 1994, shall adopt rules to incorporate the provisions of this section, relying primarily on the existing rules of the department and the water management districts, into the rules governing the management and storage of surface waters. Such rules shall seek to achieve a statewide, coordinated and consistent permitting approach to activities regulated under this part. Variations in permitting criteria in the rules of individual water management districts or the department shall only be provided to address differing physical or natural characteristics. Such rules adopted pursuant to this subsection shall include the special criteria adopted pursuant to s. 403.061(29) and may include the special criteria adopted pursuant to s. 403.061(34). Such rules shall include a provision requiring that a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reasons for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial. Such rules may establish exemptions and general permits, if such exemptions and general permits do not allow significant adverse impacts to occur individually or cumulatively. Such

rules may require submission of proof of financial responsibility which may include the posting of a bond or other form of surety prior to the commencement of construction to provide reasonable assurance that any activity permitted pursuant to this section, including any mitigation for such permitted activity, will be completed in accordance with the terms and conditions of the permit once the construction is commenced. Until rules adopted pursuant to this subsection become effective, existing rules adopted under this part and rules adopted pursuant to the authority of <sup>2</sup>ss. 403.91-403.929 shall be deemed authorized under this part and shall remain in full force and effect. Neither the department nor the governing boards are limited or prohibited from amending any such rules.

(10) The department in consultation with the water management districts by rule shall establish water quality criteria for wetlands, which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

(11)(a) In addition to the statutory exemptions applicable to this part, dredging and filling permitted under rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or exempted from regulation under such rules, shall be exempt from the rules adopted pursuant to subsection (9) if the dredging and filling activity did not require a permit under rules adopted pursuant to this part prior to the effective date of the rules adopted pursuant to subsection (9). The exemption from the rules adopted pursuant to subsection (9) shall extend to:

1. The activities approved by said chapter 403 permit for the term of the permit; or

2. Dredging and filling exempted from regulation under rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, which is commenced prior to the effective date of the rules adopted pursuant to subsection (9), is completed within 5 years after the effective date of such rules, and regarding which, at all times during construction, the terms of the dredge and fill exemption continue to be met.

(b) This exemption shall also apply to any modification of such permit which does not constitute a substantial modification. For the purposes of this paragraph, a substantial modification is one which is reasonably expected to lead to substantially different environmental impacts. This exemption shall also apply to a modification which lessens the environmental impact. A modification qualifying for this exemption shall be reviewed under the rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in existence prior to the effective date of the rules adopted under subsection (9).

(12)(a) Activities approved in a conceptual, general, or individual permit issued pursuant to rules adopted pursuant to this part and which were either permitted under rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or exempt from regulation under such rules, all prior to the effective date of rules adopted pursuant to subsection (9), shall be exempt from the rules adopted pursuant to subsection (9). This exemption shall be for the plans, terms, and conditions approved in the permit issued under rules adopted pursuant to this part or in any permit issued under rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and shall be valid for the term of such permits. This exemption shall also apply to any modification of the plans, terms, and conditions of the permit, including new activities, within the geographical area to which the permit issued under rules adopted pursuant to this part applies; however, this exemption shall not apply to a modification that would extend the permitted time limit for construction beyond 2 additional years, or to any modification which is reasonably expected to lead to substantially different water resource impacts. This exemption shall also apply to any modification which lessens the impact to water resources. A modification of the permit qualifying for this exemption shall be reviewed under the rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, as applicable, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such modifications reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

(b) Surface water and wetland delineations identified and approved by the permit issued under rules adopted pursuant to this part prior to the effective date of rules adopted pursuant to subsection (9) shall remain valid until expiration of such permit, notwithstanding the methodology ratified in s. 373.4211. For purposes of this section, the term "identified and approved" means:

1. The delineation was field-verified by the permitting agency and such verification was surveyed as part of the application review process for the permit; or

2. The delineation was field-verified by the permitting agency and approved by the permit.

Where surface water and wetland delineations were not identified and approved by the permit issued under rules adopted pursuant to this part, delineations within the geographical area to which such permit applies shall be determined pursuant to the rules applicable at the time the permit was issued, notwithstanding the methodology ratified in s. 373.4211. This paragraph shall also apply to any modification of the permit issued under rules adopted pursuant to this part within the geographical area to which the permit applies.

(c) Within the boundaries of a jurisdictional declaratory statement issued under <sup>1</sup>s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, in which activities have been permitted as described in paragraph (a), the delineation of the landward extent of waters of the state for the purposes of regulation under the rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, as such rules existed prior to the effective date of the rules adopted pursuant to subsection (9), shall remain valid for the duration of the permit issued pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and shall be used in the review of any modification of such permit.

(13) Any declaratory statement issued by the department under <sup>1</sup>s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, or by a water management district under s. 373.421, in response to a petition filed on or before June 1, 1994, shall continue to be valid for the duration of such declaratory statement. Any such petition pending on June 1, 1994, shall be exempt from the methodology ratified in s. 373.4211, but the rules of the department or the relevant water management district, as applicable, in effect prior to the effective date of s. 373.4211, shall apply. Until May 1, 1998, activities within the boundaries of an area subject to a petition pending on June 1, 1994, and prior to final agency action on such petition, shall be reviewed under the rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9). In the event that a jurisdictional declaratory statement pursuant to the vegetative index in effect prior to the effective date of chapter 84-79, Laws of Florida, has been obtained and is valid prior to the effective date of the rules adopted under subsection (9) or July 1, 1994, whichever is later, and the affected lands are part of a project for which a master development order has been issued pursuant to s. 380.06(21), the declaratory statement shall remain valid for the duration of the buildout period of the project. Any jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, shall remain in effect for a period of 5 years following the effective date of this act if proof of such validation is submitted to the department prior to January 1, 1995. In the event that a jurisdictional determination has been revalidated by the department pursuant to this subsection and the affected lands are part of a project for which a development order has been issued pursuant to s. 380.06(15), a final development order to which s. 163.3167(8) applies has been issued, or a vested rights determination has been issued pursuant to s. 380.06(20), the jurisdictional determination shall remain valid until the completion of the project, provided proof of such validation and documentation establishing that the project meets the requirements of this sentence are submitted to the department prior to January 1, 1995. Activities proposed within the boundaries of a valid declaratory statement issued pursuant to a petition submitted to either the department or the relevant water management district prior to June 1, 1994, or a revalidated jurisdictional determination, prior to its expiration shall continue thereafter to be exempt from the methodology ratified in s. 373.4211 and to be reviewed under the rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted under subsection (9), unless the applicant elects to have such activities reviewed under the rules adopted under this part, as amended in accordance with subsection (9).

(14) An application under the rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or this part for dredging and filling or other activity, which is pending on June 15, 1994, or which is submitted and complete prior to the effective date of rules adopted pursuant to subsection (9) shall be:

(a) Acted upon by the agency which is responsible for review of the application under the operating agreement adopted pursuant to s. 373.046(4);

(b) Reviewed under the rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, and this part, in existence prior to the effective date of the rules adopted pursuant to subsection (9), unless the applicant elects to have such activities reviewed under the rules of this part, as amended in accordance with subsection (9); and

(c) Exempt from the methodology ratified in s. 373.4211, but the rules of the department and water management districts to delineate surface waters and wetlands in effect prior to the effective date of s. 373.4211 shall apply, unless the applicant elects to have such ratified methodology apply.

(15) Activities associated with mining operations as defined by and subject to ss. 378.201-378.212 and 378.701-378.703 and included in a conceptual reclamation plan or modification application submitted prior to July 1, 1996, shall continue to be reviewed under the rules of the department adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, the rules of the water management districts under this part, and interagency agreements, in effect on January 1, 1993. Such activities shall be exempt from rules adopted pursuant to subsection (9) and the statewide methodology ratified pursuant to s. 373.4211. As of January 1, 1994, such activities may be issued permits authorizing construction for the life of the mine.

(16) Until October 1, 2000, regulation under rules adopted pursuant to this part of any sand, limerock, or limestone mining activity which is located in Township 52 South, Range 39 East, sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36; in Township 52 South, Range 40 East, sections 6, 7, 8, 18, and 19; in Township 53 South, Range 39 East, sections 1, 2, 13, 21, 22, 23, 24, 25, 26, 33, 34, 35, and 36; and in Township 54 South, Range 38 East, sections 24, and 25, and 36, shall not include the rules adopted pursuant to subsection (9). In addition, until October 1, 2000, such activities shall continue to be regulated under the rules adopted pursuant to <sup>2</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, as such rules existed prior to the effective date of the rules adopted pursuant to subsection (9) and such dredge and fill jurisdiction shall be that which existed prior to January 24, 1984. In addition, any such sand, limerock, or limestone mining activity shall be approved by Dade County and the United States Army Corps of Engineers. This section shall only apply to mining activities which are continuous and carried out on land contiguous to mining operations that were in existence on or before October 1, 1984.

(17) The variance provisions of s. 403.201 are applicable to the provisions of this section or any rule adopted pursuant hereto. The governing boards and the department are authorized to review and take final agency action on petitions requesting such variances for those activities they regulate under this part.

(18) The department and each water management district responsible for implementation of the environmental resource permitting program shall develop a uniform wetland mitigation assessment method no later than October 1, 2001. The department shall adopt the uniform wetland mitigation assessment method by rule no later than January 31, 2002. Once the department adopts the uniform wetland mitigation assessment method by rule, the uniform wetland mitigation assessment method shall be binding on the department, the water management districts, local governments, and any other governmental agencies and shall be the sole means to determine mitigation needed to offset adverse impacts and to award and deduct mitigation bank credits. A water management district and any other governmental agency subject to chapter 120 may apply the uniform wetland mitigation assessment method without the need to adopt it pursuant to s. 120.54. It shall be a goal of the department and water management districts that the uniform wetland mitigation assessment method developed be practicable for use within the timeframes provided in the permitting process and result in a consistent process for determining mitigation requirements. It shall be recognized that any such method shall require the application of reasonable scientific judgment. The uniform wetland mitigation assessment method must determine the value of functions provided by wetlands and other surface waters considering the current conditions of these areas, utilization by fish and wildlife, location, uniqueness, and hydrologic connection, in addition to the factors listed in s. 373.4136(4). The uniform wetland mitigation assessment method shall also account for the expected time-lag associated with offsetting impacts and the degree of risk associated with the proposed mitigation. The uniform wetland mitigation assessment method shall account for different ecological communities in different areas of the state. In developing the uniform wetland mitigation assessment method, the department and water management districts shall consult with approved local programs under s. 403.182 which have an established wetland mitigation program. The department and water management districts shall consider the recommendations submitted by such approved local programs, including any recommendations relating to the adoption by the department and water management districts of any uniform wetland mitigation methodology that has been adopted and used by an approved local program in its established wetland mitigation program. Environmental resource permitting rules may establish categories of permits or thresholds for minor impacts under which the use of the uniform wetland mitigation assessment method will not be required. The application of the uniform wetland mitigation assessment method is not subject to s. 70.001. In the event the rule establishing the uniform wetland mitigation assessment method is deemed to be invalid, the applicable rules related to establishing needed mitigation in existence prior to the adoption of the uniform wetland mitigation assessment method, including those adopted by a county which is an approved local program under s. 403.182, and the method described in paragraph (b) for existing mitigation banks, shall be authorized for use by the department, water management districts, local governments, and other state agencies.

(a) In developing the uniform wetland mitigation assessment method, the department shall seek input from the United States Army Corps of Engineers in order to promote consistency in the mitigation assessment methods used by the state and federal permitting programs.

(b) An entity which has received a mitigation bank permit prior to the adoption of the uniform wetland mitigation assessment method shall have impact sites assessed, for the purpose of deducting bank credits, using the credit assessment method, including any functional assessment methodology, which was in place when the bank was permitted; unless the entity elects to have its credits redetermined, and thereafter have its credits deducted, using the uniform wetland mitigation assessment method.

(19) The Office of Program Policy Analysis and Government Accountability shall study the cumulative impact consideration required by s. 373.414(8) and issue a report by July 1, 2001. The study shall address the justification for the cumulative impact consideration, changes that can provide clarity and certainty in the cumulative impact

consideration, and whether a practicable, consistent, and equitable methodology can be developed for considering cumulative impacts within the environmental resource permitting program.

**History.**—ss. 4, 5, ch. 86-186; s. 30, ch. 93-213; s. 4, ch. 94-122; s. 3, ch. 96-370; s. 5, ch. 96-371; ss. 2, 5, ch. 97-222; s. 169, ch. 99-13; s. 26, ch. 99-385; s. 4, ch. 2000-133.

<sup>1</sup>**Note.**—Repealed by s. 45, ch. 93-213.

<sup>2</sup>**Note.**—Sections 403.91-403.925 and 403.929 were repealed by s. 45, ch. 93-213, and s. 403.913, as amended by s. 46, ch. 93-213, was transferred to s. 403.939 and subsequently repealed by s. 18, ch. 95-145. The only section remaining within the cited range is s. 403.927.

#### **373.4141 Permits; processing.—**

(1) Within 30 days after receipt of an application for a permit under this part, the department or the water management district shall review the application and shall request submittal of all additional information the department or the water management district is permitted by law to require. If the applicant believes any request for additional information is not authorized by law or rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department or water management district shall review it and may request only that information needed to clarify such additional information or to answer new questions raised by or directly related to such additional information. If the applicant believes the request of the department or water management district for such additional information is not authorized by law or rule, the department or water management district, at the applicant's request, shall proceed to process the permit application.

(2) A permit shall be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

**History.**—s. 4, ch. 96-370.

**373.4142 Water quality within stormwater treatment systems.**—State surface water quality standards applicable to waters of the state, as defined in s. 403.031(13), shall not apply within a stormwater management system which is designed, constructed, operated, and maintained for stormwater treatment in accordance with a valid permit or noticed exemption issued pursuant to chapter 17-25, Florida Administrative Code; a valid permit issued on or subsequent to April 1, 1986, within the Suwannee River Water Management District or the St. Johns River Water Management District pursuant to this part; a valid permit issued on or subsequent to March 1, 1988, within the Southwest Florida Water Management District pursuant to this part; or a valid permit issued on or subsequent to January 6, 1982, within the South Florida Water Management District pursuant to this part. Such inapplicability of state water quality standards shall be limited to that part of the stormwater management system located upstream of a manmade water control structure permitted, or approved under a noticed exemption, to retain or detain stormwater runoff in order to provide treatment of the stormwater. The additional use of such a stormwater management system for flood attenuation or irrigation shall not divest the system of the benefits of this exemption. This section shall not affect the authority of the department and water management districts to require reasonable assurance that the water quality within such stormwater management systems will not adversely impact public health, fish and wildlife, or adjacent waters.

**History.**—s. 7, ch. 94-122.

#### **373.4145 Interim part IV permitting program for the Northwest Florida Water Management District.—**

(1) Within the geographical jurisdiction of the Northwest Florida Water Management District, the permitting authority of the department under this part shall consist solely of the following, notwithstanding the rule adoption deadline in s. 373.414(9):

(a) Chapter 17-25, Florida Administrative Code, shall remain in full force and effect, and shall be implemented by the department. Notwithstanding the provisions of this section, chapter 17-25, Florida Administrative Code, may be amended by the department as necessary to comply with any requirements of state or federal laws or regulations, or any condition imposed by a federal program, or as a requirement for receipt of federal grant funds.

(b) Rules adopted pursuant to the authority of <sup>1</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, in effect prior to July 1, 1994, shall remain in full force and effect, and shall be implemented by the department. However, the department is authorized to establish additional exemptions and general permits for dredging and filling, if such exemptions or general permits do not allow significant adverse impacts to occur individually or cumulatively. However, for the purpose of chapter 17-312, Florida Administrative Code, the landward extent of surface waters of the state identified in rule 17-312.030(2), Florida Administrative Code, shall be determined in accordance

with the methodology in rules 17-340.100 through 17-340.600, Florida Administrative Code, as ratified in s. 373.4211, upon the effective date of such ratified methodology. In implementing s. 373.421(2), the department shall determine the extent of those surface waters and wetlands within the regulatory authority of the department as described in this paragraph. At the request of the petitioner, the department shall also determine the extent of surface waters and wetlands which can be delineated by the methodology ratified in s. 373.4211, but which are not subject to the regulatory authority of the department as described in this paragraph.

(c) The department may implement chapter 40A-4, Florida Administrative Code, in effect prior to July 1, 1994, pursuant to an interagency agreement with the Northwest Florida Water Management District adopted under s. 373.046(4).

(2) The authority of the Northwest Florida Water Management District to implement this part or to implement any authority pursuant to delegation by the department shall not be affected by this section. The rule adoption deadline in s. 373.414(9) shall not apply to said district.

(3) The division of permitting responsibilities in s. 373.046(4) shall not apply within the geographical jurisdiction of the Northwest Florida Water Management District.

(4) If the United States Environmental Protection Agency approves an assumption of the federal program to regulate the discharge of dredged or fill material by the department or the water management districts, or both, pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq.; the United States Army Corps of Engineers issues one or more state programmatic general permits under the referenced statutes; or the United States Environmental Protection Agency or the United States Corps of Engineers approves any other delegation of regulatory authority under the referenced statutes, then the department may implement any permitting authority granted in this part within the Northwest Florida Water Management District which is prescribed as a condition of granting such assumption, general permit, or delegation.

(5) Within the geographical jurisdiction of the Northwest Florida Water Management District, the methodology for determining the landward extent of surface waters of the state under chapter 403 in effect prior to the effective date of the methodology ratified in s. 373.4211 shall apply to:

(a) Activities permitted under the rules adopted pursuant to <sup>1</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or which were exempted from regulation under such rules, prior to July 1, 1994, and which were permitted under chapter 17-25, Florida Administrative Code, or exempt from chapter 17-25, Florida Administrative Code, prior to July 1, 1994, provided:

1. An activity authorized by such permits is conducted in accordance with the plans, terms, and conditions of such permits.

2. An activity exempted from the permitting requirements of the rules adopted pursuant to <sup>1</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or chapter 17-25, Florida Administrative Code, is:

a. Commenced prior to July 1, 1994, and completed by July 1, 1999;

b. Conducted in accordance with a plan depicting the activity which has been submitted to and approved for construction by the department, the appropriate local government, the United States Army Corps of Engineers, or the Northwest Florida Water Management District; and

c. Conducted in accordance with the terms of the exemption.

(b) An activity within the boundaries of a valid jurisdictional declaratory statement issued pursuant to <sup>2</sup>s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or the rules adopted thereunder, in response to a petition received prior to June 1, 1994.

(c) Any modification of a permitted or exempt activity as described in paragraph (a) which does not constitute a substantial modification or which lessens the environmental impact of such permitted or exempt activity. For the purposes of this section, a substantial modification is one which is reasonably expected to lead to substantially different environmental impacts.

(d) Applications for activities permitted under the rules adopted pursuant to <sup>1</sup>ss. 403.91-403.929, 1984 Supplement to the 1983 Florida Statutes, as amended, which were pending on June 15, 1994, unless the application elects to have applied the delineation methodology ratified in s. 373.4211.

(6) Subsections (1), (2), (3), and (4) shall be repealed effective July 1, 2003.

(7)(a) The department and the Northwest Florida Water Management District are directed to begin developing a plan by which the permitting for activities proposed in surface waters and wetlands shall fully comply with the provisions of this part, beginning July 1, 2003. The plan also shall address the division of environmental resource permitting responsibilities between the department and the Northwest Florida Water Management District; the methodology of delineating wetlands in the Northwest Florida Water Management District; authority of the Northwest Florida Water Management District to implement federal permitting programs related to activities in surface waters and

wetlands; and the chapter 70 implications of implementing the provisions of this part within the jurisdiction of the Northwest Florida Water Management District.

(b) The department and Northwest Florida Water Management District shall jointly prepare an interim report on their progress in developing the aforementioned plan, to be presented March 1, 2001 to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the relevant substantive and fiscal committees. The department and district shall present a final report on March 1, 2003.

(c) Any jurisdictional declaratory statement issued for a project within the geographic jurisdiction of the Northwest Florida Water Management District that is valid on July 1, 1999, and for which there has been issued a permit pursuant to this chapter and chapter 403 for a phase of that project and which identified proposed future development, including mitigation, that would require an additional permit pursuant to this chapter and chapter 403 shall not expire until January 1, 2002.

**History.**—s. 8, ch. 94-122; s. 18, ch. 96-247; s. 5, ch. 96-370; s. 1, ch. 99-353.

<sup>1</sup>**Note.**—Sections 403.91-403.925 and 403.929 were repealed by s. 45, ch. 93-213, and s. 403.913, as amended by s. 46, ch. 93-213, was transferred to s. 403.939 and subsequently repealed by s. 18, ch. 95-145. The only section remaining within the cited range is s. 403.927.

<sup>2</sup>**Note.**—Repealed by s. 45, ch. 93-213.

### <sup>1</sup>**373.4149 Miami-Dade County Lake Belt Plan.**—

(1) The Legislature hereby accepts and adopts the recommendations contained in the Phase I Lake Belt Report and Plan, known as the “Miami-Dade County Lake Plan,” dated February 1997 and submitted by the Miami-Dade County Lake Belt Plan Implementation Committee.

(2)(a) The Legislature recognizes that deposits of limestone and sand suitable for production of construction aggregates, cement, and road base materials are located in limited areas of the state.

(b) The Legislature recognizes that the deposit of limestone available in South Florida is limited due to urbanization to the east and the Everglades to the west.

(3) The Miami-Dade County Lake Belt Area is that area bounded by the Ronald Reagan Turnpike to the east, the Miami-Dade-Broward County line to the north, Krome Avenue to the west and Tamiami Trail to the south together with the land south of Tamiami Trail in sections 5, 6, 7, 8, 17, and 18, Township 54 South, Range 39 East, sections 24, 25, and 36, Township 54 South, Range 38 East less those portions of section 10, except the west one-half, section 11, except the northeast one-quarter and the east one-half of the northwest one-quarter, and tracts 38 through 41, and tracts 49 through 64 inclusive, section 13, except tracts 17 through 35 and tracts 46 through 48, of Florida Fruit Lands Company Subdivision No. 1 according to the plat thereof as recorded in plat book 2, page 17, public records of Miami-Dade County, and section 14, except the west three quarters, Township 52 South, Range 39 East, lying north of the Miami Canal, sections 35 and 36 and the east one-half of sections 24 and 25, Township 53 South, Range 39 East and Government Lots 1 and 2, lying between Townships 53 and 54 South, Range 39 East and those portions of sections 1 and 2, Township 54 South, Range 39 East, lying north of Tamiami Trail.

(4) The identification of the Miami-Dade County Lake Belt Area shall not preempt local land use jurisdiction, planning, or regulatory authority in regard to the use of land by private land owners. When amending local comprehensive plans, or implementing zoning regulations, development regulations, or other local regulations, Miami-Dade County shall strongly consider limestone mining activities and ancillary operations, such as lake excavation, including use of explosives, rock processing, cement, concrete and asphalt products manufacturing, and ancillary activities, within the rock mining supported and allowable areas of the Miami-Dade County Lake Plan adopted by subsection (1); provided, however, that limerock mining activities are consistent with wellfield protection. Rezoning or amendments to local comprehensive plans concerning properties that are located within 1 mile of the Miami-Dade Lake Belt Area shall be compatible with limestone mining activities. No rezonings, variances, or amendments to local comprehensive plans for any residential purpose may be approved for any property located in sections 35 and 36 and the east one-half of sections 24 and 25, Township 53 South, Range 39 East until such time as there is no active mining within 2 miles of the property. This section does not preclude residential development that complies with current regulations.

(5) The Miami-Dade County Lake Belt Plan Implementation Committee shall be appointed by the governing board of the South Florida Water Management District to develop a strategy for the design and implementation of the Miami-Dade County Lake Belt Plan. The committee shall consist of the chair of the governing board of the South Florida Water Management District, who shall serve as chair of the committee, the policy director of Environmental and Growth Management in the office of the Governor, the secretary of the Department of Environmental Protection, the director of the Division of Water Facilities or its successor division within the Department of Environmental

Protection, the director of the Office of Tourism, Trade, and Economic Development within the office of the Governor, the secretary of the Department of Community Affairs, the executive director of the Fish and Wildlife Conservation Commission, the director of the Department of Environmental Resource Management of Miami-Dade County, the director of the Miami-Dade County Water and Sewer Department, the Director of Planning in Miami-Dade County, a representative of the Friends of the Everglades, a representative of the Florida Audubon Society, a representative of the Florida chapter of the Sierra Club, four representatives of the nonmining private landowners within the Miami-Dade County Lake Belt Area, and four representatives from the limestone mining industry to be appointed by the governing board of the South Florida Water Management District. Two ex officio seats on the committee will be filled by one member of the Florida House of Representatives to be selected by the Speaker of the House of Representatives from among representatives whose districts, or some portion of whose districts, are included within the geographical scope of the committee as described in subsection (3), and one member of the Florida Senate to be selected by the President of the Senate from among senators whose districts, or some portion of whose districts, are included within the geographical scope of the committee as described in subsection (3). The committee may appoint other ex officio members, as needed, by a majority vote of all committee members. A committee member may designate in writing an alternate member who, in the member's absence, may participate and vote in committee meetings.

(6) The committee shall develop Phase II of the Lake Belt Plan which shall:

- (a) Include a detailed master plan to further implementation;
- (b) Consider the feasibility of a common mitigation plan for nonrock mining uses, including a nonrock mining mitigation fee. Any mitigation fee shall be for the limited purpose of offsetting the loss of wetland functions and values and not as a revenue source for other purposes.
- (c) Further address compatible land uses, opportunities, and potential conflicts;
- (d) Provide for additional wellfield protection;
- (e) Provide measures to prevent the reclassification of the Northwest Miami-Dade County wells as groundwater under the direct influence of surface water;
- (f) Secure additional funding sources;
- (g) Consider the need to establish a land authority; and
- (h) Analyze the hydrological impacts resulting from the future mining included in the Lake Belt Plan and recommend appropriate mitigation measures, if needed, to be incorporated into the Lake Belt Mitigation Plan.

(7) The committee shall remain in effect until January 1, 2002, and shall meet as deemed necessary by the chair. The committee shall monitor and direct progress toward developing and implementing the plan. The committee shall submit progress reports to the governing board of the South Florida Water Management District and the Legislature by December 31 of each year. These reports shall include a summary of the activities of the committee, updates on all ongoing studies, any other relevant information gathered during the calendar year, and the committee recommendations for legislative and regulatory revisions. The committee shall submit a Phase II report and plan to the governing board of the South Florida Water Management District and the Legislature by December 31, 2000, to supplement the Phase I report submitted on February 28, 1997. The Phase II report must include the detailed master plan for the Miami-Dade County Lake Belt Area together with the final reports on all studies, the final recommendations of the committee, the status of implementation of Phase I recommendations and other relevant information, and the committee's recommendation for legislative and regulatory revisions.

(8) The committee shall report to the governing board of the South Florida Water Management District semiannually.

(9) In carrying out its work, the committee shall solicit comments from scientific and economic advisors and governmental, public, and private interests. The committee shall provide meeting notes, reports, and the strategy document in a timely manner for public comment.

(10) The committee is authorized to seek from the agencies or entities represented on the committee any grants or funds necessary to enable it to carry out its charge.

(11) The secretary of the Department of Environmental Protection, the secretary of the Department of Community Affairs, the secretary of the Department of Transportation, the Commissioner of Agriculture, the executive director of the Fish and Wildlife Conservation Commission, and the executive director of the South Florida Water Management District may enter into agreements with landowners, developers, businesses, industries, individuals, and governmental agencies as necessary to effectuate the provisions of this section.

(12)(a) All agencies of the state shall review the status of their landholdings within the boundaries of the Miami-Dade County Lake Belt. Those lands for which no present or future use is identified must be made available, together with other suitable lands, to the committee for its use in carrying out the objectives of this act.

(b) It is the intent of the Legislature that lands provided to the committee be used for land exchanges to further the objectives of this act.

**History.**—s. 21, ch. 92-132; s. 5, ch. 94-122; s. 1010, ch. 95-148; s. 10, ch. 97-222; s. 1, ch. 99-298; s. 22, ch. 2000-197; ss. 1, 2, ch. 2000-285.

**Note.**—Section 2, ch. 2000-285, provides that “[a]ny rights a person may have acquired pursuant to [former] subsection (5) of s. 373.4149, shall be extinguished [December 14, 2000]; unless, prior to such date, that person has filed an action in a court of competent jurisdiction to enforce such alleged rights and has recorded a notice of lis pendens.”

**373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.—**

(1) The Legislature finds that the impact of mining within the rock mining supported and allowable areas of the Miami-Dade County Lake Plan adopted by s. 373.4149(1) can best be offset by the implementation of a comprehensive mitigation plan as recommended in the 1998 Progress Report to the Florida Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee. The Lake Belt Mitigation Plan consists of those provisions contained in subsections (2)-(9). The per-ton mitigation fee assessed on limestone sold from the Miami-Dade County Lake Belt Area and sections 10, 11, 13, 14, Township 52 South, Range 39 East, and sections 24, 25, 35, and 36, Township 53 South, Range 39 East, shall be used for acquiring environmentally sensitive lands and for restoration, maintenance, and other environmental purposes. It is the intent of the Legislature that the per-ton mitigation fee shall not be a revenue source for purposes other than enumerated herein. Further, the Legislature finds that the public benefit of a sustainable supply of limestone construction materials for public and private projects requires a coordinated approach to permitting activities on wetlands within Miami-Dade County in order to provide the certainty necessary to encourage substantial and continued investment in the limestone processing plant and equipment required to efficiently extract the limestone resource. It is the intent of the Legislature that the Lake Belt Mitigation Plan satisfy all local, state, and federal requirements for mining activity within the rock mining supported and allowable areas.

(2) To provide for the mitigation of wetland resources lost to mining activities within the Miami-Dade County Lake Belt Plan, effective October 1, 1999, a mitigation fee is imposed on each ton of limerock and sand extracted by any person who engages in the business of extracting limerock or sand from within the Miami-Dade County Lake Belt Area and sections 10, 11, 13, 14, Township 52 South, Range 39 East, and sections 24, 25, 35, and 36, Township 53 South, Range 39 East. The mitigation fee is at the rate of 5 cents for each ton of limerock and sand sold from within the properties where the fee applies in raw, processed, or manufactured form, including, but not limited to, sized aggregate, asphalt, cement, concrete, and other limerock and concrete products. Any limerock or sand that is used within the mine from which the limerock or sand is extracted is exempt from the fee. The amount of the mitigation fee imposed under this section must be stated separately on the invoice provided to the purchaser of the limerock or sand product from the limerock or sand miner, or its subsidiary or affiliate, for which the mitigation fee applies. The limerock or sand miner, or its subsidiary or affiliate, who sells the limerock or sand product shall collect the mitigation fee and forward the proceeds of the fee to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs.

(3) The mitigation fee imposed by this section must be reported to the Department of Revenue. Payment of the mitigation fee must be accompanied by a form prescribed by the Department of Revenue. The proceeds of the fee, less administrative costs, must be transferred by the Department of Revenue to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund. As used in this section, the term “proceeds of the fee” means all funds collected and received by the Department of Revenue under this section, including interest and penalties on delinquent mitigation fees. The amount deducted for administrative costs may not exceed 3 percent of the total revenues collected under this section and may equal only those administrative costs reasonably attributable to the mitigation fee.

(4)(a) The Department of Revenue shall administer, collect, and enforce the mitigation fee authorized under this section in accordance with the procedures used to administer, collect, and enforce the general sales tax imposed under chapter 212. The provisions of chapter 212 with respect to the authority of the Department of Revenue to audit and make assessments, the keeping of books and records, and the interest and penalties imposed on delinquent fees apply to this section. The fee may not be included in computing estimated taxes under s. 212.11, and the dealer’s credit for collecting taxes or fees provided for in s. 212.12 does not apply to the mitigation fee imposed by this section.

(b) In administering this section, the Department of Revenue may employ persons and incur expenses for which funds are appropriated by the Legislature. The Department of Revenue shall adopt rules and prescribe and publish forms necessary to administer this section. The Department of Revenue shall establish audit procedures and may assess delinquent fees.

(5) Beginning January 1, 2001, and each January 1 thereafter, the per-ton mitigation fee shall be increased by 2.1 percentage points, plus a cost growth index. The cost growth index shall be the percentage change in the weighted average of the Employment Cost Index for All Civilian Workers (ecu 10001I), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, and the percentage change in the Producer Price Index for All Commodities (WPU 00000000), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, compared to the weighted average of these indices for the previous year. The weighted average shall be calculated as 0.6 times the percentage change in the Employment Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times the percentage change in the Producer Price Index for All Commodities (WPU 00000000). If either index is discontinued, it shall be replaced by its successor index, as identified by the United States Department of Labor.

(6)(a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee and adopted under s. 373.4149. Such mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands, the purchase of mitigation credit from a permitted mitigation bank, and any structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program and the Internal Improvement Trust Fund, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land under s. 373.4149 for mitigation due to rockmining.

(b) Expenditures must be approved by an interagency committee consisting of representatives from each of the following: the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Fish and Wildlife Conservation Commission. In addition, the limerock mining industry shall select a representative to serve as a nonvoting member of the interagency committee. At the discretion of the committee, additional members may be added to represent federal regulatory, environmental, and fish and wildlife agencies.

(7) Payment of the fee imposed by this section satisfies the mitigation requirements imposed under ss. 373.403-373.439 and any applicable county ordinance for loss of the value and functions from mining of the wetlands identified as rockmining supported and allowable areas of the Miami-Dade County Lake Plan adopted by s. 373.4149(1). In addition, it is the intent of the Legislature that the payment of the mitigation fee imposed by this section satisfy all federal mitigation requirements for the wetlands mined.

(8) If a general permit by the United States Army Corps of Engineers, or an appropriate long-term permit for mining, consistent with the Miami-Dade County Lake Belt Plan, this section, and ss. 373.4149, 373.4415, and 378.4115 is not issued on or before September 30, 2000, the fee imposed by this section is suspended until revived by the Legislature.

(9)(a) The interagency committee established in this section shall annually prepare and submit to the governing board of the South Florida Water Management District a report evaluating the mitigation costs and revenues generated by the mitigation fee.

(b) No sooner than January 31, 2010, and no more frequently than every 10 years thereafter, the interagency committee shall submit to the Legislature a report recommending any needed adjustments to the mitigation fee to ensure that the revenue generated reflects the actual costs of the mitigation.

**History.**—s. 2, ch. 99-298; s. 23, ch. 2000-197.

**373.41495 Lake Belt Mitigation Trust Fund; bonds.—**

(1) The Lake Belt Mitigation Trust Fund is hereby created, to be administered by the South Florida Water Management District. Funds shall be credited to the trust fund as provided in s. 373.41492, to be used for the purposes set forth therein.

(2) The South Florida Water Management District may issue revenue bonds pursuant to s. 373.584, payable from revenues from the Lake Belt Mitigation fee imposed under s. 373.41492.

(3) Net proceeds from the Lake Belt Mitigation fee and any revenue bonds issued under subsection (2) shall be deposited into the trust fund and, together with any interest earned on such moneys, shall be applied to Lake Belt mitigation projects as provided in s. 373.41492.

(4) The Lake Belt Mitigation Trust Fund is a trust fund as described in s. 19(f)(3), Art. III of the State Constitution, and therefore is not subject to termination pursuant to s. 19(f)(2), Art. III of the State Constitution.

**History.**—ss. 1, 2, 3, 4, ch. 98-260; s. 1, ch. 99-297.

**373.415 Protection zones; duties of the St. Johns River Water Management District.—**

(1) Not later than November 1, 1988, the St. Johns River Water Management District shall adopt rules establishing protection zones adjacent to the watercourses in the Wekiva River System, as designated in s. 369.303(10). Such protection zones shall be sufficiently wide to prevent harm to the Wekiva River System, including water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent wildlife species, caused by any of the activities regulated under this part. Factors on which the widths of the protection zones shall be based shall include, but not be limited to:

(a) The biological significance of the wetlands and uplands adjacent to the designated watercourses in the Wekiva River System, including the nesting, feeding, breeding, and resting needs of aquatic species and wetland-dependent wildlife species.

(b) The sensitivity of these species to disturbance, including the short-term and long-term adaptability to disturbance of the more sensitive species, both migratory and resident.

(c) The susceptibility of these lands to erosion, including the slope, soils, runoff characteristics, and vegetative cover.

In addition, the rules may establish permitting thresholds, permitting exemptions, or general permits, if such thresholds, exemptions, or general permits do not allow significant adverse impacts to the Wekiva River System to occur individually or cumulatively.

(2) Notwithstanding the provisions of s. 120.60, the St. Johns River Water Management District shall not issue any permit under this part within the Wekiva River Protection Area, as defined in s. 369.303(9), until the appropriate local government has provided written notification to the district that the proposed activity is consistent with the local comprehensive plan and is in compliance with any land development regulation in effect in the area where the development will take place. The district may, however, inform any property owner who makes a request for such information as to the location of the protection zone or zones on his or her property. However, if a development proposal is amended as the result of the review by the district, a permit may be issued prior to the development proposal being returned, if necessary, to the local government for additional review.

(3) Nothing in this section shall affect the authority of the water management districts created by this chapter to adopt similar protection zones for other watercourses.

(4) Nothing in this section shall affect the authority of the water management districts created by this chapter to decline to issue permits for development which have not been determined to be consistent with local comprehensive plans or in compliance with land development regulations in areas outside the Wekiva River Protection Area.

(5) Nothing in this section shall affect the authority of counties or municipalities to establish setbacks from any surface waters or watercourses.

(6) The provisions of s. 373.617 are applicable to final actions of the St. Johns River Water Management District with respect to a permit or permits issued pursuant to this section.

**History.**—s. 2, ch. 88-121; s. 27, ch. 88-393; s. 606, ch. 95-148; s. 12, ch. 2000-212.

**373.416 Permits for maintenance or operation.—**

(1) Except for the exemptions set forth in this part, the governing board or department may require such permits and impose such reasonable conditions as are necessary to assure that the operation or maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto, will not be inconsistent with the overall objectives of the district, and will not be harmful to the water resources of the district.

(2) Except as otherwise provided in ss. 373.426 and 373.429, a permit issued by the governing board or department for the maintenance or operation of a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works shall be permanent, and the sale or conveyance of such dam, impoundment, reservoir, appurtenant work, or works, or the land on which the same is located, shall in no way affect the validity of the permit, provided the owner in whose name the permit was granted notifies the governing board or department of such change of ownership within 30 days of such transfer.

(3) The governing boards shall, by November 1, 1990, establish by rule requirements for the monitoring and maintenance of stormwater management systems.

**History.**—s. 5, part IV, ch. 72-299; s. 20, ch. 73-190; s. 14, ch. 89-279.

**373.417 Citation of rule.**—In addition to any other provisions within this part or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this part or such rules promulgated hereunder, cite a specific rule. If a request for information cannot be accompanied by a rule citation, failure to provide such information cannot be grounds to deny a permit.

**History.**—s. 6, ch. 79-161.

**373.418 Rulemaking; preservation of existing authority.**—

(1) It is the intent of the Legislature that stormwater management systems be regulated under this part incorporating all of existing requirements contained in or adopted pursuant to this chapter and chapter 403. Neither the department nor governing boards are limited or prohibited from amending any regulatory requirement applicable to stormwater management systems in accordance with the provisions of this part. It is further the intent of the Legislature that all current exemptions under this chapter and chapter 403 shall remain in full force and effect and that this act shall not be construed to remove or alter these exemptions.

(2) In order to preserve existing requirements, all rules of the department or governing boards existing on July 1, 1989, except for rule 17-25.090, Florida Administrative Code, shall be applicable to stormwater management systems and continue in full force and effect unless amended or replaced by future rulemaking in accordance with this part.

(3) The department or governing boards have authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part. Such rules shall be consistent with the water resource implementation rule and shall not allow harm to water resources or be contrary to the policy set forth in s. 373.016.

(4) The department or the governing boards are authorized to adopt by rule performance criteria for the review of groundwater discharge of stormwater. Upon adoption of such performance criteria the department shall not require a separate groundwater permit for permitted stormwater facilities.

**History.**—s. 15, ch. 89-279; s. 22, ch. 97-160; s. 86, ch. 98-200.

**373.419 Completion report.**—Within 30 days after the completion of construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, the permittee shall file a written statement of completion with the governing board or department. The governing board or department shall designate the form of such statement and such information as it shall require.

**History.**—s. 6, part IV, ch. 72-299; s. 16, ch. 89-279.

**373.421 Delineation methods; formal determinations.**—

(1) The Environmental Regulation Commission shall adopt a unified statewide methodology for the delineation of the extent of wetlands as defined in s. 373.019(22). This methodology shall consider regional differences in the types of soils and vegetation that may serve as indicators of the extent of wetlands. This methodology shall also include provisions for determining the extent of surface waters other than wetlands for the purposes of regulation under s. 373.414. This methodology shall not become effective until ratified by the Legislature. Subsequent to legislative ratification, the wetland definition in s. 373.019(22) and the adopted wetland methodology shall be binding on the department, the water management districts, local governments, and any other governmental entities. Upon ratification of such wetland methodology, the Legislature preempts the authority of any water management district, state or regional agency, or local government to define wetlands or develop a delineation methodology to implement the definition and determines that the exclusive definition and delineation methodology for wetlands shall be that established pursuant to s. 373.019(22) and this section. Upon such legislative ratification, any existing wetlands definition or wetland delineation methodology shall be superseded by the wetland definition and delineation methodology established pursuant to this chapter. Subsequent to legislative ratification, a delineation of the extent of a surface water or wetland by the department or a water management district, pursuant to a formal determination under subsection (2), or pursuant to a permit issued under this part in which the delineation was field-verified by the permitting agency and specifically approved in the permit, shall be binding on all other governmental entities for the duration of the formal determination or permit. All existing rules and methodologies of the department, the water management districts, and local governments, regarding surface water or wetland definition and delineation shall remain in full force and effect until the common methodology rule becomes effective. However, this shall not be construed to limit any power of the department, the water management districts, and local governments to amend or adopt a surface water or wetland definition or delineation methodology until the common methodology rule becomes effective.

(2) A water management district or the department may provide a process by rule for formal determinations of the extent of surface waters and wetlands, as delineated in subsection (1). By interagency agreement, the department and each water management district shall determine which agency shall implement the determination process within the district. If a rule is adopted, a property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in property may petition the district for a formal determination. In such rule, the governing board or the department shall specify information which must be provided and may require authorization to enter upon the property. The rule shall also establish procedures for issuing a formal determination. The governing board may authorize its executive director to issue formal determinations. The governing board must by rule prescribe the circumstances in which its executive director may issue such determinations. The governing board or the department may require a fee to cover the costs of processing and acting upon the petition. That fee must be established by rule. A water management district or the department may publish, or require the petitioner to publish at the petitioner's expense, notice of the intended agency action on the petition for a formal determination in a newspaper of general circulation within the affected area. Within 60 days prior to the expiration of a formal determination, the property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in the property may petition for a new formal determination for the same parcel of property and such determination shall be issued, approving the same extent of surface waters and wetlands in the previous formal determination, as long as physical conditions on the property have not changed, other than changes which have been authorized by a permit pursuant to this part, so as to alter the boundaries of surface waters or wetlands and the methodology for determining the extent of surface waters and wetlands authorized by subsection (1) has not been amended since the previous formal determination. The application fee for such a subsequent petition shall be less than the application fee for the original determination.

(3) A formal determination is binding for a period not to exceed 5 years as long as physical conditions on the property do not change, other than changes which have been authorized by a permit pursuant to this part, so as to alter the boundaries of surface waters or wetlands, as delineated in subsection (1).

(4) The governing board or the department may revoke a formal determination if it finds that the petitioner has submitted inaccurate information to the district.

(5) A formal determination obtained under this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable under s. 120.565. Sections 120.569 and 120.57 apply to formal determinations under this section.

(6) The district or the department may also issue nonbinding informal determinations or otherwise institute determinations on its own initiative as provided by law. A nonbinding informal determination of the extent of surface waters and wetlands issued by the South Florida Water Management District or the Southwest Florida Water Management District, between July 1, 1989, and the effective date of the methodology ratified in s. 373.4211, shall be validated by the district if a petition to validate the nonbinding informal determination is filed with the district on or before October 1, 1994, provided:

(a) The petitioner submits the documentation prepared by the agency, and signed by an agency employee in the course of the employee's official duties, at the time the nonbinding informal determination was issued, showing the boundary of the surface waters or wetlands;

(b) The request is accompanied by the appropriate fee in accordance with the fee schedule established by district rule;

(c) Any supplemental information, such as aerial photographs and soils maps, is provided as necessary to ensure an accurate determination;

(d) District staff verify the delineated surface water or wetland boundary through site inspection; and

(e) Following district verification, and adjustment if necessary, of the boundary of surface waters or wetlands, the petitioner submits a survey certified pursuant to chapter 472, which depicts the surface water or wetland boundaries. The certified survey shall contain a legal description of, and the acreage contained within, the boundaries of the property for which the determination is sought. The boundaries must be witnessed to the property boundaries and must be capable of being mathematically reproduced from the survey.

Validated informal nonbinding determinations issued by the South Florida Water Management District and the Southwest Florida Water Management District shall remain valid for a period of 5 years from the date of validation by the district, as long as physical conditions on the property do not change so as to alter the boundaries of surface waters or wetlands. A validation obtained under this section is final agency action. Sections 120.569 and 120.57 apply to validations under this section.

(7)(a) This subsection is intended to restore qualified developments to their pre-Henderson Wetland Protection Act status for contiguous wetlands. This provision will therefore streamline state wetland permitting without loss of wetland protection by other governmental entities.

(b) Wetlands contiguous to surface waters of the state as defined in s. 403.031(13), Florida Statutes (1991), shall be delineated pursuant to the department's rules as such rules existed prior to January 24, 1984, while wetlands not contiguous to surface waters of the state as defined in s. 403.031(13), Florida Statutes (1991), shall be delineated pursuant to the applicable methodology ratified by s. 373.4211 for any development which obtains an individual permit from the United States Army Corps of Engineers under 33 U.S.C. s. 1344:

1. Where a jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, is revalidated pursuant to s. 373.414(13) and the affected lands are part of a project for which a vested rights determination has been issued pursuant to s. 380.06, or

2. Where the lands affected were grandfathered pursuant to <sup>1</sup>s. 403.913(6), Florida Statutes (1991), and proof of prior notification pursuant to <sup>1</sup>s. 403.913(6), Florida Statutes (1991), is submitted to the department within 180 days of the publication of a notice by the department of the existence of this provision. Failure to timely submit the proof of prior notification to the department serves as a waiver of the benefits conferred by this subsection.

3. This subsection shall not be applicable to lands:

a. Within the geographical area to which an individual or general permit issued prior to June 1, 1994, under rules adopted pursuant to this part applies; or

b. Within the geographical area to which a conceptual permit issued prior to June 1, 1994, under rules adopted pursuant to this part applies if wetland delineations were identified and approved by the conceptual permit as set forth in s. 373.414(12)(b)1. or 2.; or

c. Where no development activity as defined in <sup>2</sup>s. 380.01(1) or (2)(a)-(d) and (f) has occurred within the project boundaries since October 1, 1986; or

d. Of a project which is not in compliance with this part or the rules adopted pursuant to <sup>3</sup>ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended.

4. The wetland delineation methodology required in this subsection shall only apply within the geographical area of an individual permit issued by the United States Army Corps of Engineers under 33 U.S.C. s. 1344. The requirement to obtain such individual permit to secure the benefit of this subsection shall not apply to any activities exempt or not subject to regulation under 33 U.S.C. s. 1344.

5. Notwithstanding subsection (1), the wetland delineation methodology required in this subsection and any wetland delineation pursuant thereto, shall only apply to agency action under this part and shall not be binding on local governments except in their implementation of this part.

**History.**—s. 7, ch. 91-288; s. 31, ch. 93-213; ss. 6, 18, ch. 94-122; s. 100, ch. 96-410; s. 10, ch. 98-88; s. 170, ch. 99-13.

<sup>1</sup>**Note.**—Repealed by s. 45, ch. 93-213.

<sup>2</sup>**Note.**—Section 380.01 was transferred to s. 381.492 by the reviser in 1969; it was further redesignated as s. 381.0605 by s. 52, ch. 91-297.

<sup>3</sup>**Note.**—Sections 403.91-403.925 and 403.929 were repealed by s. 45, ch. 93-213, and s. 403.913, as amended by s. 46, ch. 93-213, was transferred to s. 403.939 and subsequently repealed by s. 18, ch. 95-145. The only section remaining within the cited range is s. 403.927.

**373.4211 Ratification of chapter 17-340, Florida Administrative Code, on the delineation of the landward extent of wetlands and surface waters.**—Pursuant to s. 373.421, the Legislature ratifies chapter 17-340, Florida Administrative Code, approved on January 13, 1994, by the Environmental Regulation Commission, with the following changes:

(1) The last sentence of rule 17-340.100(1), Florida Administrative Code, is changed to read: “The methodology shall not be used to delineate areas which are not wetlands as defined in subsection 17-340.200(19), F.A.C., nor to delineate as wetlands or surface waters areas exempted from delineation by statute or agency rule.”

(2) The introductory paragraph of rule 17-340.300, Florida Administrative Code, is changed to read: “The landward extent (i.e., the boundary) of wetlands as defined in subsection 17-340.200(19), F.A.C., shall be determined by applying reasonable scientific judgment to evaluate the dominance of plant species, soils, and other hydrologic evidence of regular and periodic inundation and saturation as set forth below. In applying reasonable scientific judgment, all reliable information shall be evaluated in determining whether the area is a wetland as defined in subsection 17-340.200(19), F.A.C.”

(3) The introductory paragraph of rule 17-340.300(2), Florida Administrative Code, is changed to read: “The landward extent of a wetland as defined in subsection 17-340.200(19), F.A.C., shall include any of the following areas:”

(4) Rule 17-340.300(2)(a), Florida Administrative Code, is changed to read:

“(a) Those areas where the areal extent of obligate plants in the appropriate vegetative stratum is greater than the areal extent of all upland plants in that stratum, as identified using the method in section 17-340.400, F.A.C., and either:

“1. The substrate is composed of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance;

“2. The substrate is nonsoil, rock outcrop-soil complex, or is located within an artificially created wetland area,  
or

“3. One or more of the hydrologic indicators listed in section 17-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C.”

(5) Rule 17-340.300(2)(b), Florida Administrative Code, is changed to read:

“(b) Those areas where the areal extent of obligate or facultative wet plants, or combinations thereof, in the appropriate stratum is equal to or greater than 80 percent of all the plants in that stratum, excluding facultative plants, and either:

“1. The substrate is comprised of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance;

“2. The substrate is nonsoil, rock outcrop-soil complex, or is located within an artificially created wetland area;  
or

“3. One or more of the hydrologic indicators listed in section 17-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C.”

(6) Rule 17-340.300(2)(c), Florida Administrative Code, is deleted.

(7) Rule 17-340.300(2)(d), Florida Administrative Code, is changed to read:

“(c) Those areas, other than pine flatwoods and improved pastures, with undrained hydric soils which meet, in situ, at least one of the criteria listed below. A hydric soil is considered undrained unless reasonable scientific judgment indicates permanent artificial alterations to the onsite hydrology have resulted in conditions which would not support the formation of hydric soils.

“1. Soil classified according to United States Department of Agriculture’s Keys to Soil Taxonomy (4th ed. 1990) as Umbraqualfs, Sulfaquents, Hydraquents, Humaquepts, Histosols (except Folist), Argiaquolls, or Umbraquults.

“2. Saline sands (salt flats-tidal flats).

“3. Soil within a hydric mapping unit designated by the U.S.D.A.-S.C.S. as frequently flooded or depressional, when the hydric nature of the soil has been field verified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida. If a permit applicant, or a person petitioning for a formal determination pursuant to subsection 373.421(2), F.S., disputes the boundary of a frequently flooded or depressional mapping unit, the applicant or petitioner may request that the regulating agency, in cooperation with the U.S.D.A.-S.C.S., confirm the boundary. For the purposes of section 120.60, F.S., a request for a boundary confirmation pursuant to this subparagraph shall have the same effect as a timely request for additional information by the regulating agency. The regulating agency’s receipt of the final response provided by the U.S.D.A.-S.C.S. to the request for boundary confirmation shall have the same effect as a receipt of timely requested additional information.

“4. For the purposes of this paragraph only, ‘pine flatwoods’ means a plant community type in Florida occurring on flat terrain with soils which may experience a seasonable high water table near the surface. The canopy species consist of a monotypic or mixed forest of long leaf pine or slash pine. The subcanopy is typically sparse or absent. The ground cover is dominated by saw palmetto with areas of wire grass, gallberry, and other shrubs, grasses, and forbs, which are not obligate or facultative wet species. Pine flatwoods do not include those wetland communities as listed in the wetland definition contained in subsection 17-340.200(19) which may occur in the broader landscape setting of pine flatwoods and which may contain slash pine. Also for the purposes of this paragraph only, ‘improved pasture’ means areas where the dominant native plant community has been replaced with planted or natural recruitment of

herbaceous species which are not obligate or facultative wet species and which have been actively maintained for livestock through mechanical means or grazing.”

(8) Rule 17-340.300(2)(e), Florida Administrative Code, is changed to read:

“(d) Those areas where one or more of the hydrologic indicators listed in section 17-340.500, F.A.C., are present, and which have hydric soils, as identified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida, and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C. These areas shall not extend beyond the seasonal high water elevation.”

(9) Rule 17-340.300(2)(f), Florida Administrative Code, is deleted.

(10) Rule 17-340.300(3), Florida Administrative Code, is added to read:

“(3)(a) If the vegetation or soils of an upland or wetland area have been altered by natural or human-induced factors such that the boundary between wetlands and uplands cannot be delineated reliably by use of the methodology in subsection 17-340.300(2), F.A.C., as determined by the regulating agency, and the area has hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance, then the most reliable available information shall be used with reasonable scientific judgment to determine where the methodology in subsection 17-340.300(2), F.A.C., would have delineated the boundary between wetlands and uplands. Reliable available information may include, but is not limited to, aerial photographs, remaining vegetation, authoritative site-specific documents, or topographical consistencies.

“(b) This subsection shall not apply to any area where regional or site-specific permitted activities, or activities which did not require a permit, under sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities, Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., have altered the hydrology of the area to the extent that reasonable scientific judgment, or application of the provisions of section 17-340.550, F.A.C., indicate that under normal circumstances the area no longer inundates or saturates at a frequency and duration sufficient to meet the wetland definition in subsection 17-340.200(19), F.A.C.

“(c) This subsection shall not be construed to limit the type of evidence which may be used to delineate the landward extent of a wetland under this chapter when an activity violating the regulatory requirements of sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities, Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., has disturbed the vegetation or soils of an area.”

(11) Rule 17-340.300(4), Florida Administrative Code, is created to read:

“17-340.300(4) The regulating agency shall maintain sufficient soil scientists on staff to provide evaluation or consultation regarding soil determinations in applying the methodologies set forth in subsections 17-340.300(2) or (3), F.A.C. Services provided by the U.S.D.A.-S.C.S., or other competent soil scientists, under contract or agreement with the regulating agency, may be used in lieu of, or to augment, agency staff.”

(12) Rule 17-340.400, Florida Administrative Code, is changed to read:

“17-340.400 Selection of Appropriate Vegetative Stratum.

“Dominance of plant species, as described in paragraphs 17-340.300(2)(a) and 17-340.300(2)(b), shall be determined in a plant stratum (canopy, subcanopy, or ground cover). The top stratum shall be used to determine dominance unless the top stratum, exclusive of facultative plants, constitutes less than 10 percent areal extent, or unless reasonable scientific judgment establishes that the indicator status of the top stratum is not indicative of the hydrologic conditions on site. In such cases, the stratum most indicative of onsite hydrologic conditions, considering the reasonable variability in the amount and distribution of rainfall, shall be used. The evidence concerning the presence or absence of regular and periodic inundation or saturation shall be based on in situ data. All facts and factors relating to the presence or absence of regular and periodic inundation or saturation shall be weighed in deciding whether the evidence supports shifting to a lower stratum. The presence of obligate, facultative wet, or upland plants in a lower stratum does not by itself constitute sufficient evidence to shift strata, but can be considered along with other physical data in establishing the weight of evidence necessary to shift to a lower stratum. The burden of proof shall be with the party asserting that a stratum other than the top stratum should be used to determine dominance. Facultative plants shall not be considered for purposes of determining appropriate strata or dominance.”

(13) Rule 17-340.450(1), Florida Administrative Code, is changed by deletion of the following plant species: *Habenaria repens*, *Schoenus nigricans*, and *Ulmus americana*.

(14) Rule 17-340.450(2), Florida Administrative Code, is changed by deletion of the following plant species: *Bucida buceras*, *Bumelia lycioides*, *Conoclinium coelestinum*, *Coreopsis tripteris*, *Erithralis fruticosa*, *Eryngium baldwini*, *Eustachys petracea*, *Helianthus floridanus*, *Muhlenbergia expansa*, *Myrsine quianensis*, *Peperomia*

*floridana*, *Scutellaria floridana*, *Scutellaria integrifolia*, *Stillingia sylvatica* var. *tenuis*, *Tripsacum dactyloides*, *Verbesina virginica*, and *Wisteria frutescens*, *Aletris* spp., *Alopecurus carolinianus*, *Carphephorus odoratissimus*, *Carphephorus paniculata*, *Chasmanthium* spp., *Elytraria caroliniensis*, *Euthamia* spp., *Flaveria* spp., *Gratiola* spp., *Habenaria* spp. except *Habenaria repens* (OBL), *Hibiscus tiliaceus*, *Ilex opaca* var. *opaca*, *Lilium catesbaei*, *Metopium toxiferum*, *Morus rubra*, *Nephrolepis* spp., *Oplismenus setarius*, *Panicum tenue*, *Vaccinium elliotti*, *Fimbristylis spathacea*, *Guapira discolor*, *Jacquinia keyensis*, *Morinda royoc*, *Schizachyrium maritimum*, *Schizachyrium rhizomatum*, *Strumpfia maritima*, *Baccharis glomeruliflora*, *Lachnanthes caroliniana*, *Liatris spicata*, *Lyonia ligustrina*, *Michella repens*, *Sambucus canadensis*, *Sebastiania fruticosa*, and *Setaria geniculata*.

(15) Rule 17-340.450(2) is changed by adding the following species: *Chasmanthium* spp. except *Chasmanthium latifolium* (FAC) and *Chasmanthium sessiliflorum* (FAC), *Flaveria floridana*, *Flaveria linearis*, *Gratiola* spp. except *Gratiola hispida* (FAC), and *Habenaria* spp., *Schoenus nigricans*, and *Ulmus americana*.

(16) Rule 17-340.450(2) is amended by adding, after the species list, the following language:

“Within Monroe County and the Key Largo portion of Dade County only, the following species shall be listed as Facultative Wet: *Alternanthera maritima*, *Morinda royoc*, and *Strumpfia maritima*.”

(17) Rule 17-340.450(3) is changed by deleting the following species: *Bischofia javanica*, *Dioclea multiflora*, *Canella alba*, *Ernodea littoralis*, *Eugenia axillaris*, *Eugenia foetida*, *Eugenia rhombea*, *Eugenia uniflora*, *Manilkara bahamensis*, *Musa* spp., *Pisonia rotundata*, *Psidium guajava*, *Randia aculeata*, and *Reynoldsia septentrionalis*, *Terminalia catappa*, *Paspalum bifidum*, *Ligustrum* spp., and *Urena lobata*.

(18) Rule 17-340.450(3) is changed by adding the following species: *Bucida buceras*, *Bumelia lycioides*, *Conoclinium coelestinum*, *Coreopsis tripteris*, *Erithralis fruticosa*, *Eryngium baldwini*, *Eustachys petracea*, *Helianthus floridanus*, *Muhlenbergia expansa*, *Myrsine quianensis*, *Scutellaria floridana*, *Scutellaria integrifolia*, *Stillingia sylvatica* var. *tenuis*, *Tripsacum dactyloides*, and *Verbesina virginica*, *Aletris* spp., *Alopecurus carolinianus*, *Carphephorus odoratissimus*, *Carphephorus paniculata*, *Chasmanthium latifolium*, *Chasmanthium sessiliflorum*, *Elytraria caroliniensis*, *Euthamia* spp., *Fimbristylis spathacea*, *Flaveria bidentis*, *Flaveria trinervia*, *Gratiola hispida*, *Heliotropium polyphyllum*, *Hibiscus tiliaceus*, *Ilex opaca* var. *opaca*, *Jacquinia keyensis*, *Lilium catesbaei*, *Metopium toxiferum*, *Morus rubra*, *Nephrolepis* spp., *Oplismenus setarius*, *Panicum tenue*, *Schizachyrium* spp., *Vaccinium elliotti*, *Baccharis glomeruliflora*, *Lachnanthes caroliniana*, *Liatris spicata*, *Lyonia ligustrina*, *Sambucus canadensis*, *Sebastiania fruticosa*, and *Setaria geniculata*.

(19) Rule 17-340.450(3) is amended by adding, after the species list, the following language:

“Within Monroe County and the Key Largo portion of Dade County only, the following species shall be listed as facultative: *Alternanthera paronychioides*, *Byrsonima lucida*, *Ernodea littoralis*, *Guapira discolor*, *Manilkara bahamensis*, *Pisonia rotundata*, *Pithecellobium keyensis*, *Pithecellobium unguis-cati*, *Randia aculeata*, *Reynoldsia septentrionalis*, and *Thrinax radiata*.”

(20) Rule 17-340.500, Florida Administrative Code, is changed to read: “The indicators below may be used as evidence of inundation or saturation when used as provided in section 17-340.300, F.A.C. Several of the indicators reflect a specific water elevation. These specific water elevation indicators are intended to be evaluated with meteorological information, surrounding topography, and reliable hydrologic data or analyses when provided, to ensure that such indicators reflect inundation or saturation of a frequency and duration sufficient to meet the wetland definition in subsection 17-340.200(19), F.A.C., and not rare or aberrant events. These specific water elevation indicators are not intended to be extended from the site of the indicator into surrounding areas when reasonable scientific judgment indicates that the surrounding areas are not wetlands as defined in subsection 17-340.200(19), F.A.C.

“(1) Algal mats. The presence or remains of nonvascular plant material which develops during periods of inundation and persists after the surface water has receded.

“(2) Aquatic mosses or liverworts on trees or substrates. The presence of those species of mosses or liverworts tolerant of or dependent on surface water inundation.

“(3) Aquatic plants. Defined in subsection 17-340.200(1), F.A.C.

“(4) Aufwuchs. The presence or remains of the assemblage of sessile, attached, or free-living, nonvascular plants and invertebrate animals (including protozoans) which develop a community on inundated surfaces.

“(5) Drift lines and rafted debris. Vegetation, litter, and other natural or manmade material deposited in discrete lines or locations on the ground or against fixed objects, or entangled above the ground within or on fixed objects in a form and manner which indicates that the material was waterborne. This indicator should be used with caution to ensure that the drift lines or rafted debris represent usual and recurring events typical of inundation or saturation at a frequency and duration sufficient to meet the wetland definition of subsection 17-340.200(19), F.A.C.

“(6) Elevated lichen lines. A distinct line, typically on trees, formed by the water-induced limitation on the growth of lichens.

“(7) Evidence of aquatic fauna. The presence or indications of the presence of animals which spend all or portions of their life cycle in water. Only those life stages which depend on being in or on water for daily survival are included in this indicator.

“(8) Hydrologic data. Reports, measurements, or direct observation of inundation or saturation which support the presence of water to an extent consistent with the provisions of the definition of wetlands and the criteria within this rule, including evidence of a seasonal high water table at or above the surface according to methodologies set forth in Soil and Water Relationships of Florida’s Ecological Communities (Florida Soil Conservation Staff 1992).

“(9) Morphological plant adaptations. Specialized structures or tissues produced by certain plants in response to inundation or saturation, which normally are not observed when the plant has not been subject to conditions of inundation or saturation.

“(10) Secondary flow channels. Discrete and obvious natural pathways of water flow landward of the primary bank of a stream watercourse and typically parallel to the main channel.

“(11) Sediment deposition. Mineral or organic matter deposited in or shifted to positions indicating water transport.

“(12) Vegetated tussocks or hummocks. Areas where vegetation is elevated above the natural grade on a mound built up of plant debris, roots, and soils so that the growing vegetation is not subject to the prolonged effects of soil anoxia.

“(13) Water marks. A distinct line created on fixed objects, including vegetation, by a sustained water elevation.”

(21) Rule 17-340.600(2)(e), Florida Administrative Code, is changed to read:

“(e) the seasonal high-water line for artificial lakes, borrow pits, canals, ditches, and other artificial water bodies with side slopes flatter than 1 foot vertical to 4 feet horizontal along with any artificial water body created by diking or impoundment above the ground.”

(22) The first sentence of subsection (1) and paragraphs (1)(a) and (b) of rule 17-340.700, Florida Administrative Code, are changed to read:

“(1) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water management districts to implement subsections 373.414(1) through 373.414(6), 373.414(8), and 373.414(10), F.S.; and subsection 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to section 373.414, F.S. (1991):

“(a) Works, impoundments, reservoirs, and other watercourses constructed and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under sections 17-28.700, 17-302.520, F.A.C., Chapters 17-17, 17-600, 17-610, 17-640, 17-650, 17-660, 17-670, 17-671, 17-673, 17-701, F.A.C., or section 403.0885, F.S., or rules implementing section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 17-611, F.A.C., or section 403.0885, F.S., or its implementing rules;

“(b) Works, impoundments, reservoirs, and other watercourses constructed solely for wastewater treatment or disposal before a construction permit was required under Chapter 403, F.S., and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under sections 17-28.700, 17-302.520, F.A.C., Chapters 17-17, 17-600, 17-610, 17-640, 17-650, 17-660, 17-670, 17-671, 17-673, 17-701, F.A.C., or section 403.0885, F.S., or rules implementing section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 17-611, F.A.C., or section 403.0885, F.S., or its implementing rules;”

(23) The first sentence of rule 17-340.700(2), Florida Administrative Code, is changed to read:

“(2) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water management districts to implement subsections 373.414(1), 373.414(2)(a), 373.414(8), and 373.414(10), F.S.; and subsections 373.414(3) through 373.414(6), F.S.; and subsection 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to section 373.414, F.S. (1991), except for authority to protect threatened and endangered species in isolated wetlands:”

(24) Rule 17-340.700(7), Florida Administrative Code, is changed to read:

“(7) As used in this subsection, ‘solely for’ means the reason for which a work, impoundment, reservoir, or other watercourse is constructed and operated; and such construction and operation would not have occurred but for the purposes identified in subsection 17-340.700(1) or subsection 17-340.700(2), F.A.C. Furthermore, the phrase does not refer to a work, impoundment, reservoir, or other watercourse constructed or operated for multiple purposes. Incidental uses, such as occasional recreational uses, will not render the exemption inapplicable, so long as the incidental uses are not part of the original planned purpose of the work, impoundment, reservoir, or other watercourse. However, for those

works, impoundments, reservoirs, or other watercourses described in paragraphs 17-340.700(1)(c) and 17-340.700(2)(a), F.A.C., use of the system for flood attenuation, whether originally planned or unplanned, shall be considered an incidental use, so long as the works, impoundments, reservoirs, and other watercourses are no more than 2 acres larger than the minimum area required to comply with the stormwater treatment requirements of the district or department. For the purposes of this subsection, reuse from a work, impoundment, reservoir, or other watercourse is part of treatment or disposal.”

(25) The first sentence of rule 17-340.750, Florida Administrative Code, is changed to read:

“17-340.750 Exemption for Surface Waters or Wetlands Created by Mosquito Control Activities.

“Construction, alteration, operation, maintenance, removal, and abandonment of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, or works, in, on, or over lands that have become surface waters or wetlands solely because of mosquito control activities undertaken as part of a governmental mosquito control program, and which lands were neither surface waters nor wetlands before such activities, shall be exempt from the rules adopted by the department and water management districts to implement subsections 373.414(1) through 373.414(6), 373.414(8), and 373.414(10), F.S.; and subsection 373.414(7), F.S., regarding any authority granted pursuant to section 373.414, F.S. (1991).”

(26) Any future amendments to rule 17-340, Florida Administrative Code, shall be submitted in bill form to the Speaker of the House of Representatives and to the President of the Senate for their consideration and referral to the appropriate committees. Such rule amendments shall become effective only upon approval by act of the Legislature.

**History.**—s. 1, ch. 94-122; s. 101, ch. 96-410; s. 46, ch. 97-96.

<sup>1</sup>**Note.**—Repealed by s. 15, ch. 84-79.

**373.422 Applications for activities on state sovereignty lands or other state lands.**—If sovereignty lands or other lands owned by the state are the subject of a proposed activity, the issuance of a permit by the department or a water management district must be conditioned upon the receipt by the applicant of all necessary approvals and authorizations under chapters 253 and 258 before the undertaking of the activity. The department or the governing board must issue its permit conditioned upon the securing of the necessary consent or approvals by the applicant. Once the department has adopted rules under s. 373.427 for concurrent review of applications for permits under this part and proprietary authorizations under chapters 253 and 258 to use submerged lands, the permitting conditions required under this section cease to apply to those applications. If the approval or authorization of the board is required, the applicant may not commence any excavation, construction, or other activity until the approval or authorization has been issued.

**History.**—s. 32, ch. 93-213; s. 503, ch. 94-356.

**373.423 Inspection.**—

(1) During the construction or alteration of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, the governing board or department pursuant to s. 403.091 shall make at its expense such periodic inspections as it deems necessary to ensure conformity with the approved plans and specifications included in the permit.

(2) If during construction or alteration the governing board or department finds that the work is not being done in accordance with the approved plans and specifications as indicated in the permit, it shall give the permittee written notice stating with which particulars of the approved plans and specifications the construction is not in compliance and shall order immediate compliance with such plans and specifications. The failure to act in accordance with the orders of the governing board or department after receipt of written notice shall result in the initiation of revocation proceedings in accordance with s. 373.429.

(3) Upon completion of the work, the executive director of the district or the Department of Environmental Protection or its successor agency shall have periodic inspections made of permitted stormwater management systems, dams, reservoirs, impoundments, appurtenant work, or works to protect the public health and safety and the natural resources of the state. No person shall refuse immediate entry or access to any authorized representative of the governing board or the department who requests entry for purposes of such inspection and presents appropriate credentials.

**History.**—s. 7, part IV, ch. 72-299; s. 21, ch. 73-190; s. 48, ch. 79-65; s. 13, ch. 84-341; s. 17, ch. 89-279; s. 269, ch. 94-356.

**373.426 Abandonment.**—

(1) Any owner of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works wishing to abandon or remove such work may first be required by the governing board or the department to obtain a permit to do so and may be required to meet such reasonable conditions as are necessary to assure that such abandonment will not be inconsistent with the overall objectives of the district.

(2) Where any permitted stormwater management system, dam, impoundment, reservoir, appurtenant work, or works is not owned nor directly controlled by the state or any of its agencies and is not used nor maintained under the authority of the owner for a period of 3 years, it shall be presumed that the owner has abandoned such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works, and has dedicated the same to the district for the use of the people of the district.

(3) The title of the district to any such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be established and determined in the court appointed by statute to determine the title to real estate.

**History.**—s. 8, part IV, ch. 72-299; s. 22, ch. 73-190; s. 18, ch. 89-279.

### **373.427 Concurrent permit review.—**

(1) The department, in consultation with the water management districts, may adopt procedural rules requiring concurrent application submittal and establishing a concurrent review procedure for any activity regulated under this part that also requires any authorization, permit, waiver, variance, or approval described in paragraphs (a)-(d). The rules must address concurrent review of applications under this part and any one or more of the authorizations, permits, waivers, variances, and approvals described in paragraphs (a)-(d). Applicants that propose such activities must submit, as part of the permit application under this part, all information necessary to satisfy the requirements for:

- (a) Proprietary authorization under chapter 253 or chapter 258 to use submerged lands owned by the board of trustees;
- (b) Coastal construction permits under s. 161.041;
- (c) Coastal construction control line permits under s. 161.053; and
- (d) Waiver or variance of the setback requirements under s. 161.052.

The rules adopted under this section may also require submittal of such information as is necessary to determine whether the proposed activity will occur on submerged lands owned by the board of trustees. Notwithstanding s. 120.60, an application under this part is not complete and the timeframes for license approval or denial shall not commence until all information required by rules adopted under this section is received. For applications concurrently reviewed under this section, the agency that conducts the concurrent application review shall issue a notice of consolidated intent to grant or deny the applicable authorizations, permits, waivers, variances, and approvals. The issuance of the notice of consolidated intent to grant or deny is deemed in compliance with s. 120.60 timeframes for license approval or denial on the concurrently processed applications for any required permit, waiver, variance, or approval under this chapter or chapter 161. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands. If an administrative proceeding pursuant to ss. 120.569 and 120.57 is timely requested, the case shall be conducted as a single consolidated administrative proceeding on all such concurrently processed applications. Once the rules adopted pursuant to this section become effective, they shall establish the concurrent review procedure for applications submitted to both the department and the water management districts, including those applications for categories of activities requiring authorization to use board of trustees-owned submerged lands for which the board of trustees has not delegated authority to take final agency action without action by the board of trustees.

(2) In addition to the provisions set forth in subsection (1) and notwithstanding s. 120.60, the procedures established in this subsection shall apply to concurrently reviewed applications which request proprietary authorization to use board of trustees-owned submerged lands for activities for which there has been no delegation of authority to take final agency action without action by the board of trustees.

(a) Unless waived by the applicant, within 90 days of receipt of a complete application, the department or water management district shall issue a recommended consolidated intent to grant or deny on all of the concurrently reviewed applications, and shall submit the recommended consolidated intent to the board of trustees for its consideration of the application to use board of trustees-owned submerged lands. The recommended consolidated intent shall not constitute a point of entry to request a hearing pursuant to ss. 120.569 and 120.57. Unless waived by the applicant, the board of trustees shall consider the board of trustees-owned submerged lands portion of the recommended consolidated intent at its next regularly scheduled meeting for which notice may be properly given, and the board of trustees shall determine whether the application to use board of trustees-owned submerged lands should be granted, granted with modifications,

or denied. The board of trustees shall then direct the department or water management district to issue a notice of intent to grant or deny the application to use board of trustees-owned submerged lands. Unless waived by the applicant, within 14 days following the action by the board of trustees, the department or water management district shall issue a notice of consolidated intent to grant or deny on the application to use board of trustees-owned submerged lands, in accordance with the directions of the board of trustees, together with all of the concurrently reviewed applications.

(b) The timely issuance of a recommended consolidated intent to grant or deny as set forth in paragraph (a) is deemed in compliance with s. 120.60 timeframes for license approval or denial on the concurrently processed applications for any required permit, waiver, variance, or approval under this chapter or chapter 161. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands.

(c) Any petition for an administrative hearing pursuant to ss. 120.569 and 120.57 must be filed within 14 days of the notice of consolidated intent to grant or deny. Unless waived by the applicant, within 60 days after the recommended order is submitted, or at the next regularly scheduled meeting for which notice may be properly given, whichever is latest, the board of trustees shall determine what action to take on any recommended order issued under ss. 120.569 and 120.57 on the application to use board of trustees-owned submerged lands, and shall direct the department or water management district on what action to take in the final order concerning the application to use board of trustees-owned submerged lands. The department or water management district shall determine what action to take on any recommended order issued under ss. 120.569 and 120.57 regarding any concurrently processed permits, waivers, variances, or approvals required by this chapter or chapter 161. The department or water management district shall then take final agency action by entering a consolidated final order addressing each of the concurrently reviewed authorizations, permits, waivers, or approvals. Failure to satisfy these timeframes shall not result in approval by default of the application to use board of trustees-owned submerged lands. Any provisions relating to authorization to use board of trustees-owned submerged lands shall be as directed by the board of trustees. Issuance of the consolidated final order within 45 days after receipt of the direction of the board of trustees regarding the application to use board of trustees-owned submerged lands is deemed in compliance with the timeframes for issuance of final orders under s. 120.60. The final order shall be subject to the provisions of s. 373.4275.

(3) After the effective date of rules adopted under this section, neither the department nor a water management district may issue a permit under this part unless the requirements for issuance of any additional required authorizations, permits, waivers, variances, and approvals set forth in this section which are subject to concurrent review are also satisfied.

(4) When both an environmental resource permit or dredge and fill permit and a waiver, or variance set forth in paragraphs (1)(b)-(d) are granted in a consolidated order, these permits shall be consolidated into a single permit to be known as a joint coastal permit.

(5) Any application fee required under s. 373.109 for a permit under this part is in addition to any fees required for any of the concurrently reviewed applications for authorizations, permits, waivers, variances, or approvals set forth in subsection (1) or subsection (2). The application fees must be allocated, deposited, and used as provided in s. 373.109.

(6) Whenever a concurrently processed application includes an application to use board of trustees-owned submerged lands, any noticing requirements of s. 253.115 shall be met, in addition to those in s. 373.413.

(7) When a water management district acts pursuant to a delegation under s. 253.002, any person instituting an administrative or judicial proceeding regarding such action shall serve a copy of the petition or complaint on the board of trustees. The department or the Department of Legal Affairs, acting on behalf of the board of trustees, may intervene in any such proceeding.

**History.**—s. 501, ch. 94-356; s. 102, ch. 96-410.

### **373.4275 Review of consolidated orders.—**

(1) Beginning on the effective date of the rules adopted under s. 373.427(1), review of any consolidated order rendered pursuant to s. 373.427(1) shall be governed by the provisions of s. 373.114(1). However, the term “party” shall mean any person who participated as a party in a proceeding under ss. 120.569 and 120.57 on the concurrently reviewed authorizations, permits, waivers, variances, or approvals, or any affected person who submitted to the department, water management district, or board of trustees oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity objections to or support for the authorization, permit, waiver, variance, or approval, provided that such testimony was cognizable within the scope of this chapter or the applicable provisions of chapter 161, chapter 253, or chapter 258 when the consolidated notice of intent includes an authorization, permit, waiver, variance, or approval under those chapters. In such cases, the standard of review shall also ensure

consistency with the applicable provisions and purposes of chapter 161, chapter 253, or chapter 258 when the consolidated order includes an authorization, permit, waiver, variance, or approval under those chapters. If the consolidated order subject to review includes approval or denial of proprietary authorization to use submerged lands on which the board of trustees has previously acted, as described in s. 373.427(2), the scope of review under this section shall not encompass such proprietary decision, but the standard of review shall also ensure consistency with the applicable provisions and purposes of chapter 161 when the consolidated order includes a permit, waiver, or approval under that chapter.

(a) The final order issued under this section shall contain separate findings of fact and conclusions of law, and a ruling that individually addresses each authorization, permit, waiver, variance, and approval that was the subject of the review.

(b) If a consolidated order includes proprietary authorization under chapter 253 or chapter 258 to use submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund for an activity for which the authority has been delegated to take final agency action without action of the board of trustees, the following additional provisions and exceptions to s. 373.114(1) apply:

1. The Governor and Cabinet shall sit concurrently as the Land and Water Adjudicatory Commission and the Board of Trustees of the Internal Improvement Trust Fund in exercising the exclusive authority to review the order;

2. The review may also be initiated by the Governor or any member of the Cabinet within 20 days after the rendering of the order in which case the other provisions of s. 373.114(1)(a) regarding acceptance of a request for review do not apply; and

3. If the Governor and Cabinet find that an authorization to use submerged lands is not consistent with chapter 253 or chapter 258, any authorization, permit, waiver, or approval authorized or granted by the consolidated order must be rescinded or modified or the proceeding must be remanded for further action consistent with the order issued under this section.

(2) Subject to the provisions of subsection (3), appellate review of that part of a consolidated order granting or denying authorization to use board of trustees-owned submerged lands on which the board of trustees has previously acted, as described in s. 373.427(2), shall be only pursuant to s. 120.68.

(3) As with an appeal under s. 373.114, the proper initiation of discretionary review under this section tolls the time for seeking judicial review under s. 120.68.

**History.**—s. 502, ch. 94-356; s. 103, ch. 96-410.

**373.428 Federal consistency.**—When an activity regulated under this part is subject to federal consistency review under s. 380.23, the final agency action on a permit application submitted under this part shall constitute the state's determination as to whether the activity is consistent with the federally approved Florida Coastal Management Program. Agencies with authority to review and comment on such activity pursuant to the Florida Coastal Management Program shall review such activity for consistency with only those statutes and rules incorporated into the Florida Coastal Management Program and implemented by that agency. An agency which submits a determination of inconsistency to the permitting agency shall be an indispensable party to any administrative or judicial proceeding in which such determination is an issue; shall be responsible for defending its determination in such proceedings; and shall be liable for any damages, costs, and attorneys' fees should any be awarded in an appropriate action as a consequence of such determination.

**History.**—s. 6, ch. 96-370.

**373.429 Revocation and modification of permits.**—The governing board or the department may revoke or modify a permit at any time if it determines that a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works has become a danger to the public health or safety or if its operation has become inconsistent with the objectives of the district. The affected party may file a written petition for hearing no later than 14 days after notice of revocation or modification is served. If the executive director of the district or the division determines that the danger to the public is imminent, he or she may order a temporary suspension of the construction, alteration, or operation of the works until the hearing is concluded, or may take such action as authorized under s. 373.439.

**History.**—s. 9, part IV, ch. 72-299; s. 14, ch. 78-95; s. 19, ch. 89-279; s. 607, ch. 95-148.

**373.430 Prohibitions, violation, penalty, intent.**—

(1) It shall be a violation of this part, and it shall be prohibited for any person:

(a) To cause pollution, as defined in s. 403.031(7), except as otherwise provided in this part, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

(b) To fail to obtain any permit required by this part or by rule or regulation adopted pursuant thereto, or to violate or fail to comply with any rule, regulation, order, or permit adopted or issued by a water management district, the department, or local government pursuant to their lawful authority under this part.

(c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this part or by any permit, rule, regulation, or order issued under this part.

(2) Whoever commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. 373.129.

(3) Any person who willfully commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree, punishable as provided in ss. 775.082(3)(d) and 775.083(1)(g), by a fine of not more than \$50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) Any person who commits a violation specified in paragraph (1)(a) due to reckless indifference or gross careless disregard is guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g), by a fine of not more than \$5,000 or 60 days in jail, or by both, for each offense.

(5) Any person who willfully commits a violation specified in paragraph (1)(b) or paragraph (1)(c) is guilty of a misdemeanor of the first degree, punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g), by a fine of not more than \$10,000 or by 6 months in jail, or by both, for each offense.

(6) It is the intent of the Legislature that the civil penalties imposed by the court be of such amount as to ensure immediate and continued compliance with this section.

(7) All moneys recovered under the provisions of this section shall be allocated to the use of the water management district, the department, or the local government, whichever undertook and maintained the enforcement action. All monetary penalties and damages recovered by the department or the state under the provisions of this section shall be deposited in the Ecosystem Management and Restoration Trust Fund. All monetary penalties and damages recovered pursuant to this section by a water management district shall be deposited in the Water Management Lands Trust Fund established under s. 373.59 and used exclusively within the territory of the water management district which deposits the money into the fund. Any such monetary penalties and damages recovered after the expiration of such fund shall be deposited in the Ecosystem Management and Restoration Trust Fund and used exclusively within the territory of the water management district which deposits the money into the fund. All monetary penalties and damages recovered pursuant to this subsection by a local government to which authority has been delegated pursuant to s. 373.103(8) shall be used to enhance surface water improvement or pollution control activities.

**History.**—s. 33, ch. 93-213; s. 40, ch. 96-321.

**373.433 Abatement.**—Any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works which violates the laws of this state or which violates the standards of the governing board or the department shall be declared a public nuisance. The operation of such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may be enjoined by suit by the state or any of its agencies or by a private citizen. The governing board or the department shall be a necessary party to any such suit. Nothing herein shall be construed to conflict with the provisions of s. 373.429.

**History.**—s. 10, part IV, ch. 72-299; s. 20, ch. 89-279.

**373.436 Remedial measures.**—

(1) Upon completion of any inspection provided for by s. 373.423(3), the executive director or the department shall determine what alterations or repairs are necessary and order that such alterations and repairs shall be made within a time certain, which shall be a reasonable time. The owner of such stormwater management system, dam, impoundment, reservoir, appurtenant work, or works may file a written petition for hearing before the governing board or the department no later than 14 days after such order is served. If, after such order becomes final, the owner shall fail to make the specified alterations or repairs, the governing board or the department may, in its discretion, cause such alterations or repairs to be made.

(2) Any cost to the district or the department of alterations or repairs made by it under the provisions of subsection (1) shall be a lien against the property of the landowner on whose lands the alterations or repairs are made until the governing board or department is reimbursed, with reasonable interest and attorney's fees, for its costs.

**History.**—s. 11, part IV, ch. 72-299; s. 14, ch. 78-95; s. 21, ch. 89-279.

**373.439 Emergency measures.—**

(1) The executive director, with the concurrence of the governing board, or the department shall immediately employ any remedial means to protect life and property if either:

(a) The condition of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation.

(b) Passing or imminent floods threaten the safety of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works.

(2) In applying the emergency measures provided for in this section, the executive director or the Department of Environmental Protection may in an emergency do any of the following:

(a) Lower the water level by releasing water from any impoundment or reservoir.

(b) Completely empty the impoundment or reservoir.

(c) Take such other steps as may be essential to safeguard life and property.

(3) The executive director or the Department of Environmental Protection shall continue in full charge and control of such stormwater management system, dam, impoundment, reservoir, and its appurtenant works until they are rendered safe or the emergency occasioning the action has ceased.

**History.**—s. 12, part IV, ch. 72-299; s. 49, ch. 79-65; s. 22, ch. 89-279; s. 270, ch. 94-356.

**373.441 Role of counties, municipalities, and local pollution control programs in permit processing.—**

(1) The department in consultation with the water management districts shall, by December 1, 1994, adopt rules to guide the participation of counties, municipalities, and local pollution control programs in an efficient, streamlined permitting system. Such rules shall seek to increase governmental efficiency, shall maintain environmental standards, and shall include consideration of the following:

(a) Provisions under which the environmental resource permit program shall be delegated, upon approval of the department and the appropriate water management districts, to a county, municipality, or local pollution control program which has the financial, technical, and administrative capabilities and desire to implement and enforce the program;

(b) Provisions under which a locally delegated permit program may have stricter environmental standards than state standards;

(c) Provisions for identifying and reconciling any duplicative permitting by January 1, 1995;

(d) Provisions for timely and cost-efficient notification by the reviewing agency of permit applications, and permit requirements, to counties, municipalities, local pollution control programs, the department, or water management districts, as appropriate;

(e) Provisions for ensuring the consistency of permit applications with local comprehensive plans;

(f) Provisions for the partial delegation of the environmental resource permit program to counties, municipalities, or local pollution control programs, and standards and criteria to be employed in the implementation of such delegation by counties, municipalities, and local pollution control programs;

(g) Special provisions under which the environmental resource permit program may be delegated to counties with populations of 75,000 or less, or municipalities with, or local pollution control programs serving, populations of 50,000 or less; and

(h) Provisions for the applicability of chapter 120 to local government programs when the environmental resource permit program is delegated to counties, municipalities, or local pollution control programs.

(2) Nothing in this section affects or modifies land development regulations adopted by a local government to implement its comprehensive plan pursuant to chapter 163.

(3) The department shall review environmental resource permit applications for electrical distribution and transmission lines and other facilities related to the production, transmission, and distribution of electricity which are not certified under ss. 403.52-403.5365, the Transmission Line Siting Act, regulated under this part.

**History.**—s. 34, ch. 93-213; s. 17, ch. 94-122; s. 33, ch. 95-146; s. 13, ch. 98-258.

**373.4415 Role of Miami-Dade County in processing permits for limerock mining in Miami-Dade County Lake Belt.—**The department and Miami-Dade County shall cooperate to establish and fulfill reasonable requirements for the departmental delegation to the Miami-Dade County Department of Environmental Resource Management of

authority to implement the permitting program under ss. 373.403-373.439 for limerock mining activities within the geographic area of the Miami-Dade County Lake Belt which was recommended for mining in the report submitted to the Legislature in February 1997 by the Miami-Dade County Lake Belt Plan Implementation Committee under s. 373.4149. The delegation of authority must be consistent with s. 373.441 and chapter 62-344, Florida Administrative Code. To further streamline permitting within the Miami-Dade County Lake Belt, the department and Miami-Dade County are encouraged to work with the United States Army Corps of Engineers to establish a general permit under s. 404 of the Clean Water Act for limerock mining activities within the geographic area of the Miami-Dade County Lake Belt consistent with the report submitted in February 1997. Miami-Dade County is further encouraged to seek delegation from the United States Army Corps of Engineers for the implementation of any such general permit. This section does not limit the authority of the department to delegate other responsibilities to Miami-Dade County under this part.

**History.**—s. 3, ch. 97-222; s. 3, ch. 99-298.

**373.443 Immunity from liability.**—No action shall be brought against the state or district, or any agents or employees of the state or district, for the recovery of damages caused by the partial or total failure of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works upon the ground that the state or district is liable by virtue of any of the following:

- (1) Approval of the permit for construction or alteration.
- (2) The issuance or enforcement of any order relative to maintenance or operation.
- (3) Control or regulation of stormwater management systems, dams, impoundments, reservoirs, appurtenant work, or works regulated under this chapter.
- (4) Measures taken to protect against failure during emergency.

**History.**—s. 13, part IV, ch. 72-299; s. 23, ch. 89-279.

**373.451 Short title; legislative findings and intent.**—

- (1) Sections 373.451-373.4595 may be cited as the “Surface Water Improvement and Management Act.”
- (2) Legislative intent.—The Legislature finds that the water quality of many of the surface waters of the state has been degraded, or is in danger of becoming degraded, and that the natural systems associated with many surface waters have been altered so that these surface waters no longer perform the important functions that they once performed.

These functions include:

- (a) Providing aesthetic and recreational pleasure for the people of the state;
  - (b) Providing habitat for native plants, fish, and wildlife, including endangered and threatened species;
  - (c) Providing safe drinking water to the growing population of the state; and
  - (d) Attracting visitors and accruing other economic benefits.
- (3) The Legislature finds that the declining quality of the state’s surface waters has been detrimental to the public’s right to enjoy these surface waters and that it is the duty of the state, through the state’s agencies and subdivisions, to enhance the environmental and scenic value of surface waters.
  - (4) The Legislature finds that factors contributing to the decline in the ecological, aesthetic, recreational, and economic value of the state’s surface waters include:
    - (a) Point and nonpoint source pollution; and
    - (b) Destruction of the natural systems which purify surface waters and provide habitats.
  - (5) The Legislature finds that surface water problems can be corrected and prevented through plans and programs for surface water improvement and management that are planned, designed, and implemented by the water management districts and local governments.
  - (6) It is therefore the intent of the Legislature that each water management district develop plans and programs for the improvement and management of surface waters within its boundaries.
  - (7) It is also the intent of the Legislature that the department shall conduct or coordinate statewide research by the water management districts or others to provide a better scientific understanding of the causes and effects of surface water pollution and of the destruction of natural systems in order to improve and manage surface waters and associated natural systems.
  - (8) The state, through the department, shall provide funds to assist with the implementation of the district plans and programs under this act. However, to achieve the goals of this act, cooperation and funding is necessary from the state, the water management districts, and local governments.

**History.**—s. 1, ch. 87-97; s. 24, ch. 89-279; s. 41, ch. 96-321.

**373.453 Surface water improvement and management plans and programs.—**

(1)(a) Each water management district, in cooperation with the department, the Department of Agriculture and Consumer Services, the Department of Community Affairs, the Fish and Wildlife Conservation Commission, and local governments shall prepare and maintain a list which shall prioritize water bodies of regional or statewide significance within each water management district. The list shall be reviewed and updated every 3 years. The list shall be based on criteria adopted by rule of the department and shall assign priorities to the water bodies based on their need for protection and restoration.

(b) Criteria developed by the department shall include, but need not be limited to, consideration of violations of water quality standards occurring in the water body, the amounts of nutrients entering the water body and the water body's trophic state, the existence of or need for a continuous aquatic weed control program in the water body, the biological condition of the water body, reduced fish and wildlife values, and threats to agricultural and urban water supplies and public recreational opportunities.

(c) In developing their respective priority lists, water management districts shall give consideration to the following priority areas:

1. The South Florida Water Management District shall give priority to the restoration needs of Lake Okechobee, Biscayne Bay, and the Indian River Lagoon system and their tributaries.

2. The Southwest Florida Water Management District shall give priority to the restoration needs of Tampa Bay and its tributaries.

3. The St. Johns River Water Management District shall give priority to the restoration needs of Lake Apopka, the Lower St. Johns River, and the Indian River Lagoon system and their tributaries.

(2) Once the priority lists are approved by the department, the water management districts, in cooperation with the department, the Fish and Wildlife Conservation Commission, the Department of Community Affairs, the Department of Agriculture and Consumer Services, and local governments, shall develop surface water improvement and management plans for the water bodies based on the priority lists. The department shall establish a uniform format for such plans and a schedule for reviewing and updating the plans. These plans shall include, but not be limited to:

(a) A description of the water body system, its historical and current uses, its hydrology, and a history of the conditions which have led to the need for restoration or protection;

(b) An identification of all governmental units that have jurisdiction over the water body and its drainage basin within the approved surface water improvement and management plan area, including local, regional, state, and federal units;

(c) A description of land uses within the drainage basin within the approved surface water improvement and management plan area and those of important tributaries, point and nonpoint sources of pollution, and permitted discharge activities;

(d) A list of the owners of point and nonpoint sources of water pollution that are discharged into each water body and tributary thereto and that adversely affect the public interest, including separate lists of those sources that are:

1. Operating without a permit;
2. Operating with a temporary operating permit; and
3. Presently violating effluent limits or water quality standards.

The plan shall also include recommendations and schedules for bringing all sources into compliance with state standards when not contrary to the public interest. This paragraph does not authorize any existing or future violation of any applicable statute, regulation, or permit requirement, and does not diminish the authority of the department or the water management district;

(e) A description of strategies and potential strategies for restoring or protecting the water body to Class III or better;

(f) A listing of studies that are being or have been prepared for the water body;

(g) A description of the research and feasibility studies which will be performed to determine the particular strategy or strategies to restore or protect the water body;

(h) A description of the measures needed to manage and maintain the water body once it has been restored and to prevent future degradation;

(i) A schedule for restoration and protection of the water body; and

(j) An estimate of the funding needed to carry out the restoration or protection strategies.

(3) Each water management district shall be responsible for planning and coordinating restoration or protection strategies for the priority water bodies within the district which have been approved by the department as water bodies of regional and statewide significance in need of protection or restoration. The governing board of the appropriate

water management district shall hold at least one public hearing and public workshops in the vicinity of the water body under consideration as may be necessary for obtaining public input prior to finalizing the surface water improvement and management plans for the water bodies on the priority list. The water management district shall then forward a copy of the plans to the department and to appropriate local governmental units.

(4) Each September 1, the water management districts shall submit a funding proposal for the next state fiscal year to the department for its review and approval. The proposal shall specify the activities that need state funding and the amounts of funding, and shall describe the specific restoration or protection activities proposed. The department shall review water management district funding proposals and shall consider them in making its annual budget request.

(5) The governing board of each water management district is encouraged to appoint advisory committees as necessary to assist in formulating and evaluating strategies for water body protection and restoration activities and to increase public awareness and intergovernmental cooperation. Such committees should include representatives of the Fish and Wildlife Conservation Commission, the Department of Agriculture and Consumer Services, appropriate local governments, federal agencies, existing advisory councils for the subject water body, and representatives of the public who use the water body.

(6) The water management districts may contract with appropriate state, local, and regional agencies and others to perform various tasks associated with the development and implementation of the surface water improvement and management plans.

**History.**—s. 2, ch. 87-97; s. 25, ch. 89-279; s. 271, ch. 94-356; s. 187, ch. 99-245.

**373.455 Review of surface water improvement and management plans.—**

(1) At least 60 days prior to consideration by the governing board pursuant to s. 373.456(1) of its surface water improvement and management plan, a water management district shall transmit its proposed plan to the department, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, the Department of Community Affairs, and local governments.

(2)(a) The department shall review each plan to determine:

1. Whether the costs described in the plan, as projected by the water management districts, are reasonable estimates of the actual costs;

2. The likelihood that the plan will significantly improve or protect water quality and associated natural resources; and

3. Whether the plan activities can be funded based on available appropriations or other funding which may be proposed by the department, the districts, or local governments.

(b) If the department determines that a plan does not meet these requirements, the department shall recommend to the district modifications or additions to the plan to the governing board at the time of its consideration of the plan pursuant to s. 373.456(1).

(3) The Fish and Wildlife Conservation Commission shall review each proposed surface water improvement and management plan to determine the effects of the plan on wild animal life and fresh water aquatic life and their habitats. If the commission determines that the plan has adverse effects on these resources and that such adverse effects exceed the beneficial effects on these resources, the commission shall recommend modifications of or additions to the plan to the district governing board at the time it considers the plan pursuant to s. 373.456(1), or any modifications or additions which would result in additional beneficial effects on wild animal life or fresh water aquatic life or their habitats.

(4) The department shall review each proposed surface water improvement and management plan to determine the effects of the plan on state-owned lands and on marine and estuarine aquatic life and their habitats. If the department determines that the plan has adverse effects on these resources and that such adverse effects exceed the beneficial effects on these resources, the department shall recommend modifications of, or additions to, the plan to the district governing board at the time it considers the plan pursuant to s. 373.456(1).

(5) The Department of Agriculture and Consumer Services shall review each proposed surface water improvement and management plan to determine the effects of the plan on the agricultural resources of the area and the state. If the Department of Agriculture and Consumer Services determines that the plan has adverse effects on these resources and that such adverse effects exceed the beneficial effects on these resources, the department shall recommend modifications of, or additions to, the plan to the district governing board at the time it considers the plan pursuant to s. 373.456(1).

(6) The Department of Community Affairs shall review each proposed surface water improvement and management plan to determine the effects of the plan on the State Comprehensive Plan and Areas of Critical State Concern. If the Department of Community Affairs determines that the plan has adverse effects on the State Comprehensive Plan or these resources and that such adverse effects exceed the beneficial effects on these resources,

the department shall recommend modifications of, or additions to, the plan to the district governing board at the time it considers the plan pursuant to s. 373.456(1).

(7) The local governments shall review each proposed surface water improvement and management plan and provide comments as to the effects of the plan on local resources consistent with the intent of this act. If the local government determines that the plan has adverse effects on these resources and that such adverse effects exceed the beneficial effects on these resources, the local government shall recommend modifications of or additions to the district governing board at the time it considers the plan pursuant to s. 373.456(1).

**History.**—s. 3, ch. 87-97; s. 26, ch. 89-279; s. 272, ch. 94-356; s. 42, ch. 96-321; s. 188, ch. 99-245.

### **373.456 Approval of surface water improvement and management plans.—**

(1) After consideration of the comments and recommendations submitted pursuant to s. 373.455 and any other public comments, the governing board shall approve the surface water improvement and management plan. Within 15 days of approval, the district shall transmit the plan to the department.

(2) The department shall have the exclusive authority to review the plan to ensure consistency with the water resource implementation rule and the State Comprehensive Plan.

(3) Within 30 days after receipt of an approved plan, the department shall submit a determination of consistency to the governing board. The determination of the department shall not constitute a rule or order.

(4) If the department determines that the plan is consistent, the district shall publish notice in the Florida Administrative Weekly. The plan shall be considered effective and shall constitute final agency action of the governing board on the date of advertisement.

(5) If the department determines that the plan is not consistent, the following procedure shall apply:

(a) The secretary shall notify the governing board of the changes recommended by the department to make the plan consistent. The governing board shall review the recommended change at its next regularly scheduled meeting.

(b) Upon conclusion of its review, the governing board shall either incorporate the recommended changes into the plan or state in the plan the reasons for not adopting the changes. The governing board's action shall then be effective and shall constitute final agency action. The plan shall be subject to review pursuant to s. 373.114 as of the date of the governing board action approving the plan after completion of any necessary reviews.

**History.**—s. 27, ch. 89-279; s. 23, ch. 97-160.

### **373.457 Implementation of surface water improvement and management plans and programs.—**

(1) Legislative appropriations provided for the Surface Water Improvement and Management Program shall be available to the water management districts for detailed planning for and implementation of surface water improvement and management plans.

(2) To facilitate appropriate and timely implementation, each water management district shall coordinate the implementation of approved surface water improvement and management plans.

(3) Each water management district shall update annually, as necessary, its approved surface water improvement and management plan. If a district determines that modifications of or additions to its plan are necessary, such modifications or additions shall be subject to the review process established in s. 373.455.

**History.**—s. 4, ch. 87-97; s. 28, ch. 89-279; s. 10, ch. 93-260; s. 62, ch. 95-143; s. 43, ch. 96-321.

### **373.459 Funds for surface water improvement and management.—**

(1) The Ecosystem Management and Restoration Trust Fund shall be used for the deposit of funds appropriated by the Legislature for the purposes of ss. 373.451-373.4595. The department shall administer all funds appropriated to or received for surface water improvement and management activities. Expenditure of the moneys shall be limited to the costs of detailed planning for and implementation of programs prepared for priority surface waters. Moneys from the fund shall not be expended for planning for, or construction or expansion of, treatment facilities for domestic or industrial waste disposal.

(2) The secretary of the department shall authorize the release of money from the fund within 30 days after receipt of a request adopted by the governing board of a water management district or by the executive director when authority has been delegated by the governing board, certifying that the money is needed for detailed planning for or implementation of plans approved pursuant to ss. 373.453, 373.455, and 373.456. A water management district may not receive more than 50 percent of the moneys appropriated to the fund for the purposes of ss. 373.451-373.4595 in any fiscal year unless otherwise provided for by law. Each year after funds are appropriated, each water management district shall receive the amount requested pursuant to s. 373.453(4) or 10 percent of the money appropriated for the

purposes of ss. 373.451-373.4595, whichever is less. The department shall allocate the remaining money in the appropriation for such purposes annually, based upon the specific needs of the districts. The department, at its discretion, may include any funds allocated to a district for such purposes in previous years which remain unencumbered by the district on July 1, to the amount of money to be distributed based upon specific needs of the districts.

(3) The amount of money that may be released to a water management district from the fund for approved plans, or continuations of approved plans, to improve and manage the surface waters described in ss. 373.451-373.4595 is limited to not more than 60 percent of the amount of money necessary for the approved plans of the South Florida Water Management District, the Southwest Florida Water Management District, and the St. Johns River Water Management District, and not more than 80 percent of the amount of money necessary for the approved plans of the Northwest Florida Water Management District and the Suwannee River Water Management District. The remaining funds necessary for the approved plans shall be provided by the district.

(4) Moneys in the fund which are not needed to meet current obligations incurred under this section shall be transferred to the State Board of Administration, to the credit of the trust fund, to be invested in the manner provided by law. Interest received on such investments shall be credited to the trust fund.

**History.**—s. 5, ch. 87-97; s. 29, ch. 89-279; s. 9, ch. 91-79; s. 11, ch. 91-305; s. 11, ch. 94-115; s. 504, ch. 94-356; s. 44, ch. 96-321.

### **373.4592 Everglades improvement and management.—**

#### **(1) FINDINGS AND INTENT.—**

(a) The Legislature finds that the Everglades ecological system not only contributes to South Florida's water supply, flood control, and recreation, but serves as the habitat for diverse species of wildlife and plant life. The system is unique in the world and one of Florida's great treasures. The Everglades ecological system is endangered as a result of adverse changes in water quality, and in the quantity, distribution, and timing of flows, and, therefore, must be restored and protected.

(b) The Legislature finds that, although the district and the department have developed plans and programs for the improvement and management of the surface waters tributary to the Everglades Protection Area, implementation of those plans and programs has not been as timely as is necessary to restore and protect unique flora and fauna of the Everglades, including the Everglades National Park and the Arthur R. Marshall Loxahatchee National Wildlife Refuge. Therefore, the Legislature determines that an appropriate method to proceed with Everglades restoration and protection is to authorize the district to proceed expeditiously with implementation of the Everglades Program.

(c) The Legislature finds that, in the last decade, people have come to realize the tremendous cost the alteration of natural systems has exacted on the region. The Statement of Principles of July 1993 among the Federal Government, the South Florida Water Management District, the Department of Environmental Protection, and certain agricultural industry representatives formed a basis to bring to a close 5 years of costly litigation. That agreement should be used to begin the cleanup and renewal of the Everglades ecosystem.

(d) It is the intent of the Legislature to promote Everglades restoration and protection through certain legislative findings and determinations. The Legislature finds that waters flowing into the Everglades Protection Area contain excessive levels of phosphorus. A reduction in levels of phosphorus will benefit the ecology of the Everglades Protection Area.

(e) It is the intent of the Legislature to pursue comprehensive and innovative solutions to issues of water quality, water quantity, hydroperiod, and invasion of exotic species which face the Everglades ecosystem. The Legislature recognizes that the Everglades ecosystem must be restored both in terms of water quality and water quantity and must be preserved and protected in a manner that is long term and comprehensive. The Legislature further recognizes that the EAA and adjacent areas provide a base for an agricultural industry, which in turn provides important products, jobs, and income regionally and nationally. It is the intent of the Legislature to preserve natural values in the Everglades while also maintaining the quality of life for all residents of South Florida, including those in agriculture, and to minimize the impact on South Florida jobs, including agricultural, tourism, and natural resource-related jobs, all of which contribute to a robust regional economy.

(f) The Legislature finds that improved water supply and hydroperiod management are crucial elements to overall revitalization of the Everglades ecosystem, including Florida Bay. It is the intent of the Legislature to expedite plans and programs for improving water quantity reaching the Everglades, correcting long-standing hydroperiod problems, increasing the total quantity of water flowing through the system, providing water supply for the Everglades National Park, urban and agricultural areas, and Florida Bay, and replacing water previously available from the coastal ridge in areas of southern Dade County. Whenever possible, wasteful discharges of fresh water to tide shall be reduced,

and the water shall be stored for delivery at more optimum times. Additionally, reuse and conservation measures shall be implemented consistent with law. The Legislature further recognizes that additional water storage may be an appropriate use of Lake Okeechobee.

(g) The Legislature finds that the Statement of Principles of July 1993, the Everglades Construction Project, and the regulatory requirements of this section provide a sound basis for the state's long-term cleanup and restoration objectives for the Everglades. It is the intent of the Legislature to provide a sufficient period of time for construction, testing, and research, so that the benefits of the Everglades Construction Project will be determined and maximized prior to requiring additional measures. The Legislature finds that STAs and BMPs are currently the best available technology for achieving the interim water quality goals of the Everglades Program. A combined program of agricultural BMPs, STAs, and requirements of this section is a reasonable method of achieving interim total phosphorus discharge reductions. The Everglades Program is an appropriate foundation on which to build a long-term program to ultimately achieve restoration and protection of the Everglades Protection Area.

(h) The Everglades Construction Project represents by far the largest environmental cleanup and restoration program of this type ever undertaken, and the returns from substantial public and private investment must be maximized so that available resources are managed responsibly. To that end, the Legislature directs that the Everglades Construction Project and regulatory requirements associated with the Statement of Principles of July 1993 be pursued expeditiously, but with flexibility, so that superior technology may be utilized when available. Consistent with the implementation of the Everglades Construction Project, landowners shall be provided the maximum opportunity to provide treatment on their land.

(2) DEFINITIONS.—As used in this section:

(a) “Best management practice” or “BMP” means a practice or combination of practices determined by the district, in cooperation with the department, based on research, field-testing, and expert review, to be the most effective and practicable, including economic and technological considerations, on-farm means of improving water quality in agricultural discharges to a level that balances water quality improvements and agricultural productivity.

(b) “C-139 Basin” or “Basin” means those lands described in subsection (16).

(c) “Department” means the Florida Department of Environmental Protection.

(d) “District” means the South Florida Water Management District.

(e) “Everglades Agricultural Area” or “EAA” means the Everglades Agricultural Area, which are those lands described in subsection (15).

(f) “Everglades Construction Project” means the project described in the February 15, 1994, conceptual design document together with construction and operation schedules on file with the South Florida Water Management District, except as modified by this section.

(g) “Everglades Program” means the program of projects, regulations, and research provided by this section, including the Everglades Construction Project.

(h) “Everglades Protection Area” means Water Conservation Areas 1, 2A, 2B, 3A, and 3B, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park.

(i) “Master permit” means a single permit issued to a legally responsible entity defined by rule, authorizing the construction, alteration, maintenance, or operation of multiple stormwater management systems that may be owned or operated by different persons and which provides an opportunity to achieve collective compliance with applicable department and district rules and the provisions of this section.

(j) “Phosphorus criterion” means a numeric interpretation for phosphorus of the Class III narrative nutrient criterion.

(k) “Stormwater management program” shall have the meaning set forth in s. 403.031(15).

(l) “Stormwater treatment areas” or “STAs” means those treatment areas described and depicted in the district's conceptual design document of February 15, 1994, and any modifications as provided in this section.

(3) EVERGLADES SWIM PLAN.—The Legislature finds that the Everglades Program required by this section establishes more extensive and comprehensive requirements for surface water improvement and management within the Everglades than the SWIM plan requirements provided in ss. 373.451-373.456. In order to avoid duplicative requirements, and in order to conserve the resources available to the district, the SWIM plan requirements of those sections shall not apply to the Everglades Protection Area and the EAA during the term of the Everglades Program, and the district will neither propose, nor take final agency action on, any Everglades SWIM plan for those areas until the Everglades Program is fully implemented; however, funds under s. 259.101(3)(b) may be used for acquisition of lands necessary to implement the Everglades Construction Project, to the extent these funds are identified in the Statement of Principles of July 1993. The district's actions in implementing the Everglades Construction Project relating to the responsibilities of the EAA and C-139 Basin for funding and water quality compliance in the EAA and the Everglades

Protection Area shall be governed by this section. Other strategies or activities in the March 1992 SWIM plan may be implemented if otherwise authorized by law.

(4) EVERGLADES PROGRAM.—

(a) *Everglades Construction Project.*—The district shall implement the Everglades Construction Project. By the time of completion of the project, the state, district, or other governmental authority shall purchase the inholdings in the Rotenberger and such other lands necessary to achieve a 2:1 mitigation ratio for the use of Brown's Farm and other similar lands, including those needed for the STA 1 Inflow and Distribution Works. The inclusion of public lands as part of the project is for the purpose of treating waters not coming from the EAA for hydroperiod restoration. It is the intent of the Legislature that the district aggressively pursue the implementation of the Everglades Construction Project in accordance with the schedule in this subsection. The Legislature recognizes that adherence to the schedule is dependent upon factors beyond the control of the district, including the timely receipt of funds from all contributors. The district shall take all reasonable measures to complete timely performance of the schedule in this section in order to finish the Everglades Construction Project. The district shall not delay implementation of the project beyond the time delay caused by those circumstances and conditions that prevent timely performance. The district shall not levy ad valorem taxes in excess of 0.1 mill within the Okeechobee Basin for the purposes of the design, construction, and acquisition of the Everglades Construction Project. The ad valorem tax proceeds not exceeding 0.1 mill levied within the Okeechobee Basin for such purposes shall be the sole direct district contribution from district ad valorem taxes appropriated or expended for the design, construction, and acquisition of the Everglades Construction Project unless the Legislature by specific amendment to this section increases the 0.1 mill ad valorem tax contribution, increases the agricultural privilege taxes, or otherwise reallocates the relative contribution by ad valorem taxpayers and taxpayers paying the agricultural privilege taxes toward the funding of the design, construction, and acquisition of the Everglades Construction Project. Notwithstanding the provisions of s. 200.069 to the contrary, any millage levied under the 0.1 mill limitation in this paragraph shall be included as a separate entry on the Notice of Proposed Property Taxes pursuant to s. 200.069. Once the STAs are completed, the district shall allow these areas to be used by the public for recreational purposes in the manner set forth in s. 373.59(11), considering the suitability of these lands for such uses. These lands shall be made available for recreational use unless the district governing board can demonstrate that such uses are incompatible with the restoration goals of the Everglades Construction Project or the water quality and hydrological purposes of the STAs or would otherwise adversely impact the implementation of the project. The district shall give preferential consideration to the hiring of agricultural workers displaced as a result of the Everglades Construction Project, consistent with their qualifications and abilities, for the construction and operation of these STAs. The following milestones apply to the completion of the Everglades Construction Project as depicted in the February 15, 1994, conceptual design document:

1. The district must complete the final design of the STA 1 East and West and pursue STA 1 East project components as part of a cost-shared program with the Federal Government. The district must be the local sponsor of the federal project that will include STA 1 East, and STA 1 West if so authorized by federal law. Land acquisition shall be completed for STA 1 West by April 1, 1996, and for STA 1 East by July 1, 1998;
2. Construction of STA 1 East is to be completed under the direction of the United States Army Corps of Engineers in conjunction with the currently authorized C-51 flood control project by July 1, 2002;
3. The district must complete construction of STA 1 West and STA 1 Inflow and Distribution Works under the direction of the United States Army Corps of Engineers, if the direction is authorized under federal law, in conjunction with the currently authorized C-51 flood control project, by January 1, 1999;
4. The district must complete construction of STA 2 by February 1, 1999;
5. The district must complete construction of STA 3/4 by October 1, 2003;
6. The district must complete construction of STA 5 by January 1, 1999; and
7. The district must complete construction of STA 6 by October 1, 1997.
8. East Beach Water Control District, South Shore Drainage District, South Florida Conservancy District, East Shore Water Control District, and the lessee of agricultural lease number 3420 shall complete any system modifications described in the Everglades Construction Project to the extent that funds are available from the Everglades Fund. These entities shall divert the discharges described within the Everglades Construction Project within 60 days of completion of construction of the appropriate STA. Such required modifications shall be deemed to be a part of each district's plan of reclamation pursuant to chapter 298.

(b) *Everglades water supply and hydroperiod improvement and restoration.*—

1. A comprehensive program to revitalize the Everglades shall include programs and projects to improve the water quantity reaching the Everglades Protection Area at optimum times and improve hydroperiod deficiencies in the Everglades ecosystem. To the greatest extent possible, wasteful discharges of fresh water to tide shall be reduced, and water conservation practices and reuse measures shall be implemented by water users, consistent with law. Water

supply management must include improvement of water quantity reaching the Everglades, correction of long-standing hydroperiod problems, and an increase in the total quantity of water flowing through the system. Water supply management must provide water supply for the Everglades National Park, the urban and agricultural areas, and the Florida Bay and must replace water previously available from the coastal ridge areas of southern Dade County. The Everglades Construction Project redirects some water currently lost to tide. It is an important first step in completing hydroperiod improvement.

2. The district shall operate the Everglades Construction Project as specified in the February 15, 1994, conceptual design document, to provide additional inflows to the Everglades Protection Area. The increased flow from the project shall be directed to the Everglades Protection Area as needed to achieve an average annual increase of 28 percent compared to the baseline years of 1979 to 1988. Consistent with the design of the Everglades Construction Project and without demonstratively reducing water quality benefits, the regulatory releases will be timed and distributed to the Everglades Protection Area to maximize environmental benefits.

3. The district shall operate the Everglades Construction Project in accordance with the February 15, 1994, conceptual design document to maximize the water quantity benefits and improve the hydroperiod of the Everglades Protection Area. All reductions of flow to the Everglades Protection Area from BMP implementation will be replaced. The district shall develop a model to be used for quantifying the amount of water to be replaced. The district shall publish in the Florida Administrative Weekly a notice of rule development on the model no later than July 1, 1994, and a notice of rulemaking no later than July 1, 1995. The timing and distribution of this replaced water will be directed to the Everglades Protection Area to maximize the natural balance of the Everglades Protection Area.

4. The Legislature recognizes the complexity of the Everglades watershed, as well as legal mandates under Florida and federal law. As local sponsor of the Central and Southern Florida Flood Control Project, the district must coordinate its water supply and hydroperiod programs with the Federal Government. Federal planning, research, operating guidelines, and restrictions for the Central and Southern Florida Flood Control Project now under review by federal agencies will provide important components of the district's Everglades Program. The department and district shall use their best efforts to seek the amendment of the authorized purposes of the project to include water quality protection, hydroperiod restoration, and environmental enhancement as authorized purposes of the Central and Southern Florida Flood Control Project, in addition to the existing purposes of water supply, flood protection, and allied purposes. Further, the department and the district shall use their best efforts to request that the Federal Government include in the evaluation of the regulation schedule for Lake Okeechobee a review of the regulatory releases, so as to facilitate releases of water into the Everglades Protection Area which further improve hydroperiod restoration.

5. The district, through cooperation with the federal and state agencies, shall develop other programs and methods to increase the water flow and improve the hydroperiod of the Everglades Protection Area.

6. Nothing in this section is intended to provide an allocation or reservation of water or to modify the provisions of part II. All decisions regarding allocations and reservations of water shall be governed by applicable law.

7. The district shall proceed to expeditiously implement the minimum flows and levels for the Everglades Protection Area as required by s. 373.042 and shall expeditiously complete the Lower East Coast Water Supply Plan.

(c) *STA 3/4 modification.*—The Everglades Program will contribute to the restoration of the Rotenberger and Holey Land tracts. The Everglades Construction Project provides a first step toward restoration by improving hydroperiod with treated water for the Rotenberger tract and by providing a source of treated water for the Holey Land. It is further the intent of the Legislature that the easternmost tract of the Holey Land, known as the "Toe of the Boot," be removed from STA 3/4 under the circumstances set forth in this paragraph. The district shall proceed to modify the Everglades Construction Project, provided that the redesign achieves at least as many environmental and hydrological benefits as are included in the original design, including treatment of waters from sources other than the EAA, and does not delay construction of STA 3/4. The district is authorized to use eminent domain to acquire alternative lands, only if such lands are located within 1 mile of the northern border of STA 3/4.

(d) *Everglades research and monitoring program.*—

1. By January 1996, the department and the district shall review and evaluate available water quality data for the Everglades Protection Area and tributary waters and identify any additional information necessary to adequately describe water quality in the Everglades Protection Area and tributary waters. By such date, the department and the district shall also initiate a research and monitoring program to generate such additional information identified and to evaluate the effectiveness of the BMPs and STAs, as they are implemented, in improving water quality and maintaining designated and existing beneficial uses of the Everglades Protection Area and tributary waters. As part of the program, the district shall monitor all discharges into the Everglades Protection Area for purposes of determining compliance with state water quality standards.

2. The research and monitoring program shall evaluate the ecological and hydrological needs of the Everglades Protection Area, including the minimum flows and levels. Consistent with such needs, the program shall also evaluate water quality standards for the Everglades Protection Area and for the canals of the EAA, so that these canals can be classified in the manner set forth in paragraph (e) and protected as an integral part of the water management system which includes the STAs of the Everglades Construction Project and allows landowners in the EAA to achieve applicable water quality standards compliance by BMPs and STA treatment to the extent this treatment is available and effective.

3. The research and monitoring program shall include research seeking to optimize the design and operation of the STAs, including research to reduce outflow concentrations, and to identify other treatment and management methods and regulatory programs that are superior to STAs in achieving the intent and purposes of this section.

4. The research and monitoring program shall be conducted to allow completion by December 2001 of any research necessary to allow the department to propose a phosphorus criterion in the Everglades Protection Area, and to evaluate existing state water quality standards applicable to the Everglades Protection Area and existing state water quality standards and classifications applicable to the EAA canals. In developing the phosphorus criterion, the department shall also consider the minimum flows and levels for the Everglades Protection Area and the district's water supply plans for the Lower East Coast.

5. The district, in cooperation with the department, shall prepare a peer-reviewed interim report regarding the research and monitoring program, which shall be submitted no later than January 1, 1999, to the Governor, the President of the Senate, and the Speaker of the House of Representatives for their review. The interim report shall summarize all data and findings available as of July 1, 1998, on the effectiveness of STAs and BMPs in improving water quality. The interim report shall also include a summary of the then-available data and findings related to the following: the Lower East Coast Water Supply Plan of the district, the United States Environmental Protection Agency Everglades Mercury Study, the United States Army Corps of Engineers South Florida Ecosystem Restoration Study, the results of research and monitoring of water quality and quantity in the Everglades region, the degree of phosphorus discharge reductions achieved by BMPs and agricultural operations in the region, the current information on the ecological and hydrological needs of the Everglades, and the costs and benefits of phosphorus reduction alternatives. Prior to finalizing the interim report, the district shall conduct at least one scientific workshop and two public hearings on its proposed interim report. One public hearing must be held in Palm Beach County and the other must be held in either Dade or Broward County. The interim report shall be used by the department and the district in making any decisions regarding the implementation of the Everglades Construction Project subsequent to the completion of the interim report. The construction of STAs 3/4 shall not be commenced until 90 days after the interim report has been submitted to the Governor and the Legislature.

6. Beginning January 1, 2000, the district and the department shall annually issue a peer-reviewed report regarding the research and monitoring program that summarizes all data and findings. The department shall provide copies of the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall identify water quality parameters, in addition to phosphorus, which exceed state water quality standards or are causing or contributing to adverse impacts in the Everglades Protection Area.

7. The district shall continue research seeking to optimize the design and operation of STAs and to identify other treatment and management methods that are superior to STAs in achieving optimum water quality and water quantity for the benefit of the Everglades. The district shall optimize the design and operation of the STAs described in the Everglades Construction Project prior to expanding their size. Additional methods to achieve compliance with water quality standards shall not be limited to more intensive management of the STAs.

(e) *Evaluation of water quality standards.*—

1. The department and the district shall employ all means practicable to complete by December 31, 1998, any additional research necessary to:

- a. Numerically interpret for phosphorus the Class III narrative nutrient criterion necessary to meet water quality standards in the Everglades Protection Area; and
- b. Evaluate existing water quality standards applicable to the Everglades Protection Area and EAA canals.

This research shall be completed no later than December 31, 2001.

2. By December 31, 2001, the department shall file a notice of rulemaking in the Florida Administrative Weekly to establish a phosphorus criterion in the Everglades Protection Area. In no case shall such phosphorus criterion allow waters in the Everglades Protection Area to be altered so as to cause an imbalance in the natural populations of aquatic flora or fauna. The phosphorus criterion shall be 10 parts per billion (ppb) in the Everglades Protection Area in the event the department does not adopt by rule such criterion by December 31, 2003. However, in the event the

department fails to adopt a phosphorus criterion on or before December 31, 2002, any person whose substantial interests would be affected by the rulemaking shall have the right, on or before February 28, 2003, to petition for a writ of mandamus to compel the department to adopt by rule such criterion. Venue for the mandamus action must be Leon County. The court may stay implementation of the 10 parts per billion (ppb) criterion during the pendency of the mandamus proceeding upon a demonstration by the petitioner of irreparable harm in the absence of such relief. The department's phosphorus criterion, whenever adopted, shall supersede the 10 parts per billion (ppb) criterion otherwise established by this section, but shall not be lower than the natural conditions of the Everglades Protection Area and shall take into account spatial and temporal variability.

3. The department shall use the best available information to define relationships between waters discharged to, and the resulting water quality in, the Everglades Protection Area. The department or the district shall use these relationships to establish discharge limits in permits for discharges into the EAA canals and the Everglades Protection Area necessary to prevent an imbalance in the natural populations of aquatic flora or fauna in the Everglades Protection Area, and to provide a net improvement in the areas already impacted. Compliance with the phosphorus criterion shall be based upon a long-term geometric mean of concentration levels to be measured at sampling stations recognized from the research to be reasonably representative of receiving waters in the Everglades Protection Area, and so located so as to assure that the Everglades Protection Area is not altered so as to cause an imbalance in natural populations of aquatic flora and fauna and to assure a net improvement in the areas already impacted. For the Everglades National Park and the Arthur R. Marshall Loxahatchee National Wildlife Refuge, the method for measuring compliance with the phosphorus criterion shall be in a manner consistent with Appendices A and B, respectively, of the settlement agreement dated July 26, 1991, entered in case No. 88-1886-Civ-Hoeveler, United States District Court for the Southern District of Florida, that recognizes and provides for incorporation of relevant research.

4. The department's evaluation of any other water quality standards must include the department's antidegradation standards and EAA canal classifications. In recognition of the special nature of the conveyance canals of the EAA, as a component of the classification process, the department is directed to formally recognize by rulemaking existing actual beneficial uses of the conveyance canals in the EAA. This shall include recognition of the Class III designated uses of recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife, the integrated water management purposes for which the Central and Southern Florida Flood Control Project was constructed, flood control, conveyance of water to and from Lake Okeechobee for urban and agricultural water supply, Everglades hydroperiod restoration, conveyance of water to the STAs, and navigation.

(f) *EAA best management practices.*—

1. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the effectiveness of the BMPs in achieving and maintaining compliance with state water quality standards and restoring and maintaining designated and existing beneficial uses. The program shall include an analysis of the effectiveness of the BMPs in treating constituents that are not being significantly improved by the STAs. The monitoring program shall include monitoring of appropriate parameters at representative locations.

2. The district shall continue to require and enforce the BMP and other requirements of chapters 40E-61 and 40E-63, Florida Administrative Code, during the terms of the existing permits issued pursuant to those rules. Chapter 40E-61, Florida Administrative Code, may be amended to include the BMPs required by chapter 40E-63, Florida Administrative Code. Prior to the expiration of existing permits, and during each 5-year term of subsequent permits as provided for in this section, those rules shall be amended to implement a comprehensive program of research, testing, and implementation of BMPs that will address all water quality standards within the EAA and Everglades Protection Area. Under this program:

a. EAA landowners, through the EAA Environmental Protection District or otherwise, shall sponsor a program of BMP research with qualified experts to identify appropriate BMPs.

b. Consistent with the water quality monitoring program, BMPs will be field-tested in a sufficient number of representative sites in the EAA to reflect soil and crop types and other factors that influence BMP design and effectiveness.

c. BMPs as required for varying crops and soil types shall be included in permit conditions in the 5-year permits issued pursuant to this section.

d. The district shall conduct research in cooperation with EAA landowners to identify water quality parameters that are not being significantly improved either by the STAs or the BMPs, and to identify further BMP strategies needed to address these parameters.

3. The Legislature finds that through the implementation of the Everglades BMPs Program and the implementation of the Everglades Construction Project, reasonable further progress will be made towards addressing water quality requirements of the EAA canals and the Everglades Protection Area. Permittees within the EAA and the C-139 Basin who are in full compliance with the conditions of permits under chapters 40E-61 and 40E-63, Florida

Administrative Code, have made all payments required under the Everglades Program, and are in compliance with subparagraph (a)8., if applicable, shall not be required to implement additional water quality improvement measures, prior to December 31, 2006, other than those required by subparagraph 2., with the following exceptions:

a. Nothing in this subparagraph shall limit the existing authority of the department or the district to limit or regulate discharges that pose a significant danger to the public health and safety; and

b. New land uses and new stormwater management facilities other than alterations to existing agricultural stormwater management systems for water quality improvements shall not be accorded the compliance established by this section. Permits may be required to implement improvements or alterations to existing agricultural water management systems.

4. As of December 31, 2006, all permits, including those issued prior to that date, shall require implementation of additional water quality measures, taking into account the water quality treatment actually provided by the STAs and the effectiveness of the BMPs. As of that date, no permittee's discharge shall cause or contribute to any violation of water quality standards in the Everglades Protection Area.

5. Effective immediately, landowners within the C-139 Basin shall not collectively exceed an annual average loading of phosphorus of 28.7 metric tons based proportionately on the historical rainfall for the C-139 Basin over the period of October 1, 1978, to September 30, 1988. New surface inflows shall not increase the annual average loading of phosphorus stated above. Provided that the C-139 Basin does not exceed this annual average loading, all landowners within the Basin shall be in compliance for that year. Compliance determinations for individual landowners within the C-139 Basin for remedial action, if the Basin is determined by the district to be out of compliance for that year, shall be based on the landowners' proportional share of the total phosphorus loading of 28.7 metric tons. The total phosphorus discharge load shall be determined by a method consistent with Appendix 40E-63-3, Florida Administrative Code, disregarding the 25-percent phosphorus reduction factor.

6. The district, in cooperation with the department, shall develop and implement a water quality monitoring program to evaluate the quality of the discharge from the C-139 Basin. Upon determination by the department or the district that the C-139 Basin is exceeding any presently existing water quality standards, the district shall require landowners within the C-139 Basin to implement BMPs appropriate to the land uses within the C-139 Basin consistent with subparagraph 2. Thereafter, the provisions of subparagraphs 2.-4. shall apply to the landowners within the C-139 Basin.

(g) *Monitoring and control of exotic species.*—

1. The district shall establish a biological monitoring network throughout the Everglades Protection Area and shall prepare a survey of exotic species at least every 2 years.

2. In addition, the district shall establish a program to coordinate with federal, state, or other governmental entities the control of continued expansion and the removal of these exotic species. The district's program shall give high priority to species affecting the largest areal extent within the Everglades Protection Area.

(5) ACQUISITION AND LEASE OF STATE LANDS.—

(a) As used in this subsection, the term:

1. "Available land" means land within the EAA owned by the board of trustees which is covered by any of the following leases: Numbers 3543, 3420, 1447, 1971-5, and 3433, and the southern one-third of number 2376 constituting 127 acres, more or less.

2. "Board of trustees" means the Board of Trustees of the Internal Improvement Trust Fund.

3. "Designated acre," as to any impacted farmer, means an acre of land which is designated for STAs or water retention or storage in the February 15, 1994, conceptual design document and which is owned or leased by the farmer or on which one or more agricultural products were produced which, during the period beginning October 1, 1992, and ending September 30, 1993, were processed at a facility owned by the farmer.

4. "Impacted farmer" means a producer or processor of agricultural commodities and includes subsidiaries and affiliates that have designated acres.

5. "Impacted vegetable farmer" means an impacted farmer in the EAA who uses more than 30 percent of the land farmed by that farmer, whether owned or leased, for the production of vegetables.

6. "Vegetable-area available land" means land within the EAA owned by the board of trustees which is covered by lease numbers 3422 and 1935/1935S.

(b) The Legislature declares that it is necessary for the public health and welfare that the Everglades water and water-related resources be conserved and protected. The Legislature further declares that certain lands may be needed for the treatment or storage of water prior to its release into the Everglades Protection Area. The acquisition of real property for this objective constitutes a public purpose for which public funds may be expended. In addition to other authority pursuant to this chapter to acquire real property, the governing board of the district is empowered and authorized to acquire fee title or easements by eminent domain for the limited purpose of implementing stormwater

management systems, identified and described in the Everglades Construction Project or determined necessary to meet water quality requirements established by rule or permit.

(c) The Legislature determines it to be in the public interest to minimize the potential loss of land and related product supply to farmers and processors who are most affected by acquisition of land for Everglades restoration and hydroperiod purposes. Accordingly, subject to the priority established below for vegetable-area available land, impacted farmers shall have priority in the leasing of available land. An impacted farmer shall have the right to lease each parcel of available land, upon expiration of the existing lease, for a term of 20 years and at a rental rate determined by appraisal using established state procedures. For those parcels of land that have previously been competitively bid, the rental rate shall not be less than the rate the board of trustees currently receives. The board of trustees may also adjust the rental rate on an annual basis using an appropriate index, and update the appraisals at 5-year intervals. If more than one impacted farmer desires to lease a particular parcel of available land, the one that has the greatest number of designated acres shall have priority.

(d) Impacted vegetable farmers shall have priority in leasing vegetable-area available land. An impacted vegetable farmer shall have the right to lease vegetable-area available land, upon expiration of the existing lease, for a term of 20 years or a term ending August 25, 2018, whichever term first expires, and at a rental rate determined by appraisal using established state procedures. If the lessee elects, such terms may consist of an initial 5-year term, with successive options to renew at the lessee's option for additional 5-year terms. For extensions of leases on those parcels of land that have previously been competitively bid, the rental rate shall not be less than the rate the board of trustees currently receives. The board of trustees may also adjust the rental rate on an annual basis using an appropriate index, and update the appraisals at 5-year intervals. If more than one impacted vegetable farmer desires to lease vegetable-area available land, the one that has the greatest number of designated acres shall have priority.

(e) Impacted vegetable farmers with farming operations in areas of Florida other than the EAA shall have priority in leasing suitable surplus lands, where such lands are located in the St. Johns River Water Management District and in the vicinity of the other areas where such impacted vegetable farmers operate. The suitability of such use shall be determined solely by the St. Johns River Water Management District. The St. Johns River Water Management District shall make good faith efforts to provide these impacted vegetable farmers with the opportunity to lease such suitable lands to offset their designated acres. The rental rate shall be determined by appraisal using established procedures.

(f) The corporation conducting correctional work programs under part II of chapter 946 shall be entitled to renew, for a period of 20 years, its lease with the Department of Corrections which expires June 30, 1998, which includes the utilization of land for the production of sugar cane, and which is identified as lease number 2671 with the board of trustees.

(g) Except as specified in paragraph (f), once the leases or lease extensions specified in this subsection have been granted and become effective, the trustees shall retain the authority to terminate after 9 years any such lease or lease extension upon 2 years' notice to the lessee and a finding by the trustees that the lessee has ceased to be impacted as provided in this section. In that event, the outgoing lessee is entitled to be compensated for any documented, unamortized planting costs associated with the lease and any unamortized capital costs incurred prior to the notice. In addition, the trustees may terminate such lease or lease extension if the lessee fails to comply with, and after reasonable notice and opportunity to correct or fails to correct, any material provision of the lease or its obligation under this section.

(6) EVERGLADES AGRICULTURAL PRIVILEGE TAX.—

(a) There is hereby imposed an annual Everglades agricultural privilege tax for the privilege of conducting an agricultural trade or business on:

1. All real property located within the EAA that is classified as agricultural under the provisions of chapter 193; and
2. Leasehold or other interests in real property located within the EAA owned by the United States, the state, or any agency thereof permitting the property to be used for agricultural purposes in a manner that would allow such property to be classified as agricultural under the provisions of chapter 193 if not governmentally owned, whether or not such property is actually classified as agricultural under the provisions of chapter 193.

It is hereby determined by the Legislature that the privilege of conducting an agricultural trade or business on such property constitutes a reasonable basis for imposition of the Everglades agricultural privilege tax and that logical differences exist between the agricultural use of such property and the use of other property within the EAA for residential or nonagricultural commercial use. The Everglades agricultural privilege tax shall constitute a lien against the property, or the leasehold or other interest in governmental property permitting such property to be used for

agricultural purposes, described on the Everglades agricultural privilege tax roll. The lien shall be in effect from January 1 of the year the tax notice is mailed until discharged by payment and shall be equal in rank and dignity with the liens of all state, county, district, or municipal taxes and non-ad valorem assessments imposed pursuant to general law, special act, or local ordinance and shall be superior in dignity to all other liens, titles, and claims.

(b) The Everglades agricultural privilege tax, other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, shall be collected in the manner provided for ad valorem taxes. By September 15 of each year, the governing board of the district shall certify by resolution an Everglades agricultural privilege tax roll on compatible electronic medium to the tax collector of each county in which a portion of the EAA is located. The district shall also produce one copy of the roll in printed form which shall be available for inspection by the public. The district shall post the Everglades agricultural privilege tax for each parcel on the roll. The tax collector shall not accept any such roll that is not certified on compatible electronic medium and that does not contain the posting of the Everglades agricultural privilege tax for each parcel. It is the responsibility of the district that such rolls be free of errors and omissions. Alterations to such rolls may be made by the executive director of the district, or a designee, up to 10 days before certification. If the tax collector or any taxpayer discovers errors or omissions on such roll, such person may request the district to file a corrected roll or a correction of the amount of any Everglades agricultural privilege tax. Other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, Everglades agricultural privilege taxes collected pursuant to this section shall be included in the combined notice for ad valorem taxes and non-ad valorem assessments provided for in s. 197.3635. Such Everglades agricultural privilege taxes shall be listed in the portion of the combined notice utilized for non-ad valorem assessments. A separate mailing is authorized only as a solution to the most exigent factual circumstances. However, if a tax collector cannot merge an Everglades agricultural privilege tax roll to produce such a notice, the tax collector shall mail a separate notice of Everglades agricultural privilege taxes or shall direct the district to mail such a separate notice. In deciding whether a separate mailing is necessary, the tax collector shall consider all costs to the district and taxpayers of such a separate mailing and the adverse effects to the taxpayers of delayed and multiple notices. The district shall bear all costs associated with any separate notice. Everglades agricultural privilege taxes collected pursuant to this section shall be subject to all collection provisions of chapter 197, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment. Everglades agricultural privilege taxes for leasehold or other interests in property owned by the United States, the state, or any agency thereof permitting such property to be used for agricultural purposes shall be included on the notice provided pursuant to s. 196.31, a copy of which shall be provided to lessees or other interestholders registering with the district, and shall be collected from the lessee or other appropriate interestholder and remitted to the district immediately upon collection. Everglades agricultural privilege taxes included on the statement provided pursuant to s. 196.31 shall be due and collected on or prior to the next April 1 following provision of the notice. Proceeds of the Everglades agricultural privilege taxes shall be distributed by the tax collector to the district. Each tax collector shall be paid a commission equal to the actual cost of collection, not to exceed 2 percent, on the amount of Everglades agricultural privilege taxes collected and remitted. Notwithstanding any general law or special act to the contrary, Everglades agricultural privilege taxes shall not be included on the notice of proposed property taxes provided for in s. 200.069.

(c) The initial Everglades agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. Incentive credits to the Everglades agricultural privilege taxes to be included on the initial Everglades agricultural privilege tax roll, if any, shall be based upon the total phosphorus load reduction for the year ending April 30, 1993. The Everglades agricultural privilege taxes for each year shall be computed in the following manner:

1. Annual Everglades agricultural privilege taxes shall be charged for the privilege of conducting an agricultural trade or business on each acre of real property or portion thereof. The annual Everglades agricultural privilege tax shall be \$24.89 per acre for the tax notices mailed in November 1994 through November 1997; \$27 per acre for the tax notices mailed in November 1998 through November 2001; \$31 per acre for the tax notices mailed in November 2002 through November 2005; and \$35 per acre for the tax notices mailed in November 2006 through November 2013.

2. It is the intent of the Legislature to encourage the performance of best management practices to maximize the reduction of phosphorus loads at points of discharge from the EAA by providing an incentive credit against the Everglades agricultural privilege taxes set forth in subparagraph 1. The total phosphorus load reduction shall be measured for the entire EAA by comparing the actual measured total phosphorus load attributable to the EAA for each annual period ending on April 30 to the total estimated phosphorus load that would have occurred during the 1979-1988 base period using the model for total phosphorus load determinations provided in chapter 40E-63, Florida Administrative Code, utilizing the technical information and procedures contained in Section IV-EAA Period of Record Flow and Phosphorus Load Calculations; Section V-Monitoring Requirements; and Section VI-Phosphorus Load Allocations and Compliance Calculations of the Draft Technical Document in Support of chapter 40E-63, Florida

Administrative Code - Works of the District within the Everglades, March 3, 1992, and the Standard Operating Procedures for Water Quality Collection in Support of the Everglades Water Condition Report, dated February 18, 1994. The model estimates the total phosphorus load that would have occurred during the 1979-1988 base period by substituting the rainfall conditions for such annual period ending April 30 for the conditions that were used to calibrate the model for the 1979-1988 base period. The data utilized to calculate the actual loads attributable to the EAA shall be adjusted to eliminate the effect of any load and flow that were not included in the 1979-1988 base period as defined in chapter 40E-63, Florida Administrative Code. The incorporation of the method of measuring the total phosphorus load reduction provided in this subparagraph is intended to provide a legislatively approved aid to the governing board of the district in making an annual ministerial determination of any incentive credit.

3. Phosphorus load reductions calculated in the manner described in subparagraph 2. and rounded to the nearest whole percentage point for each annual period beginning on May 1 and ending on April 30 shall be used to compute incentive credits to the Everglades agricultural privilege taxes to be included on the annual tax notices mailed in November of the next ensuing calendar year. Incentive credits, if any, will reduce the Everglades agricultural privilege taxes set forth in subparagraph 1. only to the extent that the phosphorus load reduction exceeds 25 percent. Subject to subparagraph 4., the reduction of phosphorus load by each percentage point in excess of 25 percent, computed for the 12-month period ended on April 30 of the calendar year immediately preceding certification of the Everglades agricultural privilege tax, shall result in the following incentive credits: \$0.33 per acre for the tax notices mailed in November 1994 through November 1997; \$0.54 per acre for the tax notices mailed in November 1998 through November 2001; \$0.61 per acre for the tax notices mailed in November 2002 through November 2005, and \$0.65 per acre for the tax notices mailed in November 2006 through November 2013. The determination of incentive credits, if any, shall be documented by resolution of the governing board of the district adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

4. Notwithstanding subparagraph 3., incentive credits for the performance of best management practices shall not reduce the minimum annual Everglades agricultural privilege tax to less than \$24.89 per acre, which annual Everglades agricultural privilege tax as adjusted in the manner required by paragraph (e) shall be known as the "minimum tax." To the extent that the application of incentive credits for the performance of best management practices would reduce the annual Everglades agricultural privilege tax to an amount less than the minimum tax, then the unused or excess incentive credits for the performance of best management practices shall be carried forward, on a phosphorus load percentage basis, to be applied as incentive credits in subsequent years. Any unused or excess incentive credits remaining after certification of the Everglades agricultural privilege tax roll for the tax notices mailed in November 2013 shall be canceled.

5. Notwithstanding the schedule of Everglades agricultural privilege taxes set forth in subparagraph 1., the owner, lessee, or other appropriate interestholder of any property shall be entitled to have the Everglades agricultural privilege tax for any parcel of property reduced to the minimum tax, commencing with the tax notices mailed in November 1996 for parcels of property participating in the early baseline option as defined in chapter 40E-63, Florida Administrative Code, and with the tax notices mailed in November 1997 for parcels of property not participating in the early baseline option, upon compliance with the requirements set forth in this subparagraph. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for consideration of reduction to the minimum tax on the Everglades agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the reduction in phosphorus load attributable to such parcel of property. The phosphorus load reduction for each discharge structure serving the parcel shall be measured as provided in chapter 40E-63, Florida Administrative Code, and the permit issued for such property pursuant to chapter 40E-63, Florida Administrative Code. A parcel of property which has achieved the following annual phosphorus load reduction standards shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year: 30 percent or more for the tax notices mailed in November 1994 through November 1997; 35 percent or more for the tax notices mailed in November 1998 through November 2001; 40 percent or more for the tax notices mailed in November 2002 through November 2005; and 45 percent or more for the tax notices mailed in November 2006 through November 2013. In addition, any parcel of property that achieves an annual flow weighted mean concentration of 50 parts per billion (ppb) of phosphorus at each discharge structure serving the property for any year ending April 30 shall have the minimum tax included on the annual tax notice mailed in November of the next ensuing calendar year. Any annual phosphorus reductions that exceed the amount necessary to have the minimum tax included on the annual tax notice for any parcel of property shall be carried forward to the subsequent years' phosphorus load reduction to determine if the minimum tax shall be included on the annual tax notice. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

6. The annual Everglades agricultural privilege tax for the tax notices mailed in November 2014 and thereafter shall be \$10 per acre.

(d) For purposes of this paragraph, "vegetable acreage" means, for each tax year, any portion of a parcel of property used for a period of not less than 8 months for the production of vegetable crops, including sweet corn, during the 12 months ended September 30 of the year preceding the tax year. Land preparation, crop rotation, and fallow periods shall not disqualify property from classification as vegetable acreage if such property is actually used for the production of vegetable crops.

1. It is hereby determined by the Legislature that vegetable farming in the EAA is subject to volatile market conditions and is particularly subject to crop loss or damage due to freezes, flooding, and drought. It is further determined by the Legislature that, due to the foregoing factors, imposition of an Everglades agricultural privilege tax upon vegetable acreage in excess of the minimum tax could create a severe economic hardship and impair the production of vegetable crops. Notwithstanding the schedule of Everglades agricultural privilege taxes set forth in subparagraph (c)1., the Everglades agricultural privilege tax for vegetable acreage shall be the minimum tax, and vegetable acreage shall not be entitled to any incentive credits.

2. If either the Governor, the President of the United States, or the United States Department of Agriculture declares the existence of a state of emergency or disaster resulting from extreme natural conditions impairing the ability of vegetable acreage to produce crops, payment of the Everglades agricultural privilege taxes imposed for the privilege of conducting an agricultural trade or business on such property shall be deferred for a period of 1 year, and all subsequent annual payments shall be deferred for the same period.

a. If the declaration occurs between April 1 and October 31, the Everglades agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

b. If the declaration occurs between November 1 and March 31 and the Everglades agricultural privilege tax included on the most recent tax notice has not been paid, such Everglades agricultural privilege tax will be deferred to the next annual tax notice.

c. If the declaration occurs between November 1 and March 31 and the Everglades agricultural privilege tax included on the most recent tax notice has been paid, the Everglades agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

3. In the event payment of Everglades agricultural privilege taxes is deferred pursuant to this paragraph, the district must record a notice in the official records of each county in which vegetable acreage subject to such deferment is located. The recorded notice must describe each parcel of property as to which Everglades agricultural privilege taxes have been deferred and the amount deferred for such property. If all or any portion of the property as to which Everglades agricultural privilege taxes have been deferred ceases to be classified as agricultural under the provisions of chapter 193 or otherwise subject to the Everglades agricultural privilege tax, all deferred amounts must be included on the tax notice for such property mailed in November of the first tax year for which such property is not subject to the Everglades agricultural privilege tax. After a property owner has paid all outstanding Everglades agricultural privilege taxes, including any deferred amounts, the district shall provide the property owner with a recordable instrument evidencing the payment of all outstanding amounts.

4. The owner, lessee, or other appropriate interestholder must file an application with the executive director of the district prior to July 1 for classification of a portion of the property as vegetable acreage on the Everglades agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the number of acres used for the production of vegetable crops during the year in which incentive credits are determined and the period of such use. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual Everglades agricultural privilege tax roll to the appropriate tax collector.

5. This paragraph does not relieve vegetable acreage from the performance of best management practices specified in chapter 40E-63, Florida Administrative Code.

(e) If, for any tax year, the number of acres subject to the Everglades agricultural privilege tax is less than the number of acres included on the Everglades agricultural privilege tax roll certified for the tax notices mailed in November 1994, the minimum tax shall be subject to increase in the manner provided in this paragraph. In determining the number of acres subject to the Everglades agricultural privilege tax for purposes of this paragraph, property acquired by a not-for-profit entity for purposes of conservation and preservation, the United States, or the state, or any agency thereof, and removed from the Everglades agricultural privilege tax roll after January 1, 1994, shall be treated as subject to the tax even though no tax is imposed or due: in its entirety, for tax notices mailed prior to November 2000; to the extent its area exceeds 4 percent of the total area of property subject to the Everglades agricultural tax, for tax notices mailed in November 2000 through November 2005; and to the extent its area exceeds 8 percent of the total

area of property subject to the Everglades agricultural tax, for tax notices mailed in November 2006 and thereafter. For each tax year, the district shall determine the amount, if any, by which the sum of the following exceeds \$12,367,000:

1. The product of the minimum tax multiplied by the number of acres subject to the Everglades agricultural privilege tax; and
2. The ad valorem tax increment, as defined in this subparagraph.

The aggregate of such annual amounts, less any portion previously applied to eliminate or reduce future increases in the minimum tax, as described in this paragraph, shall be known as the "excess tax amount." If for any tax year, the amount computed by multiplying the minimum tax by the number of acres then subject to the Everglades agricultural privilege tax is less than \$12,367,000, the excess tax amount shall be applied in the following manner. If the excess tax amount exceeds such difference, an amount equal to the difference shall be deducted from the excess tax amount and applied to eliminate any increase in the minimum tax. If such difference exceeds the excess tax amount, the excess tax amount shall be applied to reduce any increase in the minimum tax. In such event, a new minimum tax shall be computed by subtracting the remaining excess tax amount from \$12,367,000 and dividing the result by the number of acres subject to the Everglades agricultural privilege tax for such tax year. For purposes of this paragraph, the "ad valorem tax increment" means 50 percent of the difference between the amount of ad valorem taxes actually imposed by the district for the immediate prior tax year against property included on the Everglades agricultural privilege tax roll certified for the tax notices mailed in November 1994 that was not subject to the Everglades agricultural privilege tax during the immediate prior tax year and the amount of ad valorem taxes that would have been imposed against such property for the immediate prior tax year if the taxable value of each acre had been equal to the average taxable value of all other land classified as agricultural within the EAA for such year; however, the ad valorem tax increment for any year shall not exceed the amount that would have been derived from such property from imposition of the minimum tax during the immediate prior tax year.

(f) Any owner, lessee, or other appropriate interestholder of property subject to the Everglades agricultural privilege tax may contest the Everglades agricultural privilege tax by filing an action in circuit court.

1. No action may be brought to contest the Everglades agricultural privilege tax after 60 days from the date the tax notice that includes the Everglades agricultural privilege tax is mailed by the tax collector. Before an action to contest the Everglades agricultural privilege tax may be brought, the taxpayer shall pay to the tax collector the amount of the Everglades agricultural privilege tax which the taxpayer admits in good faith to be owing. The tax collector shall issue a receipt for the payment, and the receipt shall be filed with the complaint. Payment of an Everglades agricultural privilege tax shall not be deemed an admission that such tax was due and shall not prejudice the right to bring a timely action to challenge such tax and seek a refund. No action to contest the Everglades agricultural privilege tax may be maintained, and such action shall be dismissed, unless all Everglades agricultural privilege taxes imposed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent. The requirements of this subparagraph are jurisdictional.

2. In any action involving a challenge of the Everglades agricultural privilege tax, the court shall assess all costs. If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 25 percent of the deficiency per year from the date the tax became delinquent. The court may issue injunctions to restrain the sale of property for any Everglades agricultural privilege tax which appears to be contrary to law or equity.

(g) Notwithstanding any contrary provisions in chapter 120, or any provision of any other law, an action in circuit court shall be the exclusive remedy to challenge the assessment of an Everglades agricultural privilege tax and owners of property subject to the Everglades agricultural privilege tax shall have no right or standing to initiate administrative proceedings under chapter 120 to challenge the assessment of an Everglades agricultural privilege tax, including specifically, and without limitation, the annual certification by the district governing board of the Everglades agricultural privilege tax roll to the appropriate tax collector, the annual calculation of any incentive credit for phosphorus level reductions, the denial of an application for exclusion from the Everglades agricultural privilege tax, the calculation of the minimum tax adjustments provided in paragraph (e), the denial of an application for reduction to the minimum tax, and the denial of any application for classification as vegetable acreage, deferment of payment for vegetable acreage, or correction of any alleged error in the Everglades agricultural privilege tax roll.

(h) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the Everglades agricultural privilege tax is a matter of concern to all areas of Florida and the Legislature intends this act to be a general law authorization of the tax within the meaning of s. 9, Art. VII of the State Constitution.

(7) C-139 AGRICULTURAL PRIVILEGE TAX.—

(a) There is hereby imposed an annual C-139 agricultural privilege tax for the privilege of conducting an agricultural trade or business on:

1. All real property located within the C-139 Basin that is classified as agricultural under the provisions of chapter 193; and

2. Leasehold or other interests in real property located within the C-139 Basin owned by the United States, the state, or any agency thereof permitting the property to be used for agricultural purposes in a manner that would result in such property being classified as agricultural under the provisions of chapter 193 if not governmentally owned, whether or not such property is actually classified as agricultural under the provisions of chapter 193.

It is hereby determined by the Legislature that the privilege of conducting an agricultural trade or business on such property constitutes a reasonable basis for imposing the C-139 agricultural privilege tax and that logical differences exist between the agricultural use of such property and the use of other property within the C-139 Basin for residential or nonagricultural commercial use. The C-139 agricultural privilege tax shall constitute a lien against the property, or the leasehold or other interest in governmental property permitting such property to be used for agricultural purposes, described on the C-139 agricultural privilege tax roll. The lien shall be in effect from January 1 of the year the tax notice is mailed until discharged by payment and shall be equal in rank and dignity with the liens of all state, county, district, or municipal taxes and non-ad valorem assessments imposed pursuant to general law, special act, or local ordinance and shall be superior in dignity to all other liens, titles, and claims.

(b) The C-139 agricultural privilege tax, other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, shall be collected in the manner provided for ad valorem taxes. By September 15 of each year, the governing board of the district shall certify by resolution a C-139 agricultural privilege tax roll on compatible electronic medium to the tax collector of each county in which a portion of the C-139 Basin is located. The district shall also produce one copy of the roll in printed form which shall be available for inspection by the public. The district shall post the C-139 agricultural privilege tax for each parcel on the roll. The tax collector shall not accept any such roll that is not certified on compatible electronic medium and that does not contain the posting of the C-139 agricultural privilege tax for each parcel. It is the responsibility of the district that such rolls be free of errors and omissions. Alterations to such rolls may be made by the executive director of the district, or a designee, up to 10 days before certification. If the tax collector or any taxpayer discovers errors or omissions on such roll, such person may request the district to file a corrected roll or a correction of the amount of any C-139 agricultural privilege tax. Other than for leasehold or other interests in governmental property permitting such property to be used for agricultural purposes, C-139 agricultural privilege taxes collected pursuant to this section shall be included in the combined notice for ad valorem taxes and non-ad valorem assessments provided for in s. 197.3635. Such C-139 agricultural privilege taxes shall be listed in the portion of the combined notice utilized for non-ad valorem assessments. A separate mailing is authorized only as a solution to the most exigent factual circumstances. However, if a tax collector cannot merge a C-139 agricultural privilege tax roll to produce such a notice, the tax collector shall mail a separate notice of C-139 agricultural privilege taxes or shall direct the district to mail such a separate notice. In deciding whether a separate mailing is necessary, the tax collector shall consider all costs to the district and taxpayers of such a separate mailing and the adverse effects to the taxpayers of delayed and multiple notices. The district shall bear all costs associated with any separate notice. C-139 agricultural privilege taxes collected pursuant to this section shall be subject to all collection provisions of chapter 197, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment. C-139 agricultural privilege taxes for leasehold or other interests in property owned by the United States, the state, or any agency thereof permitting such property to be used for agricultural purposes shall be included on the notice provided pursuant to s. 196.31, a copy of which shall be provided to lessees or other interestholders registering with the district, and shall be collected from the lessee or other appropriate interestholder and remitted to the district immediately upon collection. C-139 agricultural privilege taxes included on the statement provided pursuant to s. 196.31 shall be due and collected on or prior to the next April 1 following provision of the notice. Proceeds of the C-139 agricultural privilege taxes shall be distributed by the tax collector to the district. Each tax collector shall be paid a commission equal to the actual cost of collection, not to exceed 2 percent, on the amount of C-139 agricultural privilege taxes collected and remitted. Notwithstanding any general law or special act

to the contrary, C-139 agricultural privilege taxes shall not be included on the notice of proposed property taxes provided in s. 200.069.

(c) The initial C-139 agricultural privilege tax roll shall be certified for the tax notices mailed in November 1994. The C-139 agricultural privilege taxes for the tax notices mailed in November 1994 through November 2013 shall be computed by dividing \$654,656 by the number of acres included on the C-139 agricultural privilege tax roll for such year, excluding any property located within the C-139 Annex. The C-139 agricultural privilege taxes for the tax notices mailed in November 2014 and thereafter shall be \$1.80 per acre.

(d) For purposes of this paragraph, "vegetable acreage" means, for each tax year, any portion of a parcel of property used for a period of not less than 8 months for the production of vegetable crops, including sweet corn, during the 12 months ended September 30 of the year preceding the tax year. Land preparation, crop rotation, and fallow periods shall not disqualify property from classification as vegetable acreage if such property is actually used for the production of vegetable crops.

1. If either the Governor, the President of the United States, or the United States Department of Agriculture declares the existence of a state of emergency or disaster resulting from extreme natural conditions impairing the ability of vegetable acreage to produce crops, payment of the C-139 agricultural privilege taxes imposed for the privilege of conducting an agricultural trade or business on such property shall be deferred for a period of 1 year, and all subsequent annual payments shall be deferred for the same period.

a. If the declaration occurs between April 1 and October 31, the C-139 agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

b. If the declaration occurs between November 1 and March 31 and the C-139 agricultural privilege tax included on the most recent tax notice has not been paid, such C-139 agricultural privilege tax will be deferred to the next annual tax notice.

c. If the declaration occurs between November 1 and March 31 and the C-139 agricultural privilege tax included on the most recent tax notice has been paid, the C-139 agricultural privilege tax to be included on the next annual tax notice will be deferred to the subsequent annual tax notice.

2. In the event payment of C-139 agricultural privilege taxes is deferred pursuant to this paragraph, the district must record a notice in the official records of each county in which vegetable acreage subject to such deferment is located. The recorded notice must describe each parcel of property as to which C-139 agricultural privilege taxes have been deferred and the amount deferred for such property. If all or any portion of the property as to which C-139 agricultural privilege taxes have been deferred ceases to be classified as agricultural under the provisions of chapter 193 or otherwise subject to the C-139 agricultural privilege tax, all deferred amounts must be included on the tax notice for such property mailed in November of the first tax year for which such property is not subject to the C-139 agricultural privilege tax. After a property owner has paid all outstanding C-139 agricultural privilege taxes, including any deferred amounts, the district shall provide the property owner with a recordable instrument evidencing the payment of all outstanding amounts.

3. The owner, lessee, or other appropriate interestholder shall file an application with the executive director of the district prior to July 1 for classification of a portion of the property as vegetable acreage on the C-139 agricultural privilege tax roll to be certified for the tax notice mailed in November of the same calendar year and shall have the burden of proving the number of acres used for the production of vegetable crops during the year in which incentive credits are determined and the period of such use. The governing board of the district shall deny or grant the application by resolution adopted prior to or at the time of the adoption of its resolution certifying the annual C-139 agricultural privilege tax roll to the appropriate tax collector.

4. This paragraph does not relieve vegetable acreage from the performance of best management practices specified in chapter 40E-63, Florida Administrative Code.

(e) Any owner, lessee, or other appropriate interestholder of property subject to the C-139 agricultural privilege tax may contest the C-139 agricultural privilege tax by filing an action in circuit court.

1. No action may be brought to contest the C-139 agricultural privilege tax after 60 days from the date the tax notice that includes the C-139 agricultural privilege tax is mailed by the tax collector. Before an action to contest the C-139 agricultural privilege tax may be brought, the taxpayer shall pay to the tax collector the amount of the C-139 agricultural privilege tax which the taxpayer admits in good faith to be owing. The tax collector shall issue a receipt for the payment and the receipt shall be filed with the complaint. Payment of an C-139 agricultural privilege tax shall not be deemed an admission that such tax was due and shall not prejudice the right to bring a timely action to challenge such tax and seek a refund. No action to contest the C-139 agricultural privilege tax may be maintained, and such action shall be dismissed, unless all C-139 agricultural privilege taxes imposed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent. The requirements of this paragraph are jurisdictional.

2. In any action involving a challenge of the C-139 agricultural privilege tax, the court shall assess all costs. If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 25 percent of the deficiency per year from the date the tax became delinquent. The court may issue injunctions to restrain the sale of property for any C-139 agricultural privilege tax which appears to be contrary to law or equity.

(f) Notwithstanding any contrary provisions in chapter 120, or any provision of any other law, an action in circuit court shall be the exclusive remedy to challenge the assessment of an C-139 agricultural privilege tax and owners of property subject to the C-139 agricultural privilege tax shall have no right or standing to initiate administrative proceedings under chapter 120 to challenge the assessment of an C-139 agricultural privilege tax including specifically, and without limitation, the annual certification by the district governing board of the C-139 agricultural privilege tax roll to the appropriate tax collector, the denial of an application for exclusion from the C-139 agricultural privilege tax, and the denial of any application for classification as vegetable acreage, deferment of payment for vegetable acreage, or correction of any alleged error in the C-139 agricultural privilege tax roll.

(g) In recognition of the findings set forth in subsection (1), the Legislature finds that the assessment and use of the C-139 agricultural privilege tax is a matter of concern to all areas of Florida and the Legislature intends this section to be a general law authorization of the tax within the meaning of s. 9, Art. VII of the State Constitution.

(8) SPECIAL ASSESSMENTS.—

(a) In addition to any other legally available funding mechanism, the district may create, alone or in cooperation with counties, municipalities, and special districts pursuant to s. 163.01, the Florida Interlocal Cooperation Act of 1969, one or more stormwater management system benefit areas including property located outside the EAA and the C-139 Basin, and property located within the EAA and the C-139 Basin that is not subject to the Everglades agricultural privilege tax or the C-139 agricultural privilege tax. The district may levy special assessments within said benefit areas to fund the planning, acquisition, construction, financing, operation, maintenance, and administration of stormwater management systems for the benefited areas. Any benefit area in which property owners receive substantially different levels of stormwater management system benefits shall include stormwater management system benefit subareas within which different per acreage assessments shall be levied from subarea to subarea based upon a reasonable relationship to benefits received. The assessments shall be calculated to generate sufficient funds to plan, acquire, construct, finance, operate, and maintain the stormwater management systems authorized pursuant to this section.

(b) The district may use the non-ad valorem levy, collection, and enforcement method as provided in chapter 197 for assessments levied pursuant to paragraph (a).

(c) The district shall publish notice of the certification of the non-ad valorem assessment roll pursuant to chapter 197 in a newspaper of general circulation in the counties wherein the assessment is being levied, within 1 week after the district certifies the non-ad valorem assessment roll to the tax collector pursuant to s. 197.3632(5). The assessments levied pursuant to paragraph (a) shall be final and conclusive as to each lot or parcel unless the owner thereof shall, within 90 days of certification of the non-ad valorem assessment roll pursuant to s. 197.3632(5), commence an action in circuit court. Absent such commencement of an action within such period of time by an owner of a lot or parcel, such owner shall thereafter be estopped to raise any question related to the special benefit afforded the property or the reasonableness of the amount of the assessment. Except with respect to an owner who has commenced such an action, the non-ad valorem assessment roll as finally adopted and certified by the South Florida Water Management District to the tax collector pursuant to s. 197.3632(5) shall be competent and sufficient evidence that the assessments were duly levied and that all other proceedings adequate to the adoption of the non-ad valorem assessment roll were duly held, taken, and performed as required by s. 197.3632. If any assessment is abated in whole or in part by the court, the amount by which the assessment is so reduced may, by resolution of the governing board of the district, be payable from funds of the district legally available for that purpose, or at the discretion of the governing board of the district, assessments may be increased in the manner provided in s. 197.3632.

(d) In no event shall the amount of funds collected for stormwater management facilities pursuant to paragraph (a) exceed the cost of providing water management attributable to water quality treatment resulting from the operation of stormwater management systems of the landowners to be assessed. Such water quality treatment may be required by the plan or permits issued by the district. Prior to the imposition of assessments pursuant to paragraph (a) for construction of new stormwater management systems or the acquisition of necessary land, the district shall establish the general purpose, design, and function of the new system sufficient to make a fair and reasonable determination of the estimated costs of water management attributable to water quality treatment resulting from operation of stormwater management systems of the landowners to be assessed. This determination shall establish the proportion of the total

anticipated costs attributable to the landowners. In determining the costs to be imposed by assessments, the district shall consider the extent to which nutrients originate from external sources beyond the control of the landowners to be assessed. Costs for hydroperiod restoration within the Everglades Protection Area shall be provided by funds other than those derived from the assessments. The proportion of total anticipated costs attributable to the landowners shall be apportioned to individual landowners considering the factors specified in paragraph (e). Any determination made pursuant to this paragraph or paragraph (e) may be included in the plan or permits issued by the district.

(e) In determining the amount of any assessment imposed on an individual landowner under paragraph (a), the district shall consider the quality and quantity of the stormwater discharged by the landowner, the amount of treatment provided to the landowner, and whether the landowner has provided equivalent treatment or retention prior to discharge to the district's system.

(f) No assessment shall be imposed under this section for the operation or maintenance of a stormwater management system or facility for which construction has been completed on or before July 1, 1991, except to the extent that the operation or maintenance, or any modification of such system or facility, is required to provide water quality treatment.

(g) The district shall suspend, terminate, or modify projects and funding for such projects, as appropriate, if the projects are not achieving applicable goals specified in the plan.

(h) The Legislature hereby determines that any property owner who contributes to the need for stormwater management systems and programs, as determined for each individual property owner either through the plan or through permits issued to the district or to the property owner, is deemed to benefit from such systems and programs, and such benefits are deemed to be directly proportional to the relative contribution of the property owner to such need. The Legislature also determines that the issuance of a master permit provides benefits, through the opportunity to achieve collective compliance, for all persons within the area of the master permit which may be considered by the district in the imposition of assessments under this section.

(9) PERMITS.—

(a) The Legislature finds that construction and operation of the Everglades Construction Project will benefit the water resources of the district and is consistent with the public interest. The district shall construct, maintain, and operate the Everglades Construction Project in accordance with this section.

(b) The Legislature finds that there is an immediate need to initiate cleanup and restoration of the Everglades Protection Area through the Everglades Construction Project. In recognition of this need, the district may begin construction of the Everglades Construction Project prior to final agency action, or notice of intended agency action, on any permit from the department under this section.

(c) The department may issue permits to the district to construct, operate, and maintain the Everglades Construction Project based on the criteria set forth in this section. The permits to be issued by the department to the district under this section shall be in lieu of other permits under this part or <sup>2</sup>part VIII of chapter 403, 1992 Supplement to the Florida Statutes 1991.

(d) By June 1, 1994, the district shall apply to the department for a permit or permits for the construction, operation, and maintenance of the Everglades Construction Project. The district may comply with this paragraph by amending its pending Everglades permit application.

(e) The department shall issue a permit for a term of 5 years for the construction, operation, and maintenance of the Everglades Construction Project upon the district's providing reasonable assurances that:

1. The project will be constructed, operated, and maintained in accordance with the Everglades Construction Project;
2. The BMP program set forth in paragraph (4)(f) has been implemented; and
3. The final design of the Everglades Construction Project shall minimize wetland impacts, to the maximum extent practicable and consistent with the Everglades Construction Project.

(f) At least 60 days prior to the expiration of any permit issued under this section, the district may apply for renewal for a period of 5 years.

(g) Permits issued under this section may include any standard conditions provided by department rule which are appropriate and consistent with this section.

(h) Discharges shall be allowed, provided the STAs are operated in accordance with this section, if, after a stabilization period:

1. The STAs achieve the design objectives of the Everglades Construction Project for phosphorus;
2. For water quality parameters other than phosphorus, the quality of water discharged from the STAs is of equal or better quality than inflows; and
3. Discharges from STAs do not pose a serious danger to the public health, safety, or welfare.

(i) The district may discharge from any STA into waters of the state upon issuance of final agency action authorizing such action or in accordance with s. 373.439.

(j)1. Modifications to the Everglades Construction Project shall be submitted to the department for a determination as to whether permit modification is necessary. The department shall notify the district within 30 days after receiving the submittal as to whether permit modification is necessary.

2. The Legislature recognizes that technological advances may occur during the construction of the Everglades Construction Project. If superior technology becomes available in the future which can be implemented to more effectively meet the intent and purposes of this section, the district is authorized to pursue that alternative through permit modification to the department. The department may issue or modify a permit provided that the alternative is demonstrated to be superior at achieving the restoration goals of the Everglades Construction Project considering:

- a. Levels of load reduction;
- b. Levels of discharge concentration reduction;
- c. Water quantity, distribution, and timing for the Everglades Protection Area;
- d. Compliance with water quality standards;
- e. Compatibility of treated water with the balance in natural populations of aquatic flora or fauna in the Everglades Protection Area;
- f. Cost-effectiveness; and
- g. The schedule for implementation.

Upon issuance of permit modifications by the department, the district is authorized to use available funds to finance the modification.

3. The district shall modify projects of the Everglades Construction Project, as appropriate, if the projects are not achieving the design objectives. Modifications that are inconsistent with the permit shall require a permit modification from the department. Modifications which substitute the treatment technology must meet the requirements of subparagraph 2. Nothing in this section shall prohibit the district from refining or modifying the final design of the project based upon the February 14, 1994, conceptual design document in accordance with standard engineering practices.

(k) By October 1, 1994, the district shall apply for a permit under this section to operate and maintain discharge structures within the control of the district which discharge into, within, or from the Everglades Protection Area and are not included in the Everglades Construction Project. The district may comply with this subsection by amending its pending permit application regarding these structures. In addition to the requirements of ss. 373.413 and 373.416, the application shall include the following:

1. Schedules and strategies for:
  - a. Achieving and maintaining water quality standards;
  - b. Evaluation of existing programs, permits, and water quality data;
  - c. Acquisition of lands and construction and operation of water treatment facilities, if appropriate, together with development of funding mechanisms; and
  - d. Development of a regulatory program to improve water quality, including identification of structures or systems requiring permits or modifications of existing permits.

2. A monitoring program to ensure the accuracy of data and measure progress toward achieving compliance with water quality standards.

(l) The department shall issue one or more permits for a term of 5 years for the operation and maintenance of structures identified by the district in paragraph (k) upon the district's demonstration of reasonable assurance that those elements identified in paragraph (k) will provide compliance with water quality standards to the maximum extent practicable and otherwise comply with the provisions of ss. 373.413 and 373.416. The department shall take agency action on the permit application by October 1, 1996. At least 60 days prior to the expiration of any permit, the district may apply for a renewal thereof for a period of 5 years.

(m) The district may apply for modification of any permit issued pursuant to this subsection, including superior technology in accordance with the procedures set forth in this subsection.

(n) The district also shall apply for a permit or modification of an existing permit, as provided in this subsection, for any new structure or for any modification of an existing structure.

(o) Except as otherwise provided in this section, nothing in this subsection shall relieve any person from the need to obtain any permit required by the department or the district pursuant to any other provision of law.

(p) The district shall publish notice of rulemaking pursuant to chapter 120 by October 1, 1991, allowing for a master permit or permits authorizing discharges from landowners within that area served by structures identified as S-

5A, S-6, S-7, S-8, and S-150. For discharges within this area, the district shall not initiate any proceedings to require new permits or permit modifications for nutrient limitations prior to the adoption of the master permit rule by the governing board of the district or prior to April 1, 1992, whichever first occurs. The district's rules shall also establish conditions or requirements allowing for a single master permit for the Everglades Agricultural Area including those structures and water releases subject to chapter 40E-61, Florida Administrative Code. No later than the adoption of rules allowing for a single master permit, the department and the district shall provide appropriate procedures for incorporating into a master permit separate permits issued by the department under this chapter. The district's rules authorizing master permits for the Everglades Agricultural Area shall provide requirements consistent with this section and with interim or other permits issued by the department to the district. Such a master permit shall not preclude the requirement that individual permits be obtained for persons within the master permit area for activities not authorized by, or not in compliance with, the master permit. Nothing in this subsection shall limit the authority of the department or district to enforce existing permit requirements or existing rules, to require permits for new structures, or to develop rules for master permits for other areas. To the greatest extent possible the department shall delegate to the district any authority necessary to implement this subsection which is not already delegated.

(10) LONG-TERM COMPLIANCE PERMITS.—By December 31, 2006, the department and the district shall take such action as may be necessary so that water delivered to the Everglades Protection Area achieves state water quality standards, including the phosphorus criterion, in all parts of the Everglades Protection Area.

(a) By December 31, 2003, the district shall submit to the department a permit modification to incorporate proposed changes to the Everglades Construction Project and the permits issued pursuant to subsection (9). These changes shall be designed to achieve compliance with the phosphorus criterion and the other state water quality standards by December 31, 2006.

(b) If the Everglades Construction Project or other discharges to the Everglades Protection Area are not in compliance with state water quality standards, the permit application shall include:

1. A plan for achieving compliance with the phosphorus criterion in the Everglades Protection Area.
2. A plan for achieving compliance in the Everglades Protection Area with state water quality standards other than the phosphorus criterion.
3. Proposed cost estimates for the plans referred to in subparagraphs 1. and 2.
4. Proposed funding mechanisms for the plans referred to in subparagraphs 1. and 2.
5. Proposed schedules for implementation of the plans referred to in subparagraphs 1. and 2.

(c) If the Everglades Construction Project or other discharges to the Everglades Protection Area are in compliance with state water quality standards, including the phosphorus criterion, the permit application shall include:

1. A plan for maintaining compliance with the phosphorus criterion in the Everglades Protection Area.
2. A plan for maintaining compliance in the Everglades Protection Area with state water quality standards other than the phosphorus criterion.

(11) APPLICABILITY OF LAWS AND WATER QUALITY STANDARDS; AUTHORITY OF DISTRICT AND DEPARTMENT.—

(a) Except as otherwise provided in this section, nothing in this section shall be construed:

1. As altering any applicable state water quality standards, laws, or district or department rules in areas impacted by this section; or

2. To restrict the authority otherwise granted the department and the district pursuant to this chapter or chapter 403, and provisions of this section shall be deemed supplemental to the authority granted pursuant to this chapter and chapter 403.

(b) Mixing zones, variances, and moderating provisions, or relief mechanisms for compliance with water quality standards as provided by department rules, shall not be permitted for discharges which are subject to paragraph (4)(f) and subject to this section, except that site specific alternative criteria may be allowed for nonphosphorus parameters if the applicant shows entitlement under applicable law. After December 31, 2006, all such relief mechanisms may be allowed for nonphosphorus parameters if otherwise provided for by applicable law.

(c) Those landowners or permittees who are not in compliance as provided in paragraph (4)(f) must meet a discharge limit for phosphorus of 50 parts per billion (ppb) unless and until some other limit has been established by department rule or order or operation of paragraph (4)(e).

(12) RIGHTS OF SEMINOLE TRIBE OF FLORIDA.—Nothing in this section is intended to diminish or alter the governmental authority and powers of the Seminole Tribe of Florida, or diminish or alter the rights of that tribe, including, but not limited to, rights under the Water Rights Compact among the Seminole Tribe of Florida, the state, and the South Florida Water Management District as enacted by Pub. L. No. 100-228, 101 Stat. 1556, and chapter 87-292, Laws of Florida, and codified in s. 285.165, and rights under any other agreement between the Seminole Tribe of

Florida and the state or its agencies. No land of the Seminole Tribe of Florida shall be used for stormwater treatment without the consent of the tribe.

(13) ANNUAL REPORTS.—Beginning January 1, 1992, the district shall submit to the department, the Governor, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, and the Minority Leader of the Senate annual progress reports regarding implementation of the section. The annual report will include a summary of the water conditions in the Everglades Protection Area, the status of the impacted areas, the status of the construction of the STAs, the implementation of the BMPs, and actions taken to monitor and control exotic species. The district must prepare the report in coordination with federal and state agencies.

(14) EVERGLADES FUND.—The South Florida Water Management District is directed to separately account for all moneys used for the purpose of funding the Everglades Construction Project.

(15) DEFINITION OF EVERGLADES AGRICULTURAL AREA.—As used in this section, “Everglades Agricultural Area” or “EAA” means the following described property: BEGINNING at the intersection of the North line of Section 2, Township 41, Range 37 East, with the Easterly right-of-way line of U.S. Army Corps of Engineers’ Levee D-9, in Palm Beach County, Florida; thence, easterly along said North line of said Section 2 to the Northeast corner of said Section 2; thence, northerly along the West line of Section 36, Township 40 South, Range 37 East, to the West one-quarter corner of said Section 36; thence, easterly along the East-West half section line of said Section 36 to the center of said Section 36; thence northerly along the North-South half section line of said Section 36 to the North one-quarter corner of said Section 36, said point being on the line between Palm Beach and Martin Counties; thence, easterly along said North line of said Section 36 and said line between Palm Beach and Martin Counties to the Westerly right-of-way line of the South Florida Water Management District’s Levee 8 North Tieback; thence, southerly along said Westerly right-of-way line of said Levee 8 North Tieback to the Southerly right-of-way line of South Florida Water Management District’s Levee 8 at a point near the Northeast corner of Section 12, Township 41 South, Range 37 East; thence, easterly along said Southerly right-of-way line of said Levee 8 to a point in Section 7, Township 41 South, Range 38 East, where said right-of-way line turns southeasterly; thence, southeasterly along the Southwesterly right-of-way line of said Levee 8 to a point near the South line of Section 8, Township 43 South, Range 40 East, where said right-of-way line turns southerly; thence, southerly along the Westerly right-of-way line of said Levee 8 to the Northerly right-of-way line of State Road 80, in Section 32, Township 43 South, Range 40 East; thence, westerly along the Northerly right-of-way line of said State Road 80 to the northeasterly extension of the Northwesterly right-of-way line of South Florida Water Management District’s Levee 7; thence, southwestward along said northeasterly extension, and along the northwesterly right-of-way line of said Levee 7 to a point near the Northwest corner of Section 3, Township 45 South, Range 39 East, where said right-of-way turns southerly; thence, southerly along the Westerly right-of-way line of said Levee 7 to the Northwesterly right-of-way line of South Florida Water Management District’s Levee 6, on the East line of Section 4, Township 46 South, Range 39 East; thence, southwestward along the Northwesterly right-of-way line of said Levee 6 to the Northerly right-of-way line of South Florida Water Management District’s Levee 5, near the Southwest corner of Section 22, Township 47 South, Range 38 East; thence, westerly along said Northerly right-of-way lines of said Levee 5 and along the Northerly right-of-way line of South Florida Water Management District’s Levee 4 to the Northeasterly right-of-way line of South Florida Water Management District’s Levee 3 and the Northeast corner of Section 12, Township 48 South, Range 34 East; thence, northwesterly along said Northeasterly right-of-way line of said Levee 3 to a point near the Southwest corner of Section 9, Township 47 South, Range 34 East, where said right-of-way line turns northerly; thence, northerly along the Easterly right-of-way lines of said Levee 3 and South Florida Water Management District’s Levee 2 to the southerly line of Section 4, Township 46 South, Range 34 East; thence, easterly along said southerly line of said Section 4 to the Southeast corner of said Section 4; thence, northerly along the East lines of said Section 4 and Section 33, Township 45 South, Range 34 East, to the Northeast corner of said Section 33; thence, westerly along the North line of said Section 33 to said Easterly right-of-way line of said Levee 2; thence, northerly along said Easterly right-of-way lines of said Levee 2 and South Florida Water Management District’s Levee 1, to the North line of Section 16, Township 44 South, Range 34 East; thence, easterly along the North lines of said Section 16 and Section 15, Township 44 South, Range 34 East, to the Northeast corner of said Section 15; thence, northerly along the West lines of Section 11 and Section 2, Township 44 South, Range 34 East, and the West lines of Section 35, Section 26 and Section 23, Township 43 South, Range 34 East to a point 25 feet north of the West quarter-corner ( $W\frac{1}{4}$ ) of said Section 23; thence, easterly along a line that is 25 feet north and parallel to the East-West half section line of said Section 23 and Section 24 to a point that is 25 feet north of the center of said Section 24; thence, northerly along the North-South half section lines of said Section 24 and Section 13, Township 43 South, Range 34 East, to the intersection with the North right-of-way line of State Road 80A (old U.S. Highway 27); thence, westerly along said North right-of-way line of said State Road 80A (old U.S. Highway 27) to the intersection with the Southerly right-of-way line of State Road 80; thence, easterly along said Southerly right-of-way line of said State Road 80 to the intersection with the North line of Section 19, Township 43 South, Range 35 East;

thence, easterly along said North line of said Section 19 to the intersection with Southerly right-of-way of U.S. Army Corps of Engineers Levee D-2; thence, easterly along said Southerly right-of-way of said Levee D-2 to the intersection with the north right-of-way line of State Road 80 (new U.S. Highway 27); thence, easterly along said North right-of-way line of said State Road 80 (new U.S. Highway 27) to the East right-of-way line of South Florida Water Management District's Levee 25 (Miami Canal); thence, North along said East right-of-way line of said Levee 25 to the said south right-of-way line of said Levee D-2; thence, easterly and northeasterly along said Southerly and Easterly right-of-way lines of said Levee D-2 and said Levee D-9 to the point of beginning.

<sup>3</sup>(16) DEFINITION OF C-139 BASIN.—For purposes of this section:

(a) "C-139 Basin" or "Basin" means the following described property: beginning at the intersection of an easterly extension of the south bank of Deer Fence Canal with the center line of South Florida Water Management District's Levee 3 in Section 33, Township 46 South, Range 34 East, Hendry County, Florida; thence, westerly along said easterly extension and along the South bank of said Deer Fence Canal to where it intersects the center line of State Road 846 in Section 33, Township 46 South, Range 32 East; thence, departing from said top of bank to the center line of said State Road 846, westerly along said center line of said State Road 846 to the West line of Section 4, Township 47 South, Range 31 East; thence, northerly along the West line of said section 4, and along the west lines of Sections 33 and 28, Township 46 South, Range 31 East, to the northwest corner of said Section 28; thence, easterly along the North line of said Section 28 to the North one-quarter ( $N^{1/4}$ ) corner of said Section 28; thence, northerly along the West line of the Southeast one-quarter ( $SE^{1/4}$ ) of Section 21, Township 46 South, Range 31 East, to the northwest corner of said Southeast one-quarter ( $SE^{1/4}$ ) of Section 21; thence, easterly along the North line of said Southeast one-quarter ( $SE^{1/4}$ ) of Section 21 to the northeast corner of said Southeast one-quarter ( $SE^{1/4}$ ) of Section 21; thence, northerly along the East line of said Section 21 and the East line of Section 16, Township 46 South, Range 31, East, to the northeast corner thereof; thence, westerly along the North line of said Section 16, to the northwest corner thereof; thence, northerly along the West line of Sections 9 and 4, Township 46 South, Range 31, East, to the northwest corner of said Section 4; thence, westerly along the North lines of Section 5 and Section 6, Township 46 South, Range 31 East, to the South one-quarter ( $S^{1/4}$ ) corner of Section 31, Township 45 South, Range 31 East; thence, northerly to the South one-quarter ( $S^{1/4}$ ) corner of Section 30, Township 45 South, Range 31 East; thence, easterly along the South line of said Section 30 and the South lines of Sections 29 and 28, Township 45 South, Range 31 East, to the Southeast corner of said Section 28; thence, northerly along the East line of said Section 28 and the East lines of Sections 21 and 16, Township 45 South, Range 31 East, to the Northwest corner of the Southwest one-quarter of the Southwest one-quarter ( $SW^{1/4}$  of the  $SW^{1/4}$ ) of Section 15, Township 45 South, Range 31 East; thence, northeasterly to the east one-quarter ( $E^{1/4}$ ) corner of Section 15, Township 45 South, Range 31 East; thence, northerly along the East line of said Section 15, and the East line of Section 10, Township 45 South, Range 31 East, to the center line of a road in the Northeast one-quarter ( $NE^{1/4}$ ) of said Section 10; thence, generally easterly and northeasterly along the center line of said road to its intersection with the center line of State Road 832; thence, easterly along said center line of said State Road 832 to its intersection with the center line of State Road 833; thence, northerly along said center line of said State Road 833 to the north line of Section 9, Township 44 South, Range 32 East; thence, easterly along the North line of said Section 9 and the north lines of Sections 10, 11 and 12, Township 44 South, Range 32 East, to the northeast corner of Section 12, Township 44 South, Range 32 East; thence, easterly along the North line of Section 7, Township 44 South, Range 33 East, to the center line of Flaghole Drainage District Levee, as it runs to the east near the northwest corner of said Section 7, Township 44 South, Range 33 East; thence, easterly along said center line of the Flaghole Drainage District Levee to where it meets the center line of South Florida Water Management District's Levee 1 at Flag Hole Road; thence, continue easterly along said center line of said Levee 1 to where it turns south near the Northwest corner of Section 12, Township 44 South, Range 33 East; thence, Southerly along said center line of said Levee 1 to where the levee turns east near the Southwest corner of said Section 12; thence, easterly along said center line of said Levee 1 to where it turns south near the Northeast corner of Section 17, Township 44 South, Range 34 East; thence, southerly along said center line of said Levee 1 and the center line of South Florida Water Management District's Levee 2 to the intersection with the north line of Section 33, Township 45 South, Range 34 East; thence, easterly along the north line of said Section 33 to the northeast corner of said Section 33; thence, southerly along the east line of said Section 33 to the southeast corner of said Section 33; thence, southerly along the east line of Section 4, Township 46 South, Range 34 East to the southeast corner of said Section 4; thence, westerly along the south line of said Section 4 to the intersection with the centerline of South Florida Water Management District's Levee 2; thence, southerly along said Levee 2 centerline and South Florida Water Management District's Levee 3 centerline to the POINT OF BEGINNING.

(b) If the district issues permits in accordance with all applicable rules allowing water from the "C-139 Annex" to flow into the drainage system for the C-139 Basin, the C-139 Annex shall be added to the C-139 Basin for all tax years thereafter, commencing with the next C-139 agricultural privilege tax roll certified after issuance of such permits. "C-139 Annex" means the following described property: that part of the S.E.  $1/4$  of Section 32, Township 46 South,

Range 34 East and that portion of Sections 5 and 6, Township 47 South, Range 34 East lying west of the L-3 Canal and South of the Deer Fence Canal; all of Sections 7, 17, 18, 19, 20, 28, 29, 30, 31, 32, 33, and 34, and that portion of Sections 8, 9, 16, 21, 22, 26, 27, 35, and 36 lying south and west of the L-3 Canal, in Township 47 South, Range 34 East; and all of Sections 2, 3, 4, 5, 6, 8, 9, 10, and 11 and that portion of Section 1 lying south and west of the L-3 Canal all in Township 48 South, Range 34 East.

(17) **SHORT TITLE.**—This section shall be known as the “Everglades Forever Act.”

**History.**—s. 2, ch. 91-80; ss. 1, 2, ch. 94-115; s. 273, ch. 94-356; s. 171, ch. 99-13.

<sup>1</sup>**Note.**—Repealed by s. 38, ch. 99-247.

<sup>2</sup>**Note.**—Sections 403.91-403.938 comprised part VIII of ch. 403 in 1992. Except for s. 403.927 and ss. 403.93-403.958, these sections were repealed by ss. 45, 46, ch. 93-213, or s. 18, ch. 95-145. Sections 403.93-403.936 were repealed by s. 13, ch. 95-299. The two remaining sections from former part VIII as it was constituted in 1992, ss. 403.927 and 403.938 (transferred to s. 403.9333 by s. 12, ch. 95-299), are located in part VII of ch. 403.

<sup>3</sup>**Note.**—Section 3, ch. 96-412, provides that “[n]otwithstanding s. 373.4592(16), to the contrary, Sections 21, 28, and 33, Township 46 South, Range 31 East shall not be included within the boundary of the C-139 Basin.” Section 84, ch. 96-321, contains a substantially similar provision.

**373.45922 South Florida Water Management District; permit for completion of Everglades Construction Project; report.**—Within 60 days after receipt of any permit issued pursuant to s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, for the completion of the Everglades Construction Project, as defined by s. 373.4592(2)(f), the South Florida Water Management District shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that details the differences between the permit and the Everglades Program as defined by s. 373.4592(2)(g) and identifies any changes to the schedule or funding for the Everglades Program that result from the permit. The South Florida Water Management District shall include in the report a complete chronological record of any negotiations related to conditions included in the permit. Such record shall be documented by inclusion of all relevant correspondence in the report. If any condition of the permit affects the schedule or costs of the Everglades Construction Project, the South Florida Water Management District shall include in the report a detailed explanation of why the condition was imposed and a detailed analysis of whether the condition would promote or hinder the progress of the project.

**History.**—s. 3, ch. 97-258.

**373.45924 South Florida Water Management District; Everglades truth in borrowing.**—

(1) **Definitions.**—As used in this section, unless the context otherwise indicates:

(a) “Debt” means any evidence of indebtedness, including, but not limited to, an agreement to pay principal and any interest thereon, whether in the form of a contract to repay borrowed money or otherwise, and includes moneys borrowed from any source that are directed to a purpose for which they were not originally budgeted.

(b) “District” means the South Florida Water Management District.

(c) “Interest” means the compensation for the use or detention of money or its equivalent.

(d) “Interest rate” means the annual percentage of the outstanding debt or obligation payable as interest.

(e) “Obligation” means an agreement to pay principal and interest thereon, other than a debt, whether in the form of a lease, lease-purchase, installment purchase, or otherwise, and includes a share, participation, or other interest in any such agreement.

(f) “Outstanding debt” means any debt or obligation of which the principal has not been paid or for which an amount sufficient to provide for the payment of such debt or obligation and the interest on such debt or obligation to the maturity or early redemption of such debt or obligation has not been set aside for the benefit of the holders of such debt or obligation.

(g) “Principal” means the face value of the debt or obligation proposed to be issued or incurred.

(2) Whenever the South Florida Water Management District proposes to borrow or to otherwise finance with debt any fixed capital outlay projects or operating capital outlay for purposes pursuant to s. 373.4592, it shall develop the following documents to explain the issuance of a debt or obligation:

(a) A summary of outstanding debt, including borrowing.

(b) A statement of proposed financing, which shall include the following items:

1. A listing of the purpose of the debt or obligation.

2. The source of repayment of the debt or obligation.

3. The principal amount of the debt or obligation.

4. The interest rate on the debt or obligation.

5. A schedule of annual debt service payments for each proposed debt or obligation.

(c) A truth-in-borrowing statement, developed from the information compiled pursuant to this section, in substantially the following form:

The South Florida Water Management District is proposing to incur \$ (insert principal) of debt or obligation through borrowing for the purpose of (insert purpose). This debt or obligation is expected to be repaid over a period of (insert term of issue from subparagraph (b)5.) years from the following sources: (list sources). At a forecasted interest rate of (insert rate of interest from subparagraph (b)4.), total interest paid over the life of the debt or obligation will be \$ (insert sum of interest payments).

The truth-in-borrowing statement shall be published as a notice in one or more newspapers having a combined general circulation in the counties having land in the district. Such notice must be at least 6 inches square in size and shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

**History.**—s. 4, ch. 97-258.

**373.45926 Everglades Trust Fund; allocation of revenues and expenditure of funds for conservation and protection of natural resources and abatement of water pollution.—**

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds and declares the following:

(a) The Everglades ecological system is unique in the world and one of Florida's great treasures. The Legislature has responded to adverse changes in water quality, and in quantity, distribution, and timing of flows, that endanger the Everglades ecological system, by enacting the Everglades Forever Act. The act authorized the Everglades Construction Project, which is by far the largest environmental cleanup and restoration program of this type ever undertaken and will require substantial expenditures.

(b) In consideration of both the environmental benefits and public costs of the Everglades Construction Project, the Legislature finds that enhanced oversight and accountability is necessary to ensure that the Everglades Construction Project is completed in a timely manner and within the limits of the funds made available for its completion. The Legislature further finds that the implementation of the Everglades Forever Act is critical to the conservation and protection of natural resources and improvement of water quality in the Everglades Protection Area and the Everglades Agricultural Area.

(2) The South Florida Water Management District shall administer the Everglades Trust Fund consistent with the requirements of this section, as well as all other applicable laws.

(3) The South Florida Water Management District shall furnish, on a quarterly basis, a detailed copy of its expenditures from the Everglades Trust Fund to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and shall make copies available to the public. The information shall be provided in a format approved by the Joint Legislative Committee on Everglades Oversight. At the direction of the Joint Legislative Committee on Everglades Oversight, a postaudit may be made from time to time by the Auditor General, and such audit shall be within the authority of said Auditor General, to make.

(4) The following funds shall be deposited into the Everglades Trust Fund specifically for the implementation of the Everglades Forever Act.

(a) Alligator Alley toll revenues pursuant to s. 338.26(3).

(b) Everglades agricultural privilege tax revenues pursuant to s. 373.4592(6).

(c) C-139 agricultural privilege tax revenues pursuant to s. 373.4592(7).

(d) Special assessment revenues pursuant to s. 373.4592(8).

(e) Ad valorem revenues pursuant to s. 373.4592(4)(a).

(f) Federal funds appropriated by the United States Congress for any component of the Everglades Construction Project.

(g) Preservation 2000 funds for acquisition of lands necessary for implementation of the Everglades Forever Act as prescribed in an annual appropriation.

(h) Any additional funds specifically appropriated by the Legislature for this purpose.

(i) Gifts designated for implementation of the Everglades Forever Act from individuals, corporations, and other entities.

(j) Any additional funds that become available for this purpose from any other source.

(5) Funds deposited into the Everglades Trust Fund pursuant to this section shall be expended for implementation of the Everglades Forever Act as provided by s. 373.4592.

(6) Funds from other sources deposited into the Everglades Trust Fund shall be used consistent with the purposes for which they were received.

(7) Annually, no later than January 1, the South Florida Water Management District shall report to the Joint Committee on Everglades Oversight:

(a) The unencumbered balance which remains in the Everglades Trust Fund at the end of each fiscal year.

(b) The revenues deposited in the Everglades Trust Fund pursuant to this section, by source, and the record of expenditures from the Everglades Trust Fund.

**History.**—s. 5, ch. 97-258.

**373.4593 Florida Bay Restoration.**—

(1) The Legislature declares that an emergency exists regarding Florida Bay due to an environmental crisis manifested in widespread die off of sea grasses, algae blooms, and resulting decreases in marine life. These conditions threaten the ecological integrity of Florida Bay and surrounding areas and the economic viability of Monroe County and the State of Florida. The Legislature further finds that an increase in freshwater flow will assist in the restoration of Florida Bay.

(2) The South Florida Water Management District shall take all actions within its authority to implement an emergency interim plan. The emergency interim plan shall be designed to provide for the release of water into Taylor Slough and Florida Bay by up to 800 cfs, in order to optimize the quantity, timing, distribution, and quality of fresh water, and promote sheet flow into Taylor Slough.

(a) By June 1, 1994, the South Florida Water Management District shall request the Federal Government to become a joint sponsor of the emergency interim plan.

(b) By June 1, 1994, the South Florida Water Management District shall request the Federal Government to take all action within its authority to expedite or waive any necessary federal approvals.

(c) By July 1, 1994, the South Florida Water Management District shall file for any necessary federal approvals.

(d) Within 60 days of the issuance of the final federal approvals, the South Florida Water Management District shall complete the installation of the necessary facilities required by the emergency interim plan.

(e) The South Florida Water Management District, upon approval of a majority of the Trustees of the Internal Improvement Trust Fund, shall file an eminent domain action to acquire the western three sections of the area known as Frog Pond. The Trustees of the Internal Improvement Trust Fund shall reach a decision on whether to approve the use of eminent domain for such purpose not later than January 1, 1995. The South Florida Water Management District, upon such approval, is granted the specific powers to exercise eminent domain to condemn the lands in these areas.

(f) Within 30 days of the acquisition of the property referred to above and the completion of the actions in paragraph (d) above, the South Florida Water Management District shall implement the emergency interim plan.

The above measures are emergency interim actions intended to enhance the quantity, timing, and distribution of freshwater to Taylor Slough and Florida Bay. These measures will benefit the water resources of the South Florida Water Management District and are consistent with the public interest.

(3) The district shall not be required to obtain a permit which may otherwise be required under this chapter or chapter 403 prior to the construction, installation, and operation of the pumping facilities and related facilities required to implement the emergency interim plan. The district is directed to provide information on the emergency interim plan to the department. The district shall minimize environmental impacts which may occur during construction, and shall submit a construction plan to the department. In the event that the emergency interim plan continues beyond July 1, 1996, the district shall apply to the department for a permit to continue to operate these facilities.

(4) The Legislature recognizes that the United States Army Corps of Engineers is developing a comprehensive plan for restoring freshwater flow into Taylor Slough and Florida Bay over the next several years. The emergency interim plan is not a substitute for or in conflict with the provisions of the United States Army Corps of Engineers currently under development. Further, the Legislature directs that the department and the South Florida Water Management District shall request the Federal Government complete and fund the ongoing restoration efforts so as to increase the quantity, quality, timing, and distribution of water delivered to the Bay. The department and the district shall also request the Federal Government to evaluate the release of fresh water under the demonstration project, consistent with applicable law.

**History.**—s. 6, ch. 94-115.

**373.45931 Alligator Alley tolls; Everglades and Florida Bay restoration.**—The South Florida Water Management District is authorized to expend funds from Alligator Alley tolls which have been deposited in the Everglades Fund of the South Florida Water Management District to fund restoration activities for the Everglades and Florida Bay.

**History.**—s. 8, ch. 94-115.

**373.4595 Lake Okeechobee Protection Program.**—

(1) FINDINGS AND INTENT.—

(a) The Legislature finds that Lake Okeechobee is one of the most important water resources of the state, providing many functions benefiting the public interest, including agricultural, public, and environmental water supply; flood control; fishing; navigation and recreation; and habitat to endangered and threatened species and other flora and fauna.

(b) The Legislature finds that land uses in the Lake Okeechobee watershed and the construction of the Central and Southern Florida Project have resulted in adverse changes to the hydrology and water quality of Lake Okeechobee. These hydrology and water quality changes have resulted in algal blooms and other adverse impacts to water quality both in Lake Okeechobee and in downstream receiving waters.

(c) The Legislature finds that improvement to the hydrology and water quality of Lake Okeechobee is essential to the protection of the Everglades.

(d) The Legislature also finds that it is imperative for the state, local governments, and agricultural and environmental communities to commit to restoring and protecting Lake Okeechobee and downstream receiving waters, and that a watershed-based approach to address these issues must be developed and implemented immediately.

(e) The Legislature finds that phosphorus loads from the Lake Okeechobee watershed have contributed to excessive phosphorus levels in Lake Okeechobee and downstream receiving waters and that a reduction in levels of phosphorus will benefit the ecology of these systems. The excessive levels of phosphorus have also resulted in an accumulation of phosphorus in the sediments of Lake Okeechobee. If not removed, internal phosphorus loads from the sediments are expected to delay responses of the lake to external phosphorus reductions.

(f) The Legislature finds that the Lake Okeechobee phosphorus loads set forth in the South Florida Water Management District's Technical Publication 81-2 represent an appropriate basis for the initial phase of phosphorus load reductions to Lake Okeechobee and that subsequent phases of phosphorus load reductions shall be determined by the total maximum daily loads established in accordance with s. 403.067.

(g) The Legislature finds that this section, in conjunction with s. 403.067, provides a reasonable means of achieving and maintaining compliance with state water quality standards.

(h) The Legislature finds that the implementation of the programs contained in this section is for the benefit of the public health, safety, and welfare and is in the public interest.

(i) The Legislature finds that sufficient research has been conducted and sufficient plans developed to immediately initiate the first phase of a program to address the hydrology and water quality problems in Lake Okeechobee and downstream receiving waters.

(j) It is the intent of the Legislature to achieve and maintain compliance with water quality standards in Lake Okeechobee and downstream receiving waters through a phased, comprehensive, and innovative protection program to reduce both internal and external phosphorus loads to Lake Okeechobee through immediate actions to achieve the phosphorus load reductions set forth in Technical Publication 81-2 and long-term solutions based upon the total maximum daily loads established in accordance with s. 403.067. This program shall be watershed-based, shall provide for consideration of all potential phosphorus sources, and shall include research and monitoring, development and implementation of best management practices, refinement of existing regulations, and structural and nonstructural projects, including public works.

(k) It is the intent of the Legislature that the Lake Okeechobee Protection Program be developed and implemented in coordination with and, to the greatest extent practicable, through the implementation of Restudy project components and other federal programs in order to maximize opportunities for the most efficient and timely expenditures of public funds.

(l) It is the intent of the Legislature that the coordinating agencies encourage and support the development of creative public-private partnerships and programs, including opportunities for pollutant trading and credits, to facilitate or further the restoration of Lake Okeechobee, consistent with s. 403.067.

(2) DEFINITIONS.—As used in this section:

(a) "Best management practice" means a practice or combination of practices determined by the coordinating agencies, based on research, field-testing, and expert review, to be the most effective and practicable on-location

means, including economic and technological considerations, for improving water quality in agricultural and urban discharges. Best management practices for agricultural discharges shall reflect a balance between water quality improvements and agricultural productivity.

(b) "Coordinating agencies" means the Department of Agriculture and Consumer Services, the Department of Environmental Protection, and the South Florida Water Management District.

(c) "Corps of Engineers" means the United States Army Corps of Engineers.

(d) "Department" means the Department of Environmental Protection.

(e) "District" means the South Florida Water Management District.

(f) "District's WOD program" means the program implemented pursuant to rules adopted as authorized by this section and ss. 373.016, 373.044, 373.085, 373.086, 373.109, 373.113, 373.118, 373.451, and 373.453, entitled "Works of the District Basin."

(g) "Lake Okeechobee Construction Project" means the construction project developed pursuant to paragraph (3)(b).

(h) "Lake Okeechobee Protection Plan" means the plan developed pursuant to this section and ss. 373.451-373.459.

(i) "Lake Okeechobee watershed" means Lake Okeechobee and the area surrounding and tributary to Lake Okeechobee, composed of 39 surrounding hydrologic basins, as defined by South Florida Water Management District SWIM Plan Update dated August 8, 1997.

(j) "Lake Okeechobee Watershed Phosphorus Control Program" means the program developed pursuant to paragraph (3)(c).

(k) "Project component" means any structural or operational change, resulting from the Restudy, to the Central and Southern Florida Project as it existed and was operated as of January 1, 1999.

(l) "Restudy" means the Comprehensive Review Study of the Central and Southern Florida Project, for which federal participation was authorized by the Federal Water Resources Development Acts of 1992 and 1996 together with related Congressional resolutions and for which participation by the South Florida Water Management District is authorized by s. 373.1501. The term includes all actions undertaken pursuant to the aforementioned authorizations which will result in recommendations for modifications or additions to the Central and Southern Florida Project.

(m) "Total maximum daily load" means the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

(3) LAKE OKEECHOBEE PROTECTION PROGRAM.—A protection program for Lake Okeechobee that achieves phosphorus load reductions for Lake Okeechobee shall be immediately implemented as specified in this subsection. The program shall address the reduction of phosphorus loading to the lake from both internal and external sources. Phosphorus load reductions shall be achieved through a phased program of implementation. Initial implementation actions shall be technology-based, based upon a consideration of both the availability of appropriate technology and the cost of such technology, and shall include phosphorus reduction measures at both the source and the regional level. The initial phase of phosphorus load reductions shall be based upon the district's Technical Publication 81-2 and the district's WOD program, with subsequent phases of phosphorus load reductions based upon the total maximum daily loads established in accordance with s. 403.067. In the development and administration of the Lake Okeechobee Protection Program, the coordinating agencies shall maximize opportunities provided by federal cost-sharing programs and opportunities for partnerships with the private sector.

(a) *Lake Okeechobee Protection Plan.*—By January 1, 2004, the district, in cooperation with the other coordinating agencies, shall complete a Lake Okeechobee Protection Plan in accordance with this section and ss. 373.451-373.459. The plan shall contain an implementation schedule for subsequent phases of phosphorus load reduction consistent with the total maximum daily loads established in accordance with s. 403.067. The plan shall consider and build upon a review and analysis of the following:

1. The performance of projects constructed during Phase I of the Lake Okeechobee Construction Project, pursuant to paragraph (b).
2. Relevant information resulting from the Lake Okeechobee Watershed Phosphorus Control Program, pursuant to paragraph (c).
3. Relevant information resulting from the Lake Okeechobee Research and Water Quality Monitoring Program, pursuant to paragraph (d).
4. Relevant information resulting from the Lake Okeechobee Exotic Species Control Program, pursuant to paragraph (e).

5. Relevant information resulting from the Lake Okeechobee Internal Phosphorus Management Program, pursuant to paragraph (f).

(b) *Lake Okeechobee Construction Project.*—To improve the hydrology and water quality of Lake Okeechobee and downstream receiving waters, the district shall design and construct the Lake Okeechobee Construction Project.

1. Phase I.—Phase I of the Lake Okeechobee Construction Project shall consist of a series of project features consistent with the recommendations of the South Florida Ecosystem Restoration Working Group's Lake Okeechobee Action Plan. Priority basins for such projects include S-191, S-154, and Pools D and E in the Lower Kissimmee River. In order to obtain immediate phosphorus load reductions to Lake Okeechobee as soon as possible, the following actions shall be implemented:

a. The district shall serve as a full partner with the Corps of Engineers in the design and construction of the Grassy Island Ranch and New Palm Dairy stormwater treatment facilities as components of the Lake Okeechobee Water Retention/Phosphorus Removal Critical Project. The Corps of Engineers shall have the lead in design and construction of these facilities. However, the district shall encourage the Corps of Engineers to complete a detailed design document by July 1, 2001. Should delays be encountered in the implementation of either of these facilities, the district shall notify the department and recommend corrective actions.

b. By January 1, 2001, the district shall obtain permits and complete construction of two of the isolated wetland restoration projects that are part of the Lake Okeechobee Water Retention/Phosphorus Removal Critical Project. The additional isolated wetland projects included in this critical project shall be permitted and constructed by January 1, 2003, to further reduce phosphorus loading to Lake Okeechobee.

c. By January 31, 2002, the district shall design and complete implementation of the Lake Okeechobee Tributary Sediment Removal Pilot Project. This project shall consist of testing two alternative technologies for trapping and collecting phosphorus-laden sediment in the secondary drainage system prior to its discharge into the primary canal system and Lake Okeechobee, thereby further reducing the total sediment loading to the lake.

d. The district shall work with the Corps of Engineers to expedite initiation of the design process for the Taylor Creek/Nubbins Slough Reservoir Assisted Stormwater Treatment Area, a project component of the Restudy. The district shall propose to the Corps of Engineers that the district take the lead in the design and construction of the Reservoir Assisted Stormwater Treatment Area and receive credit towards the local share of the total cost of the Restudy.

2. Phase II.—By January 1, 2004, the district, in cooperation with the other coordinating agencies and the Corps of Engineers, shall develop an implementation plan for Phase II of the Lake Okeechobee Construction Project. Phase II shall include construction of additional facilities in the priority basins identified in subparagraph (b)1., as well as facilities for other basins in the Lake Okeechobee watershed. The implementation plan shall:

a. Identify Lake Okeechobee Construction Project facilities to be constructed to achieve a design objective of 40 parts per billion (ppb) for phosphorus measured as a long-term flow weighted average concentration, unless an allocation has been established pursuant to s. 403.067 for the Lake Okeechobee total maximum daily load.

b. Identify the size and location of all such Lake Okeechobee Construction Project facilities.

c. Provide a construction schedule for all such Lake Okeechobee Construction Project facilities, including the sequencing and specific timeframe for construction of each Lake Okeechobee Construction Project facility.

d. Provide a land acquisition schedule for lands necessary to achieve the construction schedule.

e. Provide a detailed schedule of costs associated with the construction schedule.

f. Identify, to the maximum extent practicable, impacts on wetlands and state-listed species expected to be associated with construction of such facilities, including potential alternatives to minimize and mitigate such impacts, as appropriate.

3. Evaluation.—By January 1, 2004, and every 3 years thereafter, the district, in cooperation with the coordinating agencies, shall conduct an evaluation of any further phosphorus load reductions necessary to achieve compliance with the Lake Okeechobee total maximum daily load established pursuant to s. 403.067. Additionally, the district shall identify modifications to facilities of the Lake Okeechobee Construction Project as appropriate if the design objective of 40 parts per billion (ppb) or the allocation established pursuant to s. 403.067 for the Lake Okeechobee total maximum daily load established pursuant to s. 403.067 is not being met. The evaluation shall be included in the applicable annual progress report submitted pursuant to paragraph (g).

4. Coordination and review.—To ensure the timely implementation of the Lake Okeechobee Construction Project, the design of project facilities shall be coordinated with the department and other interested parties to the maximum extent practicable. Lake Okeechobee Construction Project facilities shall be reviewed and commented upon by the department prior to the execution of a construction contract by the district for that facility.

(c) *Lake Okeechobee Watershed Phosphorus Control Program.*—The Lake Okeechobee Watershed Phosphorus Control Program is designed to be a multifaceted approach to reducing phosphorus loads by improving the

management of phosphorus sources within the Lake Okeechobee watershed through continued implementation of existing regulations and best management practices, development and implementation of improved best management practices, improvement and restoration of the hydrologic function of natural and managed systems, and utilization of alternative technologies for nutrient reduction. The coordinating agencies shall facilitate the application of federal programs that offer opportunities for water quality treatment, including preservation, restoration, or creation of wetlands on agricultural lands.

1. Agricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Protection Program, shall be implemented on an expedited basis. By March 1, 2001, the coordinating agencies shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the coordinating agencies during any best management practice reevaluation performed pursuant to sub-subparagraph d. The department shall use best professional judgment in making the initial determination of best management practice effectiveness.

a. As provided in s. 403.067(7)(d), by October 1, 2000, the Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall initiate rule development for interim measures, best management practices, conservation plans, nutrient management plans, or other measures necessary for Lake Okeechobee phosphorus load reduction. The rule shall include thresholds for requiring conservation and nutrient management plans and criteria for the contents of such plans. Development of agricultural nonpoint source best management practices shall initially focus on those priority basins listed in subparagraph (b)1. The Department of Agriculture and Consumer Services, in consultation with the department, the district, and affected parties, shall conduct an ongoing program for improvement of existing and development of new interim measures or best management practices for the purpose of adoption of such practices by rule.

b. Where agricultural nonpoint source best management practices or interim measures have been adopted by rule of the Department of Agriculture and Consumer Services, the owner or operator of an agricultural nonpoint source addressed by such rule shall either implement interim measures or best management practices or demonstrate compliance with the district's WOD program by conducting monitoring prescribed by the department or the district. Owners or operators of agricultural nonpoint sources who implement interim measures or best management practices adopted by rule of the Department of Agriculture and Consumer Services shall be subject to the provisions of s. 403.067(7). The Department of Agriculture and Consumer Services, in cooperation with the department and the district, shall provide technical and financial assistance for implementation of agricultural best management practices, subject to the availability of funds.

c. The district or department shall conduct monitoring at representative sites to verify the effectiveness of agricultural nonpoint source best management practices.

d. Where water quality problems are detected for agricultural nonpoint sources despite the appropriate implementation of adopted best management practices, the Department of Agriculture and Consumer Services, in consultation with the other coordinating agencies and affected parties, shall institute a reevaluation of the best management practices and make appropriate changes to the rule adopting best management practices.

2. Nonagricultural nonpoint source best management practices, developed in accordance with s. 403.067 and designed to achieve the objectives of the Lake Okeechobee Protection Program, shall be implemented on an expedited basis. By March 1, 2001, the department and the district shall develop an interagency agreement pursuant to ss. 373.046 and 373.406(5) that assures the development of best management practices that complement existing regulatory programs and specifies how those best management practices are implemented and verified. The interagency agreement shall address measures to be taken by the department and the district during any best management practice reevaluation performed pursuant to sub-subparagraph d.

a. The department and the district are directed to work with the University of Florida's Institute of Food and Agricultural Sciences to develop appropriate nutrient application rates for all nonagricultural soil amendments in the watershed. As provided in s. 403.067(7)(c), by January 1, 2001, the department, in consultation with the district and affected parties, shall develop interim measures, best management practices, or other measures necessary for Lake Okeechobee phosphorus load reduction. Development of nonagricultural nonpoint source best management practices shall initially focus on those priority basins listed in subparagraph (b)1. The department, the district, and affected parties shall conduct an ongoing program for improvement of existing and development of new interim measures or best management practices. The district shall adopt technology-based standards under the district's WOD program for nonagricultural nonpoint sources of phosphorus.

b. Where nonagricultural nonpoint source best management practices or interim measures have been developed by the department and adopted by the district, the owner or operator of a nonagricultural nonpoint source shall

implement interim measures or best management practices and be subject to the provisions of s. 403.067(7). The department and district shall provide technical and financial assistance for implementation of nonagricultural nonpoint source best management practices, subject to the availability of funds.

c. The district or the department shall conduct monitoring at representative sites to verify the effectiveness of nonagricultural nonpoint source best management practices.

d. Where water quality problems are detected for nonagricultural nonpoint sources despite the appropriate implementation of adopted best management practices, the department and the district shall institute a reevaluation of the best management practices.

3. The provisions of subparagraphs 1. and 2. shall not preclude the department or the district from requiring compliance with water quality standards or with current best management practices requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules promulgated by the department that are necessary to maintain a federally delegated or approved program.

4. Projects which reduce the phosphorus load originating from domestic wastewater systems within the Lake Okeechobee watershed shall be given funding priority in the department's revolving loan program under s. 403.1835. The department shall coordinate and provide assistance to those local governments seeking financial assistance for such priority projects.

5. The department shall require all entities disposing of domestic wastewater residuals within the Lake Okeechobee watershed to develop and submit to the department by July 1, 2001, an agricultural use plan that limits applications based upon phosphorus loading. Phosphorus loading originating from these application sites shall not exceed the limits established in the district's WOD program.

6. By July 1, 2001, the Department of Agriculture and Consumer Services shall initiate rulemaking requiring entities within the Lake Okeechobee watershed which land-apply animal manure to develop conservation or nutrient management plans that limit application, based upon phosphorus loading. Such rules may include criteria and thresholds for the requirement to develop a conservation or nutrient management plan, requirements for plan approval, and recordkeeping requirements.

7. Prior to authorizing a discharge into works of the district, the district shall require responsible parties to demonstrate that proposed changes in land use will not result in increased phosphorus loading over that of existing land uses.

8. The district, the department, or the Department of Agriculture and Consumer Services, as appropriate, shall implement those alternative nutrient reduction technologies determined to be feasible pursuant to subparagraph (d)6.

(d) *Lake Okeechobee Research and Water Quality Monitoring Program.*—By January 1, 2001, the district, in cooperation with the other coordinating agencies, shall establish a Lake Okeechobee Research and Water Quality Monitoring Program that builds upon the district's existing Lake Okeechobee research program. The program shall:

1. Evaluate all available existing water quality data concerning total phosphorus in the Lake Okeechobee watershed, develop a water quality baseline to represent existing conditions for total phosphorus, monitor long-term ecological changes, including water quality for total phosphorus, and measure compliance with water quality standards for total phosphorus, including the total maximum daily load for Lake Okeechobee as established pursuant to s. 403.067. The district shall also implement a total phosphorus monitoring program at all inflow structures to Lake Okeechobee.

2. By July 1, 2003, develop a Lake Okeechobee water quality model that reasonably represents phosphorus dynamics of the lake and incorporates an uncertainty analysis associated with model predictions.

3. By July 1, 2003, determine the relative contribution of phosphorus from all identifiable sources and all primary and secondary land uses.

4. By July 1, 2003, conduct an assessment of the sources of phosphorus from the Upper Kissimmee Chain-of-Lakes and Lake Istokpoga, and their relative contribution to the water quality of Lake Okeechobee. The results of this assessment shall be used by the coordinating agencies to develop interim measures, best management practices, or regulation, as applicable.

5. By July 1, 2003, assess current water management practices within the Lake Okeechobee watershed and develop recommendations for structural and operational improvements. Such recommendations shall balance water supply, flood control, estuarine salinity, maintenance of a healthy lake littoral zone, and water quality considerations.

6. By July 1, 2003, evaluate the feasibility of alternative nutrient reduction technologies, including sediment traps, canal and ditch maintenance, fish production or other aquaculture, bioenergy conversion processes, and algal or other biological treatment technologies.

(e) *Lake Okeechobee Exotic Species Control Program.*—By June 1, 2002, the coordinating agencies shall identify the exotic species that threaten the native flora and fauna within the Lake Okeechobee watershed and develop and implement measures to protect the native flora and fauna.

(f) *Lake Okeechobee Internal Phosphorus Management Program.*—By July 1, 2003, the district, in cooperation with the other coordinating agencies and interested parties, shall complete a Lake Okeechobee internal phosphorus load removal feasibility study. The feasibility study shall be based on technical feasibility, as well as economic considerations, and address all reasonable methods of phosphorus removal. If methods are found to be feasible, the district shall immediately pursue the design, funding, and permitting for implementing such methods.

(g) *Annual progress report.*—Each January 1, beginning in 2001, the district shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives annual progress reports regarding implementation of this section. The annual report shall include a summary of water quality and habitat conditions in Lake Okeechobee and the Lake Okeechobee watershed and the status of the Lake Okeechobee Construction Project. The district shall prepare the report in cooperation with the other coordinating agencies.

(4) LAKE OKEECHOBEE PROTECTION PERMITS.—

(a) The Legislature finds that the Lake Okeechobee Protection Program will benefit Lake Okeechobee and downstream receiving waters and is consistent with the public interest. The Lake Okeechobee Construction Project and structures discharging into or from Lake Okeechobee shall be constructed, operated, and maintained in accordance with this section.

(b) Permits obtained pursuant to this section are in lieu of all other permits under chapter 373 or chapter 403, except those issued under s. 403.0885, if applicable. No additional permits are required for the Lake Okeechobee Construction Project or structures discharging into or from Lake Okeechobee. Construction activities related to implementation of the Lake Okeechobee Construction Project may be initiated prior to final agency action, or notice of intended agency action, on any permit from the department under this section.

(c) Within 90 days of completion of the diversion plans set forth in Department Consent Orders 91-0694, 91-0707, 91-0706, 91-0705, and RT50-205564, owners or operators of existing structures which discharge into or from Lake Okeechobee that are subject to the provisions of s. 373.4592(4)(a) shall apply for a permit from the department to operate and maintain such structures. By September 1, 2000, owners or operators of all other existing structures which discharge into or from Lake Okeechobee shall apply for a permit from the department to operate and maintain such structures. The department shall issue one or more such permits for a term of 5 years upon the demonstration of reasonable assurance that schedules and strategies to achieve and maintain compliance with water quality standards have been provided for, to the maximum extent practicable, and that operation of the structures otherwise complies with provisions of ss. 373.413 and 373.416.

1. Permits issued under this paragraph shall also contain reasonable conditions to ensure that discharges of waters through structures:

a. Are adequately and accurately monitored;

b. Will not degrade existing Lake Okeechobee water quality and will result in an overall reduction of phosphorus input into Lake Okeechobee, as set forth in the district's Technical Publication 81-2 and the total maximum daily load established in accordance with s. 403.067, to the maximum extent practicable; and

c. Do not pose a serious danger to public health, safety, or welfare.

2. For the purposes of this paragraph, owners and operators of existing structures which are subject to the provisions of s. 373.4592(4)(a) and which discharge into or from Lake Okeechobee shall be deemed in compliance with the term "maximum extent practicable" if they are in full compliance with the conditions of permits under chapters 40E-61 and 40E-63, Florida Administrative Code.

3. By January 1, 2004, the district shall submit to the department a permit modification to the Lake Okeechobee structure permits to incorporate proposed changes necessary to ensure that discharges through the structures covered by this permit achieve state water quality standards, including the total maximum daily load established in accordance with s. 403.067. These changes shall be designed to achieve such compliance with state water quality standards no later than January 1, 2015.

(d) The department shall require permits for Lake Okeechobee Construction Project facilities. Such permits shall be issued for a term of 5 years upon the demonstration of reasonable assurances that:

1. The Lake Okeechobee Construction Project facility, based upon the conceptual design documents and any subsequent detailed design documents developed by the district, will achieve the design objectives for phosphorus required in paragraph (3)(b);

2. For water quality standards other than phosphorus, the quality of water discharged from the facility is of equal or better quality than the inflows;

3. Discharges from the facility do not pose a serious danger to public health, safety, or welfare; and

4. Any impacts on wetlands or state-listed species resulting from implementation of that facility of the Lake Okeechobee Construction Project are minimized and mitigated, as appropriate.

(e) At least 60 days prior to the expiration of any permit issued under this section, the permittee may apply for a renewal thereof for a period of 5 years.

(f) Permits issued under this section may include any standard conditions provided by department rule which are appropriate and consistent with this section.

(g) Permits issued pursuant to this section may be modified, as appropriate, upon review and approval by the department.

(5) **RESTRICTIONS ON WATER DIVERSIONS.**—The South Florida Water Management District shall not divert waters to the St. Lucie River, the Indian River estuary, the Caloosahatchee River or its estuary, or the Everglades National Park, in such a way that the state water quality standards are violated, that the nutrients in such diverted waters adversely affect indigenous vegetation communities or wildlife, or that fresh waters diverted to the St. Lucie River or the Caloosahatchee or Indian River estuaries adversely affect the estuarine vegetation or wildlife, unless the receiving waters will biologically benefit by the diversion. However, diversion is permitted when an emergency is declared by the water management district, if the Secretary of Environmental Protection concurs.

(6) **PRESERVATION OF PROVISIONS RELATING TO THE EVERGLADES.**—Nothing in this section shall be construed to modify any provision of s. 373.4592.

(7) **RIGHTS OF SEMINOLE TRIBE OF FLORIDA.**—Nothing in this section is intended to diminish or alter the governmental authority and powers of the Seminole Tribe of Florida, or diminish or alter the rights of that tribe, including, but not limited to, rights under the water rights compact among the Seminole Tribe of Florida, the state, and the South Florida Water Management District as enacted by Pub. L. No. 100-228, 101 Stat. 1556, and chapter 87-292, Laws of Florida, and codified in s. 285.165, and rights under any other agreement between the Seminole Tribe of Florida and the state or its agencies. No land of the Seminole Tribe of Florida shall be used for water storage or stormwater treatment without the consent of the tribe.

(8) **RELATIONSHIP TO STATE WATER QUALITY STANDARDS.**—Nothing in this section shall be construed to modify any existing state water quality standard.

(9) **PRESERVATION OF AUTHORITY.**—Nothing in this section shall be construed to restrict the authority otherwise granted to agencies pursuant to chapters 373 and 403, and provisions of this section shall be deemed supplemental to the authority granted to agencies pursuant to chapters 373 and 403.

**History.**—s. 6, ch. 87-97; s. 274, ch. 94-356; s. 1011, ch. 95-148; s. 189, ch. 99-245; s. 1, ch. 2000-130.

#### **373.45952 Lake Okeechobee Protection Trust Fund.**—

(1) The Lake Okeechobee Protection Trust Fund is hereby created within the Department of Environmental Protection.

(2) Funds to be credited to the trust fund shall consist of funds appropriated annually by the Legislature and as provided for by general law. Funds shall be used solely for the purposes set forth in s. 373.4595 and for related purposes undertaken pursuant to ss. 373.451-373.459.

(3) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(4) In accordance with s. 19(f)(2), Art. III of the State Constitution, the Lake Okeechobee Protection Trust Fund shall, unless terminated sooner, be terminated on July 1, 2004. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

**History.**—s. 1, ch. 2000-131.

**373.4596 State compliance with stormwater management programs.**—The state, through the Department of Management Services, the Department of Transportation, and other agencies, shall construct, operate, and maintain buildings, roads, and other facilities it owns, leases, or manages to fully comply with state, water management district, and local government stormwater management programs.

**History.**—s. 40, ch. 89-279; s. 298, ch. 92-279; s. 55, ch. 92-326.

#### **373.4597 The Geneva Freshwater Lens Protection Act.**—

(1) The Legislature finds that the Geneva Freshwater Lens, a single source water supply, is a unique and valuable water resource for the citizens of northeast Seminole County and, in general, to the citizens of this state and that the

lens is a precious natural resource system vital to the health and diversity of the regional ecosystem. It is the intent of the Legislature that this resource be protected for future generations of citizens of this state and that the St. Johns River Water Management District implement the laws of this state and administrative rules of the district to that end.

(2) The recharge area of the Geneva Freshwater Lens shall be delineated by rule by the St. Johns River Water Management District, to be based on the 20-foot (NGVD) contour of the recharge area prior to development, using a static line and based on the quadrangle maps referenced in the United States Geological Survey Report titled "Water Resources Investigation 86-4078."

(3) The Legislature hereby directs the appropriate state agencies to implement, by December 1, 1995, recommendations of the Geneva Freshwater Lens Task Force that do not require rule amendments. The Legislature directs such agencies to act, by July 1, 1996, upon recommendations of the task force that require rule amendments, unless otherwise noted in the report. The requirements of this bill related to actions to be taken by appropriate state agencies shall not require expenditures to be made by the government of Seminole County. The St. Johns River Water Management District shall continue to implement the recommendations contained in the Geneva Freshwater Lens Task Force report to the Legislature.

**History.**—s. 2, ch. 95-377.

### **373.461 Lake Apopka improvement and management.—**

#### **(1) FINDINGS AND INTENT.—**

(a) The Legislature has expressed its intent that economically and technically feasible methods be developed to restore the Lake Apopka Basin through the Lake Apopka Restoration Act and the Surface Water Improvement and Management Act. It is the Legislature's intent to enhance and accelerate the restoration process begun by those previous acts of the Legislature.

(b) Technical studies have determined that substantial reductions in or elimination of phosphorus in farm discharges to Lake Apopka will be necessary in order to improve water quality and restore the lake to Class III standards.

(c) Acquisition of the lands in agricultural production which discharge phosphorus to Lake Apopka, and their related facilities, would serve the public interest by eliminating the impacts of introduction of phosphorus from these sources into the lake. It is the Legislature's intent that a fair and equitable program of acquisition of the lands necessary to achieve the purposes of this section be implemented.

(d) The Legislature finds that time is of the essence and that a complete purchase of properties described in this section should be accomplished in an accelerated and economical manner.

(e) It is the Legislature's intent to provide a process for development of phosphorus discharge limitations that will bring such discharges into compliance with state water quality standards and to provide for interim phosphorus abatement measures designed to further reduce phosphorus discharges from the Zellwood Drainage and Water Control District, which is the largest agricultural entity within the Lake Apopka Basin, unless both of the timeframes specified in paragraph (4)(a) regarding purchase agreements and completion of purchases are met. The Legislature finds that it is in the public interest to jointly share in the cost of implementing such interim phosphorus reduction measures with Zellwood.

(f) A. Duda and Sons, Inc., has implemented phosphorus treatment and has worked cooperatively with the district to meet applicable water quality standards. An existing settlement agreement outlines treatment measures that should satisfy all discharge limitations and criteria.

#### **(2) DEFINITIONS.—As used in this section:**

(a) "District" means the St. Johns River Water Management District.

(b) "Phosphorus criterion" means a numeric interpretation for phosphorus of the Class III narrative nutrient criterion.

(c) "Stormwater management system" has the meaning set forth in s. 373.403(10).

(d) "Zellwood" means the Zellwood Drainage and Water Control District as it is described in chapter 20715, Laws of Florida.

#### **(3) PHOSPHORUS CRITERION AND DISCHARGE LIMITATIONS FOR LAKE APOPKA.—**

(a) In the event the district does not adopt a rule establishing a phosphorus criterion for Lake Apopka by January 1997, the phosphorus criterion for the lake shall be 55 parts per billion (ppb).

(b) The district shall adopt by rule discharge limitations for all permits issued by the district for discharges into Lake Apopka, the Lake Level Canal, and the McDonald Canal.

#### **(4) CONSTRUCTION OF STORMWATER MANAGEMENT SYSTEMS.—**

(a) It is the intent of the Legislature that construction of stormwater management facilities to store, treat, and recycle Zellwood's agricultural stormwater runoff will be necessary during the interim period while discharge limitations are being established for Lake Apopka, unless both of the following conditions are met:

1. Agreements to purchase all the lands within Zellwood are executed by September 30, 1997, or a later execution deadline established by the United States for such agreements before reallocation of Commodity Credit Corporation funds made available to acquire wetland reserve program conservation easements within the Lake Apopka Partnership Project area; and
2. All such purchases are completed pursuant to the terms of such agreements.

The Legislature finds that it is in the public interest for state, regional, and local revenue sources to be used along with Zellwood's revenue sources to finance the costs of acquiring land and constructing such facilities. One-third of the cost of the facilities shall be contributed by Zellwood, one-third by the state, and one-third by the district.

(b) Consistent with the funding formula outlined in paragraph (a), the state will provide up to \$2 million, with the same amount being committed by both Zellwood and the district, for a total of \$6 million. These funds shall be used for the purpose of acquiring the necessary land for and constructing a stormwater management facility, not to exceed 600 acres in total size, for Zellwood's farm runoff, together with the necessary pumps and other infrastructure associated with such facilities, provided that Zellwood's contribution shall be used for project purposes other than acquiring land.

(c) The district shall be responsible for design of the facilities and for acquiring any necessary interest in land for the facilities. Zellwood will be responsible for construction of the facilities in accordance with the district's design. The district will administer the funds provided for under this section. No later than September 30, 1997, the district and Zellwood will develop an agreement regarding dispersal of funds for construction of the facilities which shall take into account the financing mechanisms available to the parties. Zellwood shall not be required to assess more than \$25 per acre per year in financing its share of the stormwater management facility. However, it must provide its one-third share of the funding within the timeframes outlined for construction of the stormwater construction facility outlined in this section.

(d) Construction of the stormwater retention and treatment facilities provided for in this section shall begin within 90 days after acquisition of interests in land necessary for the facilities and the district's delivery of the design of the facilities to Zellwood, and shall be completed within 1 year thereafter. After completion of the facilities, Zellwood shall be responsible for operation and maintenance so long as the facilities are used by Zellwood.

(e) The district may, as appropriate, alter or modify the design of the facility to reduce the cost of the acquisition and construction of the facility if lands presently in production within Zellwood are acquired pursuant to subsection (5) before construction of the facility. The district shall have the flexibility to adjust these dates due to any unforeseen circumstances such as, and not limited to, acts of God, delays due to litigation by outside parties, or unnecessary or unforeseen permitting or construction delays.

(f) The district and Zellwood shall give preferential consideration to the hiring of agricultural workers displaced as a result of the Lake Apopka Restoration Act, consistent with their qualifications and abilities, for the construction and operation of the stormwater facility.

(5) PURCHASE OF AGRICULTURAL LANDS.—

(a) The Legislature finds that it is in the public interest of the state to acquire lands in agricultural production, along with their related facilities, which contribute, directly or indirectly, to phosphorus discharges to Lake Apopka, for the purpose of improving water quality in Lake Apopka. These lands consist of those farming entities on Lake Apopka having consent and settlement agreements with the district and those sand land farms discharging indirectly to Lake Apopka through Lake Level Canal, Apopka-Beauclair Canal, or McDonald Canal. The district is granted the power of eminent domain on those properties.

(b) In determining the fair market value of lands to be purchased from willing sellers, all appraisals of such lands may consider income from the use of the property for farming and, for this purpose, such income shall be deemed attributable to the real estate.

(c) The district shall explore the availability of funding from all sources, including any federal, state, regional, and local land acquisition funding programs, to purchase the agricultural lands described in paragraph (a). It is the Legislature's intent that, if such funding sources can be identified, acquisition of the lands described in paragraph (a) may be undertaken by the district to purchase these properties from willing sellers. However, the purchase price paid for acquisition of such lands that were in active cultivation during 1996 shall not exceed the highest appraisal obtained by the district for these lands from a state-certified general appraiser following the Uniform Standards of Professional Appraisal Practice. This maximum purchase price limitation shall not include, nor be applicable to, that portion of the

purchase price attributable to consideration of income described in paragraph (b), or that portion attributable to related facilities, or closing costs.

(d) In connection with successful acquisition of any of the lands described in this section which are not needed for stormwater management facilities, the district shall give the seller the option to lease the land for a period not to exceed 5 years, at a fair market lease value for similar agricultural lands. Proceeds derived from such leases shall be used to offset the cost of acquiring the land.

(e) If all the lands within Zellwood are purchased in accordance with this section prior to expiration of the consent agreement between Zellwood and the district, Zellwood shall be reimbursed for any costs described in subsection (4).

(f)1. Tangible personal property acquired by the district as part of related facilities pursuant to this section, and classified as surplus by the district, shall be sold by the Department of Management Services. The Department of Management Services shall deposit the proceeds of such sale in the Economic Development Trust Fund in the Executive Office of the Governor. The proceeds shall be used for the purpose of providing economic and infrastructure development in portions of northwestern Orange County and east central Lake County which will be adversely affected economically due to the acquisition of lands pursuant to this subsection.

2. The Office of Tourism, Trade, and Economic Development shall, upon presentation of the appropriate documentation justifying expenditure of the funds deposited pursuant to this paragraph, pay any obligation for which it has sufficient funds from the proceeds of the sale of tangible personal property and which meets the limitations specified in paragraph (g). The authority of the Office of Tourism, Trade, and Economic Development to expend such funds shall expire 5 years from the effective date of this paragraph. Such expenditures may occur without future appropriation from the Legislature.

3. Funds deposited under this paragraph may not be used for any purpose other than those enumerated in paragraph (g).

(g)1. The proceeds of sale of tangible personal property authorized by paragraph (f) shall be distributed as follows: 60 percent to Orange County; 25 percent to the City of Apopka; and 15 percent to Lake County.

2. Such proceeds shall be used to implement the redevelopment plans adopted by the Orange County Board of County Commissioners, Apopka City Commission, and Lake County Board of County Commissioners.

3. Of the total proceeds, the Orange County Board of County Commissioners, Apopka City Commission, and Lake County Board of County Commissioners, may not expend more than:

a. Twenty percent for labor force training related to the redevelopment plan;

b. Thirty-three percent for financial or economic incentives for business location or expansion in the redevelopment area; and

c. Four percent for administration, planning, and marketing the redevelopment plan.

4. The Orange County Board of County Commissioners, Apopka City Commission, and Lake County Board of County Commissioners must spend those revenues not expended under subparagraph 3. for infrastructure needs necessary for the redevelopment plan.

(6) EXISTING CONSENT OR SETTLEMENT AGREEMENTS PRESERVED.—Except to the extent specifically modified in this section, the district's existing consent or settlement agreements with A. Duda and Sons, Inc., and Zellwood, including requirements regarding compliance with any discharge limitations established for Lake Apopka, shall remain in effect.

(7) APPLICABILITY OF LAWS AND WATER QUALITY STANDARDS; AUTHORITY OF DISTRICT AND DEPARTMENT.—Except as otherwise provided in this section, nothing in this section shall be construed:

(a) As altering any applicable state water quality standards, laws, or district or department rules; or

(b) To restrict the authority otherwise granted the department and the district pursuant to this chapter or chapter 403. The provisions of this section shall be deemed supplemental to the authority granted pursuant to this chapter and chapter 403.

**History.**—s. 1, ch. 96-207; s. 3, ch. 97-81; s. 5, ch. 2000-153; s. 52, ch. 2000-158.

**373.465 Lake Panasoffkee Restoration Council.**—There is created within the Southwest Florida Water Management District the Lake Panasoffkee Restoration Council.

(1)(a) The council shall consist of seven voting members: two representatives of lakefront property owners, one environmental engineer, one person with training in biology or another scientific discipline, one person with training as an attorney, one person with training as an engineer, and one representative of the sport fishing industry, all to be appointed by the Sumter County Commission. No person serving on the council may be appointed to any of the council advisory group agencies' councils, board, or commission. The council members shall serve as advisors to the governing

board of the Southwest Florida Water Management District. The council is subject to the provisions of chapters 119 and 120.

(b) The council advisory group to the council shall consist of: one representative each from the Southwest Florida Water Management District, the Florida Department of Environmental Protection, the Florida Department of Transportation, the Fish and Wildlife Conservation Commission, the Withlacoochee River Basin Board, and the United States Army Corps of Engineers, to be appointed by their respective agencies, all of whom must have training in biology or another scientific discipline.

(2) Immediately after their appointment, the council shall meet and organize by electing a chair, a vice chair, and a secretary, whose terms shall be for 2 years each. Council officers shall not serve consecutive terms. Each council member shall be a voting member.

(3) The council shall meet at the call of its chair, at the request of six of its members, or at the request of the chair of the governing board of the Southwest Florida Water Management District.

(4) The council shall have the powers and duties to:

(a) Review audits and all data specifically related to lake restoration techniques and sport fish population recovery strategies, including data and strategies for shoreline restoration, sediment control and removal, exotic species management, floating tussock management or removal, navigation, water quality, and fisheries habitat improvement, particularly as they may apply to Lake Panasoffkee.

(b) Evaluate whether additional studies are needed.

(c) Explore all possible sources of funding to conduct the restoration activities.

(d) Advise the governing board of the Southwest Florida Water Management District regarding the best approach to restoring Lake Panasoffkee, and make a recommendation as to which techniques should be part of the restoration program. The governing board of the Southwest Florida Water Management District shall respond in writing to the council if any recommendations from the council require reevaluation. The response shall detail reasons for reevaluation.

(e) Report to the Legislature before November 25 of each year on the progress of the Lake Panasoffkee restoration plan and any recommendations for the next fiscal year.

(5) The Southwest Florida Water Management District shall provide staff to assist the council in carrying out the provisions of this act.

(6) Members of the council shall receive no compensation for their services, but are entitled to be reimbursed for per diem and travel expenses incurred during execution of their official duties, as provided in s. 112.061. State and federal agencies shall be responsible for the per diem and travel expenses of their respective appointees to the council and the Southwest Florida Water Management District shall be responsible for per diem and travel expenses of other appointees to the council.

**History.**—s. 1, ch. 98-69; s. 190, ch. 99-245.

### **373.466 Lake Panasoffkee restoration program.—**

(1) The Southwest Florida Water Management District, in conjunction with the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, the Sumter County Commission, and the Lake Panasoffkee Restoration Council, shall review existing restoration proposals to determine which ones are the most environmentally sound and economically feasible methods of improving the fisheries and natural systems of Lake Panasoffkee.

(2) The Southwest Florida Water Management District, in consultation and by agreement with the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, and pertinent local governments, shall develop tasks to be undertaken by those entities necessary to initiate the Lake Panasoffkee restoration program recommended by the Lake Panasoffkee Restoration Council. These agencies shall:

(a) Evaluate different methodologies for removing the extensive tussocks and build-up of organic matter along the shoreline and of the aquatic vegetation in the lake; and

(b) Conduct any additional studies as recommended by the Lake Panasoffkee Restoration Council.

(3) Contingent on the Legislature appropriating funds for the Lake Panasoffkee restoration program and in conjunction with financial participation by federal, other state, and local governments, the appropriate agencies shall through competitive bid award contracts to implement the activities of the Lake Panasoffkee restoration program.

**History.**—s. 2, ch. 98-69; s. 191, ch. 99-245.

## **PART V FINANCE AND TAXATION**

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**373.470 Everglades restoration.—**

- (1) **SHORT TITLE.**—This section may be cited as the “Everglades Restoration Investment Act.”
- (2) **DEFINITIONS.**—As used in this section, the term:
  - (a) “Comprehensive plan” means the recommended comprehensive plan contained within the “Final Integrated Feasibility Report and Programmatic Environmental Impact Statement, April 1999” and submitted to Congress on July 1, 1999.
  - (b) “Corps” means the United States Army Corps of Engineers.
  - (c) “District” means the South Florida Water Management District.
  - (d) “Project” means the Central and Southern Florida Project authorized under the heading “CENTRAL AND SOUTHERN FLORIDA” in s. 203 of the Flood Control Act of 1948 (62 Stat. 1176), and any modification to the project authorized by law.
  - (e) “Project component” means any structural or operational change, resulting from the comprehensive plan, to the project as it existed and was operated as of January 1, 1999.
  - (f) “Project implementation report” means the project implementation report as described in the “Final Integrated Feasibility Report and Programmatic Environmental Impact Statement, April 1999” and submitted to Congress on July 1, 1999.
- (3) **FURTHER ANALYSIS; AGREEMENTS FOR PROJECT COMPONENTS AND ALLOCATION OF PROJECT BENEFITS.**—
  - (a) The Legislature intends to establish a full and equal partnership between the state and federal governments for the implementation of the comprehensive plan.
  - (b) The comprehensive plan shall be used as a guide and framework for a continuing planning process to:
    1. Reflect new scientific knowledge, the results of pilot projects, and the results of new and continuing feasibility studies with the Corps; and
    2. Ensure that project components will be implemented to achieve the purposes provided in the Federal Water Resource Development Act of 1996 that include restoring, preserving, and protecting the South Florida ecosystem, providing for the protection of water quality in and the reduction of the loss of fresh water from the Everglades, and

providing such features as are necessary to meet the other water-related needs of the region, including flood control, the enhancement of water supplies, and other objectives served by the project.

(c) Prior to executing a project cooperation agreement with the Corps for the construction of a project component, the district, in cooperation with the Corps, shall complete a project implementation report to address the project component's economic and environmental benefits, engineering feasibility, and other factors provided in s. 373.1501 sufficient to allow the district to obtain approval under s. 373.026. Each project implementation report shall also identify the increase in water supplies resulting from the project component. The additional water supply shall be allocated or reserved by the district under chapter 373.

(4) **SAVE OUR EVERGLADES TRUST FUND; FUNDS AUTHORIZED FOR DEPOSIT.**—The following funds may be deposited into the Save Our Everglades Trust Fund created by s. 373.472 to finance implementation of the comprehensive plan:

- (a) In fiscal year 2000-2001, funds described in s. 259.101(3).
- (b) Funds described in subsection (5).
- (c) Federal funds appropriated by Congress for implementation of the comprehensive plan.
- (d) Any additional funds appropriated by the Legislature for the purpose of implementing the comprehensive plan.
- (e) Gifts designated for implementation of the comprehensive plan from individuals, corporations, or other entities.

(5) **SAVE OUR EVERGLADES TRUST FUND SUPPLEMENTED.**—

(a)1. For fiscal year 2000-2001, \$50 million of state funds shall be deposited into the Save Our Everglades Trust Fund created by s. 373.472.

2. For each year of the 9 consecutive years beginning with fiscal year 2001-2002, \$75 million of state funds shall be deposited into the Save Our Everglades Trust Fund created by s. 373.472.

(b) For each year of the 10 consecutive years beginning with fiscal year 2000-2001, the department shall deposit \$25 million of the funds allocated to the district by the department under s. 259.105(11)(a) into the Save Our Everglades Trust Fund created by s. 373.472.

(6) **DISTRIBUTIONS FROM SAVE OUR EVERGLADES TRUST FUND.**—The department shall distribute funds in the Save Our Everglades Trust Fund to the district in accordance with a legislative appropriation and s. 373.026(8)(b) and (c). Distribution of funds from the Save Our Everglades Trust Fund shall be equally matched by the cumulative contributions from all local sponsors by fiscal year 2009-2010 by providing funding or credits toward project components. The dollar value of in-kind work by local sponsors in furtherance of the comprehensive plan and existing interest in public lands needed for a project component are credits towards the local sponsors' contributions.

(7) **ANNUAL REPORT.**—To provide enhanced oversight of and accountability for the financial commitments established under this section and the progress made in the implementation of the comprehensive plan, the following information must be prepared annually:

(a) The district, in cooperation with the department, shall provide the following information as it relates to implementation of the comprehensive plan:

1. An identification of funds, by source and amount, received by the state and by each local sponsor during the fiscal year.

2. An itemization of expenditures, by source and amount, made by the state and by each local sponsor during the fiscal year.

3. A description of the purpose for which the funds were expended.

4. The unencumbered balance of funds remaining in trust funds or other accounts designated for implementation of the comprehensive plan.

5. A schedule of anticipated expenditures for the next fiscal year.

(b) The department shall prepare a detailed report on all funds expended by the state and credited toward the state's share of funding for implementation of the comprehensive plan. The report shall include:

1. A description of all expenditures, by source and amount, from the Conservation and Recreation Lands Trust Fund, the Land Acquisition Trust Fund, the Preservation 2000 Trust Fund, the Florida Forever Trust Fund, the Save Our Everglades Trust Fund, and other named funds or accounts for the acquisition or construction of project components or other features or facilities that benefit the comprehensive plan.

2. A description of the purposes for which the funds were expended.

3. The unencumbered fiscal-year-end balance that remains in each trust fund or account identified in subparagraph 1.

(c) The district, in cooperation with the department, shall provide a detailed report on progress made in the implementation of the comprehensive plan, including the status of all project components initiated after the effective date of this act or the date of the last report prepared under this subsection, whichever is later.

The information required in paragraphs (a), (b), and (c) shall be provided annually in a single report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and copies of the report must be made available to the public. The initial report is due by November 30, 2000, and each annual report thereafter is due by November 30.

**History.**—s. 5, ch. 2000-129.

**373.472 Save Our Everglades Trust Fund.—**

(1) There is created within the Department of Environmental Protection the Save Our Everglades Trust Fund. Funds in the trust fund shall be expended to implement the comprehensive plan defined in s. 373.470(2)(a). The trust fund shall serve as the repository for state, local, and federal project contributions in accordance with s. 373.470(4).

(2) The trust fund is not subject to the service charge described in s. 215.20(1). All income of a revenue nature, including interest or other earnings received or credited by the trust fund, shall be credited to the fund.

(3) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

(4) Pursuant to the provisions of s. 19(f)(2), Art. III of the State Constitution, the Save Our Everglades Trust Fund shall, unless terminated sooner, terminate on July 1, 2004. Prior to its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).

**History.**—s. 1, ch. 2000-132.

**373.498 Disbursements from water resources development account.**—Subject to the provisions of this chapter, there shall be available to any flood control or water management district created under this chapter or by special acts of Legislature, out of said Water Resources Development Account upon the approval of the Department of Environmental Protection, a sum or sums of money not exceeding in the aggregate the total estimated amount required to cover the costs allocated to the district for constructing the works of said district, for the acquisition of lands for water storage areas, for highway bridge construction, and for administration and promotion. These works may include small watershed projects (Pub. L. No. 83-566). Said sum or sums shall be available as money is required for said purposes and may be a grant to said districts. Also, subject to the provisions of this chapter, there shall be available to any navigation district or agency created under chapter 374 or by special act of the Legislature, out of said Water Resources Development Account upon approval of the department, a sum or sums of money not exceeding in the aggregate the total estimated amount required to cover the costs allocated to the district for constructing the works, for highway bridge construction, for the acquisition of land for rights-of-way, for water storage areas, and for administration and promotion. Said sum or sums shall be available as money is required for said purposes and may be a grant to said districts or agencies.

**History.**—s. 4, ch. 25209, 1949; s. 2, ch. 65-287; s. 1, ch. 67-199; ss. 25, 35, ch. 69-106; s. 2, ch. 70-143; s. 25, ch. 73-190; s. 50, ch. 79-65; s. 275, ch. 94-356.

**Note.**—Former s. 378.04.

**373.501 Appropriation of funds to water management districts.**—The department may allocate to the water management districts, from funds appropriated to the department, such sums as may be deemed necessary to defray the costs of the administrative, regulatory, and other activities of the districts. The governing boards shall submit annual budget requests for such purposes to the department, and the department shall consider such budgets in preparing its budget request for the Legislature.

**History.**—s. 11, part I, ch. 72-299; ss. 5, 25, ch. 73-190.

**Note.**—Former s. 373.066.

**373.503 Manner of taxation.—**

(1) It is the finding of the Legislature that the general regulatory and administrative functions of the districts herein authorized are of general benefit to the people of the state and should fully or in part be financed by general

appropriations. Further, it is the finding of the Legislature that water resources programs of particular benefit to limited segments of the population should be financed by those most directly benefited. To those ends, this chapter provides for the establishment of permit application fees and a method of ad valorem taxation to finance the activities of the district.

(2)(a) The Legislature declares that the millage authorized for water management purposes by s. 9(b), Art. VII of the State Constitution shall be levied only by the water management districts set forth in this chapter and intends by this section to prevent any laws which would allow other units of government to levy any portion of said millage. However, this does not preclude such units of government from financing and engaging in water management programs if otherwise authorized by law.

(b) Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application pertaining to the allocation of any portion of the millage authorized for water management purposes by s. 9(b), Art. VII of the State Constitution to any unit of government other than those districts established by this chapter.

(c) The authority of the Central and Southern Florida Flood Control District and the Southwest Florida Water Management District to levy ad valorem taxes within the territories specified in chapter 25270, 1949, Laws of Florida, and chapter 61-691, Laws of Florida, respectively, as heretofore amended, shall continue until those districts have authority to levy ad valorem taxes pursuant to this section.

(3)(a) The districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, 1949, Laws of Florida, as amended, and chapter 61-691, Laws of Florida, as amended. The authority to levy ad valorem taxes as provided in this act shall commence with the year 1977. However, the taxes levied for 1977 by the governing boards pursuant to this section shall be prorated to ensure that no such taxes will be levied for the first 4 days of the tax year, which days will fall prior to the effective date of the amendment to s. 9(b), Art. VII of the State Constitution, which was approved March 9, 1976. When appropriate, taxes levied by each governing board may be separated by the governing board into a millage necessary for the purposes of the district and a millage necessary for financing basin functions specified in s. 373.0695. Beginning with the taxing year 1977, and notwithstanding the provisions of any other general or special law to the contrary, the maximum total millage rate for district and basin purposes shall be:

1. Northwest Florida Water Management District: 0.05 mill.
2. Suwannee River Water Management District: 0.75 mill.
3. St. Johns River Water Management District: 0.6 mill.
4. Southwest Florida Water Management District: 1.0 mill.
5. South Florida Water Management District: 0.80 mill.

(b) The apportionment in the South Florida Water Management District shall be a maximum of 40 percent for district purposes and a maximum of 60 percent for basin purposes, respectively.

(c) Within the Southwest Florida Water Management District, the maximum millage assessed for district purposes shall not exceed 50 percent of the total authorized millage when there are one or more basins in the district, and the maximum millage assessed for basin purposes shall not exceed 50 percent of the total authorized millage.

(4) It is hereby determined that the taxes authorized by this chapter are in proportion to the benefits to be derived by the several parcels of real estate within the districts to which territories are annexed and transferred. It is further determined that the cost of conducting elections within the respective districts or within the transferred or annexed territories, including costs incidental thereto in preparing for such election and in informing the electors of the issues therein, is a proper expenditure of the department, of the respective districts, and of the district to which such territory is or has been annexed or transferred.

(5) Each water management district created under this chapter which does not receive state shared revenues under part II of chapter 218 shall, before January 1 of each year, certify compliance or noncompliance with s. 200.065 to the Department of Banking and Finance. Specific grounds for noncompliance shall be stated in the certification. In its annual report required by s. 218.32(2), the Department of Banking and Finance shall report to the Governor and the Legislature those water management districts certifying noncompliance or not reporting.

**History.**—s. 1, part V, ch. 72-299; s. 24, ch. 73-190; s. 12, ch. 76-243; s. 6, ch. 80-259; s. 41, ch. 80-274; s. 2, ch. 85-146; ss. 1, 2, ch. 85-211; s. 10, ch. 87-97; s. 8, ch. 91-288.

**373.506 Costs of district.**—If it should appear necessary to procure funds with which to pay the expenses of a district, or to meet emergencies, before a sufficient sum can be obtained from the collection of the tax, the board may borrow a sufficient amount of money to pay expenses and to meet emergencies and may issue interest-bearing negotiable notes therefor and pledge the proceeds of the tax imposed under the provisions of this chapter for the

repayment thereof. Said board may issue to any person performing work or services or furnishing anything of value interest-bearing negotiable evidence of debt.

**History.**—s. 19, ch. 25209, 1949; s. 25, ch. 73-190; s. 15, ch. 76-243.

**Note.**—Former s. 378.19.

### **373.507 Districts and basins; postaudits, budgets.—**

(1) Each basin referred to in this chapter must furnish a detailed copy of its budget and past year's expenditures to the Governor, the Legislature, and the governing body of each county in which the basin has jurisdiction or derives any funds for the operations of the basin.

(2) Each district and basin referred to in this chapter must make provision for an annual postaudit of its financial accounts. The postaudit must be made in accordance with the rules of the Auditor General adopted under ss. 11.47 and 166.241.

(3)(a) Each district referred to in this chapter must furnish copies of the following documents to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees with substantive or fiscal jurisdiction over districts, as determined by the President or Speaker as applicable, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district:

1. The tentative budget.
2. The adopted budget.
3. The past year's expenditures.
4. The postaudit described in subsection (2).

(b) The documents must be furnished by the earlier of 10 days following completion of each document or as otherwise provided by law.

(c) If any entity in paragraph (a) provides written comments to the district regarding any document furnished, the district must respond to the comments in writing and furnish copies of the comments and written responses to the other entities.

**History.**—s. 16, ch. 76-243; s. 1, ch. 77-367; s. 12, ch. 82-101; s. 15, ch. 97-160.

**373.516 Benefits to rights-of-way.**—The governing board of the district shall assess benefits to rights-of-way of railroads and other public service corporations in like manner as for other property, and the imposition and collection of said tax shall be in like manner as is provided with respect to other property, except that the basis of value of railroad rights-of-way for assessment purposes is hereby fixed at \$4,000 per mile without reference to number of tracks, or other facilities thereon, and the governing board of the district shall furnish the property appraiser of the county in which such rights-of-way is located a description thereof, the number of miles in length and the tax rate on value-benefit basis to be applied in assessing district taxes against said rights-of-way.

**History.**—s. 22, ch. 25209, 1949; s. 25, ch. 73-190; s. 1, ch. 77-102.

**Note.**—Former s. 378.22.

### **373.536 District budget and hearing thereon.—**

(1) The fiscal year of districts created under the provisions of this chapter shall extend from October 1 of one year through September 30 of the following year. The budget officer of the district shall, on or before July 15 of each year, submit for consideration by the governing board of the district a tentative budget for the district covering its proposed operation and requirements for the ensuing fiscal year. Unless alternative notice requirements are otherwise provided by law, notice of all budget hearings conducted by the governing board or district staff must be published in a newspaper of general circulation in each county in which the district lies not less than 5 days nor more than 15 days before the hearing. Budget workshops conducted for the public and not governed by s. 200.065 must be advertised in a newspaper of general circulation in the community or area in which the workshop will occur not less than 5 days nor more than 15 days before the workshop. The tentative budget shall be adopted in accordance with the provisions of s. 200.065; however, if the mailing of the notice of proposed property taxes is delayed beyond September 3 in any county in which the district lies, the district shall advertise its intention to adopt a tentative budget and millage rate, pursuant to s. 200.065(3)(g), in a newspaper of general paid circulation in that county. The budget shall set forth, classified by object and purpose, and by fund if so designated, the proposed expenditures of the district for bonds or other debt, for construction, for acquisition of land, for operation and maintenance of the district works, for the conduct of the affairs

of the district generally, and for other purposes, to which may be added an amount to be held as a reserve. District administrative and operating expenses must be identified in the budget and allocated among district programs.

(2) The budget shall also show the estimated amount which will appear at the beginning of the fiscal year as obligated upon commitments made but uncompleted. There shall be shown the estimated unobligated or net balance which will be on hand at the beginning of the fiscal year, and the estimated amount to be raised by district taxes and from other sources for meeting the requirements of the district.

(3) As provided in s. 200.065(2)(d), the board shall publish one or more notices of its intention to finally adopt a budget for the district for the ensuing fiscal year. The notice shall appear adjacent to an advertisement which shall set forth the tentative budget in full. The notice and advertisement shall be published in one or more newspapers having a combined general circulation in the counties having land in the district. Districts may include explanatory phrases and examples in budget advertisements published under s. 200.065 to clarify or illustrate the effect that the district budget may have on ad valorem taxes.

(4) The hearing to finally adopt a budget and millage rate shall be by and before the governing board of the district as provided in s. 200.065 and may be continued from day to day until terminated by the board. The final budget for the district will thereupon be the operating and fiscal guide for the district for the ensuing year; however, transfers of funds may be made within the budget by action of the governing board at a public meeting of the governing board. Should the district receive unanticipated funds after the adoption of the final budget, the final budget may be amended by including such funds, so long as notice of intention to amend is published one time in one or more newspapers qualified to accept legal advertisements having a combined general circulation in the counties in the district. The notice shall set forth the proposed amendment and shall be published at least 10 days prior to the public meeting of the board at which the proposed amendment is to be considered. However, in the event of a disaster or of an emergency arising to prevent or avert the same, the governing board shall not be limited by the budget but shall have authority to apply such funds as may be available therefor or as may be procured for such purpose.

(5)(a) The Executive Office of the Governor is authorized to approve or disapprove, in whole or in part, the budget of each water management district and shall analyze each budget as to the adequacy of fiscal resources available to the district and the adequacy of district expenditures related to water supply, including water resource development projects identified in the district's regional water supply plans; water quality; flood protection and floodplain management; and natural systems. This analysis shall be based on the particular needs within each water management district in those four areas of responsibility.

(b) The Executive Office of the Governor and the water management districts shall develop a process to facilitate review and communication regarding water management district budgets, as necessary. Written disapproval of any provision in the tentative budget must be received by the district at least 5 business days prior to the final district budget adoption hearing conducted under s. 200.065(2)(d). If written disapproval of any portion of the budget is not received at least 5 business days prior to the final budget adoption hearing, the governing board may proceed with final adoption. Any provision rejected by the Governor shall not be included in a district's final budget.

(c) Each water management district shall, by August 1 of each year, submit for review a tentative budget to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees with substantive or fiscal jurisdiction over water management districts, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district. The tentative budget must include, but is not limited to, the following information for the preceding fiscal year and the current fiscal year, and the proposed amounts for the upcoming fiscal year, in a standard format prescribed by the Executive Office of the Governor which is generally consistent with the format prescribed by legislative budget instructions for state agencies and the format requirements of s. 216.031:

1. The millage rates and the percentage increase above the rolled-back rate, together with a summary of the reasons the increase is required, and the percentage increase in taxable value resulting from new construction;

2. The salary and benefits, expenses, operating capital outlay, number of authorized positions, and other personal services for the following program areas, including a separate section for lobbying, intergovernmental relations, and advertising:

- a. District management and administration;
- b. Implementation through outreach activities;
- c. Implementation through regulation;
- d. Implementation through acquisition, restoration, and public works;
- e. Implementation through operations and maintenance of lands and works;
- f. Water resources planning and monitoring; and

g. A full description and accounting of expenditures for lobbying activities relating to local, regional, state, and federal governmental affairs, whether incurred by district staff or through contractual services and all expenditures for public relations, including all expenditures for public service announcements and advertising in any media.

In addition to the program areas reported by all water management districts, the South Florida Water Management District shall include in its budget document a separate section on all costs associated with the Everglades Construction Project.

3. The total amount in the district budget for each area of responsibility listed in paragraph (a) and for water resource development projects identified in the district's regional water supply plans.

4. A 5-year capital improvements plan.

5. A description of each new, expanded, reduced, or eliminated program.

6. A proposed 5-year water resource development work program, that describes the district's implementation strategy for the water resource development component of each approved regional water supply plan developed or revised pursuant to s. 373.0361. The work program shall address all the elements of the water resource development component in the district's approved regional water supply plans. The office of the Governor, with the assistance of the department, shall review the proposed work program. The review shall include a written evaluation of its consistency with and furtherance of the district's approved regional water supply plans, and adequacy of proposed expenditures. As part of the review, the Executive Office of the Governor and the department shall afford to all interested parties the opportunity to provide written comments on each district's proposed work program. At least 7 days prior to the adoption of its final budget, the governing board shall state in writing to the Executive Office of the Governor which changes recommended in the evaluation it will incorporate into its work program, or specify the reasons for not incorporating the changes. The office of the Governor shall include the district's responses in the written evaluation and shall submit a copy of the evaluation to the Legislature; and

7. The funding sources, including, but not limited to, ad valorem taxes, Surface Water Improvement and Management Program funds, other state funds, federal funds, and user fees and permit fees for each program area.

(d) By September 5 of the year in which the budget is submitted, the House and Senate appropriations chairs may transmit to each district comments and objections to the proposed budgets. Each district governing board shall include a response to such comments and objections in the record of the governing board meeting where final adoption of the budget takes place, and the record of this meeting shall be transmitted to the Executive Office of the Governor, the department, and the chairs of the House and Senate appropriations committees.

(e) The Executive Office of the Governor shall annually, on or before December 15, file with the Legislature a report that summarizes the expenditures of the water management districts by program area and identifies the districts that are not in compliance with the reporting requirements of this section. State funds shall be withheld from a water management district that fails to comply with these reporting requirements.

**History.**—s. 28, ch. 25209, 1949; s. 3, ch. 29790, 1955; s. 4, ch. 61-497; s. 1, ch. 65-432; s. 1, ch. 67-74; s. 25, ch. 73-190; s. 18, ch. 74-234; s. 46, ch. 80-274; s. 230, ch. 81-259; s. 3, ch. 84-164; s. 2, ch. 86-190; s. 9, ch. 91-288; s. 24, ch. 93-213; s. 276, ch. 94-356; s. 1012, ch. 95-148; s. 5, ch. 96-339; s. 16, ch. 97-160; s. 6, ch. 98-88.

**Note.**—Former s. 378.28.

### **373.539 Imposition of taxes.—**

(1) Each year the governing board of the district shall certify to the property appraiser of the county in which the property is situate, timely for the preparation of the tax roll, the tax rate to be applied in determining the amount of the district's annual tax, and the property appraiser shall extend on his or her county tax roll the amount of such tax, determined at the rate certified to the property appraiser by the governing board, and shall certify the same to the tax collector at the same time and in like manner as for county taxes.

(2) Collection of district taxes, the issuance of tax sale certificates for nonpayment thereof, the redemption or sale of said certificates, the vesting of title by tax forfeiture, and the sale of the land and other real estate so forfeited shall be at the same time, in conjunction with, and by like procedure and of like effect as is provided by law with respect to county taxes, nor may either the county or the district taxes be paid or redemption effected without the payment or redemption of both. The title to district tax forfeited land shall vest in the county on behalf of said district along with that of the county for county tax forfeited land, said district tax forfeited land to be held, sold, or otherwise disposed of by said county for the benefit of said district. The proceeds therefrom, after deducting costs, shall be paid to the district in amounts proportionate to the respective tax liens thereon.

(3) The district tax liens shall be of equal dignity with those of the county.

(4) The tax officers of the county are hereby authorized and directed to perform the duties devolving upon them under this chapter, and to receive compensation therefor at such rates or charges as are provided by law with respect to similar services or charges in other cases.

**History.**—s. 29, ch. 25209, 1949; s. 25, ch. 73-190; s. 1, ch. 77-102; s. 608, ch. 95-148.

**Note.**—Former s. 378.29.

**373.543 Land held by Board of Trustees of the Internal Improvement Trust Fund; areas not taxed.—**

(1) Land comprising part of the principal of the State School Trust Fund declared by the constitution to be “sacred and inviolate,” or other real estate, title to which is in the State Board of Education, shall not be subject to the district tax nor shall there be liability therefor upon any state agency.

(2) There shall be excluded from district taxes all bodies of navigable water and unreclaimed water areas meandered by the public surveys, all rights-of-way of said district, all areas devoted or dedicated to the use of and for the works of the district, rights-of-way of state and county highways, and streets within the limits of incorporated towns, and property owned by a public agency open to the use of the public or for the public benefit not leased to or operated by a private agency.

**History.**—s. 30, ch. 25209, 1949; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 25, ch. 73-190; s. 1, ch. 77-102; s. 231, ch. 81-259.

**Note.**—Former s. 378.30.

**373.546 Unit areas.**—The governing board may, in its discretion, adopt and effectuate unit areas embracing separate or combined drainage basins, or parts thereof, or areas of related lands and works, for convenience or economy in constructing, maintaining and operating the works of the district, and for the purpose of imposing taxes within each area to meet these requirements of the said area.

**History.**—s. 31, ch. 25209, 1949; s. 25, ch. 73-190.

**Note.**—Former s. 378.31.

**373.553 Treasurer of the board; payment of funds; depositories.—**

(1) The governing board shall designate a treasurer who shall be custodian of all funds belonging to the board and to the district, and such funds shall be disbursed upon the order of, or in the manner prescribed by, the governing board by warrant or check signed by the treasurer or assistant treasurer and countersigned by the chair or vice chair of the board. The board is authorized to establish procedures for disbursement of funds in such amounts and in such manner as the board may prescribe, except that disbursement of funds prior to specific board approval may only be authorized upon certification by its chief executive officer or his or her designated assistant to the treasurer or assistant treasurer and to the chair or vice chair of the board that such disbursement is proper and in order and is within budgetary limits. Any such disbursements shall be reported to the board at its next regular meeting. The board may establish, by rule, a procedure for the disbursement of funds of the district by means of wire or electronic transfers.

(2) The board is authorized to select as depositories in which the funds of the board and of the district shall be deposited in any qualified public depository as defined in s. 280.02, and such deposits shall be secured in the manner provided in chapter 280.

**History.**—s. 33, ch. 25209, 1949; s. 3, ch. 63-224; s. 25, ch. 73-190; s. 1, ch. 73-213; s. 115, ch. 77-104; s. 13, ch. 82-101; s. 10, ch. 91-288; s. 609, ch. 95-148.

**Note.**—Former s. 378.33.

**373.556 Investment of funds.**—The governing board of the district may, in its discretion, invest funds of the district in the following manner:

(1) That portion of the funds of the district which the board anticipates will be needed for emergencies may be invested in bonds or other obligations, either bearing interest or sold on a discount basis, of the United States, or the United States Treasury, or those for the payment of the principal and interest of which the faith and credit of the United States is pledged.

(2) All other funds of the district may be invested in securities named in subsection (1) hereof, or in bonds or other interest-bearing obligations of any incorporated county, city, town, school district or road and bridge district located in the state, for which the full faith and credit of such political subdivision has been pledged; provided, such political subdivision or its successor, through merger, consolidation or otherwise, has not within 5 years previous to the making of such investment, defaulted for more than 6 months in the payment of any part of the principal or interest of

its bonded indebtedness; and, provided, the securities purchased under the provisions of this subsection shall have a maturity date on or before the anticipated date of need for the funds represented thereby.

**History.**—s. 4, ch. 29790, 1955; s. 25, ch. 73-190.

**Note.**—Former s. 378.331.

**373.559 May borrow money temporarily.**—In order to provide for the works described by this chapter, the governing board is hereby authorized and empowered to borrow money temporarily, from time to time, for a period not to exceed 1 year at any one time, not including renewals thereof, and to issue its promissory notes therefor upon such terms and at such rates of interest as the said board may deem advisable, payable from the taxes herein levied and imposed, and the increment thereof. Any of such notes may be used in payment of amounts due, or to become due, upon contracts made or to be made by said board for carrying on the work authorized and provided for herein, and the said board may, to secure the payment of any of such notes, hypothecate bonds herein authorized to be issued, and may thereafter redeem such hypothecated bonds. Any of the notes so issued may be paid out of the proceeds of bonds authorized to be issued by this chapter.

**History.**—s. 34, ch. 25209, 1949; s. 25, ch. 73-190.

**Note.**—Former s. 378.34.

### **373.563 Bonds.**—

(1) The governing board is hereby authorized and empowered to borrow money on permanent loans and incur obligations from time to time on such terms and at such rates of interest as it may deem proper, not exceeding 7.5 percent per annum, for the purpose of raising funds to prosecute to final completion the works and all expenses necessary or needful to be incurred in carrying out the purposes of this chapter; and the better to enable the said board to borrow the money to carry out the purposes aforesaid, the board is hereby authorized and empowered to issue in the corporate name of said board, negotiable coupon bonds of said district.

(2) The bonds to be issued by authority of this chapter shall be in such form as shall be prescribed by the said board, shall recite that they are issued under the authority of this chapter, and shall pledge the faith and credit of the governing board of the district for the prompt payment of the interest and principal thereof.

(3) Said bonds shall have all the qualities of negotiable paper under the Law Merchant, and shall not be invalid for any irregularity, or defect in the proceedings for the issue and sale thereof except forgery; and shall be incontestable in the hands of bona fide purchasers or holders thereof for value. The provisions of this chapter shall constitute an irrevocable contract between said board and the district and the holders of any bonds and the coupons thereof, issued pursuant to the provisions hereof. Any holder of any of said bonds or coupons may either at law or in equity by suit, action or mandamus enforce and compel the performance of the duties required by this chapter of any of the officers or persons mentioned in this chapter in relation to the said bonds, or to the collection, enforcement and application of the taxes for the payment thereof.

(4) The amount of bonds to be issued in any one year, when added to the amount then outstanding, shall be not greater than can be supported for that year in accordance with the bond schedule out of 90 percent of the taxes imposed, or to be imposed, for that year, plus other moneys in the hands of the district usable for bond purposes after deducting therefrom amounts estimated to be required for maintenance and operation of the works of the district, cost of administration, and amounts for such other purposes as the governing board may determine, nor shall the governing board levy in any year taxes insufficient to support said bonds for such year on the basis herein described.

(5) All bonds and coupons not paid at maturity shall bear interest at a rate not to exceed 7.5 percent per annum from maturity until paid, or until sufficient funds have been deposited at the place of payment.

(6) The bonds to be issued by authority of this chapter shall be in denominations of not less than \$100, bearing interest from date at a rate not to exceed 5 percent per annum, payable semiannually, to mature at annual intervals within 40 years commencing after a period of not later than 10 years, to be determined by said board, both principal and interest payable at some convenient place designated by said board to be named in said bonds, which said bonds shall be signed by the chair of the board, attested with the seal of said district and by the signature of the secretary of said board. In case any of the officers whose signatures, countersignatures, and certificates appear upon the said bonds and coupons shall cease to be such officer before the delivery of such bonds to the purchaser, such signature or countersignature and certificate shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until the delivery of the bonds.

(7) Interest coupons shall be attached to the said bonds and the said coupons shall be consecutively numbered, specifying the number of the bond to which they are attached, and shall be attested by the lithographed or engraved facsimile signature of the chair and secretary of said board.

(8) In the discretion of said board, it may be provided that at any time, after such date as shall be fixed by the said board, said bonds may be redeemed before maturity at the option of said board, or its successors in office. If any bond so issued subject to redemption before maturity shall not be presented when called for redemption, it shall cease to bear interest from and after the date so fixed for redemption.

**History.**—s. 35, ch. 25209, 1949; s. 1, ch. 61-147; s. 25, ch. 73-190; s. 33, ch. 73-302; s. 1, ch. 77-174; s. 147, ch. 79-400; s. 610, ch. 95-148.

**Note.**—Former s. 378.35.

**373.566 Refunding bonds.**—The governing board shall have authority to issue refunding bonds to take up any outstanding bonds of said district falling due and becoming payable, when, in the judgment of said board, it shall be for the best interests of said district so to do. The said board is hereby authorized and empowered to issue refunding bonds to take up and refund all bonds of said district outstanding that are subject to call and termination, and all bonds of said district that are not subject to call or redemption, where the surrender of said bonds can be procured from the holder thereof at prices satisfactory to the board. Such refunding bonds may be issued at any time when in the judgment of said board it will be to the interest of the district financially or economically by securing a lower rate of interest on said bonds or by extending the time of maturity of said bonds, or for any other reason in the judgment of said board advantageous to said district.

**History.**—s. 36, ch. 25209, 1949; s. 25, ch. 73-190.

**Note.**—Former s. 378.36.

**373.569 Bond election.**—When required by the State Constitution, the governing board shall call an election of the freeholders in said district, in which said election the matter of whether or not said bonds shall be issued shall be decided as provided by law with respect to bond elections.

**History.**—s. 37, ch. 25209, 1949; s. 25, ch. 73-190.

**Note.**—Former s. 378.37.

**373.573 Bonds to be validated.**—Whenever the governing board shall have authorized the issuance of bonds under the provisions of this chapter, the said board may, if it shall so elect, have said bonds validated in the manner provided by chapter 75, and to that end the said board may adopt a suitable resolution for the issuance of said bonds.

**History.**—s. 38, ch. 25209, 1949; s. 25, ch. 73-190.

**Note.**—Former s. 378.38.

**373.576 Sale of bonds.**—All of said bonds shall be executed and delivered to the treasurer of said district, who shall sell the same in such quantities and at such rates as the board may deem necessary to meet the payments for the works and improvements in the district. Said bonds shall not be sold for less than 95 cents on the dollar, with accrued interest.

**History.**—s. 39, ch. 25209, 1949; s. 25, ch. 73-190.

**Note.**—Former s. 378.39.

**373.579 Proceeds from taxes for bond purposes.**—It shall be the duty of the treasurer as custodian of the funds belonging to the said board and to the district, out of the proceeds of the taxes levied and imposed by this chapter and out of any other moneys in the treasurer's possession belonging to the district, which moneys so far as necessary shall be set apart and appropriated for the purpose, to apply said moneys and to pay the interest upon the said bonds as the same shall fall due and at the maturity of the said bonds to pay the principal thereof.

**History.**—s. 40, ch. 25209, 1949; s. 25, ch. 73-190; s. 611, ch. 95-148.

**Note.**—Former s. 378.40.

**373.583 Registration of bonds.**—

(1) Whenever the owner of any coupon bond issued pursuant to the provisions of this chapter shall present such bond and all unpaid coupons thereof to the treasurer of the district with request for the conversion of such bond into a registered bond, such treasurer shall cut off and cancel the coupons of any such coupon bond so presented, and shall stamp, print or write upon such coupon bond so presented either upon the back or the face thereof as may be

convenient, a statement to the effect that said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time any such bond may be transferred by such registered owner in person or by attorney duly authorized on presentation of such bond to the treasurer, and the bond again registered as before, a similar statement being stamped or written thereon.

(2) Such statement stamped, printed or written upon any such bond may be in substantially the following form:

(Date, giving month, year and day.)

This bond is to be registered pursuant to the statutes in such case made and provided in the name of (here insert name of owner), and the interest and principal thereof are hereafter payable to such owner.

(Treasurer)

(3) If any bond shall have been registered as aforesaid, the principal and interest of said bond shall be payable to the registered owner. The treasurer shall enter in the register of said bonds to be kept by him or her, or in a separate book, the fact of the registration of such bonds, and in whose names respectively, so that said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

**History.**—s. 41, ch. 25209, 1949; s. 25, ch. 73-190; s. 612, ch. 95-148.

**Note.**—Former s. 378.41.

### **373.584 Revenue bonds.—**

(1) In addition to issuing general obligation bonds as provided in s. 373.563, districts may also, from time to time, issue revenue bonds to finance the undertaking of any capital or other project for the purposes permitted by the State Constitution, to pay the costs and expenses incurred in carrying out the purposes of this chapter, or to refund revenue bonds of the district issued pursuant to this section. In anticipation of the sale of such revenue bonds, the district may issue negotiable bond anticipation notes and may renew the same from time to time; but the maximum maturity of any such note, including renewals thereof, shall not exceed 5 years from the date of issue of the original note. Such notes shall be paid from the revenues hereinafter provided or from the proceeds of sale of the revenue bonds of such district in anticipation of which they were issued. The notes shall be issued in the same manner as the revenue bonds.

(2) Revenues derived by the district from the Water Management Lands Trust Fund as provided in s. 373.59 or any other revenues of the district may be pledged to the payment of such revenue bonds; however, the ad valorem taxing powers of the district may not be pledged to the payment of such revenue bonds without prior compliance with the requirements of the State Constitution as to the affirmative vote of the electors of the district and with the requirements of s. 373.563, and bonds payable from the Water Management Lands Trust Fund shall be issued solely for the purposes set forth in s. 373.59. Revenue bonds and notes shall be, and shall be deemed to be, for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds and notes for registration. The powers and authority of districts to issue revenue bonds, including, but not limited to, bonds to finance a stormwater management system as defined by s. 373.403, and to enter into contracts incidental thereto, and to do all things necessary and desirable in connection with the issuance of revenue bonds, shall be coextensive with the powers and authority of municipalities to issue bonds under state law. The provisions of this section constitute full and complete authority for the issuance of revenue bonds and shall be liberally construed to effectuate its purpose.

(3) The revenue bonds may be issued as serial bonds or as term bonds; or the district, in its discretion, may issue bonds of both types. The revenue bonds shall be authorized by resolution of the governing board and shall bear such date or dates; mature at such time or times, not exceeding 40 years from their respective dates; bear interest at such rate or rates; be payable at such time or times; be in such denominations; be in such form; carry such registration privileges; be executed in such manner; be payable in lawful money of the United States at such place or places; and be subject to such terms of redemption, including redemption prior to maturity, as such resolution or resolutions may provide. If any officer whose signature, or a facsimile of whose signature, appears on any bonds or coupons ceases to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until the delivery. The revenue bonds or notes may be sold at public or private sale for such price or prices as the governing board shall determine. Pending preparation of the definitive bonds, the district may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(4) As used in this section:

(a) “Bonds” means bonds, debentures, notes, certificates of indebtedness, certificates of participation, mortgage certificates, or other obligations or evidences of indebtedness of any type or character.

(b) “Project” means a governmental undertaking approved by the governing body of a water management district and includes all property rights, easements, and franchises relating thereto and deemed necessary or convenient for the construction, acquisition, or operation thereof, and embraces any capital expenditure which the governing body of a water management district shall deem to be made for a public purpose, including the refunding of any bonded indebtedness which may be outstanding on any existing project.

(c) “Revenue bonds” means bonds of a water management district to the payment of which the full faith and credit and power to levy ad valorem taxes are not pledged.

**History.**—s. 4, ch. 85-347; s. 6, ch. 91-80; s. 613, ch. 95-148.

**373.586 Unpaid warrants to draw interest.**—If any warrant issued under this chapter is not paid when presented to the treasurer of the district because of lack of funds in the treasury, such fact shall be endorsed on the back of such warrant, and such warrant shall draw interest thereafter at a rate not exceeding 6 percent per annum, until such time as there is money on hand to pay the amount of such warrant and the interest then accumulated; but no interest shall be allowed on warrants after notice to the holder or holders thereof that sufficient funds are in the treasury to pay said endorsed warrants and interest.

**History.**—s. 42, ch. 25209, 1949; s. 25, ch. 73-190; s. 116, ch. 77-104.

**Note.**—Former s. 378.42.

**373.589 Water management district audit.**—Each water management district shall have an annual financial audit of its accounts and records as provided in s. 11.45. A copy of the audit shall be filed with the Governor, the Department of Environmental Protection, the Auditor General, the governing board of the district, and the clerks of the circuit courts of each county within or partly within the district.

**History.**—s. 43, ch. 25209, 1949; s. 8, ch. 69-82; ss. 12, 35, ch. 69-106; s. 25, ch. 73-190; s. 12, ch. 99-333.

**Note.**—Former s. 378.43.

### **373.59 Water Management Lands Trust Fund.**—

(1) There is established within the Department of Environmental Protection the Water Management Lands Trust Fund to be used as a nonlapsing fund for the purposes of this section. The moneys in this fund are hereby continually appropriated for the purposes of land acquisition, management, maintenance, capital improvements of land titled to the districts, payments in lieu of taxes, debt service on bonds issued prior to July 1, 1999, debt service on bonds issued on or after July 1, 1999, which are issued to refund bonds issued before July 1, 1999, preacquisition costs associated with land purchases, and the department’s costs of administration of the fund. The department’s costs of administration shall be charged proportionally against each district’s allocation using the formula provided in subsection (8). Capital improvements shall include, but need not be limited to, perimeter fencing, signs, firelanes, control of invasive exotic species, controlled burning, habitat inventory and restoration, law enforcement, access roads and trails, and minimal public accommodations, such as primitive campsites, garbage receptacles, and toilets.

(2) Until the Preservation 2000 Program is concluded, each district shall file with the Legislature and the Secretary of Environmental Protection a report of acquisition activity, by January 15 of each year, together with modifications or additions to its 5-year plan of acquisition. Included in the report shall be an identification of those lands which require a full fee simple interest to achieve water management goals and those lands which can be acquired using alternatives to fee simple acquisition techniques and still achieve such goals. In their evaluation of which lands would be appropriate for acquisition through alternatives to fee simple, district staff shall consider criteria including, but not limited to, acquisition costs, the net present value of future land management costs, the net present value of ad valorem revenue loss to the local government, and the potential for revenue generated from activities compatible with acquisition objectives. The report shall also include a description of land management activity. However, no acquisition of lands shall occur without a public hearing similar to those held pursuant to the provisions set forth in s. 120.54. In the annual update of its 5-year plan for acquisition, each district shall identify lands needed to protect or recharge groundwater and shall establish a plan for their acquisition as necessary to protect potable water supplies. Lands which serve to protect or recharge groundwater identified pursuant to this paragraph shall also serve to protect other valuable natural resources or provide space for natural resource based recreation. Once all Preservation 2000 funds allocated to the water management districts have been expended or committed, this subsection shall be repealed.

(3) Each district shall remove the property of an unwilling seller from its plan of acquisition at the next scheduled update of the plan, if in receipt of a request to do so by the property owner. This subsection shall be repealed at the conclusion of the Preservation 2000 program.

(4) The Secretary of Environmental Protection shall release moneys from the Water Management Lands Trust Fund to a district for preacquisition costs within 30 days after receipt of a resolution adopted by the district's governing board which identifies and justifies any such preacquisition costs necessary for the purchase of any lands listed in the district's 5-year plan. The district shall return to the department any funds not used for the purposes stated in the resolution, and the department shall deposit the unused funds into the Water Management Lands Trust Fund.

(5) The Secretary of Environmental Protection shall release to the districts moneys for management, maintenance, and capital improvements following receipt of a resolution and request adopted by the governing board which specifies the designated managing agency, specific management activities, public use, estimated annual operating costs, and other acceptable documentation to justify release of moneys.

(6) If a district issues revenue bonds or notes under s. 373.584 prior to July 1, 1999, the district may pledge its share of the moneys in the Water Management Lands Trust Fund as security for such bonds or notes. The Department of Environmental Protection shall pay moneys from the trust fund to a district or its designee sufficient to pay the debt service, as it becomes due, on the outstanding bonds and notes of the district; however, such payments shall not exceed the district's cumulative portion of the trust fund. However, any moneys remaining after payment of the amount due on the debt service shall be released to the district pursuant to subsection (5).

(7) Any unused portion of a district's share of the fund shall accumulate in the trust fund to the credit of that district. Interest earned on such portion shall also accumulate to the credit of that district to be used for management, maintenance, and capital improvements as provided in this section. The total moneys over the life of the fund available to any district under this section shall not be reduced except by resolution of the district governing board stating that the need for the moneys no longer exists. Any water management district with fund balances in the Water Management Lands Trust Fund as of March 1, 1999, may expend those funds for land acquisitions pursuant to s. 373.139, or for the purpose specified in this subsection.

(8) Moneys from the Water Management Lands Trust Fund shall be allocated to the five water management districts in the following percentages:

- (a) Thirty percent to the South Florida Water Management District.
- (b) Twenty-five percent to the Southwest Florida Water Management District.
- (c) Twenty-five percent to the St. Johns River Water Management District.
- (d) Ten percent to the Suwannee River Water Management District.
- (e) Ten percent to the Northwest Florida Water Management District.

(9) Moneys in the fund not needed to meet current obligations incurred under this section shall be transferred to the State Board of Administration, to the credit of the fund, to be invested in the manner provided by law. Interest received on such investments shall be credited to the fund.

(10)(a) Beginning July 1, 1999, not more than one-fourth of the land management funds provided for in subsections (1) and (8) in any year shall be reserved annually by a governing board, during the development of its annual operating budget, for payments in lieu of taxes for all actual tax losses incurred as a result of governing board acquisitions for water management districts pursuant to ss. 259.101, 259.105, and this section during any year. Reserved funds not used for payments in lieu of taxes in any year shall revert to the Water Management Lands Trust Fund to be used in accordance with the provisions of this section.

(b) Payment in lieu of taxes shall be available:

1. To all counties that have a population of 150,000 or fewer. Population levels shall be determined pursuant to s. 11.031.

2. To all local governments located in eligible counties and whose lands are bought and taken off the tax rolls.

For properties acquired after January 1, 2000, in the event that such properties otherwise eligible for payment in lieu of taxes under this subsection are leased or reserved and remain subject to ad valorem taxes, payments in lieu of taxes shall commence or recommence upon the expiration or termination of the lease or reservation, but in no event shall there be more than a total of ten annual payments in lieu of taxes for each tax loss. If the lease is terminated for only a portion of the lands at any time, the ten annual payments shall be made for that portion only commencing the year after such termination, without limiting the requirement that ten annual payments shall be made on the remaining portion or portions of the land as the lease on each expires. For the purposes of this subsection, "local government" includes municipalities, the county school board, mosquito control districts, and any other local government entity which levies ad valorem taxes.

(c) If sufficient funds are unavailable in any year to make full payments to all qualifying counties and local governments, such counties and local governments shall receive a pro rata share of the moneys available.

(d) The payment amount shall be based on the average amount of actual taxes paid on the property for the 3 years preceding acquisition. Applications for payment in lieu of taxes shall be made no later than January 31 of the year following acquisition. No payment in lieu of taxes shall be made for properties which were exempt from ad valorem taxation for the year immediately preceding acquisition. If property that was subject to ad valorem taxation was acquired by a tax-exempt entity for ultimate conveyance to the state under this chapter, payment in lieu of taxes shall be made for such property based upon the average amount of taxes paid on the property for the 3 years prior to its being removed from the tax rolls. The water management districts shall certify to the Department of Revenue those properties that may be eligible under this provision. Once eligibility has been established, that governmental entity shall receive 10 consecutive annual payments for each tax loss, and no further eligibility determination shall be made during that period.

(e) Payment in lieu of taxes pursuant to this subsection shall be made annually to qualifying counties and local governments after certification by the Department of Revenue that the amounts applied for are reasonably appropriate, based on the amount of actual taxes paid on the eligible property, and after the water management districts have provided supporting documents to the Comptroller and have requested that payment be made in accordance with the requirements of this section.

(f) If a water management district conveys to a county or local government title to any land owned by the district, any payments in lieu of taxes on the land made to the county or local government shall be discontinued as of the date of the conveyance.

(g) The districts may make retroactive payments to counties and local governments that did not receive payments in lieu of taxes for lands purchased under s. 259.101 and this section during fiscal year 1999-2000 if the counties and local governments would have received those payments under ss. 259.032(12) and <sup>1</sup>373.59(14).

<sup>2</sup>(11) Notwithstanding any provision of this section to the contrary, and for the 2000-2001 fiscal year only, the governing board of a water management district may request, and the Secretary of Environmental Protection shall release upon such request, moneys allocated to the districts pursuant to subsection (8) for the purpose of carrying out the purposes of s. 373.0361, <sup>3</sup>s. 375.0831, s. 373.139, or ss. 373.451-373.4595 and for legislatively authorized land acquisition and water restoration initiatives. No funds may be used pursuant to this subsection until necessary debt service obligations, requirements for payments in lieu of taxes, and land management obligations that may be required by this chapter are provided for. This subsection is repealed on July 1, 2001.

**History.**—ss. 3, 5, ch. 81-33; s. 36, ch. 83-218; s. 5, ch. 85-347; s. 4, ch. 86-22; s. 8, ch. 86-294; s. 13, ch. 90-217; s. 11, ch. 91-288; s. 13, ch. 92-288; s. 277, ch. 94-356; s. 1, ch. 95-311; s. 6, ch. 95-349; s. 21, ch. 95-430; s. 17, ch. 96-389; s. 25, ch. 97-94; s. 17, ch. 97-160; s. 14, ch. 97-164; ss. 27, 38, ch. 98-46; s. 172, ch. 99-13; ss. 26, 53, ch. 99-228; s. 38, ch. 99-247; s. 18, ch. 2000-170; s. 58, ch. 2000-171.

<sup>1</sup>**Note.**—Section 373.59(14) does not exist.

<sup>2</sup>**Note.**—Section 58, ch. 2000-171, amended subsection (11) “[i]n order to implement Specific Appropriations 1490E and 1591G of the 2000-2001 General Appropriations Act.”

<sup>3</sup>**Note.**—Section 375.0831 does not exist.

**<sup>1</sup>373.5905 Reinstitution of payments in lieu of taxes; duration.**—If the Department of Environmental Protection or a water management district has made a payment in lieu of taxes to a governmental entity and subsequently suspended such payment, the department or water management district shall reinstitute appropriate payments and continue the payments in consecutive years until the governmental entity has received a total of 10 payments for each tax loss.

**History.**—s. 52, ch. 99-247; s. 6, ch. 99-353.

<sup>1</sup>**Note.**—Also published at s. 259.0322.

**373.591 Management review teams.**—

(1) To determine whether conservation, preservation, and recreation lands titled in the names of the water management districts are being managed for the purposes for which they were acquired and in accordance with land management objectives, the water management districts shall establish land management review teams to conduct periodic management reviews. The land management review teams shall be composed of the following members:

- (a) One individual from the county or local community in which the parcel is located.
- (b) One employee of the water management district.
- (c) A private land manager mutually agreeable to the governmental agency representatives.
- (d) A member of the local soil and water conservation district board of supervisors.
- (e) One individual from the Fish and Wildlife Conservation Commission.

- (f) One individual from the Department of Environmental Protection.
- (g) One individual representing a conservation organization.
- (h) One individual from the Department of Agriculture and Consumer Services' Division of Forestry.
- (2) The management review team shall use the criteria provided in s. 259.036 in conducting its reviews.
- (3) In determining which lands shall be reviewed in any given year, the water management district may prioritize the properties to be reviewed.
- (4) If the land management review team finds that the lands reviewed are not being managed in accordance with their management plan, prepared in a manner and form prescribed by the governing board of the district and otherwise meeting the timber resource management requirements of s. 253.036, the land managing agency shall provide a written explanation to the management review team.
- (5) Each water management district shall, by October 1 of each year, provide its governing board with a report indicating which properties have been reviewed and the review team's findings.

**History.**—s. 15, ch. 97-164; s. 3, ch. 98-332; s. 173, ch. 99-13; s. 192, ch. 99-245.

## PART VI MISCELLANEOUS PROVISIONS

373.603	Power to enforce.
373.604	Awards to employees for meritorious service.
373.605	Group insurance for water management districts.
373.607	Minority business enterprise procurement goals; implementation of recommendations.
373.609	Enforcement; city and county officers to assist.
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373.614	Unlawful damage to district property or works; penalty.
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373.6161	Chapter to be liberally construed.
373.617	Judicial review relating to permits and licenses.
373.619	Recognition of water and sewer-saving devices.
373.62	Water conservation; automatic sprinkler systems.
373.63	Preference to State University System in award of projects or studies.
373.71	Apalachicola-Chattahoochee-Flint River Basin Compact.

**373.603 Power to enforce.**—The Department of Environmental Protection or the governing board of any water management district and any officer or agent thereof may enforce any provision of this law or any rule or regulation adopted and promulgated or order issued thereunder to the same extent as any peace officer is authorized to enforce the law. Any officer or agent of any such board may appear before any magistrate empowered to issue warrants in criminal cases and make an affidavit and apply for the issuance of a warrant in the manner provided by law; and said magistrate, if such affidavit shall allege the commission of an offense, shall issue a warrant directed to any sheriff or deputy for the arrest of any offender. The provisions of this section shall apply to the Florida Water Resources Act of 1972 in its entirety.

**History.**—s. 14, ch. 57-380; s. 14, ch. 63-336; ss. 25, 35, ch. 69-106; s. 2, part VI, ch. 72-299; s. 25, ch. 73-190; s. 117, ch. 77-104; s. 51, ch. 79-65; s. 278, ch. 94-356.

**Note.**—Former s. 373.201.

**373.604 Awards to employees for meritorious service.**—The governing board of any water management district may adopt and implement a program of meritorious service awards for district employees who make proposals which are implemented and result in reducing district expenditures or improving district operations, who make exceptional contributions to the efficiency of the district, or who make other improvements in the operations of the district. No award granted under the provisions of this section shall exceed \$2,000 or 10 percent of the first year's savings, whichever is less, unless a larger award is made by the Legislature. Awards shall be paid by the district from any available funds.

**History.**—s. 1, ch. 74-287.

**373.605 Group insurance for water management districts.**—

(1) The governing board of any water management district is hereby authorized and empowered to provide group insurance for its employees in the same manner and with the same provisions and limitations authorized for other public employees by ss. 112.08, 112.09, 112.10, 112.11, and 112.14.

(2) Any and all insurance agreements in effect as of October 1, 1974, which conform to the provisions of this section are hereby ratified.

**History.**—ss. 1, 2, ch. 74-218; s. 21, ch. 97-100.

**373.607 Minority business enterprise procurement goals; implementation of recommendations.**—Each water management district, as created in this chapter, may implement the recommendations from any study conducted pursuant to chapter 91-162, Laws of Florida, to achieve minority business enterprise procurement goals.

**History.**—s. 1, ch. 96-412.

**373.609 Enforcement; city and county officers to assist.**—It shall be the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county official, upon request, to assist the department, the governing board of any water management district, or any local board, or any of their agents in the enforcement of the provisions of this law and the rules and regulations adopted thereunder.

**History.**—s. 15, ch. 57-380; s. 15, ch. 63-336; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 117, ch. 77-104; s. 232, ch. 81-259.

**Note.**—Former s. 373.211.

**373.613 Penalties.**—Any person who violates any provision of this law or any rule, regulation or order adopted or issued pursuant thereto is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 18, ch. 57-380; s. 325, ch. 71-136; s. 25, ch. 73-190.

**Note.**—Former s. 373.241.

**373.614 Unlawful damage to district property or works; penalty.**—The governing board of the district shall have the power, and is authorized, to offer and pay rewards of up to \$1,000 to any person furnishing information leading to the arrest and conviction of any person who has committed an unlawful act or acts upon the rights-of-way, land, or land interests of the district or has destroyed or damaged district properties or works.

**History.**—s. 25, ch. 73-190; s. 1, ch. 73-212.

**Note.**—Former s. 378.163.

**373.616 Liberal construction.**—The provisions of this chapter shall be liberally construed in order to effectively carry out its purposes.

**History.**—s. 4, part VI, ch. 72-299.

**373.6161 Chapter to be liberally construed.**—This chapter shall be construed liberally for effectuating the purposes described herein, and the procedure herein prescribed shall be followed and applied with such latitude consistent with the intent thereof as shall best meet the requirements or necessities therefor.

**History.**—s. 46, ch. 25209; s. 6, ch. 25213, 1949; s. 25, ch. 73-190.

**Note.**—Former s. 378.47.

**373.617 Judicial review relating to permits and licenses.**—

(1) As used in this section, unless the context otherwise requires:

(a) “Agency” means any official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of state government.

(b) “Permit” means any permit or license required by this chapter.

(2) Any person substantially affected by a final action of any agency with respect to a permit may seek review within 90 days of the rendering of such decision and request monetary damages and other relief in the circuit court in the judicial circuit in which the affected property is located; however, circuit court review shall be confined solely to determining whether final agency action is an unreasonable exercise of the state’s police power constituting a taking

without just compensation. Review of final agency action for the purpose of determining whether the action is in accordance with existing statutes or rules and based on competent substantial evidence shall proceed in accordance with chapter 120.

(3) If the court determines the decision reviewed is an unreasonable exercise of the state's police power constituting a taking without just compensation, the court shall remand the matter to the agency which shall, within a reasonable time:

(a) Agree to issue the permit;

(b) Agree to pay appropriate monetary damages; however, in determining the amount of compensation to be paid, consideration shall be given by the court to any enhancement to the value of the land attributable to governmental action; or

(c) Agree to modify its decision to avoid an unreasonable exercise of police power.

(4) The agency shall submit a statement of its agreed-upon action to the court in the form of a proposed order. If the action is a reasonable exercise of police power, the court shall enter its final order approving the proposed order. If the agency fails to submit a proposed order within a reasonable time not to exceed 90 days which specifies an action that is a reasonable exercise of police power, the court may order the agency to perform any of the alternatives specified in subsection (3).

(5) The court shall award reasonable attorney's fees and court costs to the agency or substantially affected person, whichever prevails.

(6) The provisions of this section are cumulative and shall not be deemed to abrogate any other remedies provided by law.

**History.**—ss. 1, 2, 3, 4, 5, 6, ch. 78-85.

**373.619 Recognition of water and sewer-saving devices.**—The Legislature urges all public-owned or investor-owned water and sewerage systems to reduce connection fees and regular service charges for customers who utilize water or sewer-saving devices, including, but not limited to, individual graywater disposal systems.

**History.**—s. 2, ch. 82-10.

**373.62 Water conservation; automatic sprinkler systems.**—Any person who purchases and installs an automatic lawn sprinkler system after May 1, 1991, shall install a rain sensor device or switch which will override the irrigation cycle of the sprinkler system when adequate rainfall has occurred.

**History.**—s. 7, ch. 91-41; s. 7, ch. 91-68.

**373.63 Preference to State University System in award of projects or studies.**—Notwithstanding any provision of law to the contrary, the governing boards of the water management districts, in considering the awarding of projects or studies relating to research, restoration, or similar projects or studies, shall give preferential consideration to universities in the State University System.

**History.**—s. 14, ch. 92-288.

**373.71 Apalachicola-Chattahoochee-Flint River Basin Compact.**—

The states of Alabama, Florida and Georgia and the United States of America hereby agree to the following compact which shall become effective upon enactment of concurrent legislation by each respective state legislature and the Congress of the United States.

#### SHORT TITLE

This Act shall be known and may be cited as the "Apalachicola-Chattahoochee-Flint River Basin Compact" and shall be referred to hereafter in this document as the "ACF Compact" or "Compact."

#### ARTICLE I COMPACT PURPOSES

This Compact among the states of Alabama, Florida and Georgia and the United States of America has been entered into for the purposes of promoting interstate comity, removing causes of present and future controversies,

equitably apportioning the surface waters of the ACF, engaging in water planning, and developing and sharing common data bases.

## ARTICLE II SCOPE OF THE COMPACT

This Compact shall extend to all of the waters arising within the drainage basin of the ACF in the states of Alabama, Florida and Georgia.

## ARTICLE III PARTIES

The parties to this Compact are the states of Alabama, Florida and Georgia and the United States of America.

## ARTICLE IV DEFINITIONS

For the purposes of this Compact, the following words, phrases and terms shall have the following meanings:

(a) "ACF Basin" or "ACF" means the area of natural drainage into the Apalachicola River and its tributaries, the Chattahoochee River and its tributaries, and the Flint River and its tributaries. Any reference to the rivers within this Compact will be designated using the letters "ACF" and when so referenced will mean each of these three rivers and each of the tributaries to each such river.

(b) "Allocation formula" means the methodology, in whatever form, by which the ACF Basin Commission determines an equitable apportionment of surface waters within the ACF Basin among the three states. Such formula may be represented by a table, chart, mathematical calculation or any other expression of the Commission's apportionment of waters pursuant to this compact.

(c) "Commission" or "ACF Basin Commission" means the Apalachicola-Chattahoochee-Flint River Basin Commission created and established pursuant to this Compact.

(d) "Ground waters" means waters within a saturated zone or stratum beneath the surface of land, whether or not flowing through known and definite channels.

(e) "Person" means any individual, firm, association, organization, partnership, business, trust, corporation, public corporation, company, the United States of America, any state, and all political subdivisions, regions, districts, municipalities, and public agencies thereof.

(f) "Surface waters" means waters upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be considered "surface waters" when it exits from the spring onto the surface of the earth.

(g) "United States" means the executive branch of the government of the United States of America, and any department, agency, bureau or division thereof.

(h) "Water Resource Facility" means any facility or project constructed for the impoundment, diversion, retention, control or regulation of waters within the ACF Basin for any purpose.

(i) "Water resources," or "waters" means all surface waters and ground waters contained or otherwise originating within the ACF Basin.

## ARTICLE V CONDITIONS PRECEDENT TO LEGAL VIABILITY OF THE COMPACT

This Compact shall not be binding on any party until it has been enacted into law by the legislatures of the states of Alabama, Florida and Georgia and by the Congress of the United States of America.

## ARTICLE VI ACF BASIN COMMISSION CREATED

(a) There is hereby created an interstate administrative agency to be known as the "ACF Basin Commission." The Commission shall be comprised of one member representing the state of Alabama, one member representing the state of Florida, one member representing the state of Georgia, and one non-voting member representing the United

States of America. The state members shall be known as "State Commissioners" and the federal member shall be known as the "Federal Commissioner." The ACF Basin Commission is a body politic and corporate, with succession for the duration of this Compact.

(b) The Governor of each of the states shall serve as the State Commissioner for his or her state. Each State Commissioner shall appoint one or more alternate members and one of such alternates as designated by the State Commissioner shall serve in the State Commissioner's place and carry out the functions of the State Commissioner, including voting on Commission matters, in the event the State Commissioner is unable to attend a meeting of the Commission. The alternate members from each state shall be knowledgeable in the field of water resources management. Unless otherwise provided by law of the state for which an alternate State Commissioner is appointed, each alternate State Commissioner shall serve at the pleasure of the State Commissioner. In the event of a vacancy in the office of an alternate, it shall be filled in the same manner as an original appointment.

(c) The President of the United States of America shall appoint the Federal Commissioner who shall serve as the representative of all federal agencies with an interest in the ACF. The President shall also appoint an alternate Federal Commissioner to attend and participate in the meetings of the Commission in the event the Federal Commissioner is unable to attend meetings. When at meetings, the alternate Federal Commissioner shall possess all of the powers of the Federal Commissioner. The Federal Commissioner and alternate appointed by the President shall serve until they resign or their replacements are appointed.

(d) Each state shall have one vote on the ACF Basin Commission and the Commission shall make all decisions and exercise all powers by unanimous vote of the three State Commissioners. The Federal Commissioner shall not have a vote, but shall attend and participate in all meetings of the ACF Basin Commission to the same extent as the State Commissioners.

(e) The ACF Basin Commission shall meet at least once a year at a date set at its initial meeting. Such initial meeting shall take place within ninety days of the ratification of the Compact by the Congress of the United States and shall be called by the chair of the Commission. Special meetings of the Commission may be called at the discretion of the chair of the Commission and shall be called by the chair of the Commission upon written request of any member of the Commission. All members shall be notified of the time and place designated for any regular or special meeting at least five days prior to such meeting in one of the following ways: by written notice mailed to the last mailing address given to the Commission by each member, by facsimile, telegram or by telephone. The Chairmanship of the Commission shall rotate annually among the voting members of the Commission on an alphabetical basis, with the first chair to be the State Commissioner representing the State of Alabama.

(f) All meetings of the Commission shall be open to the public.

(g) The ACF Basin Commission, so long as the exercise of power is consistent with this Compact, shall have the following general powers:

(1) To adopt bylaws and procedures governing its conduct;

(2) To sue and be sued in any court of competent jurisdiction;

(3) To retain and discharge professional, technical, clerical and other staff and such consultants as are necessary to accomplish the purposes of this Compact;

(4) To receive funds from any lawful source and expend funds for any lawful purpose;

(5) To enter into agreements or contracts, where appropriate, in order to accomplish the purposes of this Compact;

(6) To create committees and delegate responsibilities;

(7) To plan, coordinate, monitor, and make recommendations for the water resources of the ACF Basin for the purposes of, but not limited to, minimizing adverse impacts of floods and droughts and improving water quality, water supply, and conservation as may be deemed necessary by the Commission;

(8) To participate with other governmental and non-governmental entities in carrying out the purposes of this Compact;

(9) To conduct studies, to generate information regarding the water resources of the ACF Basin, and to share this information among the Commission members and with others;

(10) To cooperate with appropriate state, federal, and local agencies or any other person in the development, ownership, sponsorship, and operation of water resource facilities in the ACF Basin; provided, however, that the Commission shall not own or operate a federally-owned water resource facility unless authorized by the United States Congress;

(11) To acquire, receive, hold and convey such personal and real property as may be necessary for the performance of its duties under the Compact; provided, however, that nothing in this Compact shall be construed as granting the ACF Basin Commission authority to issue bonds or to exercise any right of eminent domain or power of condemnation;

(12) To establish and modify an allocation formula for apportioning the surface waters of the ACF Basin among the states of Alabama, Florida and Georgia; and

(13) To perform all functions required of it by this Compact and to do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or the United States.

## ARTICLE VII EQUITABLE APPORTIONMENT

(a) It is the intent of the parties to this Compact to develop an allocation formula for equitably apportioning the surface waters of the ACF Basin among the states while protecting the water quality, ecology and biodiversity of the ACF, as provided in the Clean Water Act, 33 U.S.C. Sections 1251 et seq., the Endangered Species Act, 16 U.S.C. Sections 1532 et seq., the National Environmental Policy Act, 42 U.S.C. Sections 4321 et seq., the Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401 et seq., and other applicable federal laws. For this purpose, all members of the ACF Basin Commission, including the Federal Commissioner, shall have full rights to notice of and participation in all meetings of the ACF Basin Commission and technical committees in which the basis and terms and conditions of the allocation formula are to be discussed or negotiated. When an allocation formula is unanimously approved by the State Commissioners, there shall be an agreement among the states regarding an allocation formula. The allocation formula thus agreed upon shall become effective and binding upon the parties to this Compact upon receipt by the Commission of a letter of concurrence with said formula from the Federal Commissioner. If, however, the Federal Commissioner fails to submit a letter of concurrence to the Commission within two hundred ten (210) days after the allocation formula is agreed upon by the State Commissioners, the Federal Commissioner shall within forty-five (45) days thereafter submit to the ACF Basin Commission a letter of nonconcurrence with the allocation formula setting forth therein specifically and in detail the reasons for nonconcurrence; provided, however, the reasons for nonconcurrence as contained in the letter of nonconcurrence shall be based solely upon federal law. The allocation formula shall also become effective and binding upon the parties to this Compact if the Federal Commissioner fails to submit to the ACF Basin Commission a letter of nonconcurrence in accordance with this Article. Once adopted pursuant to this Article, the allocation formula may only be modified by unanimous decision of the State Commissioners and the concurrence by the Federal Commissioner in accordance with the procedures set forth in this Article.

(b) The parties to this Compact recognize that the United States operates certain projects within the ACF Basin that may influence the water resources within the ACF Basin. The parties to this Compact further acknowledge and recognize that various agencies of the United States have responsibilities for administering certain federal laws and exercising certain federal powers that may influence the water resources within the ACF Basin. It is the intent of the parties to this Compact, including the United States, to achieve compliance with the allocation formula adopted in accordance with this Article. Accordingly, once an allocation formula is adopted, each and every officer, agency, and instrumentality of the United States shall have an obligation and duty, to the maximum extent practicable, to exercise their powers, authority, and discretion in a manner consistent with the allocation formula so long as the exercise of such powers, authority, and discretion is not in conflict with federal law.

(c) Between the effective date of this Compact and the approval of the allocation formula under this Article, the signatories to this Compact agree that any person who is withdrawing, diverting, or consuming water resources of the ACF Basin as of the effective date of this Compact, may continue to withdraw, divert or consume such water resources in accordance with the laws of the state where such person resides or does business and in accordance with applicable federal laws. The parties to this Compact further agree that any such person may increase the amount of water resources withdrawn, diverted or consumed to satisfy reasonable increases in the demand of such person for water between the effective date of this Compact and the date on which an allocation formula is approved by the ACF Basin Commission as permitted by applicable law. Each of the state parties to this Compact further agree to provide written notice to each of the other parties to this Compact in the event any person increases the withdrawal, diversion or consumption of such water resources by more than 10 million gallons per day on an average annual daily basis, or in the event any person, who was not withdrawing, diverting or consuming any water resources from the ACF Basin as of the effective date of this Compact, seeks to withdraw, divert or consume more than one million gallons per day on an average annual daily basis from such resources. This Article shall not be construed as granting any permanent, vested or perpetual rights to the amounts of water used between January 3, 1992 and the date on which the Commission adopts an allocation formula.

(d) As the owner, operator, licensor, permitting authority or regulator of a water resource facility under its jurisdiction, each state shall be responsible for using its best efforts to achieve compliance with the allocation formula adopted pursuant to this Article. Each such state agrees to take such actions as may be necessary to achieve compliance with the allocation formula.

(e) This Compact shall not commit any state to agree to any data generated by any study or commit any state to any allocation formula not acceptable to such state.

ARTICLE VIII  
CONDITIONS RESULTING IN  
TERMINATION OF THE COMPACT

(a) This Compact shall be terminated and thereby be void and of no further force and effect if any of the following events occur:

(1) The legislatures of the states of Alabama, Florida and Georgia each agree by general laws enacted by each state within any three consecutive years that this Compact should be terminated.

(2) The United States Congress enacts a law expressly repealing this Compact.

(3) The States of Alabama, Florida and Georgia fail to agree on an equitable apportionment of the surface waters of the ACF as provided in Article VII(a) of this Compact by December 31, 1998, unless the voting members of the ACF Basin Commission unanimously agree to extend this deadline.

(4) The Federal Commissioner submits to the Commission a letter of nonconcurrence in the initial allocation formula in accordance with Article VII(a) of the Compact, unless the voting members of the ACF Basin Commission unanimously agree to allow a single 45 day period in which the non-voting Federal Commissioner and the voting State Commissioners may renegotiate an allocation formula and the Federal Commissioner withdraws the letter of nonconcurrence upon completion of this renegotiation.

(b) If the Compact is terminated in accordance with this Article it shall be of no further force and effect and shall not be the subject of any proceeding for the enforcement thereof in any federal or state court. Further, if so terminated, no party shall be deemed to have acquired a specific right to any quantity of water because it has become a signatory to this Compact.

ARTICLE IX  
COMPLETION OF STUDIES PENDING  
ADOPTION OF ALLOCATION FORMULA

The ACF Basin Commission, in conjunction with one or more interstate, federal, state or local agencies, is hereby authorized to participate in any study in process as of the effective date of this Compact, including, without limitation, all or any part of the Alabama-Coosa-Tallapoosa/Apalachicola-Chattahoochee-Flint River Basin Comprehensive Water Resource Study, as may be determined by the Commission in its sole discretion.

ARTICLE X  
RELATIONSHIP TO OTHER LAWS

(a) It is the intent of the party states and of the United States Congress by ratifying this Compact, that all state and federal officials enforcing, implementing or administering other state and federal laws affecting the ACF Basin shall, to the maximum extent practicable, enforce, implement or administer those laws in furtherance of the purposes of this Compact and the allocation formula adopted by the Commission insofar as such actions are not in conflict with applicable federal laws.

(b) Nothing contained in this Compact shall be deemed to restrict the executive powers of the President in the event of a national emergency.

(c) Nothing contained in this Compact shall impair or affect the constitutional authority of the United States or any of its powers, rights, functions or jurisdiction under other existing or future laws in and over the area or waters which are the subject of the Compact, including projects of the Commission, nor shall any act of the Commission have the effect of repealing, modifying or amending any federal law. All officers, agencies and instrumentalities of the United States shall exercise their powers and authority over water resources in the ACF Basin and water resource facilities, and to the maximum extent practicable, shall exercise their discretion in carrying out their responsibilities, powers, and authorities over water resources in the ACF Basin and water resource facilities in the ACF Basin in a manner consistent with and that effectuates the allocation formula developed pursuant to this Compact or any modification of the allocation formula so long as the actions are not in conflict with any applicable federal law. The United States Army Corps of Engineers, or its successors, and all other federal agencies and instrumentalities shall cooperate with the ACF Basin Commission in accomplishing the purposes of the Compact and fulfilling the obligations of each of the parties to the Compact regarding the allocation formula.

(d) Once adopted by the three states and ratified by the United States Congress, this Compact shall have the full force and effect of federal law, and shall supersede state and local laws operating contrary to the provisions herein or the purposes of this Compact; provided, however, nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective signatory states relating to water quality, and riparian rights as among persons exclusively within each state.

## ARTICLE XI PUBLIC PARTICIPATION

All meetings of the Commission shall be open to the public. The signatory parties recognize the importance and necessity of public participation in activities of the Commission, including the development and adoption of the initial allocation formula and any modification thereto. Prior to the adoption of the initial allocation formula, the Commission shall adopt procedures ensuring public participation in the development, review, and approval of the initial allocation formula and any subsequent modification thereto. At a minimum, public notice to interested parties and a comment period shall be provided. The Commission shall respond in writing to relevant comments.

## ARTICLE XII FUNDING AND EXPENSES OF THE COMMISSION

Commissioners shall serve without compensation from the ACF Basin Commission. All general operational funding required by the Commission and agreed to by the voting members shall obligate each state to pay an equal share of such agreed upon funding. Funds remitted to the Commission by a state in payment of such obligation shall not lapse; provided, however, that if any state fails to remit payment within 90 days after payment is due, such obligation shall terminate and any state which has made payment may have such payment returned. Costs of attendance and participation at meetings of the Commission by the Federal Commissioner shall be paid by the United States.

## ARTICLE XIII DISPUTE RESOLUTION

(a) In the event of a dispute between two or more voting members of this Compact involving a claim relating to compliance with the allocation formula adopted by the Commission under this Compact, the following procedures shall govern:

(1) Notice of claim shall be filed with the Commission by a voting member of this Compact and served upon each member of the Commission. The notice shall provide a written statement of the claim, including a brief narrative of the relevant matters supporting the claimant's position.

(2) Within twenty (20) days of the Commission's receipt of a written statement of a claim, the party or parties to the Compact against whom the complaint is made may prepare a brief narrative of the relevant matters and file it with the Commission and serve it upon each member of the Commission.

(3) Upon receipt of a claim and any response or responses thereto, the Commission shall convene as soon as reasonably practicable, but in no event later than twenty (20) days from receipt of any response to the claim, and shall determine if a resolution of the dispute is possible.

(4) A resolution of a dispute under this Article through unanimous vote of the State Commissioners shall be binding upon the state parties and any state party determined to be in violation of the allocation formula shall correct such violation without delay.

(5) If the Commission is unable to resolve the dispute within 10 days from the date of the meeting convened pursuant to subparagraph (a)(3) of this Article, the Commission shall select, by unanimous decision of the voting members of the Commission, an independent mediator to conduct a non-binding mediation of the dispute. The mediator shall not be a resident or domiciliary of any member state, shall not be an employee or agent of any member of the Commission, shall be a person knowledgeable in water resource management issues, and shall disclose any and all current or prior contractual or other relations to any member of the Commission. The expenses of the mediator shall be paid by the Commission. If the mediator becomes unwilling or unable to serve, the Commission by unanimous decision of the voting members of the Commission, shall appoint another independent mediator.

(6) If the Commission fails to appoint an independent mediator to conduct a non-binding mediation of the dispute within seventy-five (75) days of the filing of the original claim or within thirty (30) days of the date on which the Commission learns that a mediator is unwilling or unable to serve, the party submitting the claim shall have no

further obligation to bring the claim before the Commission and may proceed by pursuing any appropriate remedies, including any and all judicial remedies.

(7) If an independent mediator is selected, the mediator shall establish the time and location for the mediation session or sessions and may request that each party to the Compact submit, in writing, to the mediator a statement of its position regarding the issue or issues in dispute. Such statements shall not be exchanged by the parties except upon the unanimous agreement of the parties to the mediation.

(8) The mediator shall not divulge confidential information disclosed to the mediator by the parties or by witnesses, if any, in the course of the mediation. All records, reports, or other documents received by a mediator while serving as a mediator shall be considered confidential. The mediator shall not be compelled in any adversary proceeding or judicial forum to divulge the contents of such documents or the fact that such documents exist or to testify in regard to the mediation.

(9) Each party to the mediation shall maintain the confidentiality of the information received during the mediation and shall not rely on or introduce in any judicial proceeding as evidence:

- a. Views expressed or suggestions made by another party regarding a settlement of the dispute;
- b. Proposals made or views expressed by the mediator; or
- c. The fact that another party to the hearing had or had not indicated a willingness to accept a proposal for settlement of the dispute.

(10) The mediator may terminate the non-binding mediation session or sessions whenever, in the judgment of the mediator, further efforts to resolve the dispute would not lead to a resolution of the dispute between or among the parties. Any party to the dispute may terminate the mediation process at any time by giving written notification to the mediator and the Commission. If terminated prior to reaching a resolution, the party submitting the original claim to the Commission shall have no further obligation to bring its claim before the Commission and may proceed by pursuing any appropriate remedies, including any and all judicial remedies.

(11) The mediator shall have no authority to require the parties to enter into a settlement of any dispute regarding the Compact. The mediator may simply attempt to assist the parties in reaching a mutually acceptable resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the mediation and to make oral or written recommendations for a settlement of the dispute.

(12) At any time during the mediation process, the Commission is encouraged to take whatever steps it deems necessary to assist the mediator or the parties to resolve the dispute.

(13) In the event of a proceeding seeking enforcement of the allocation formula, this Compact creates a cause of action solely for equitable relief. No action for money damages may be maintained. The party or parties alleging a violation of the Compact shall have the burden of proof.

(b) In the event of a dispute between any voting member and the United States relating to a state's noncompliance with the allocation formula as a result of actions or a refusal to act by officers, agencies or instrumentalities of the United States, the provisions set forth in paragraph (a) of this Article (other than the provisions of subparagraph (a)(4)) shall apply.

(c) The United States may initiate dispute resolution under paragraph (a) in the same manner as other parties to this Compact.

(d) Any signatory party who is affected by any action of the Commission, other than the adoption or enforcement of or compliance with the allocation formula, may file a complaint before the ACF Basin Commission seeking to enforce any provision of this Compact.

(1) The Commission shall refer the dispute to an independent hearing officer or mediator, to conduct a hearing or mediation of the dispute. If the parties are unable to settle their dispute through mediation, a hearing shall be held by the Commission or its designated hearing officer. Following a hearing conducted by a hearing officer, the hearing officer shall submit a report to the Commission setting forth findings of fact and conclusions of law, and making recommendations to the Commission for the resolution of the dispute.

(2) The Commission may adopt or modify the recommendations of the hearing officer within 60 days of submittal of the report. If the Commission is unable to reach unanimous agreement on the resolution of the dispute within 60 days of submittal of the report with the concurrence of the Federal Commissioner in disputes involving or affecting federal interests, the affected party may file an action in any court of competent jurisdiction to enforce the provisions of this Compact. The hearing officer's report shall be of no force and effect and shall not be admissible as evidence in any further proceedings.

(e) All actions under this Article shall be subject to the following provisions:

(1) The Commission shall adopt guidelines and procedures for the appointment of hearing officers or independent mediators to conduct all hearings and mediations required under this Article. The hearing officer or mediator appointed under this Article shall be compensated by the Commission.

(2) All hearings or mediations conducted under this article may be conducted utilizing the Federal Administrative Procedures Act, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence. The Commission may also choose to adopt some or all of its own procedural and evidentiary rules for the conduct of hearings or mediations under this Compact.

(3) Any action brought under this Article shall be limited to equitable relief only. This Compact shall not give rise to a cause of action for money damages.

(4) Any signatory party bringing an action before the Commission under this Article shall have the burdens of proof and persuasion.

#### ARTICLE XIV ENFORCEMENT

The Commission may, upon unanimous decision, bring an action against any person to enforce any provision of this Compact, other than the adoption or enforcement of or compliance with the allocation formula, in any court of competent jurisdiction.

#### ARTICLE XV IMPACTS ON OTHER STREAM SYSTEMS

This Compact shall not be construed as establishing any general principle or precedent applicable to any other interstate streams.

#### ARTICLE XVI IMPACT OF COMPACT ON USE OF WATER WITHIN THE BOUNDARIES OF THE COMPACTING STATES

The provisions of this Compact shall not interfere with the right or power of any state to regulate the use and control of water within the boundaries of the state, providing such state action is not inconsistent with the allocation formula.

#### ARTICLE XVII AGREEMENT REGARDING WATER QUALITY

(a) The States of Alabama, Florida, and Georgia mutually agree to the principle of individual State efforts to control man-made water pollution from sources located and operating within each State and to the continuing support of each State in active water pollution control programs.

(b) The States of Alabama, Florida, and Georgia agree to cooperate, through their appropriate State agencies, in the investigation, abatement, and control of sources of alleged interstate pollution within the ACF River Basin whenever such sources are called to their attention by the Commission.

(c) The States of Alabama, Florida, and Georgia agree to cooperate in maintaining the quality of the waters of the ACF River Basin.

(d) The States of Alabama, Florida, and Georgia agree that no State may require another state to provide water for the purpose of water quality control as a substitute for or in lieu of adequate waste treatment.

#### ARTICLE XVIII EFFECT OF OVER OR UNDER DELIVERIES UNDER THE COMPACT

No state shall acquire any right or expectation to the use of water because of any other state's failure to use the full amount of water allocated to it under this Compact.

#### ARTICLE XIX SEVERABILITY

If any portion of this Compact is held invalid for any reason, the remaining portions, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force, effect, and application.

ARTICLE XX  
NOTICE AND FORMS OF SIGNATURE

Notice of ratification of this Compact by the legislature of each state shall promptly be given by the Governor of the ratifying state to the Governors of the other participating states. When all three state legislatures have ratified the Compact, notice of their mutual ratification shall be forwarded to the Congressional delegation of the signatory states for submission to the Congress of the United States for ratification. When the Compact is ratified by the Congress of the United States, the President, upon signing the federal ratification legislation, shall promptly notify the Governors of the participating states and appoint the Federal Commissioner. The Compact shall be signed by all four Commissioners as their first order of business at their first meeting and shall be filed of record in the party states.

**History.**—s. 1, ch. 97-25; s. 14, ch. 99-7.