STATUTES IN APPROVED FLORIDA COASTAL MANAGEMENT PROGRAM (1983 FLORIDA STATUTES)

COASTAL ZONE
INFORMATION CENTER

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION
OFFICE OF COASTAL MANAGEMENT
TWIN TOWERS OFFICE BUILDING
2600 BLAIR STONE ROAD
TALLAHASSEE, FL 32301

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CHAPTER 23

MISCELLANEOUS EXECUTIVE FUNCTIONS

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PART I

STATE COMPREHENSIVE PLANNING

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23.011 Governor; chief planning officer of the state.—The Governor shall be the chief planning officer of the state.

History.—s. 1, ch. 67-157; s. 7, ch. 73-377; s. 4, ch. 72-295.

23.0111 Short title.—This part shall be known and may be cited as the "Florida State Comprehensive Planning Act of 1972."

History.—s. 1, ch. 72-295.

23.0112 Definitions.—As used in this part:

(1) "Regional planning agency" means the agency designated by the Executive Office of the Governor to exercise responsibilities under this part in a particular region of the state.

(2) "State comprehensive plan" means the goals, objectives, and policies contained within the state comprehensive plan prepared by the [1]division.

History.—s. 3, ch. 72-295; s. 1, ch. 78-287; s. 68, ch. 79-190.

[1]Note.—See s. 2, ch. 79-190, which abolished the Division of State Planning of the Department of Administration and transferred all powers, duties, functions, records, property, and funds of the Bureau of Comprehensive Planning and, except for the State-Local Relations Section, the Bureau of Intergovernmental Relations of the Division, and the related graphics and administrative services functions of the Office of the Director of State Planning, under this section to the Executive Office of the Governor.

23.0113 Designation of departmental planning officer.—

(1) On or before September 29, 1972, the head of each executive department and the Public Service Commission, the Game and Fresh Water Fish Commission, the Parole and Probation Commission, and the Department of Military Affairs shall select from within such agency a person to be designated as the planning officer for such agency. The planning officer shall be responsible for coordinating with the Executive Office of the Governor and with the planning officers of other agencies all activities and responsibilities of such agency relating to planning.

(2) The head of each agency shall notify the Executive Office of the Governor in writing of the person initially designated as the planning officer for such agency and of any changes in persons so designated thereafter.

History.—s. 5, ch. 72-295; s. 67, ch. 79-190; s. 1, ch. 81-169.

23.0114 State comprehensive plan; preparation; revision.—

(1) The state comprehensive plan shall be advisory only, except as specifically authorized by law; shall be based on the best available data; and shall provide long-range guidance for the orderly social, economic, and physical growth of the state by setting forth goals, objectives, and policies. To the extent feasible, the Executive Office of the Governor shall utilize the services and plans of local governments and regional planning agencies when preparing and revising the provisions of the state comprehensive plan.

(2) In preparing and revising the state comprehensive plan, the Executive Office of the Governor shall, to the extent feasible, consider studies, reports, and plans of each department, agency, and institution of state and local government, each regional planning agency, and the Federal Government and shall take into account the existing and prospective resources, capabilities, and needs of state and local levels of government.

(3) The revision of the state comprehensive plan shall be a continuing process. Each section of the plan shall be reviewed and analyzed yearly by personnel of the Executive Office of the Governor in conjunction with the planning officers of other state agencies significantly affected by the provisions of the particular section under review.

(4)(a) The Legislature finds that the coastal zone is rich in variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources of immediate and potential value to the present and future well-being of the residents of this state which will be irretrievably lost or damaged if not properly managed. Participation by Florida citizens will be an important factor in developing a plan for management of the coastal zone, and management of the state's coastal zone will require a highly coordinated effort among state, regional, and local officials and agencies.

(b) The state coastal zone management plan shall be a part of the state comprehensive plan. It shall contain a boundary, policies, goals, and programs necessary to comply with the requirements of the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. ss. 1451-1464), specifically delineating the role of state, regional, and local agencies in implementing the plan, and it shall provide that the appeal of any regulatory decision, other than those provided for by existing law, shall be to the Governor and Cabinet.

History.—s. 7, ch. 72-295; ss. 3, 5, ch. 77-306; s. 2, ch. 78-287; s. 68, ch. 79-190.

23.0115 Specification of data and projections.—

(1) For the purpose of establishing consistency and uniformity in the planning process, the Executive Office of the Governor may by rule adopted under chapter 120 specify particular data, geographic boundaries, comprehensive planning districts, projections, or forecasts that agencies shall use in preparing studies, reports, and plans.

(2) If an agency chooses to use data, projections, or forecasts contrary to those specified by the Executive Office of the Governor, it shall include in or append to the plan or report a statement of any difference in conclusions or recommendations that would result if the office's data, projections, or forecasts had been used, and of its reasons for not following the rule.

History.—s. 9, ch. 72-295; s. 69, ch. 79-190.

23.012 General powers and duties.—The Executive Office of the Governor shall:

(1) Prepare and revise from time to time as necessary the state comprehensive plan.

(2) Assist in the preparation of the annual executive budget and legislative program of the Governor.

(3) Coordinate planning among federal, state, and local levels of government and between the State of Florida and other states.

(4) Coordinate all state agency planning and programming activities, including, but not limited to, the following areas: economy, employment, education, social welfare, agriculture, industrial development, commerce and trade, transportation and safety, oceanic and water resources, pollution and environmental health, fish and wildlife, housing and urban development, crime and corrections, parks, recreation and cultural development, physical and mental health, and public utilities and services.

(5) Prepare or cause to be prepared any studies and reports or interim and functional plans necessary or useful in the preparation and revision of the state comprehensive plan.

(6) Serve as the state planning and development clearinghouse and designate regional and areawide clearinghouses.

(7) Make basic demographic, geographic, and economic data and projections available to all public and private agencies concerned with development within the state.

History.—s. [illegible] 67-157; ss. 2, 3, ch. 67-[illegible]; ss. [illegible] ch. 69-106; s. 6, ch. 72-295; s. [illegible] 79-190.

23.0125 Data development by Departments of Environmental Regulation and Natural Resources.—Except for the coordination of governmental planning and programming activities, as provided in s. 23.012, the powers, duties, and functions prescribed in this part which relate to the development of the data for the environmental quality portions of the State Comprehensive Plan are vested in the Department of Environmental Regulation for those environmental programs which fall under its jurisdiction. Those powers, duties, and functions relating to the development of data for the natural resources portions of the State Comprehensive Plan are vested in the Department of Natural Resources for those natural resource programs which fall under its jurisdiction.

History.—s. [illegible] 114.

23.013 State comprehensive plan; adoption; implementation.—

(1) The proposed state comprehensive plan or parts or revisions thereof shall be transmitted to the Governor for his consideration and action. The plan or parts or revisions thereof, when approved by the Governor, shall be transmitted to the Secretary of the Senate and the Clerk of the House of Representatives no later than 90 days prior to the beginning of the next regular legislative session. Copies shall also be transmitted to each state department, regional planning agency, county, municipality, and to any other governmental agency requesting a copy of the plan.

(2) Except as specifically authorized by law, no part of the state comprehensive plan, or the policies set forth therein, or any revision thereto shall be implemented or enforced by any executive agency. The chief planning officer may, from time to time, in bill form, present to the Legislature specific proposals to implement goals, objectives, and policies of the state comprehensive plan. Nothing contained in the plan or parts or revisions thereof shall have the force or effect of law or authorize the implementation of any

programs not otherwise authorized pursuant to law. It is the further intent of the Legislature that enactment of this legislation shall not amend existing statutes, other than as provided herein, or provide additional regulatory authority.

History.—s. 3, ch. 67-157; ss. 31, 35, ch. 69-106; s. 5, ch. 72-296; s. 1, ch. 77-306; s. 3, ch. 78-287.

23.014 Annual development program preparation, procedure, content.—

(1) The annual development program shall cover at a minimum the forthcoming 6 years and may consist of the following general sections and present the following information:

(a) A section analyzing the current posture of state development in terms of long-range needs and opportunities of development together with a review of present factors and activities affecting the development of the state. This section will highlight past accomplishments and the current status of programs and activities, and will review such factors as the overall economic posture of the state, the major problems confronting or anticipated to confront the state, the activities of the private sector, local governments and federal activities as well as state operations designed to meet the responsibilities of overall state development and activities.

(b) A section on specific policies to be undertaken, which will describe the content and emphasis of policies for at least each of the following general functional areas of development: Economic development, social development, natural resource development, transportation, regional and local development, other areas of development as appropriate.

(c) A section detailing the programs and the quantified annual accomplishments to be achieved by each program over the forthcoming 6 years. Analysis of the relationship of these programs to accomplishing policies enunciated in the previous section will be described in detail. New programs, elimination or modification of existing programs and the anticipated performance or accomplishment of current, new or modified programs will be described in detail in this section.

(d) A section dealing with the methods and requirements for effectuating and implementing the proposed annual development program. Resources required, in terms of funds, manpower, capital facilities and other resources for each year of the annual development program as well as any administrative changes or new legislation required will be described in this section.

(2) Upon request of the Executive Office of the Governor, each state agency shall annually file with the office its plan for each program under its jurisdiction to be undertaken or executed for the next 6 years. The plan shall include as full an explanation of the need and justification for each program, its relationship to other similar programs being carried out by state, local, federal, or private agencies, and the annual anticipated accomplishment of each program over the prior 6 years as is feasible. The judiciary and the Legislature are specifically excluded from this requirement. The Executive Office of the Governor shall submit to the Governor recommendations for the annual development programs based on the information submitted by each state agency and its analysis of developmental needs and requirements.

History.—s. 4, ch. 67-157; ss. 31, 35, ch. 69-106; s. 6, ch. 73-333; s. 71, ch. 79-190.

23.015 Annual economic report.—The Governor as chief planning and budget officer shall annually render unto the people and to the Legislature of this state an economic report appraising the economic situation of the state, reviewing the extent to which economic growth and development have provided employment and income, and reviewing such other economic factors and indicators as are appropriate. This report shall contain timely and authoritative information concerning economic growth and development in the state both current and prospective, an analysis and interpretation of such information in the light of existing state economic policies, and an appraisal of the various programs and activities of the state in effectuating these policies. Such report shall be related to and developed in close conjunction with the preparation of the annual development program.

History.—s. 5, ch. 67-157; ss. 31, 35, ch. 69-106; s. 72, ch. 79-190; s. 15, ch. 81-259.

23.016 Special reports.—

(1) The Executive Office of the Governor shall also submit special reports upon the request of the Governor, the President of the Senate, or the Speaker of the House on those aspects of state planning and budgeting which may be deemed of current interest. Special reports on major research and planning projects, as distinguished from compilations of current data, shall be made available as soon as practicable after completion.

(2) The Executive Office of the Governor may make copies of special reports available for general distribution or sale. The price of special reports shall be determined by the nature of the special report and the cost involved in compiling and publishing those special reports made available.

History.—s. 6, ch. 67-157; ss. 31, 35, ch. 69-106; s. 73, ch. 79-190.

23.0161 Annual progress report on state and regional planning.—

(1) The Executive Office of the Governor shall prepare annually a report on the progress made by the office, other state agencies, and regional planning agencies in achieving the purposes of this part. Such report shall describe the progress made in developing the state comprehensive plan, functional plans, and planning studies and reports during the preceding fiscal year.

(2) The annual progress report on state and regional planning shall be transmitted by the Governor to each member of the Legislature not later than December 31 of each year.

History.—s. 10, ch. 72-295; s. 74, ch. 79-190.

23.017 Authorization to contract.—Whenever the preparation and revision of the state comprehensive plan becomes too specialized or professionally demanding or requires research facilities not available to the Executive Office of the Governor, the office may use federal, state, local, or private funds for the purpose of contracting with public agencies or private firms or consultants for the utilization of the planning or research capabilities and facilities of such agencies, firms, or consultants to assist in meeting the planning needs of the state.

History.—s. 7, ch. 67-157; ss. 31, 35, ch. 69-106; s. 11, ch. 72-295; s. 75, ch. 79-190.

23.019 Population census determination.—

(1) The Executive Office of the Governor, either through its own resources or by contract, shall produce population estimates of local governmental units as of April 1 of each year, utilizing accepted statistical practices. The population of local governments, as determined by the Executive Office of the Governor, shall apply to any revenue-sharing formula with local governments under the provisions of ss. 218.20-218.26, part II of chapter 218. For municipal annexations or consolidations occurring during the period April 1 through February 28, the Executive Office of the Governor shall determine the population count of the annexed areas as of April 1 and include such in its certification to the Department of Revenue for the annual revenue-sharing calculation.

(2)(a) Population shall be computed as the number of residents, employing the same general guidelines used by the United States Bureau of the Census.

(b) For the purpose of revenue-sharing distribution formulas and distribution proportions for the local government half-cent sales tax, inmates and patients residing in institutions operated by the Federal Government, the Department of Corrections, or the Department of Health and Rehabilitative Services shall not be considered to be residents of the governmental unit in which the institutions are located.

(c) Nothing herein shall be construed to prohibit the separate determination of any categories of persons, whether resident or nonresident.

(3) In cases of annexation or consolidation, local governments shall be required to submit to the Executive Office of the Governor, within 30 days following annexation or consolidation, a statement as to the population census effect of the action.

(4) Estimates of inmates and patients pursuant to paragraph (2)(b) shall be separately stated in population reports issued pursuant to this section.

History.—[illegible]

23.0191 Ten-year site plans.—

(1) Beginning January 1, 1974, each electric utility shall submit to the Department of Community Affairs a 10-year site plan which shall estimate its power-generating needs and the general location of its proposed power plant sites. The 10-year plan shall be reviewed and submitted not less frequently than every 2 years.

(2) Within 9 months of the receipt of the proposed plan, the department shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The department may suggest alternatives to the plan. All findings of the department shall be made available to the Department of Environmental Regulation for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the department. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the department shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the Public Service Commission, for electrical power in the area to be served.

(b) The anticipated environmental impact of each proposed electrical power plant site.

(c) Possible alternatives to the proposed plan.

(d) The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of saltwater or freshwater for cooling purposes.

(e) The extent to which the plan is consistent with the state comprehensive plan.

(f) The plan with respect to the information of the state on energy availability and consumption.

(3) In order to enable it to carry out its duties under this section, the department may, after hearing, establish a study fee which shall not exceed $1,000 for each proposed plan studied.

(4) The department may adopt rules governing the method of submitting, processing, and studying the 10-year plans as required by this section.

History.—[illegible]

Note.—Former s. [illegible]

23.0193 Data Bank on Older Floridians.—

(1) It is the intent of the Legislature to provide for the development, implementation, and maintenance of a Data Bank on Older Floridians in order to assure that accurate data is available for sound planning and decisionmaking by state legislative committees and by local and state agencies when considering matters related to the health, financial conditions, housing, education, transportation, and service needs of the elderly citizens of Florida.

(2) The Data Bank on Older Floridians shall be operated and maintained by one or more of the private or public institutions of higher education in Florida that operates a program for the study of aging or a center on gerontology. After an assessment of the capacity of the institutions of higher education in the state to operate and maintain the data bank, the Board of Regents, Division of Universities, Department of Education, shall contract for the operation and maintenance of the data bank with the institution or institutions that it determines to be most qualified to perform the functions outlined in this act. In awarding the contract for operating and maintaining the data bank, the board shall consider private as well as public institutions. The initial phase in the establishment of the data bank shall be the development of the planning and evaluation components. Such components shall be formulated consis-

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CHAPTER 119

PUBLIC RECORDS

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119.01 General state policy on public records.—

(1) It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.

(2) All agencies shall establish a program for the disposal of records that do not have sufficient legal, fiscal, administrative, or archival value in accordance with retention schedules established with the Division of Archives, History and Records Management of the Department of State.

History.—s. 1, ch. 5942, 1909; RGS 424; CGL 490; s. 1, ch. 73-98; s. 2, ch. 75-225; s. 2, ch. 83-286.
cf.—s. 400.321 Confidentiality.

119.011 Definitions.—For the purpose of this chapter:

(1) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(2) "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)(a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime;
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.07(3)(h);
3. The time, date, and location of the incident and of the arrest;
4. The crime charged;
5. Documents given or required by law or agency rule to be given to the person arrested; and
6. Informations and indictments except as provided in s. 905.26.

(d) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) "Criminal justice agency" means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties.

History.—s. 1, ch. 67-125; s. 2, ch. 73-98; s. 3, ch. 75-225; ss. 1, 2, ch. 79-187.
cf.—ss. 895.01-895.06 Florida RICO (Racketeer Influenced and Corrupt Organization) Act.

119.0115 Videotapes and video signals; exemption from chapter.—Any videotape or video signal which, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from this chapter.

History.—s. 1, ch. 80-4.

119.012 Records made public by public fund use.—If public funds are expended by an agency defined in s. 119.011(2) in payment of dues or membership contributions to any person, corporation, foundation, trust, association, group, or other organization, then all the financial, business and membership records pertaining to the public agency from which or on whose behalf the payments are made, of the person, corporation, foundation, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of s. 119.07.

History.—s. 3, ch. 75-225.
cf.—s. 960.28 Payment for victims' initial examinations.

119.02 Penalty.—Any public official who shall violate the provisions of s. 119.07(1) shall be subject to suspension and removal or impeachment and, in addition, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 5942, 1909; RGS 425; CGL 491; s. 1, ch. 17173, 1935; CGL 1936 Supp. 7520(6); s. 73, ch. 71-136; s. 6, ch. 75-225.

119.021 Custodian designated.—The elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his designee, shall be the custodian thereof.

History.—s. 2, ch. 67-125; s. 3, ch. 83-286.

119.031 Keeping records in safe places; copying or repairing certified copies.—Insofar as practicable, custodians of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated, or rebound if worn, mutilated, damaged, or difficult to read. Whenever any state, county, or municipal records are in need of repair, restoration, or rebinding, the head of such state agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that such records be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and certify on oath that it is an accurate copy of the original book. The copy shall then have the force and effect of the original.

History.—s. 3, ch. 67-125; s. 4, ch. 83-286.

119.041 Destruction of records regulated.—Every public official shall systematically dispose of records no longer needed subject to the consent of the Division of Archives, History and Records Management of the Department of State in accordance with chapter 267.

History.—s. 4, ch. 67-125; ss. 10, 35, ch. 69-106; s. 5, ch. 83-286.

119.05 Disposition of records at end of official's term.—Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or if there be none, to the Division of Archives, History and Records Management of the Department of State, all records, books, writings, letters and documents kept or received by him in the transaction of his official business.

History.—s. 5, ch. 67-125; ss. 10, 35, ch. 69-106.

119.06 Demanding custody.—Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. Any person unlawfully possessing public records shall upon demand of any person and within 10 days deliver such records to their lawful custodian unless just cause exists for failing to deliver such records.

History.—s. 6, ch. 67-125.

119.07 Inspection and examination of records; exemptions.—

(1)(a) Every person who has custody of public records shall permit the records to be inspected and examined by any person desiring to do so, at reasonable times, under reasonable conditions, and under supervision by the custodian of the records or his designee. The custodian shall furnish copies or certified copies of the records upon payment of fees as prescribed by law or, if fees are not prescribed by law, upon payment of the actual cost of duplication of the copies. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency.

(b) In the case of records produced under this act, when the nature or volume of records is such as to require extensive clerical or supervisory assistance by personnel of the agency involved, the agency may charge, in addition to the actual cost of duplication, a reasonable charge, which shall be based on the actual salary rate of such personnel providing the service.

(2)(a) Any person who has custody of public records and who asserts that an exemption provided in subsection (3) or in general or special law applies to a particular record shall delete or excise from the record only that portion of the record for which an exemption is asserted and shall produce for inspection and examination the remainder of such record.

(b) In any action in which an exemption is asserted pursuant to paragraph (e), paragraph (f), paragraph (g), or paragraph (m) of subsection (3), the record or records shall be submitted in camera to the court for a de novo inspection. In the case of an exemption asserted pursuant to paragraph (d) of subsection (3), an in camera inspection shall be discretionary with the court. If the court finds no basis for the assertion of the exemption, it shall order the records to be disclosed.

(3)(a) All public records which are presently pro-

vided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, are exempt from the provisions of subsection (1).

(b) All public records referred to in ss. 199.222, 228.093, 257.261, 288.075, 624.319(3) and (4), and 655.057(1)(b), (3), and (4) are exempt from the provisions of subsection (1).

(c) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from the provisions of subsection (1). However, an examinee shall have the right to review his own completed examination.

(d) Active criminal intelligence information and active criminal investigative information are exempt from the provisions of subsection (1).

(e) Any information revealing the identity of confidential informants or sources is exempt from the provisions of subsection (1).

(f) Any information revealing surveillance techniques or procedures or personnel is exempt from the provisions of subsection (1).

(g) Any information revealing undercover personnel of any criminal justice agency is exempt from the provisions of subsection (1).

(h) Any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of any sexual battery as defined by chapter 794 or child abuse as defined by chapter 827 is exempt from the provisions of subsection (1).

(i) Any criminal intelligence information or criminal investigative information which reveals the personal assets of the victim of a crime, other than property stolen or destroyed during the commission of the crime, is exempt from the provisions of subsection (1).

(j) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from the provisions of subsection (1).

(k) The home addresses, telephone numbers, and photographs of law enforcement personnel; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of law enforcement personnel; and the names and locations of schools attended by the children of law enforcement personnel are exempt from the provisions of subsection (1).

(l) Any information provided to an agency of state government or of a political subdivision for the purpose of forming ridesharing arrangements which information reveals the identity of an individual who has provided his name for ridesharing arrangements as defined in s. 341.031(5) is exempt from the provisions of subsection (1).

(m) Any information revealing the substance of a confession of a person arrested or of witness lists exchanged pursuant to the provisions of Rule 3.220, Florida Rules of Criminal Procedure, is exempt from the provisions of subsection (1), until such time as the charge is finally determined by adjudication, dismissal, or other disposition.

(n) A patient record obtained by the Hospital Cost Containment Board established under s. 395.503 which record contains the name, residential or business address or telephone number, social security or other identifying number, or photograph of any person or the spouse, relative, or guardian thereof or which record is patient-specific or otherwise identifies the patient, either directly or indirectly, is exempt from the provisions of paragraph (1)(a).

(4) Nothing herein shall be construed to exempt from subsection (1) records made part of a court file and not specifically closed by order of court except as provided in paragraphs (e), (f), (g), and (m) of subsection (3).

(5) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state and a defendant in a criminal prosecution.

History.—s. 7, ch. 67-125; s. 4, ch. 78-225; s. 2, ch. 77-60; s. 2, ch. 77-75; s. 2, ch. 77-94; s. 2, ch. 77-156; s. 2, ch. 78-81; ss. 2, 4, 6, ch. 79-187; s. 2, ch. 80-273; s. 1, ch. 81-245; s. 1, ch. 92-95; s. 36, ch. 82-243; s. 8, ch. 83-215; s. 2, ch. 83-269; s. 1, ch. 83-286.

cf.—s. 14.22 Sunshine State Games direct support organizations.
s. 17.076 Department of Banking and Finance direct deposits.
s. 20.15 District human rights advocacy committees.
s. 23.129 Florida Mutual Aid Plan; inventory of law enforcement resources.
s. 27.151 Confidentiality of executive order assigning a state attorney to, or to assist in, another circuit.
s. 27.37 Council on Organized Crime.
s. 39.031 Juvenile confidential records.
s. 110.201 Career service system; collective bargaining work products.
s. 112.324 Commission on Ethics.
s. 112.533 Receipt and processing of complaints against law enforcement officers or correctional officers.
s. 213.21 Department of Revenue; records of tax compromises.
s. 213.22 Department of Revenue technical assistance advisements.
s. 229.551 Educational management; student achievement tests.
s. 231.262 Complaints against school administrators and teachers.
s. 231.291 Public school personnel files.
s. 232.248 Confidentiality of assessment instruments.
s. 240.209 Chancellor of State University System search committee.
s. 240.241 Divisions of sponsored research at state universities.
s. 240.299 University direct support organizations.
s. 240.331 Community college direct support organizations.
s. 252.355 Registry of disabled citizens.
s. 253.025 Acquisition of state lands.
s. 265.281 John and Mable Ringling Museum of Art direct support organizations.
s. 265.289 State theater contract organizations.
s. 320.025 Confidential or fictitious motor vehicle license; application for registration.
s. 350.121 Confidentiality of business material obtained for purposes of inquiries by Florida Public Service Commission.
s. 364.183 Access to telephone company records.
s. 366.093 Public utility records; confidentiality.
s. 367.156 Water or sewer utility records; confidentiality.
s. 395.0115 Hospitals and ambulatory surgical centers; disciplinary matters.
s. 400.321 State and district nursing home and long-term care facility ombudsman councils.
s. 409.266 Medicaid investigations.
s. 415.107 Confidentiality of reports and records relating to abuse of aged or disabled persons.
s. 415.508 Confidential information with respect to spouse abuse centers.
s. 447.208 Public Employees Relations Commission; draft orders.
s. 447.605 Public employers; collective bargaining work products.
s. 455.225 Department of Professional Regulation investigations.
s. 455.279 Information required of applicants to practice a profession.
s. 455.241 Patient records; copies of records to be furnished.
s. 458.3115 Treatment programs for impaired medical professionals.
s. 464.0185 Treatment programs for impaired nursing professionals.
s. 487.0185 Pesticide Review Council.
s. 542.28 Civil antitrust investigations.
s. 634.348 Home warranty association investigatory records.
s. 634.441 Service warranty association investigatory records.
s. 637.167 Optometric service plan investigatory records.
s. 637.326 Pharmaceutical service plan investigatory records.
s. 638.282 Ambulance service contract investigatory records.
s. 639.33 Prepaid funeral merchandise or service contract investigatory records.
s. 651.134 Continuing care contract investigatory records.
s. 943.145 Decertification of law enforcement officers; reports.

119.072 Criminal intelligence or investigative information obtained from out-of-state agencies.—Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

History.—s. 3, ch. 79-187.

119.08 Photographing public records.—

(1) In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public record, instruments or documents, any person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy.

(2) Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent to the room where the said records, documents and instruments are kept as determined by the lawful custodian thereof.

(3) Where the providing of another room or place is necessary, the expense of providing the same shall be paid by the person desiring to photograph the said records, instruments or documents. While the said work hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments, or in case the same fail to agree as to the said charge, then by the lawful custodian thereof.

History.—s. 8, ch. 67-125.

119.09 Assistance of the Division of Archives, History and Records Management of the Department of State.—The Division of Archives, History and Records Management of the Department of State shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing, and making available the public records in their custody. Public officials shall assist the division by preparing an inclusive inventory of categories of public records in their custody. The division shall establish a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the division shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make space available in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value and shall render such other assistance as needed, including the microfilming of records so scheduled.

History.—s. 9, ch. 67-125; ss. 10, 35, ch. 69-106; s. 6, ch. 83-286.

119.092 Registration by federal employer's registration number.—Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978, within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

History.—s. 1, ch. 77-148.

119.10 Violation of chapter a misdemeanor.—Any person willfully and knowingly violating any of the provisions of this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 10, ch. 67-125; s. 74, ch. 71-136.

119.11 Accelerated hearing; immediate compliance.—

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period.

(3) A stay order shall not be issued unless the court determines that there is substantial probability that opening the records for inspection will result in significant damage.

History.—s. 5, ch. 75-225; s. 2, ch. 83-214.

119.12 Attorney's fees.—

(1) Whenever an action has been filed against an agency to enforce the provisions of this chapter and the court determines that such agency unreasonably refused to permit public records to be inspected, the court shall assess a reasonable attorney's fee against such agency.

(2) Whenever an agency appeals a court order requiring it to permit inspection of records pursuant to this chapter and such order is affirmed, the court

shall assess a reasonable attorney's fee for the appeal against such agency.

History.—s. 5, ch. 75-225.

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CHAPTER 120

ADMINISTRATIVE PROCEDURE ACT

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120.50 Exception to application of chapter.—This chapter shall not apply to:
(1) The Legislature.
(2) The courts.
History.—s. 1, ch. 74-310; s. 3, ch. 77-468; s. 1, ch. 78-162.
cf.—s. 192.1142, 193.1145 Approval of assessment rolls.

120.51 Short title.—This chapter may be known and cited as the "Administrative Procedure Act."
History.—s. 1, ch. 74-310.

120.52 Definitions.—As used in this act:
(1) "Agency" means:
(a) The Governor in the exercise of all executive powers other than those derived from the constitution.
(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including, but not limited to, those described in chapters 160, 163, 298, 373, 380, and 582, except any legal entity or agency created in whole or in part pursuant to chapter 361, part II.
(c) Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.

A deputy commissioner shall not, in the adjudication of workers' compensation claims, be considered an agency or part of an agency for the purposes of this act.
(2) "Agency action" means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(5).
(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action.
(4) "Committee" means the Administrative Procedures Committee.
(5) "Communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.
(6) "Division" means the Division of Administrative Hearings of the Department of Administration.
(7) "Educational unit" means a local school district, a community college district, the Florida School for the Deaf and Blind, or a unit of the State University System other than the Board of Regents.
(8) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.
(9) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.
(10) "Order" means a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing and filed with the person designated by the agency as clerk. The clerk shall indicate the date of filing on the order.
(11) "Party" means:
(a) Specifically named persons whose substantial interests are being determined in the proceeding.
(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.
(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in

agency proceedings for persons who are not eligible to become parties.
(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

Prisoners as defined in s. 944.02(5) may obtain or participate in proceedings under s. 120.54(3), (4), (5), or (9) or s. 120.56 and may be parties under s. 120.68 to seek judicial review of those proceedings. Prisoners shall not be considered parties in any other proceedings and may not seek judicial review under s. 120.68 of any other agency action. Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.
(12) "Person" means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).
(13) "Proposed order" means the advance text, under s. 120.58(1)(e), of the order which a collegial agency head plans to enter as its final order. When a hearing officer assigned by the division conducts a hearing, the recommended order is the proposed order.
(14) "Recommended order" means the official recommendation of a hearing officer assigned by the division to an agency or of any other duly authorized presiding officer, other than an agency head or member thereof, for the final disposition of a proceeding under s. 120.57.
(15) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:
(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.
(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.
(c) The preparation or modification of:
1. Agency budgets.
2. Contractual provisions reached as a result of collective bargaining.
3. Agricultural marketing orders under chapter 573 or chapter 601.
4. Curricula by an educational unit.
(d) Agency action which has the effect of altering established hunting or fishing seasons when such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting in an electronic media.
(e) Any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 229.57, s. 232.245, s. 232.246, or s. 232.247 or any other statewide educational test required by law.
(f) Law enforcement policies and procedures of the Department of Law Enforcement which relate to:
1. The collection, management, and dissemination of active criminal intelligence information and active criminal investigative information; management of criminal investigations; and management of undercover investigations and the selection, assignment, and fictitious identity of undercover personnel.
2. The recruitment, management, identity, and remuneration of confidential informants or sources.
3. Surveillance techniques, the selection of surveillance personnel, and electronic surveillance including court-ordered and consensual interceptions of communication conducted pursuant to chapter 934.
4. The safety and release of hostages.
5. The provision of security and protection to public figures.
6. The protection of witnesses.
History.—s. 1, ch. 74-310; s. 1, ch. 75-191; s. 1, ch. 76-131; s. 1, ch. 77-174; s. 11, ch. 77-290; s. 2, ch. 77-453; s. 1, ch. 78-28; s. 1, ch. 78-425; s. 1, ch. 79-20; s. 55, ch. 79-40; s. 1, ch. 79-299; s. 2, ch. 81-119; s. 1, ch. 81-180; s. 7, ch. 82-190; s. 1, ch. 83-78; s. 2, ch. 83-273.
cf.—s. 11.60 Administrative Procedures Committee; creation; membership; powers, duties.
s. 27.37 Council on Organized Crime; exclusion from definition of "agency."
s. 110.207 Career service class specifications, titles, and codes; exclusion from definition of "rule."
s. 110.209 Career service salary ranges and assignment of ranges to positions; exclusion from definition of "rule."
s. 760.10 Referral of complaint to Commission on Human Rights; exclusion from definition of "agency action."

120.53 Adoption of rules of procedure and public inspection.—
(1) In addition to other requirements imposed by law, each agency shall:
(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.
(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures, including a list of all forms and instructions used by the agency in its dealings with the public. The list of forms and instructions shall include the title of each form or instruction and a statement of the manner in which the form or instruction may be obtained without cost. Each agency shall file with the Department of State a copy of each form used by the agency in its dealings with the public. The department shall immediately send a copy of the form to the committee. A form may become effective no earlier than 20 days after it is filed with the department.
(c) Adopt rules of procedure appropriate for the

presentation of arguments concerning issues of law or policy, and for the presentation of evidence on any pertinent fact that may be in dispute.

(d) Adopt rules for the scheduling of meetings, hearings, and workshops, one of which shall be that an agenda shall be prepared by the agency in time to ensure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda shall contain the items to be considered, in the order of presentation. After the agenda has been made available, change shall be only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time. The agenda for a special meeting of a district school board under authority of s. 230.16 shall be prepared upon the calling of the meeting, but not less than 48 hours prior to such meeting. In addition, each agency shall give notice of meetings, hearings, and workshops in the same manner as that prescribed for rulemaking in s. 120.54(1), except that the notice requirement shall not apply to emergency meetings. The notice shall include a statement of the general subject matter to be considered and shall be given not less than 7 days before the event.

(2) Each agency shall make available for public inspection and copying, at no more than cost:

(a) All rules formulated, adopted, or used by the agency in the discharge of its functions.

(b) All agency orders.

(c) A current subject-matter index, identifying for the public any rule or order issued or adopted after January 1, 1975.

All rules adopted pursuant to this act shall be indexed within 90 days. The Department of State shall by rule establish uniform indexing procedures.

(3) No agency rule or order is valid for any purpose until it has been made available for public inspection as herein required unless the person or party against whom enforcement is sought has actual knowledge of it.

(4) An agency may comply with paragraphs (2)(b) and (c) by designating by rule an official reporter which publishes and indexes by subject matter each agency order rendered after a proceeding which affects substantial interests has been held.

(5) An agency which enters into a contract pursuant to the provisions of ss. 282.301-282.313, chapter 255, chapter 287, or chapters 334-349 shall adopt rules specifying procedures for the resolution of protests arising from the contract bidding process. Such rules shall at least provide that:

(a) The agency shall provide notice of its decision or intended decision concerning a bid solicitation or a contract award as follows:

1. For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.

2. For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the bids were opened or by certified United States mail, return receipt requested.

The notice required by this paragraph shall contain the following statement: "Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes."

(b) Any person who is affected adversely by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of the agency decision or intended decision and shall file a formal written protest within 10 days after the date he filed the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under chapter 120.

(c) Upon receipt of a notice of protest which has been timely filed, the agency shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d) The agency, on its own initiative or upon the request of a protestor, shall provide an opportunity to resolve the protest by mutual agreement between the parties within 14 days of receipt of a formal written protest.

1. If the subject of a protest is not resolved by mutual agreement within 14 days of receipt of the formal written protest and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to s. 120.57(2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

2. If the subject of a protest is not resolved by mutual agreement within 14 days of receipt of the formal written protest and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under s. 120.57(1).

(6) Each state agency, as defined in s. 216.011, shall adopt rules providing a procedure for conducting meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such meetings, hearings, and workshops, by means of communications media technology. The rules shall provide that all evidence, testimony, and argument presented shall be afforded equal consideration, regardless of the method of communication. If a meeting, hearing, or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means, the notice shall so state. The notice for meetings, hearings, and workshops utilizing communications media technology shall state how persons interested in attending may do so and shall name locations, if any, where communications media technology facilities will be available. Nothing in this subsection shall be construed to diminish the right to inspect public records under chapter 119. Limiting points of access to meetings, hearings, and workshops subject to the provisions of s. 286.011 to places not normally open to the public shall be presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. Other laws relating to public meetings, hearings, and workshops, including penal and remedial provisions, shall apply to meetings, hearings, and workshops conducted by means of communications media technology and shall be liberally construed in their application to such meetings, hearings, and workshops.

History.—s. 1, ch. 74-310; s. 2, ch. 75-191; s. 2, ch. 78-131; s. 2, ch. 79-299; s. 1, ch. 81-296; s. 2, ch. 81-309; s. 8, ch. 83-92; s. 34, ch. 83-217; s. 3, ch. 83-273.

cf. - s. 213.22 Department of Revenue technical assistance advisements; exception.

s. 947.071 Parole and Probation Commission; rulemaking procedures

120.54 Rulemaking; adoption procedures.—

(1) Prior to the adoption, amendment, or repeal of any rule not described in subsection (9), an agency shall give notice of its intended action, setting forth a short and plain explanation of the purpose and effect of the proposed rule, the specific legal authority under which its adoption is authorized, and a summary of the estimate of the economic impact of the proposed rule on all persons affected by it.

(a) Except as otherwise provided in this paragraph, the notice shall be mailed to the committee, to all persons named in the proposed rule, and to all persons who have made requests of the agency for advance notice of its proceedings at least 14 days prior to such mailing. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed. Notice of intent by an educational unit to adopt, amend, or repeal any rule not described in subsection (9) shall be made:

1. By publication in a newspaper of general circulation in the affected area;

2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and

3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Such publication, mailing, and posting of notice shall occur at least 14 days prior to the intended action.

(b) The notice shall be published in the Florida Administrative Weekly not less than 21 days prior to the intended action, except that notice of actions proposed by educational units or units of government with jurisdiction in only one county or a part thereof need not be published in the Florida Administrative Weekly or transmitted to the committee. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

(2)(a) Each agency, prior to the adoption, amendment, or repeal of any rule, shall provide information on its proposed action by preparing a detailed economic impact statement. The economic impact statement shall include:

1. An estimate of the cost to the agency of the implementation of the proposed action, including the estimated amount of paperwork;

2. An estimate of the cost or the economic benefit to all persons directly affected by the proposed action;

3. An estimate of the impact of the proposed action on competition and the open market for employment, if applicable; and

4. A detailed statement of the data and method used in making each of the above estimates.

(b) If an economic impact statement is required before an agency takes action on an application or petition by any person, the statement shall be prepared within a reasonable time after the application is made or the petition is filed.

(c) The failure to provide an adequate statement of economic impact is a ground for holding the rule invalid; however, beginning October 1, 1978, no rule shall be declared invalid for want of an adequate statement of economic impact unless the issue is raised in an administrative or judicial proceeding within 1 year of the effective date of the rule to which the statement applies.

(3) If the intended action concerns any rule other than one relating exclusively to organization, procedure, or practice, the agency shall, on the request of any affected person received within 14 days after the date of publication of the notice, give affected persons an opportunity to present evidence and argument on all issues under consideration appropriate to inform it of their contentions. Prisoners, as defined in s. 944.02(5), may be limited by the Department of Corrections to an opportunity to submit written statements concerning intended action on any department rule. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. Any material pertinent to the issues under consideration submitted to the agency within 14 days after the date of publication of the notice or submitted at a public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

(4)(a) Any substantially affected person may seek an administrative determination of the invalidity of any proposed rule on the ground that the proposed rule is an invalid exercise of delegated legislative authority.

(b) The request seeking a determination under this subsection shall be in writing and must be filed with the division within 14 days after the date of publication of the notice. It must state with particularity facts sufficient to show that the person challenging the proposed rule would be substantially affected by it and facts sufficient to show the invalidity of the proposed rule.

(c) Immediately upon receipt of the petition, the division shall forward copies of the petition to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director, if he determines that the petition complies with the above requirements, shall assign a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn. Within 30 days after conclusion of the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the hearing officer's decision to the Department of State and to the committee. The hearing officer may declare the proposed rule wholly or partly invalid. The

proposed rule or provision of a proposed rule declared invalid shall be withdrawn from the committee by the adopting agency and shall not be adopted. No rule shall be filed for adoption until 21 days after the notice required by subsection (1) or until the hearing officer has rendered his decision, as the case may be. However, the agency may proceed with all other steps in the rulemaking process. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

(d) Hearings held under this provision shall be conducted in the same manner as provided in s. 120.57 except that the hearing officer's order shall be final agency action. The agency proposing the rule and the person requesting the hearing shall be adversary parties. Other substantially affected persons may join the proceeding as parties or intervenors on appropriate terms which will not substantially delay the proceedings. Failure to proceed under this subsection shall not constitute failure to exhaust administrative remedies.

(5) Any person regulated by an agency or having a substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by s. 120.53. The petition shall specify the proposed rule and action requested. Not later than 30 calendar days after the date of filing a petition, the agency shall initiate rulemaking proceedings under this act, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(6) In rulemaking proceedings, the agency may recognize any material which may be judicially noticed, and it may provide that materials so recognized shall be incorporated into the record of the proceeding. Before the record of any proceeding is completed, all parties shall be provided a list of such materials and given a reasonable opportunity to examine them and offer written comments thereon or written rebuttal thereto.

(7) Each rule adopted shall be accompanied by a reference to the specific rulemaking authority pursuant to which the rule was adopted and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented, interpreted, or made specific.

(8) Each rule adopted shall contain only one subject and shall be preceded by a concise statement of the purpose of the rule and reference to the rules repealed or amended, which statement need not be printed in the Florida Administrative Code. Pursuant to rule of the Department of State, a rule may incorporate material by reference but only as such material exists on the date the rule is adopted. For purposes of such rule, changes in such material shall have no effect with respect to the rule unless the rule is amended to incorporate such material as changed. No rule shall be amended by reference only. Amendments shall set out the amended rule in full in the same manner as required by the constitution for laws.

(9)(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger by any procedure which is fair under the circumstances and necessary to protect the public interest, provided that:

1. The procedure provides at least the procedural protection given by other statutes, the Florida Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one county or a part thereof, shall be published in the first available issue of the Florida Administrative Weekly. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(b) Rules pertaining to the public health, safety, or welfare shall include, but not be limited to, those rules pertaining to perishable agricultural commodities.

(c) An emergency rule adopted under this subsection may not be effective for a period longer than 90 days and shall not be renewable. However, the agency may take identical action by normal rulemaking procedures.

(d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or at a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

(10) The Administration Commission shall promulgate one or more sets of model rules of procedure which shall be reviewed by the committee and filed with the Department of State. On filing with the department, the appropriate model rules shall be the rules of procedure for each agency subject to this act to the extent that each agency does not adopt a specific rule of procedure covering the subject matter contained in the model rules applicable to that agency. An agency may seek modification of the model rules of procedure to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or permit persons in this state to receive tax benefits under federal law or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the modification shall be published in the Florida Administrative Weekly. Agency rules adopted to comply with ss. 120.53 and 120.565 must be in substantial compliance with the model rules.

(11)(a) The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of the estimate of economic impact required by subsection (2); a statement of the extent to which the proposed rule establishes standards more restrictive than federal standards or a statement that the proposed rule is no more restrictive than federal standards or that a federal rule on the same subject does not exist; and the notice required by subsection (1). After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, the adopting agency shall file any changes in the proposed rule and the reasons therefor with the committee or advise the committee that there are no changes. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a detailed statement of such change by certified mail or actual delivery to any person who requests it in writing at the public hearing. The agency shall file the change with the committee, and provide the statement of change to persons requesting it, at least 7 days prior to filing the rule for adoption. Educational units, other than units of the State University System and the Florida School for the Deaf and the Blind, and local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee. This paragraph does not apply to emergency rules adopted pursuant to subsection (9). However, agencies, other than those listed herein, adopting emergency rules shall file a copy of each emergency rule with the committee.

(b) If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required above, in the office of the agency head; and such rules shall be open to the public pursuant to s. 120.53(2). Filings shall be made no less than 21 days nor more than 90 days after the notice required by subsection (1). If a public hearing is held, the 90-day limit is extended to 21 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this subsection have been complied with and that there is no administrative determination pending on the rule. The department shall reject any rule not filed within the prescribed time limits or upon which an administrative determination is pending. If a rule has not been adopted within the time limits imposed by this section, the agency proposing the rule shall withdraw the rule and give notice of its action in the same manner as is prescribed in paragraphs (1)(a) and (b).

(12)(a) The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the rule, or on a date required by statute. Rules not required to be filed with the Department of State shall become effective when adopted by the agency head or on a later date specified by rule or statute.

(b) After the notice required in subsection (1) and prior to adoption, the agency may withdraw the rule in whole or in part or may make such changes in the rule as are supported by the record of public hearings held on the rule, technical changes which do not affect the substance of the rule, changes in response to written material relating to the rule received by the agency within 14 days after the notice and made a part of the record of the proceeding, or changes in response to a proposed objection by the committee. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published and shall notify the Department of State if the rule is required to be filed with the Department of State. After a rule has become effective, it may be repealed or amended only through regular rulemaking procedures.

(13) If the committee disapproves a proposed rule and the agency does not modify the rule, the committee shall file with the Department of State a notice of the disapproval detailing with particularity its objection to the rule. The Department of State shall publish this notice in the Florida Administrative Weekly and shall publish, as a history note to the rule when it is published in the Florida Administrative Code, a reference to the committee's disapproval and to the issue of the Weekly in which the full text thereof appears.

(14) No agency has inherent rulemaking authority; nor has any agency authority to establish penalties for violation of a rule unless the Legislature, when establishing a penalty, specifically provides that the penalty applies to rules. However, an agency may adopt rules necessary to the proper implementation of a statute prior to the effective date of the statute, but the rules may not be enforced until the statute upon which they are based is effective.

(15) The rulemaking provisions of this chapter do not apply to compensation appeals referees.

(16) Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that his substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect his interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of s. 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

History.—s. 1, ch. 74-310; s. 4, ch. 75-191; s. 3, ch. 76-131; ss. 1, 2, ch. 76-275; s. 1, ch. 77-174; s. 13, ch. 77-290; s. 3, ch. 77-453; s. 2, ch. 78-28; s. 2, ch. 78-425; s. 7, ch. 79-3; s. 3, ch. 79-299; s. 69, ch. 79-400; s. 5, ch. 80-391; s. 1, ch. 81-309; s. 2, ch. 83-351.

cf.—s. 161.161 Beach erosion control hearings; additional notice requirements.

s. 403.8055 Department adoption of federal standards.

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.54(11)(a), and its accompanying material, and may examine any existing rule, for the purpose of determining whether:

(a) The rule is within the statutory authority upon which it is based;

(b) The statutory authority for the rule has been repealed;

(c) The rule reiterates or paraphrases statutory material;

(d) The rule is in proper form;

(e) The notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule; and

(f) The economic impact statement accompanying the rule is adequate to accurately inform the public of the economic effect of the rule.

If the committee objects to a proposed or existing rule, it shall, within 5 days of the objection, certify that fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity.

(2) Within 30 days of receipt of the objection, if the agency is headed by an individual, or within 45 days of receipt of the objection, if the agency is headed by a collegial body, the agency shall:

(a) If the rule is a proposed rule:

1. Modify the rule to meet the committee's objection;

2. Withdraw the rule in its entirety; or

3. Refuse to modify or withdraw the rule.

(b) If the rule is an existing rule:

1. Notify the committee that it has elected to amend the rule to meet the committee's objection and initiate the amendment procedure;

2. Notify the committee that it has elected to repeal the rule and initiate the repeal procedure; or

3. Notify the committee that it refuses to amend or repeal the rule.

(c) If the rule is either an existing or a proposed rule and the objection is to the economic impact statement:

1. Prepare a corrected economic impact statement, give notice of the availability of the corrected economic impact statement in the first available issue of the Florida Administrative Weekly, and file copies of the corrected statement with the committee and the Department of State; or

2. Notify the committee that it refuses to prepare a corrected economic impact statement.

(3) If the agency elects to modify a proposed rule to meet the committee's objection, it shall make only such modifications as are necessary to meet the objection and shall resubmit the rule to the committee. The agency shall give notice of its election to modify a proposed rule to meet the committee's objection in the first available issue of the Florida Administrative Weekly, but shall not be required to conduct a public hearing. If the agency elects to amend an existing rule to meet the committee's objection, it shall notify the committee in writing and shall initiate the amendment procedure by giving notice in the next available issue of the Florida Administrative Weekly. The committee shall give priority to rules so modified or amended when setting its agenda.

(4) If the agency elects to withdraw a proposed rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall give notice of the withdrawal in the next available issue of the Florida Administrative Weekly. The rule shall be withdrawn without a public hearing, effective upon publication of the notice in the Florida Administrative Weekly. If the agency elects to repeal an existing rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall initiate rulemaking procedures for that purpose by giving notice in the next available issue of the Florida Administrative Weekly.

(5) If an agency elects to amend or repeal an existing rule as a result of a committee objection, it shall complete the process within 90 days after giving notice in the Florida Administrative Weekly.

(6) Failure of the agency to respond to a committee objection to a proposed rule within the time prescribed in subsection (2) shall constitute withdrawal of the rule in its entirety. In this event, the committee shall notify the Department of State that the agency, by its failure to respond to a committee objection, has elected to withdraw the proposed rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Weekly. Upon publication of the notice, the proposed rule shall be stricken from the files of the Department of State and the files of the agency.

(7) Failure of the agency to respond to a committee objection to an existing rule within the time prescribed in subsection (2) shall constitute a refusal to repeal the rule.

(8) If the committee objects to a proposed or existing rule and the agency refuses to modify, amend, withdraw, or repeal the rule, the committee shall file with the Department of State a notice of the objection, detailing with particularity its objection to the rule. The Department of State shall publish this notice in the Florida Administrative Weekly and shall publish, as a history note to the rule in the Florida Administrative Code, a reference to the committee's objection and to the issue of the Weekly in which the full text thereof appears.

History.—s. 4, ch. 76-231; s. 1, ch. 77-174; s. 6, ch. 80-391; s. 3, ch. 81-309.

120.55 Publication.—

(1) The Department of State shall:

(a)1. Publish in a permanent compilation entitled "Florida Administrative Code" all rules adopted by each agency, citing the specific rulemaking authority pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(8), and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. The department shall, by July 1, 1981, contract with a publishing firm for the publication, in a timely and useful form, of the Florida Administrative Code; however, the department shall retain responsibility for the code as provided in this section.

This publication shall be the official compilation of the administrative rules of this state.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish a summary or listing of all rules of that agency excluded from publication in the code and a statement as to where those rules may be inspected or examined and shall also publish any exemptions granted that agency pursuant to s. 120.63, including the termination date of the exemption and a statement whether the exemption can be renewed pursuant to s. 120.63(2)(b).

4. Forms shall not be published in the Florida Administrative Code but shall be included in rules by reference. The reference shall state, at a minimum, the title and the effective date of the form and an explanation of how the form may be obtained.

(b) Publish a weekly publication entitled the "Florida Administrative Weekly," which shall contain:

1. Notice of adoption of, and an index to, all rules filed during the preceding week.

2. All hearing notices required by s. 120.54(1), showing the time, place, and date of the hearings and the text of all rules proposed for consideration or a reference to the location in the Florida Administrative Weekly where the text of the proposed rules is published. Forms shall not be published in the Florida Administrative Weekly but shall be included in the rules by reference. The reference shall state, at a minimum, the title and the effective date of the form and an explanation of how the form may be obtained.

3. All notices of meetings, hearings, and workshops conducted in accordance with the provisions of s. 120.53(1)(d), including a statement of the manner in which a copy of the agenda may be obtained.

4. A notice of each request for authorization to amend or repeal an existing model rule or for the adoption of new model rules.

5. A notice of each request for exemption from any provision of this chapter.

6. Notice of petitions for declaratory statements or administrative determinations.

7. A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week.

8. Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for publication of the Florida Administrative Weekly.

(c) Prescribe by rule the style and form required for rules submitted for filing and establish the form for their certification.

(d) Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules, after having obtained the advice and consent of the appropriate agency, and insert history notes.

(e) Make copies of the Florida Administrative Weekly available on an annual subscription basis computed to cover a pro rata share of 50 percent of the costs related to the publication of the Florida Administrative Weekly.

(f) Charge each agency using the Florida Administrative Weekly a space rate computed to cover a pro rata share of 50 percent of the costs related to the Florida Administrative Weekly.

(2) Each agency shall print or distribute copies of its rules, citing the specific rulemaking authority pursuant to which each rule was adopted.

(3) Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Code or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the supervisor or person who approved the rule, and the date upon which the rule was approved.

(4)(a) The Department of State shall furnish the Florida Administrative Code and the Florida Administrative Weekly, without charge and upon request, as follows:

1. One set to each federal and state court having jurisdiction over the residents of the state; the Legislative Library; each state university library; the State Library; each depository library designated pursuant to s. 257.05; and each standing committee of the Senate and House of Representatives and each state legislator upon request of the Senate President's or House Speaker's Office.

2. Two sets to each state department.

3. Three sets to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House.

4. Ten sets to the committee.

(b) The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to each clerk of the circuit court and each state department, for posting for public inspection.

(5)(a) There is hereby created in the State Treasury a revolving fund to be known as the "Publication Revolving Trust Fund" of the Department of State.

(b) All fees and moneys collected by the Department of State under this chapter shall be deposited in the revolving trust fund for the purpose of paying for the publication and distribution of the Florida Administrative Code and the Florida Administrative Weekly and for associated costs incurred by the department in carrying out this chapter.

(c) The unencumbered balance in the revolving trust fund at the beginning of each fiscal year shall not exceed $100,000, and any excess shall be transferred to the General Revenue Fund.

(d) It is the intent of the Legislature that the Florida Administrative Weekly be supported entirely from funds collected for subscriptions to and advertisements in the Florida Administrative Weekly. To that end, the Department of State is authorized to add a surcharge of 10 percent to any charge relating to the Florida Administrative Weekly until such time as the Publication Revolving Trust Fund has trans-

ferred to the General Revenue Fund an amount equal to all funds appropriated to the trust fund.

History.—s. 1, ch. 74-310; s. 1, ch. 75-107; s. 4, ch. 75-191; s. 5, ch. 76-131; s. 1, ch. 77-174; s. 2, ch. 77-457; s. 2, ch. 78-425; s. 4, ch. 79-299; s. 7, ch. 80-291; s. 4, ch. 81-308; s. 1, ch. 82-19; s. 1, ch. 82-47; s. 3, ch. 83-351.

120.56 Administrative determination of rule by hearing officer.—

(1) Any person substantially affected by a rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.

(2) The petition seeking an administrative determination under this section shall be in writing and shall state with particularity facts sufficient to show the person seeking relief is substantially affected by the rule and facts sufficient to show the invalidity of the rule. The petition shall be filed with the division which shall, immediately upon filing, forward copies of the petition to the agency whose rule is challenged, the Department of State, and the committee. Within 10 days after receiving the petition, the division director shall, if he determines that the petition complies with the above requirements, assign a hearing officer who shall conduct a hearing within 30 days thereafter, unless the petition is withdrawn.

(3) Within 30 days after the hearing, the hearing officer shall render his decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the hearing officer's decision to the Department of State and to the committee. The hearing officer may declare all or part of a rule invalid. The rule or part thereof declared invalid shall become void when the time for filing an appeal expires or at a later date specified in the decision. The agency whose rule has been declared invalid in whole or part shall give notice of the decision in the Florida Administrative Weekly in the first available issue after the rule has become void.

(4) Challenges to the validity of an emergency rule shall be subject to the following time schedules. Within 7 days after receiving the petition, the division director shall, if he determines that the petition complies with subsection (2), assign a hearing officer who shall conduct a hearing within 14 days thereafter, unless the petition is withdrawn. Within 14 days after the hearing, the hearing officer shall render his decision and otherwise comply with the provisions of subsection (3) not inconsistent herewith.

(5) Hearings held under this provision shall be conducted in the same manner as provided in s. 120.57 except that the hearing officer's order shall be final agency action. The petitioner and the agency whose rule is attacked shall be adversary parties. Other substantially affected persons may join the proceedings as parties or intervenors on appropriate terms which shall not unduly delay the proceedings. Failure to proceed under this section shall not constitute failure to exhaust administrative remedies.

History.—s. 1, ch. 74-310; s. 5, ch. 75-191; s. 6, ch. 76-131; s. 1, ch. 77-174; s. 4, ch. 78-425.

(1)—s. 72.011 Jurisdiction of circuit courts in specific tax matters.

120.565 Declaratory statement by agencies.—Each agency shall provide by rule the procedure for the filing and prompt disposition of petitions for declaratory statements. A declaratory statement shall set out the agency's opinion as to the applicability of a specified statutory provision or of any rule or order of the agency as it applies to the petitioner in his particular set of circumstances only. The agency shall give notice of each petition and its disposition in the Florida Administrative Weekly, except that educational units shall give notice in the same manner as provided for rules in s. 120.54(1)(a), and transmit copies of each petition and its disposition to the committee. Agency disposition of petitions shall be final agency action.

History.—s. 6, ch. 75-191; s. 7, ch. 76-131; s. 5, ch. 78-425; s. 5, ch. 79-299; (1)—s. 72.011 Jurisdiction of circuit courts in specific tax matters.

120.57 Decisions which affect substantial interests.—The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency. Unless waived by all parties, subsection (1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) applies in all other cases.

(1) FORMAL PROCEEDINGS.—

(a) A hearing officer assigned by the division shall conduct all hearings under this subsection, except for:

1. Hearings before agency heads or a member thereof other than an agency head or a member of an agency head within the Department of Professional Regulation;

2. Hearings before the Unemployment Appeals Commission in unemployment compensation appeals, unemployment compensation appeals referees, and special deputies pursuant to s. 443.141;

3. Hearings regarding drivers' licensing pursuant to chapter 322;

4. Hearings conducted within the Department of Health and Rehabilitative Services in the execution of those social and economic programs administered by the former Division of Family Services of said department prior to the reorganization effected by chapter 75-48, Laws of Florida;

5. Hearings in which the division is a party, in which case an attorney assigned by the Administration Commission shall be the hearing officer;

6. Hearings which involve student disciplinary suspensions or expulsions and which are conducted by educational units;

7. Hearings of the Public Employees Relations Commission in which a determination is made of the appropriateness of the bargaining unit, as provided in s. 447.307; and

8. Hearings held by the Department of Agriculture and Consumer Services pursuant to chapter 601.

(b) In any case to which this subsection is applicable, the following procedures apply:

1. A request for a hearing shall be granted or denied within 15 days of receipt.

2. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. In a preliminary hearing for the revocation of parole, no less than 7 days' notice shall be given. In a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice requirement may be waived by the agency head or the hearing officer without the consent of the parties. The notice shall include:

a. A statement of the time, place, and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. Except for any hearing before an unemployment compensation appeals referee, a short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

3. Except for any proceeding conducted as prescribed in s. 120.54(4) or s. 120.56, a petition or request for a hearing under this section shall be filed with the agency. If the agency elects to request a hearing officer from the division, it shall notify the division within 10 days of receipt of the petition or request, requesting the assignment of a hearing officer and, with the concurrence of the division, set the time, date, and place of the hearing. On the request of any agency, the division shall assign a hearing officer with due regard to the expertise required for the particular matter. Any party may request the disqualification of any hearing officer by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

4. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut it.

5. The record in a case governed by this subsection shall consist only of:

a. All notices, pleadings, motions, and intermediate rulings;

b. Evidence received or considered;

c. A statement of matters officially recognized;

d. Questions and proffers of proof and objections and rulings thereon;

e. Proposed findings and exceptions;

f. Any decision, opinion, proposed or recommended order, or report by the officer presiding at the hearing;

g. All staff memoranda or data submitted to the hearing officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records;

h. All matters placed on the record after an ex parte communication pursuant to s. 120.66(2); and

i. The official transcript.

6. The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost. In any proceeding before a hearing officer initiated by a consumptive use permit applicant pursuant to subparagraph 13., the applicant shall bear the cost of accurately and completely preserving all testimony and providing full or partial transcripts to the water management district. At the request of any other party, full or partial transcripts shall be provided at no more than cost.

7. Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

8. Except as provided in subparagraph 12., the hearing officer shall complete and submit to the agency and all parties a recommended order consisting of his findings of fact, conclusions of law, interpretation of administrative rules, and recommended penalty, if applicable, and any other information required by law or agency rule to be contained in the final order. The agency shall allow each party at least 10 days in which to submit written exceptions to the recommended order.

9. The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order, but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a recommended order, but may not increase it without a review of the complete record. In the event a court reverses the order of an agency, the court in its discretion may award attorney's fees and costs to the aggrieved prevailing party.

10. If the hearing officer assigned to a hearing becomes unavailable, the division shall assign another hearing officer who shall use any existing record and receive any additional evidence or argument, if any, which the new hearing officer finds necessary.

11. A hearing officer who is a member of an agency head may participate in the formulation of the final order of the agency, provided he has completed all his duties as hearing officer.

12. In any application for a license or merger pursuant to title XXXVIII which is referred by the agency to the division for hearing pursuant to this section, the hearing officer shall complete and submit to the agency and to all parties a written report consisting of findings of fact and rulings on evidentiary matters. The agency shall allow each party at least 10 days in which to submit written exceptions to the report.

13. In any application for a consumptive use permit pursuant to part II of chapter 373, the water management district on its own motion may, or, at the request of the applicant for the permit, shall, re-

fer the matter to the division for the appointment of a hearing officer to conduct a hearing under this section.

(2) INFORMAL PROCEEDINGS.—In any case to which subsection (1) does not apply:

(a) The agency shall, in accordance with its rules of procedure:

1. Give reasonable notice to affected persons or parties of the action of the agency, whether proposed or already taken, or of its decision to refuse action, together with a summary of the factual, legal, and policy grounds therefor.

2. Give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or of its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

3. If the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(b) The record shall only consist of:

1. The notice and summary of grounds;

2. Evidence received or considered;

3. All written statements submitted by persons and parties;

4. Any decision overruling objections;

5. All matters placed on the record after an ex parte communication pursuant to s. 120.66(2); and

6. The official transcript.

(3) Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.

(4) This section does not apply to agency investigations preliminary to agency action.

History.—s. 1, ch. 74-310; s. 7, ch. 75-191; s. 8, ch. 76-131; s. 1, ch. 77-174; s. 5, ch. 77-452; ss. 8, 11, ch. 78-95; s. 6, ch. 78-425; s. 8, ch. 79-7; s. 7, ch. 80-86; s. 4, ch. 80-289; s. 37, ch. 81-259; s. 2, ch. 83-78; s. 9, ch. 83-216.

cf.—s. 72.011 *Jurisdiction of circuit courts in specific tax matters.*

120.575 Taxpayer contest proceedings.—

(1) In any administrative proceeding brought pursuant to chapter 120 as authorized in s. 72.011(1), the taxpayer or other substantially affected party shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent."

(2) In any administrative proceeding brought pursuant to s. 120.57, the department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the department made the assessment.

History.—s. 12, ch. 81-178.

120.58 Agency action; evidence, record and subpoenas.—

(1) In agency proceedings for a rule or order:

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This paragraph applies only to proceedings under s. 120.57.

(b) An agency or its duly empowered presiding officer or a hearing officer has the power to swear witnesses and take their testimony under oath, to issue subpoenas upon the written request of any party or upon its own motion, and to effect discovery on the written request of any party by any means available to the courts and in the manner provided in the Florida Rules of Civil Procedure. However, no agency or its duly empowered presiding officer or any hearing officer has the authority to issue any subpoena or order directing discovery to any member or employee of the Legislature when the subpoena or order commands the production of documents or materials or compels testimony relating to the legislative duties of the member or employee. Any subpoena or order directing discovery directed to a member or an employee of the Legislature shall show on its face that the testimony sought does not relate to legislative duties.

(c) Any public employee subpoenaed to appear at an agency proceeding shall be entitled to per diem and travel expenses at the same rate as that provided for state employees under s. 112.061 if travel away from such public employee's headquarters is required. All other witnesses appearing pursuant to a subpoena shall be paid such fees and mileage for their attendance as is provided in civil actions in circuit courts of this state. In the case of a public employee, such expenses shall be processed and paid in the manner provided for agency employee travel expense reimbursement, and in the case of a witness who is not a public employee, payment of such fees and expenses shall accompany the subpoena.

(d) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(e) If a majority of those who are to render the final order have not heard the case or read the record, a decision adverse to a party other than the agency itself shall not be made until a proposed order is served upon the parties and they are given an opportunity to file exceptions and present briefs and oral arguments to those who are to render the decision. The proposed order shall contain necessary findings of fact and conclusions of law and a reference to the source of each. The proposed order shall be prepared by the individual who conducted the hearing, if available, or by one who has read the record. The parties by written stipulation may waive compliance with this paragraph. The provisions of this paragraph shall not apply in the granting of parole or preliminary hearings for the revocation of parole.

(f) A party shall be permitted to conduct cross-examination when testimony is taken or documents are made a part of the record.

(2) Any person subject to a subpoena or order directing discovery may, before compliance and on timely petition, request the agency having jurisdiction of the dispute to invalidate the subpoena or order on the ground that it was not lawfully issued, is unreasonably broad in scope, or requires the production of irrelevant material, but the decision of the agency on any such request shall not be proposed agency action governed by s. 120.57.

(3) An agency may seek enforcement of a subpoena or order directing discovery issued under the authority of this act by filing a petition for enforcement, pursuant to s. 120.69, in the circuit court of the judicial circuit wherein the person failing to comply with the subpoena or order resides. A failure to comply with an order of the court shall result in a finding of contempt of court. However, no person shall be in contempt while the subpoena or order is being challenged under subsection (2). In the absence of agency action on the default within 30 days, the party requesting the subpoena or order may bring proceedings in an appropriate court for enforcement of the subpoena or order, and a failure to comply with an order of the court shall result in a finding of contempt of court.

History.—s. 1, ch. 74-310; s. 8, ch. 75-191; s. 9, ch. 76-131; s. 7, ch. 78-425.

120.59 Orders.—

(1) The final order in a proceeding which affects substantial interests shall be in writing or stated in the record and include findings of fact and conclusions of law separately stated, and it shall be rendered within 90 days:

(a) After the hearing is concluded, if conducted by the agency,

(b) After a recommended order is submitted to the agency and mailed to all parties, if the hearing is conducted by a hearing officer, or

(c) After the agency has received the written and oral material it has authorized to be submitted, if there has been no hearing.

The 90-day period may be waived or extended with the consent of all parties.

(2) Findings of fact, if set forth in a manner which is no more than mere tracking of the statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record which support the findings. If, in accordance with agency rules, a party submitted proposed findings of fact or filed any written application or other request in connection with the proceeding, the order shall include a ruling upon each proposed finding and a brief statement of the grounds for denying the application or request.

(3) If an agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, it shall recite with particularity the facts underlying such finding in the final order, which shall be appealable or enjoinable from the date rendered.

(4) Parties shall be notified either personally or by mail of any order, and, unless waived, a copy of the final order shall be delivered or mailed to each party or to his attorney of record.

History.—s. 1, ch. 74-310; s. 1, ch. 77-174.

120.60 Licensing.—

(1) Unless otherwise provided by statute enacted subsequent to the effective date of this act, licensing is subject to the provisions of s. 120.57.

(2) When an application for a license is made as required by law, the agency shall conduct the proceedings required with reasonable dispatch and with due regard to the rights and privileges of all affected parties or aggrieved persons. Within 30 days after receipt of an application for a license, the agency shall examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the agency is permitted by law to require. Failure to correct an error or omission or to supply additional information shall not be grounds for denial of the license unless the agency timely notified the applicant within this 30-day period. The agency shall notify the applicant if the activity for which he seeks a license is exempt from the licensing requirement and return any tendered application fee within 30 days after receipt of the original application or within 10 days after receipt of the timely requested additional information or correction of errors or omissions. Every application for license shall be approved or denied within 90 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions unless a shorter period of time for agency action is provided by law. The 90-day or shorter time period shall be tolled by the initiation of a proceeding under s. 120.57 and shall resume 10 days after the recommended order is submitted to the agency and the parties. Any application for a license not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after the recommended order is submitted to the agency and the parties, whichever is latest, shall be deemed approved and, subject to the satisfactory completion of an examination, if required as a prerequisite to licensure, the license shall be issued. The Public Service Commission, when issuing a license, and any other agency, if specifically exempted by law, shall be exempt from the time limitations within this subsection. Each agency, upon issuing or denying a license, shall state with particularity the grounds or basis for the issuance or denial of same, except where issuance is a ministerial act. On denial of a license application on which there has been no hearing, the denying agency shall inform the applicant of any right to a hearing pursuant to s. 120.57.

(3) The provisions of subsection (2) notwithstanding, every application for a certificate of authority as required by s. 624.401 shall be approved or denied within 180 days after receipt of the original application. Any application for such a certificate of authority not approved or denied within the 180-day period, or within 30 days after conclusion of a public hearing held on the application, shall be deemed approved, subject to the satisfactory completion of conditions required by statute as a prerequisite to license.

(4) In proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

(a)1. The Department of Banking and Finance shall have published in the Florida Administrative Weekly notice of the application within 21 days of receipt.

2. Within 21 days of publication of notice, any person may request a hearing, which upon request shall be conducted pursuant to s. 120.57 except that the Department of Banking and Finance shall by rule provide for participation by the general public; however, failure to request a hearing within 21 days of publication of notice shall constitute waiver of any right to a hearing.

(b) Should a hearing be requested pursuant to subparagraph 2. of paragraph (a), the applicant or licensee shall publish at his own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Department of Banking and Finance may by rule specify the format and size of such notice.

(c) Notwithstanding subsection (2), every application for license for a new bank, new trust company, new credit union, or new savings and loan association, and every application for acquisition of majority control of a bank, trust company, or savings and loan association involving a foreign national, shall be approved or denied within 180 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions. Any application for such a license or for acquisition of such control not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is the latest, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, or a new credit union by the appropriate insurer.

(5) When a licensee has made timely and sufficient application for the renewal of a license which does not automatically expire by statute, the existing license shall not expire until the application has been finally acted upon by the agency or, in case the application is denied or the terms of the license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(6) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to s. 120.57. When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall cause a short, simple notice to the licensee to be published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address as it appears on the records of the board. If no newspaper is published in that county, the notice may be published in a newspaper of general circulation in that county. If the address is in some state other than this state or in a foreign territory or country, the notice may be published in Leon County.

(7) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, it shall show compliance in its order with the requirements imposed by s. 120.54(9) on agencies making emergency rules. Summary suspension, restriction, or limitation may be ordered, but a formal suspension or revocation proceeding under this section shall also be promptly instituted and acted upon.

(8) If the Administration Commission grants an exemption from any provision of this section as provided in s. 120.63, the exemption shall be for a single application only and shall not be renewable.

(9) This section shall not apply to certification of employee organizations pursuant to s. 447.307.

History.—s. 1, ch. 74-310; s. 10, ch. 76-131; s. 1, ch. 77-174; ss. 4, 8, ch. 77-453; s. 57, ch. 78-95; s. 8, ch. 78-425; s. 1, ch. 79-142; s. 6, ch. 79-299; s. 2, ch. 81-160.

cf.—s. 161.141 Beach nourishment and restoration and erosion control projects.
s. 403.815 Public notice; waiver of hearings.

120.61 Official recognition.—When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material.

History.—s. 1, ch. 74-310.

120.62 Agency investigations.—

(1) No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person who responds to a request or demand by any agency or representative thereof for written data or an oral statement shall be entitled to a transcript of his oral statement at no more than cost.

(2) Any person compelled to appear, or who appears voluntarily, before any hearing officer or agency in an investigation or in any agency proceeding has the right, at his own expense, to be accompanied, represented, and advised by counsel or by other qualified representatives.

History.—s. 1, ch. 74-310.

120.63 Exemption from act.—

(1) Upon application of any agency, the Administration Commission may exempt any process or proceeding governed by this act from one or more requirements of this act:

(a) When the agency head has certified that the requirement would conflict with any provision of federal law or rules with which the agency must comply;

(b) In order to permit persons in the state to receive tax benefits or federal funds under any federal law; or

(c) When the commission has found that conformity with the requirements of the part or parts of this act for which exemption is sought would be so inconvenient or impractical as to defeat the purpose of the agency proceeding involved or the purpose of this act and would not be in the public interest in light of the nature of the intended action and the enabling act or other laws affecting the agency.

(2) The commission may not exempt an agency from any requirement of this act pursuant to this section until it establishes alternative procedures to achieve the agency's purpose which shall be consistent, insofar as possible, with the intent and purpose of the act.

(a) Prior to the granting of any exemption authorized by this section, the commission shall hold a public hearing after notice given as provided in s. 120.54(1). Upon the conclusion of the hearing, the commission, through the Executive Office of the Governor, shall issue an order specifically granting or denying the exemption and specifying any processes or proceedings exempted and the extent of the exemption; transmit to the committee and to the Department of State a copy of the petition, a certified copy of the order granting or denying the petition, and a copy of any alternative procedures prescribed; and give notice of the petition and the commission's response in the Florida Administrative Weekly.

(b) An exemption and any alternative procedure prescribed shall terminate 90 days following adjournment sine die of the then-current or next regular legislative session after issuance of the exemption order, or upon the effective date of any subsequent legislation incorporating the exemption or any partial exemption related thereto, whichever is earlier. The exemption granted by the commission shall be renewable upon the same or similar facts not more than once. Such renewal shall terminate as would an original exemption.

History.—s. 1, ch. 74-310; s. 11, ch. 76-131; s. 1, ch. 77-53; s. 8, ch. 77-453; s. 87, ch. 78-190; s. 7, ch. 79-299; s. 70, ch. 79-400; s. 58, ch. 81-259.

120.633 Division of Pari-mutuel Wagering; partial exemption from hearing and notice requirements.—The Division of Pari-mutuel Wagering is exempted from the hearing and notice requirements of s. 120.57(1)(a) and (b), but only for stewards, judges, and boards of judges when the hearing is to be held for the purpose of the imposition of fines or suspensions as provided by rules of the Division of Pari-mutuel Wagering, but not for revocations, and only upon violations (1) through (6) below. The Division of Pari-mutuel Wagering shall adopt rules establishing alternative procedures, including a hearing upon reasonable notice, for the following violations:

(1) Horse riding, harness riding, greyhound interference, and jai alai game actions in violation of chapters 550 and 551.

(2) Application and usage of drugs and medication to horses, greyhounds, and jai alai players in violation of chapters 550 and 551.

(3) Maintaining or possessing any device which could be used for the injection or other infusion of a prohibited drug to horses, greyhounds, and jai alai players in violation of chapters 550 and 551.

(4) Suspensions under reciprocity agreements between the Division of Pari-mutuel Wagering and regulatory agencies of other states.

(5) Assault or other crimes of violence on premises licensed for pari-mutuel wagering.

(6) Prearranging the outcome of any race or game.

History.—s. 1, ch. 77-53; s. 7, ch. 79-299.
Note.—Former s. 120.63(3).

120.65 Hearing officers.—

(1) There is hereby created the Division of Administrative Hearings within the Department of Administration, to be headed by a director who shall be appointed by the Administration Commission and confirmed by the Senate. The division shall be exempt from the provisions of chapter 216. The Department of Administration shall provide administrative support and service to the division. The division shall not be subject to control, supervision, or direction by the Department of Administration.

(2) The division shall employ full-time hearing officers to conduct hearings required by this chapter or other law. No person may be employed by the division as a full-time hearing officer unless he has been a member of The Florida Bar in good standing for the preceding 5 years.

(3) If the division cannot furnish a division hearing officer promptly in response to an agency request, the director shall designate in writing a qualified full-time employee of an agency other than the requesting agency to conduct the hearing. The director shall have the discretion to designate a hearing officer who is a qualified full-time employee of an agency other than the requesting agency which is located in that part of the state where the parties and witnesses reside.

(4) The director shall have the discretion to designate qualified laypersons to conduct hearings. If a layperson is so designated, the director shall assign a hearing officer to assist in the conduct of the hearing and to rule upon proffers of proof, questions of evidence, disposition of procedural requests, and similar matters.

(5) By rule, the division may establish:

(a) Further qualifications for hearing officers and shall establish procedures by which candidates will be considered for employment or contract.

(b) The manner in which public notice will be given of vacancies in the staff of hearing officers.

(c) Procedures for the assignment of hearing officers.

(6) The division is authorized to provide hearing officers on a contract basis to any governmental entity to conduct any hearing not covered by this section.

(7) The division shall have the authority to adopt reasonable rules to carry out the provisions of this act.

History.—s. 1, ch. 74-310; s. 9, ch. 78-191; s. 14, ch. 76-131; s. 9, ch. 78-425; s. 46, ch. 79-190.

120.66 Ex parte communications.—

(1) In any proceeding under s. 120.57, no ex parte communication relative to the merits, threat, or offer of reward shall be made to the agency head, after the agency head has received a recommended order, or to the hearing officer by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter.

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the proposed agency action, or his authorized representative or counsel.

Nothing in this subsection shall apply to advisory staff members who do not testify on behalf of the agency in the proceeding or to any rulemaking proceedings under s. 120.54.

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(2) A hearing officer who is involved in the decisional process and who receives an ex parte communication in violation of subsection (1) shall place on the record of the pending matter all written communications received, all written responses to such communications, and a memorandum stating the substance of all oral communications received and all oral responses made, and shall also advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, if such party requests the opportunity for rebuttal within 10 days after notice of such communication. The hearing officer may, if he deems it necessary to eliminate the effect of an ex parte communication received by him, withdraw from the proceeding, in which case the division shall assign a successor.

(3) Any person who makes an ex parte communication prohibited by subsection (1), and any hearing officer who fails to place in the record any such communication, is in violation of this act and may be assessed a civil penalty not to exceed $500 or be subjected to such other disciplinary action as his superiors may determine.

History.—s. 1, ch. 74-310; s. 10, ch. 75-191; s. 12, ch. 76-131; s. 1, ch. 77-174; s. 10, ch. 78-425.

120.68 Judicial review.—

(1) A party who is adversely affected by final agency action is entitled to judicial review. For purposes of this section, a district school board, whose decision is reviewed under the provisions of s. 231.36 and whose final action is modified by a superior administrative decision, shall be a party entitled to judicial review of the final action. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(2) Except in matters for which judicial review by the Supreme Court is provided by law, all proceedings for review shall be instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides. Review proceedings shall be conducted in accordance with the Florida Appellate Rules.

(3) The filing of the petition does not itself stay enforcement of the agency decision, but if the agency decision has the effect of suspending or revoking a license, supersedeas shall be granted as a matter of right upon such conditions as are reasonable, unless the court, upon petition of the agency, determines that a supersedeas would constitute a probable danger to the health, safety, or welfare of the state. The agency may also grant a stay upon appropriate terms, but, whether or not the action has the effect of suspending or revoking a license, a petition to the agency for a stay shall not be a prerequisite to a petition to the court for supersedeas. In any event, the order shall specify the conditions, if any, upon which the stay or supersedeas is granted.

(4) Judicial review of any agency action shall be confined to the record transmitted and any additions made thereto in accordance with subsection (6).

(5) The record for judicial review shall consist of the following:

(a) The agency's written document expressing the order, the statement of reasons therefor, if issued, and the record under s. 120.57, if review of proceedings under that section is sought.

(b) The agency's written document expressing the action, the statement of reasons therefor, if issued, and the materials considered by the agency under s. 120.54, if review is sought of proceedings under that section.

(c) The agency's written document expressing the action, and other written documents identified by the agency as having been considered by it before its action and used as a basis for its action, if review is sought of proceedings under s. 120.56 or s. 120.565 or if there has been no proceeding under s. 120.54 or s. 120.57.

(6) When there has been no hearing prior to agency action and the reviewing court finds that the validity of the action depends upon disputed facts, the court shall order the agency to conduct a prompt, factfinding proceeding under this act after having a reasonable opportunity to reconsider its determination on the record of the proceedings.

(7) The reviewing court shall deal separately with disputed issues of agency procedure, interpretations of law, determinations of fact, or policy within the agency's exercise of delegated discretion.

(8) The court shall remand the case for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure. Failure of any agency to comply with s. 120.53 shall be presumed to be a material error in procedure.

(9) If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(a) Set aside or modify the agency action, or

(b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(10) If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of s. 120.57 of the act, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent substantial evidence in the record.

(11) If the agency's action depends on facts determined pursuant to subsection (6), the court shall set aside, modify, or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(12) The court shall remand the case to the agency if it finds the agency's exercise of discretion to be:

(a) Outside the range of discretion delegated to the agency by law;

(b) Inconsistent with an agency rule, an officially stated agency policy, or a prior agency practice, if deviation therefrom is not explained by the agency; or

(c) Otherwise in violation of a constitutional or statutory provision;

but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(13)(a) The reviewing court's decision may be mandatory, prohibitory, or declaratory in form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

1. Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings, or decide the rights, privileges, obligations, requirements, or procedures at issue between the parties, and

2. Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(b) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(14) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

History.—s. 1, ch. 74-310; s. 13, ch. 76-131; s. 38, ch. 77-104; s. 1, ch. 77-174; s. 11, ch. 78-425.

ref.—s. 72.011 Jurisdiction of circuit courts in specific tax matters.

120.69 Enforcement of agency action.—

(1) Except as otherwise provided by statute:

(a) Any agency may seek enforcement of an action by filing a petition for enforcement, as provided in this section, in the circuit court where the subject matter of the enforcement is located.

(b) A petition for enforcement of any agency action may be filed by any substantially interested person who is a resident of the state. However, no such action may be commenced:

1. Prior to 60 days after the petitioner has given notice of the violation of the agency action to the head of the agency concerned, the Attorney General, and any alleged violator of the agency action.

2. If an agency has filed, and is diligently prosecuting, a petition for enforcement.

(c) A petition for enforcement filed by a nongovernmental person shall be in the name of the State of Florida on the relation of the petitioner, and the doctrines of res judicata and collateral estoppel shall apply.

(d) In an action brought under paragraph (b), the agency whose action is sought to be enforced, if not a party, may intervene as a matter of right.

(2) A petition for enforcement may request declaratory relief; temporary or permanent equitable relief; any fine, forfeiture, penalty, or other remedy provided by statute; any combination of the foregoing; or, in the absence of any other specific statutory authority, a fine not to exceed $1,000.

(3) After the court has rendered judgment on a petition for enforcement, no other petition shall be filed or adjudicated against the same agency action, on the basis of the same transaction or occurrence, unless expressly authorized on remand. The doctrines of res judicata and collateral estoppel shall apply, and the court shall make such orders as are necessary to avoid multiplicity of actions.

(4) In all enforcement proceedings:

(a) If enforcement depends on any facts other than those appearing in the record, the court may ascertain such facts under procedures set forth in s. 120.68(6).

(b) If one or more petitions for enforcement and a petition for review involving the same agency action are pending at the same time, the court considering the review petition may order all such actions transferred to and consolidated in one court. Each party shall be under an affirmative duty to notify the court when it becomes aware of multiple proceedings.

(c) Should any party willfully fail to comply with an order of the court, the court shall punish him in accordance with the law applicable to contempt committed by a person in the trial of any other action.

(5) In any enforcement proceeding the respondent may assert as a defense the invalidity of any relevant statute, the inapplicability of the administrative determination to respondent, compliance by the respondent, the inappropriateness of the remedy sought by the agency, or any combination of the foregoing. In addition, if the petition for enforcement is filed during the time within which the respondent could petition for judicial review of the agency action, the respondent may assert the invalidity of the agency action.

(6) Notwithstanding any other provision of this section, upon receipt of evidence that an alleged violation of an agency's action presents an imminent and substantial threat to the public health, safety, or welfare, the agency may bring suit for immediate temporary relief in an appropriate circuit court, and the granting of such temporary relief shall not have res judicata or collateral estoppel effect as to further relief sought under a petition for enforcement relating to the same violation.

(7) In any final order on a petition for enforcement the court may award to the prevailing party all or part of the costs of litigation and reasonable attorney's fees and expert witness fees, whenever the court determines that such an award is appropriate.

History.—s. 1, ch. 74-310.

120.70 Annual report.—Not later than February 1 of each year, the division shall issue a written report to the Administrative Procedures Committee and the Administration Commission, including at least the following information:

(1) A summary of the extent and effect of agencies' utilization of hearing officers, court reporters, and other personnel in proceedings under this act.

(2) Recommendations for change or improvement in the Administrative Procedure Act or any agency's practice or policy with respect thereto.

History.—s. 1, ch. 74-310.

120.71 Disqualification of agency personnel.—

(1) Notwithstanding the provisions of s. 112.3143,

any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual holds his position by appointment, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute to serve in the matter from which the individual is disqualified.

(2) Any agency action taken by a duly appointed substitute for a disqualified individual shall be as conclusive and effective as if agency action had been taken by the agency as it was constituted prior to any substitution.

(3) The Administration Commission shall adopt rules of procedure to implement this section.

History.—s. 1, ch. 74-310; s. 12, ch. 78-425; s. 2, ch. 82-329.

120.72 Legislative intent; prior proceedings and rules; exception.—

(1)(a) The intent of the Legislature in enacting this complete revision of chapter 120 is to make uniform the rulemaking and adjudicative procedures used by the administrative agencies of this state. To that end, it is the express intent of the Legislature that chapter 120 shall supersede all other provisions in the Florida Statutes, 1977, relating to rulemaking, agency orders, administrative adjudication, licensing procedure, or judicial review or enforcement of administrative action for agencies as defined herein to the extent such provisions conflict with chapter 120, unless expressly provided otherwise by law subsequent to January 1, 1975, except for marketing orders adopted pursuant to chapters 573 and 601.

(b) Unless expressly provided otherwise, a reference in any section of the Florida Statutes to chapter 120 or to any section or sections or portion of a section of chapter 120 shall hereby include, and shall be understood as including, all subsequent amendments to chapter 120 or to the referenced section or sections or portions of a section.

(2) All administrative adjudicative proceedings conducted pursuant to any provision of the Florida Statutes which were begun prior to January 1, 1975, shall be continued to a conclusion, including judicial review, under the provisions of the Florida Statutes, 1973, except that administrative adjudicatory proceedings which have not progressed to the stage of a hearing may, with the consent of all parties and the agency conducting the proceeding, be conducted in accordance with the provisions of this act as nearly as is feasible.

(3) Notwithstanding any provision of this chapter, all public utilities and companies regulated by the Public Service Commission shall be entitled to proceed under the interim rate provisions of chapter 364 or the procedures for interim rates contained in chapter 74-195, Laws of Florida, or as otherwise provided by law.

(4)(a) All prior rules not adopted following a public hearing as provided by statute shall be void and unenforceable after October 1, 1975, and shall be stricken from the files of the Department of State and from the files of the adopting agency.

(b) Any rule in effect on, or filed with the Department of State prior to, January 1, 1975, except one adopted following a public hearing as provided by statute, shall be forthwith reviewed by the agency concerned on the written request of a person substantially affected by the rule involved and this provision. The agency concerned shall initiate the rulemaking procedures provided by this act within 90 days after receiving such written request. If the agency concerned fails to initiate the rulemaking procedures within 90 days, the operation of the rule shall be suspended. This provision shall control s. 120.54(5).

(c) All existing rules shall be indexed by January 1, 1975.

History.—s. 3, ch. 74-310; s. 1, ch. 76-207; s. 1, ch. 77-174; s. 57, ch. 78-95; s. 13, ch. 78-425.

120.721 Effect of chapter 75-22, Laws of Florida, on rules.—Any rule or regulation of a public agency involved in or affected by the reorganization of the executive agencies as set forth in chapter 75-22, Laws of Florida, which was valid when adopted under the authority granted by the Legislature to adopt such rule, to the extent it is not inconsistent with chapter 75-22, Laws of Florida, shall remain in effect until it expires by its terms or is specifically repealed or revised as provided by law.

History.—s. 23, ch. 75-22.

120.722 Legislative intent of chapter 78-95, Laws of Florida.—

(1) The primary purpose of chapter 78-95, Laws of Florida, is to repeal or amend various provisions of the Florida Statutes containing procedural language superseded or made redundant by chapter 120 (the Administrative Procedure Act). Chapter 78-95 is designed to place the provisions affected into conformity with chapter 120, except where expressly noted to the contrary.

(2) Any section or subunit of a section repealed by an act of any session shall remain repealed despite any amendment in chapter 78-95. Any act of the 1978 legislative session, other than one resulting from a reviser's bill, that amends any provision affected by chapter 78-95 shall supersede chapter 78-95 to the extent that such amendment conflicts with chapter 78-95.

(3) Deletions of references to chapter 120 in chapter 78-95 do not imply that chapter 120 is not applicable; except where expressly noted otherwise, references to chapter 120 are deleted as unnecessary and repetitious.

(4) Failure of chapter 78-95 to amend or repeal any provision in the Florida Statutes does not imply that that provision is not in conflict with, superseded by, or unnecessary in light of chapter 120.

History.—s. 1, ch. 78-95.

120.73 Circuit court proceedings; declaratory judgments.—Nothing in this chapter shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of an administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments under the provisions of chapter 86.

History.—s. 11, ch. 78-191; s. 14, ch. 78-425.

CHAPTER 160

REGIONAL PLANNING COUNCILS

160.001 Short title.
160.002 Legislative findings; public purpose.
160.003 Definitions.
160.01 Regional planning councils; creation; membership.
160.02 Regional planning councils; powers and duties.
160.05 Executive Office of the Governor; powers and duties.
160.07 Comprehensive regional policy plans.
160.08 Reports.
160.09 Creation of regional planning councils under ch. 163.

160.001 Short title.—Sections 160.001-160.08 shall be known and may be cited as the "Florida Regional Planning Council Act."

History.—ss. 1, 5, ch. 80-315; s. 4, ch. 82-46.

160.002 Legislative findings; public purpose.—

(1) The Legislature finds and declares that:

(a) The problems of growth and development often transcend the boundaries of individual units of local general-purpose government, and often no single unit can formulate plans or implement policies for their solution without affecting other units in their geographic area.

(b) There is a need for regional planning agencies to assist local governments to resolve their common problems, engage in areawide comprehensive and functional planning, administer certain federal and state grants-in-aid, and provide a regional focus in regard to multiple programs undertaken on an areawide basis.

(c) Federal and state programs should have coordinated purposes and consistent policy direction in order to avoid the proliferation of overlapping, duplicating, and competing regional agencies. To further this end, these efforts should result in entities agencies which effectively carry out a wide variety of federal and state program designations.

(d) The financial and technical assistance of the state should be provided to regional planning agencies to maximize the effective use of regional programs undertaken with the authorization of local, state or federal governments serving the citizens of Florida.

(e) There is a need for the establishment at the regional level of clear policy plans that will guide broad-based representative regional planning agencies as they undertake regional review functions.

(2) It is the declared purpose of this act to establish a common system of regional planning councils for areawide coordination and related cooperative activities of federal, state, and local governments; ensure a broad-based regional organization that can provide a truly regional perspective; and enhance the ability and opportunity of local governments to resolve issues and problems transcending their individual boundaries.

History.—ss. 2, 5, ch. 80-315; s. 4, ch. 82-46.

*Note.—The word "entities" appears to be an error; it was substituted for the word "regional" in the preparation of CS for H.B. 1452 (1980).

160.003 Definitions.—As used in this act:

(1) "State" or "state government" means the government of the State of Florida or any department, commission, agency, or other instrumentality thereof.

(2) "Federal" or "Federal Government" means the Government of the United States or any department, commission, agency, or other instrumentality thereof.

(3) "Local general-purpose government" means any municipality or county created pursuant to the authority granted under ss. 1 and 2, Art. VIII of the State Constitution.

(4) "Existing regional planning council" means a regional planning council created by local general-purpose governments prior to October 1, 1980, pursuant to chapters 160 and 163.

(5) "Elected official" means a member of the governing body of a municipality or county or an elected county official chosen by the governing body.

(6) "Department" means the Department of Community Affairs.

(7) "Comprehensive regional policy plan" means a long-range guide for physical, economic, and social development of a comprehensive planning district which identifies regional goals and objectives and opportunities as embodied in the policies of a regional planning council.

(8) "Comprehensive planning districts" means the geographic areas within the state specified by rule by the Executive Office of the Governor pursuant to s. 23.0115.

History.—ss. 3, 5, ch. 80-315; s. 7, ch. 81-167; s. 4, ch. 82-46; s. 7, ch. 83-55.

160.01 Regional planning councils; creation; membership.—

(1) A regional planning council shall be created in each of the several comprehensive planning districts of the state. Only one agency shall exercise the responsibilities granted herein within the geographic boundaries of any one comprehensive planning district.

(2) Membership on the regional planning council shall be as follows:

(a) Representatives appointed by each of the member counties in the geographic area covered by the regional planning council.

(b) Representatives from other member local general-purpose governments in the geographic area covered by the regional planning council.

(c) Representatives appointed by the Governor from the geographic area covered by the regional planning council.

(3) Not less than two-thirds of the representatives serving as voting members on the governing bodies of such regional planning councils shall be elected officials of local general-purpose governments chosen by the cities and counties of the region, provided each county shall have at least one vote. The remaining one-third of the voting members on the governing board shall be appointed by the Governor, subject to confirmation by the Senate, and shall reside in the region. No two appointees of the Governor shall have their places of residence in the same county until each county within the region is represented by a Governor's appointee to the governing board. Nothing contained in this section shall deny to local governing bodies or the Governor the option of appointing either locally elected officials or lay citizens provided at least two-thirds of the governing body of the regional planning council is composed of locally elected officials.

(4) Nothing contained in this act shall be construed to mandate local general-purpose government membership or participation in a regional planning council.

(5) The existing regional planning council in each of the several comprehensive planning districts shall be designated as the regional planning council specified under subsections (1)-(4), provided the council agrees to meet the membership criteria specified therein and is a regional planning council organized under either s. 163.01 or s. 163.02 or chapter 160.

History.—s. 1, ch. 59-369; s. 19, ch. 63-409; s. 1, ch. 69-63; ss. 3, 5, ch. 80-315; s. 4, ch. 82-46.

160.02 Regional planning councils; powers and duties.—Any regional planning council created hereunder shall have the following powers:

(1) To adopt rules of procedure for the regulation of its affairs and the conduct of its business and to appoint from among its members a chairman to serve annually; however, such chairman may be subject to reelection.

(2) To adopt an official name and seal.

(3) To maintain an office at such place or places within the comprehensive planning district as it may designate.

(4) To employ and to compensate such personnel, consultants, and technical and professional assistants as it shall deem necessary to exercise the powers and perform the duties set forth in this act.

(5) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act.

(6) To hold public hearings and sponsor public forums in any part of the regional area whenever the council deems it necessary or useful in the execution of its other functions.

(7) To sue and be sued in its own name.

(8) To accept and receive, in furtherance of its functions, funds, grants, and services from the Federal Government or its agencies; from departments, agencies, and instrumentalities of state, municipal, or local government; or from private or civic sources. Each regional planning council shall, no later than January 30 of each year, render an accounting of the receipt and disbursement of all funds received by it to the secretary of the Department of Community Affairs. The Secretary of Community Affairs shall consolidate all such reports and submit such consolidated report to the Legislature no later than March 1 of each year. A separate accounting of the receipt and disbursement of funds received by each regional planning council pursuant to the Federal Older Americans Act shall be submitted to the Legislature no later than March 1 of each year.

(9) To receive and expend such sums of money as shall be from time to time appropriated for its use by any county or municipality when approved by the council and to act as an agency to receive and expend federal funds for planning.

(10) To act in an advisory capacity to the constituent local governments in regional, metropolitan, county, and municipal planning matters.

(11) To cooperate, in the exercise of its planning functions, with federal and state agencies in planning for emergency management under s. 252.34(3).

(12) To fix and collect membership dues, rents, or fees when appropriate.

(13) To acquire, own, hold in custody, operate, maintain, lease, or sell real or personal property.

(14) To dispose of any property acquired through the execution of an interlocal agreement under s. 163.01.

(15) To accept gifts, grants, assistance, funds, or bequests.

(16) To conduct studies of the resources of the region.

(17) To participate with other governmental agencies, educational institutions, and private organizations in the coordination or conduct of its activities.

(18) To select and appoint such advisory bodies as the council may find appropriate for the conduct of its activities.

(19) To enter into contracts to provide, at cost, such services related to its responsibilities as may be requested by local governments within the region and which the council finds feasible to perform.

History.—s. 2, ch. 59-369; ss. 17, 35, ch. 59-136; s. 1, ch. 73-253; ss. 3, 5, ch. 80-315; s. 8, ch. 81-162; s. 4, ch. 82-46; s. 8, ch. 83-55; s. 4, ch. 83-334.

160.05 Executive Office of the Governor; powers and duties.—The Executive Office of the Governor, or its designee, shall:

(1) Arbitrate and settle disputes between regional planning councils.

(2) Provide assistance to local general-purpose governments concerning organization of, or reorganization into, a regional planning council.

(3) Review, modify, reject, or approve those rules of the regional planning councils which pertain to the functions designated to the regional planning councils by the state. These rules shall be submitted to the Governor or his designee and, if not acted upon within 30 days of receipt, they will be assumed to be in force.

(4) Conduct an in-depth analysis of the current boundaries of the regional planning councils and include in its study the preferences of local general-purpose governments; the effect of population migration, transportation networks, population increases and decreases, economic development centers and trade areas; and other data, projections, or studies which it determines to be of significance in establishing district boundaries. The Executive Office of the Governor may make such changes in the district boundaries as are found to be feasible and desirable.

History.—ss. 3, 5, ch. 80-315; s. 4, ch. 82-46.

160.07 Comprehensive regional policy plans.

—Comprehensive regional policy plans shall be adopted to the extent of available resources, pursuant to chapter 120, by each regional planning council based on the studies conducted under s. 160.02(16). For the purpose of legislative overview, each council shall prepare a plan status report, including supporting data for state funding if needed for plan completion. The report shall be presented to the Legislature by March 2, 1981. The plans shall be consistent with chapters 373 and 403. Regional planning councils shall present their policy plans to the appropriate water management district or the Secretary of the Department of Environmental Regulation for resolution of inconsistencies between regional district plans and comprehensive regional policy plans. A council may appeal the final agency action of a district to the Land and Water Adjudicatory Commission. Such comprehensive regional policy plan, when adopted, shall constitute the basis for review of developments of regional impact, local government comprehensive plans, federally assisted projects, and any other regional overview and comment functions.

History.—ss. 3, 5, ch. 80-315; s. 4, ch. 82-46.

160.08 Reports.—Each regional planning council shall prepare and furnish an annual report on its activities to the department and the local general-purpose governments within its boundaries and, upon payment as may be established by the council, to any interested person. The regional planning councils shall make a joint report and recommendations to appropriate legislative committees.

History.—ss. 3, 5, ch. 80-315; s. 4, ch. 82-46.

160.09 Creation of regional planning councils under ch. 163.—Nothing in this chapter is intended to repeal or limit the provisions of chapter 163; however, the local general-purpose governments serving as voting members of the governing body of a regional planning council created pursuant to this chapter are not authorized to create a regional planning council pursuant to chapter 163 unless an agency, other than a regional planning council created pursuant to this chapter, is designated to exercise the powers and duties in any one or more of ss. 23.012(6), 163.3164(17), and 380.031(13); in which case, such a regional planning council is also without authority to exercise the powers and duties in s. 23.012(6), s. 163.3164(17) or s. 380.031(15).

History.—ss. 4, 5, ch. 80-315; s. 4, ch. 82-46.

CHAPTER 161

BEACH AND SHORE PRESERVATION

PART I REGULATION OF CONSTRUCTION, RECONSTRUCTION, AND OTHER PHYSICAL ACTIVITY (ss. 161.011-161.212)

PART II BEACH AND SHORE PRESERVATION DISTRICTS (ss. 161.25-161.45)

PART I

REGULATION OF CONSTRUCTION, RECONSTRUCTION, AND OTHER PHYSICAL ACTIVITY

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161.011 Short title.—This chapter parts I and II, may be known and cited as the "Beach and Shore Preservation Act."

History.—s. 1, ch. 65-408.

161.021 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase, or term:

(1) "Department" means the Department of Natural Resources.

(2) "Division" means the Division of Marine Resources of the Department of Natural Resources.

(3) "Beach and shore preservation," "erosion control, beach preservation and hurricane protection," "beach erosion control" and "erosion control" includes, but is not limited to, erosion control, hurricane protection, coastal flood control, shoreline and offshore rehabilitation, and regulation of work and activities likely to affect the physical condition of the beach or shore.

(4) "Coastal construction" includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.

(5) "Inlet sediment bypassing" includes any transfer of sediment from an inlet or beach to another stretch of beach for the purpose of renourishment and beach erosion control.

(6) "Emergency" means any unusual incident resulting from natural or unnatural causes which endangers the health, safety, or resources of the residents of the state, including damages or erosion to any shoreline resulting from a hurricane, storm, or other such violent disturbance.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 43, ch. 71-377; s. 1, ch. 78-257.

161.031 Personnel and facilities.—The Department of Natural Resources may call to its assistance temporarily, any engineer or other employee in any state agency or department or in the University of Florida or other educational institution financed wholly or in part by the state, for the purpose of devising the most effective and economical method of averting and preventing erosion, hurricane and storm damages. These employees shall not receive additional compensation, except for actual necessary expenses incurred while working under the direction of the Division of Marine Resources.

History.—s. 1, ch. 65-408; ss. 28, 35, ch. 69-106.

161.041 Permits required.—If any person, firm, corporation, county, municipality, township, special district, or any public agency desires to make any coastal construction or reconstruction or change of existing structures, or any construction or physical activity undertaken specifically for shore protection purposes, or other structures and physical activity including groins, jetties, moles, breakwaters, seawalls,

revetments, artificial nourishment, inlet sediment bypassing, excavation or maintenance dredging of inlet channels, or other deposition or removal of beach material, or construction of other structures if of a solid or highly impermeable design, upon sovereignty lands of Florida, below the mean high-water line of any tidal water of the state, a coastal construction permit must be obtained from the Department of Natural Resources prior to the commencement of such work. No such development shall interfere, except during construction, with the use by the public of any area of a beach seaward of the mean high-water line unless the department determines such interference is unavoidable for purposes of protecting the beach or any endangered upland structure. Application for coastal construction permits as defined above shall be made to the department upon such terms and conditions as set forth by rule of the department.

History.—s. 1, ch. 65-408; ss. 29, 35, ch. 69-106; s. 2, ch. 78-257; s. 1, ch. 83-247.

161.0415 Citation of rule.—In addition to any other provisions within this chapter or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this chapter 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. 1, ch. 79-161.

161.042 Coastal construction and excavation in barrier beach inlets.—The department is authorized to direct that any person, or any public body or agency, responsible for the excavation of sandy sediment as a result of any activity conducted to maintain navigable depths within or immediately adjacent to any coastal barrier beach inlet within sovereignty lands shall, after receipt of written authorization from the Department of Environmental Regulation relating to the deposition of spoil material from the excavation pursuant to chapters 253 and 403, use such sediment for beach nourishment as prescribed by the division. Requests for such authorization shall be made by the applicant to the Department of Environmental Regulation, and such authorization shall be granted upon issuance of water quality certification by the Department of Environmental Regulation. For any construction or excavation within or immediately contiguous to any coastal barrier beach inlet which has been permitted pursuant to s. 161.041, the department may require the permittee to supply beach profiles and conduct hydrographic monitoring of the impacted area.

History.—s. 3, ch. 78-257; s. 1, ch. 80-183.

161.051 Coastal construction by persons, firms, corporations, or local authorities.—Where any person, firm, corporation, county, municipality, township, special district, or any public agency shall construct and install projects when permits have been properly issued, such works and improvements shall be the property of said person, firm, corporation, county, municipality, township, special district, or any public agency where located, and shall thereafter be maintained by and at the expense of said person, firm, corporation, county, municipality, township, special district, or other public agency. No grant under this section shall affect title of the state to any lands below the mean high-water mark, and any additions or accretions to the upland caused by erection of such works or improvement shall remain the property of the state if not previously conveyed. The state shall in no way be liable for any damages as a result of erections of such works and improvements, or for any damages arising out of construction, reconstruction, maintenance, or repair thereof, or otherwise arising on account of such works or improvements.

History.—s. 1, ch. 65-408.

161.052 Coastal construction and excavation; regulation.—

(1) No person, firm, corporation, municipality, county, or other public agency shall excavate or construct any dwelling house, hotel, motel, apartment building, seawall, revetment, or other structure incidental to or related to such structure, including but not limited to such attendant structures or facilities as a patio, swimming pool, or garage, within 50 feet of the line of mean high water at any riparian coastal location fronting the Gulf of Mexico or Atlantic coast shoreline of the state, exclusive of bays, inlets, rivers, bayous, creeks, passes, and the like. In areas where an erosion control line has been established under the provisions of ss. 161.141-161.211, that line, or the presently existing mean high-water line, whichever is more landward, shall be considered to be the mean high-water line for the purposes of this section.

(2) A waiver or variance of the setback requirements may be authorized by the Department of Natural Resources in the following circumstances:

(a) The department may authorize an excavation or erection of a structure at any riparian coastal location as described in subsection (1) upon receipt of an application from a riparian owner and upon the consideration of facts and circumstances, including adequate engineering data concerning shoreline stability and storm tides related to shoreline topography, which, in the opinion of the Department of Natural Resources, clearly and unequivocally justify such a waiver or variance.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if said existing structures have not been unduly affected by erosion, a proposed structure may be permitted along such line on written authorization from the Department of Natural Resources if such proposed structure is also approved by the Department of Natural Resources. However, the Department of Natural Resources shall not contravene setback requirements established by a county or municipality which are equal to, or more strict than, those setback requirements provided herein.

(c) The department may authorize the construction of pipelines or piers extending outward from the shoreline, unless it determines that the construction

of such projects would cause erosion of the beach in the area of such structures.

(3) The provisions of this section shall not apply to structures intended for shore protection purposes which are regulated by s. 161.041 or to structures existing or under construction on June 27, 1970.

(4) The Department of Natural Resources may by regulation exempt specifically described portions of the coastline from the provisions of this section whenever in its judgment such portions of coastline, because of their nature, are not subject to erosion of a substantially damaging effect to the public.

(5) The setback requirements as defined herein shall not apply to any riparian coastal locations fronting the Atlantic Ocean or Gulf of Mexico which have vegetation-type nonsandy shores.

(6) The setback requirements defined in subsection (1) shall not apply to any modification, maintenance, or repair to any existing structure within limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure.

(7) Any coastal structure erected, or excavation created, in violation of the provisions of this section is hereby declared to be a public nuisance, and such structure shall be forthwith removed or such excavation refilled after written notice by the Department of Natural Resources directing such removal or filling. In the event that the structure is not removed or the excavation refilled as directed within a reasonable time, the Department of Natural Resources may remove such structure or fill such excavation at its own expense. The cost thereof shall become a lien upon the property of the upland owner upon which such unauthorized structure or excavation is located.

(8) Any person violating any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083. Such person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this section is committed or continued.

(9) The executive director of the department may make recommendations to the Governor and Cabinet as head of the department concerning the purchase of the fee or any lesser interest in any lands seaward of the setback requirement as environmentally endangered lands or as outdoor recreation lands.

(10) A coastal county or municipality fronting on the Gulf of Mexico or the Atlantic Ocean shall advise the department within 5 days after receipt of any permit application for construction or other activities proposed to be located within 50 feet of the line of mean high water. Within 5 days after receipt of such application, the county or municipality shall notify the applicant of the requirements for state permits.

History.—s. 1, ch. 70-231; s. 82, ch. 71-136; s. 1, ch. 78-87; s. 1, ch. 78-257; s. 2, ch. 80-183; s. 66, ch. 81-259.

161.053 Coastal construction and excavation; regulation on county basis.—

(1) The Legislature finds and declares that the beaches in this state and the coastal barrier dunes adjacent to such beaches, by their nature, are subject to frequent and severe fluctuations and represent one of the most valuable natural resources of Florida and that it is in the public interest to preserve and protect them from imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, and endanger adjacent property and the beach-dune system. In furtherance of these findings, it is the intent of the Legislature to provide that the department establish coastal construction control lines on a county basis along the sand beaches of the state fronting on the Atlantic Ocean or the Gulf of Mexico. Such lines shall be established so as to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions. However, the department may establish a segment or segments of a coastal construction control line further landward than the impact zone of a 100-year storm surge, provided such segment or segments do not extend beyond the landward toe of the coastal barrier dune structure that intercepts the 100-year storm surge. Such segment or segments shall not be established if adequate dune protection is provided by a state-approved dune management plan. Special siting and design considerations shall be necessary seaward of established coastal construction control lines to ensure the protection of the beach-dune system, proposed or existing structures, and adjacent properties.

(2) Coastal construction control lines shall be established by the department only after it has been determined from a comprehensive engineering study and topographic survey that the establishment of such control lines is necessary for the protection of upland properties and the control of beach erosion. No such line shall be set until a public hearing has been held for each area involved. After the department has given consideration to the results of such public hearing, it shall, after considering ground elevations in relation to historical storm and hurricane tides, predicted maximum wave uprush, beach and offshore ground contours, the vegetation line, erosion trends, the dune or bluff line, if any exist, and existing upland development, set and establish a coastal construction control line and cause such line to be duly recorded in the public records of any county and municipality affected and shall furnish the clerk of the circuit court in each county affected a survey of such line with references made to permanently installed monuments at such intervals and locations as may be considered necessary. Upon the establishment, approval, and recordation of such control line or lines, no person, firm, corporation, or governmental agency shall construct any structure whatsoever seaward thereof; make any excavation, remove any beach material, or otherwise alter existing ground elevations; drive any vehicle on, over, or across any sand dune; or damage or cause to be damaged such sand dune or the vegetation growing thereon seaward thereof except as hereinafter provided. Control lines established under the provisions of this section shall be subject to review at the discretion of the department after consideration of hydrographic and topo-

graphic data which indicates shoreline changes that render established coastal construction control lines to be ineffective for the purposes of this act or at the written request of officials of affected counties or municipalities. Any riparian upland owner who feels that such line as established is unduly restrictive or prevents a legitimate use of his property shall be granted a review of the line upon written request. After such review, the department shall decide if a change in the control line as established is justified and shall so notify the person or persons making the request. The decision of the department shall be subject to judicial review as provided in chapter 120.

(3) Any coastal county or coastal municipality may establish coastal construction zoning and building codes in lieu of the provisions of this section, provided such zones and codes are approved by the department as being adequate to protect the shoreline from erosion and safeguard adjacent structures. Exceptions to locally established coastal construction zoning and building codes shall not be granted unless previously approved by the department. It is the intent of this subsection to provide for local administration of established coastal construction control lines through approved zoning and building codes where desired by local interests and where such local interests have, in the judgment of the department, sufficient funds and personnel to adequately administer the program. Should the department determine at any time that the program is inadequately administered, the department shall have authority to revoke the authority granted to the county or municipality.

(4) Except in those areas where local zoning and building codes have been established pursuant to subsection (3), a permit to alter, excavate, or construct on property seaward of established coastal construction control lines may be granted by the department as follows:

(a) The department may authorize an excavation or erection of a structure at any coastal location as described in subsection (1) upon receipt of an application from a property and/or riparian owner and upon the consideration of facts and circumstances, including adequate engineering data concerning shoreline stability and storm tides related to shoreline topography, design features of the proposed structures or activities, and potential impacts of the location of such structures or activities including potential cumulative effects of any proposed structures or activities upon such beach-dune system, which, in the opinion of the department, clearly justify such a permit.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if the existing structures have not been unduly affected by erosion, a proposed structure may, at the discretion of the department, be permitted along such line on written authorization from the department if such structure is also approved by the department. However, the department shall not contravene setback requirements or zoning or building codes established by a county or municipality which are equal to, or more strict than, those requirements provided herein.

(c) The department may condition the nature, timing, and sequence of construction of permitted activities to provide protection to nesting sea turtles and hatchlings and their habitat pursuant to s. 370.12 and to native salt-resistant vegetation and endangered plant communities.

(5) Any coastal structure erected, or excavation created, in violation of the provisions of this section is hereby declared to be a public nuisance; and such structure shall be forthwith removed or such excavation shall be forthwith refilled after written notice by the department directing such removal or filling. In the event the structure is not removed or the excavation refilled within a reasonable time as directed, the department may remove such structure or fill such excavation at its own expense; and the costs thereof shall become a lien upon the property of the upland owner upon which such unauthorized structure or excavation is located.

(6) Any person who violates this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084; except that a person driving any vehicle on, over, or across any sand dune and damaging or causing to be damaged such sand dune or the vegetation growing thereon in violation of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person shall be deemed guilty of a separate offense for each month during any portion of which any violation of this section is committed or continued.

(7) The provisions of this section do not apply to structures intended for shore protection purposes which are regulated by s. 161.041 or to structures existing or under construction prior to the establishment of the coastal construction control line as provided herein, provided such structures may not be materially altered except as provided in subsection (4).

(8) The department may by regulation exempt specifically described portions of the coastline from the provisions of this section when in its judgment such portions of coastline because of their nature are not subject to erosion of a substantially damaging effect to the public.

(9) Pending the establishment of coastal construction control lines as provided herein, the provisions of s. 161.052 shall remain in force. However, upon the establishment of coastal construction control lines, or the establishment of coastal construction zoning and building codes as provided in subsection (3), the provisions of s. 161.052 shall be superseded by the provisions of this section.

(10) The coastal construction control requirements defined in subsection (1) do not apply to any modification, maintenance, or repair to any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure.

(11) Concurrent with the establishment of a coastal construction control line, the executive director of the department shall make recommendations to the Governor and Cabinet as head of the department concerning the purchase of the fee or any lesser interest in any lands seaward of the control line as environmentally endangered lands or as outdoor recreation lands; and, with respect to those control lines established pursuant to this section prior to June 14, 1978, the executive director may make such recommendations.

(12) A coastal county or municipality fronting on the Gulf of Mexico or the Atlantic Ocean shall advise the department within 5 days after receipt of any permit application for construction or other activities proposed to be located seaward of the line established by the department pursuant to the provisions of this section. Within 5 days after receipt of such application, the county or municipality shall notify the applicant of the requirements for state permits.

(13) In keeping with the intent of subsection (3), and at the discretion of the department, authority for permitting certain types of activities which have been defined by the department may be delegated by the department to a coastal county or coastal municipality. Such partial delegation shall be narrowly construed to those particular activities specifically named in the delegation and agreed to by the affected county or municipality; and the delegation may be revoked by the department at any time if it is determined that the delegation is improperly or inadequately administered.

History.—s. 1, ch. 71-290; s. 2, ch. 78-87; s. 1, ch. 71-12; s. 5, ch. 78-257; s. 29, ch. 79-164; s. 3, ch. 80-183; s. 67, ch. 81-259; s. 2, ch. 83-247.

161.0535 Permits; fees, costs.—The department may establish by rule a fee schedule and may assess fees for the filing, processing, and issuance of permits issued pursuant to s. 161.041 and s. 161.053. The fee schedule shall contain categories of permits based on the varying costs of evaluating applications for different types of proposed construction. The fee schedule shall be based on the actual costs of administering these permitting programs, less the amounts appropriated by the Legislature for such purposes. The department may also assess the applicant for the costs of public notice by publication prior to the consideration of these permit applications.

History.—s. 2, ch. 83-247.

161.054 Administrative fines; liability for damage; liens.—

(1) In addition to the penalties provided for in ss. 161.052, 161.053, and 161.121, any person or agent of any person refusing to comply with or willfully violating any of the provisions of s. 161.052 or s. 161.053 or any rule or order prescribed by the department thereunder shall incur a fine for each offense in an amount up to $10,000 to be fixed, imposed, and collected by the department. Each day during any portion of which such violation occurs constitutes a separate offense.

(2) Whenever any person or agent of any person knowingly violates any of the provisions of s. 161.052 or s. 161.053 so that damage is caused to beaches, shores, or beach-dune systems, including animal, plant, or aquatic life thereon, such violator shall be liable for such damage. If two or more persons or their agents cause damage, and if liability for such damage cannot be apportioned, each violator shall be jointly and severally liable for the damage. If, however, liability for such damage can be apportioned, each violator is liable only for that portion of the damage and subject to that portion of the fine attributable to his violation.

(3) The imposition of a fine or an award of damages pursuant to this section shall create a lien upon the real and personal property of the violator, enforceable by the department as are statutory liens under chapter 85. The proceeds of such fines and awards of damages shall be deposited in the Erosion Control Trust Fund.

(4) Fines imposed by the department or damages awarded shall be of such amount so as to ensure immediate and continued compliance with the provisions of ss. 161.052 and 161.053.

History.—s. 4, ch. 80-183; s. 3, ch. 83-247.

161.061 Coastal construction serving no public purpose, endangering human life, health, or welfare, or becoming unnecessary or undesirable.—

(1) Any coastal construction, or any structure including groins, jetties, moles, breakwaters, seawalls, revetments, or other structures if of a solid or highly impermeable design upon sovereignty lands of Florida, below the mean high-water line of any tidal water of the state, regardless of date of construction or whether a permit has been issued in accordance with part I of this chapter, which serves no public purpose, which is dangerous to or in any way endangers human life, health, or welfare, or which proves to be undesirable or becomes unnecessary, as determined by the Department of Natural Resources, shall be adjusted, altered, or removed by the abutting upland property owner after written notice by the division. Request for hearing must be filed by the owner with the department within 15 days after such notice. Adjustments, alterations, or removals required by this section shall be accomplished at no cost to the state. The decision of the department as to whether to adjust, alter, or remove such coastal construction or structure shall be final and the department shall set a reasonable time within which the adjustment, alteration, or removal shall be accomplished.

(2) In the event that the upland property owner does not adjust, alter, or remove any coastal construction, or other structure including groins, jetties, moles, breakwaters, seawalls, revetments, or other structures if of a solid or highly impermeable design upon sovereignty lands of Florida, below the mean high-water line, when requested or directed by the department in accordance with subsection (1) of this section, the department may alter, adjust, or remove such coastal construction or structures at its own expense, and the costs thereof shall become a lien upon the property of said abutting upland property owner.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95.

161.071 Prosecuting officers to assist enforcement of part I of this chapter.—State attorneys, or other prosecuting officers of the state or

county, and sheriffs and their deputies of the several counties of this state, shall assist the Department of Natural Resources in enforcement of part I of this chapter. The officers and their deputies shall, upon information that any persons, firms, or corporations are violating any of the provisions of part I of this chapter, report the same, together with the information in their possession relating thereto, to the department and shall cooperate with the department in carrying out the provisions of part I of this chapter. The state attorneys and other prosecuting officers of the state or any county, upon the request of the department, shall institute and maintain such legal proceedings as may be necessary to carry out the enforcement of the provisions of part I of this chapter.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106.

161.081 Powers of Department of Legal Affairs.—When a permit is required under part I of this chapter and has not been issued as provided herein, any such project or physical activity shall be considered a public nuisance and the Department of Legal Affairs may at the request of the Department of Natural Resources institute proceedings to enjoin or abate such nuisance.

History.—s. 1, ch. 65-408; ss. 11, 25, 35, ch. 69-106.

161.091 Erosion Control Trust Fund Account.—

(1) There is created in the State Treasury an account to be known as the "Erosion Control Trust Fund Account." Subject to such appropriations as the Legislature may make therefor from time to time, disbursements from this account may be made by the Division of Marine Resources of the Department of Natural Resources subject to the approval of the department in order to carry out the proper state responsibilities in a comprehensive, long-range, statewide plan for erosion control, beach preservation, and hurricane protection, in accordance with the following:

(a) With regard to federal aid projects, the department is authorized to pay up to 75 percent of the nonfederal construction and maintenance costs of projects authorized for construction by the United States Congress, including biological monitoring costs, revegetation costs, and costs of monitoring post-construction shoreline changes, provided local interests shall, as project sponsor, pay:

1. The nonfederal costs for project engineering, including engineering supervision and inspection;
2. The costs for providing all required construction easements, rights-of-way, public access easements, and required vehicle parking spaces;
3. The costs of obtaining all required permits;
4. The costs of establishing erosion control lines; and
5. All other nonfederal costs.

The department is authorized to advance federal aid funds for projects authorized by the United States Congress when such funds are not made available by the Congress at the time a project is ready for construction. In such a case, the department shall request reimbursement of the authorized federal share in the cost of such projects and is authorized to accept such reimbursement and deposit same in the Erosion Control Trust Fund Account. The project sponsor shall assume full responsibility for all project costs in excess of the state-federal cost limitation.

(b) With regard to nonfederal aid projects, the department is authorized to pay up to 75 percent of the construction costs, maintenance costs, basic engineering data costs, biological monitoring costs, revegetation costs, costs of monitoring post-construction shoreline changes, and project monitoring costs of projects authorized for construction by the department, provided local interests shall, as project sponsor, pay:

1. The costs for project engineering, including engineering supervision and inspection;
2. The costs or providing all required construction easements, rights-of-way, public access easements, and required vehicle parking spaces;
3. The costs of obtaining all required permits;
4. The costs of establishing erosion control lines; and
5. All other costs.

(c) The department is authorized to pay up to 100 percent of the cost of sand-source data. The selection of a project engineer, acceptable to the department, by local interests, as project sponsor, shall be on a competitive negotiation basis as set forth in chapter 287. The project sponsor shall assume full responsibility for all project costs in excess of the state cost limitation.

(d) With regard to inlet sand transfer projects, the department is authorized to initiate and pay up to 75 percent of the cost of such projects when the primary purpose is beach nourishment, provided the county, municipality, port, or inlet district authority within which the inlet is located accepts the responsibility of sponsor for such project and provides easements, rights-of-way, required permits, and all other requirements normally provided by a local sponsor. Where such sand transfer projects involve the placement of sand on beaches of which the state is the upland owner, the department is authorized to pay up to 100 percent of the costs. In the case of nonfederal inlet navigation channel construction or maintenance-dredging projects, the department is authorized to pay up to 75 percent of the cost involved in placing suitable sand material on adjacent beaches, provided the county, municipality, port, or inlet district authority within which the inlet is located accepts the responsibility of sponsor for such project and provides easements, rights-of-way, required permits, and all other requirements normally provided by a local sponsor; however, if such sand is placed on beaches of which the state is the upland owner, the department is authorized to pay 100 percent of the costs. In the case of federal inlet navigation channel construction or maintenance-dredging projects, the department is authorized to pay up to 100 percent of any additional project cost, as determined by the department, involved in placing suitable sand material on nearby beaches instead of dumping such sand out at sea or in other disposal areas when such sand placement does not involve the construction of an authorized beach restoration project requiring public funding; provided that, except in cases where beach disposal areas are in state public ownership, the

county, municipality, port, or inlet district authority within which the federal inlet navigation channel is located shall accept the responsibility of sponsor for such project and provide easements, rights-of-way, required permits, and all other requirements normally provided by a local sponsor.

(e) For an area to qualify for state funding, as provided in paragraphs (a) and (b), local interests shall, as project sponsor, provide permanent public access to project areas at approximately ½-mile intervals, including adequate vehicle parking areas, as determined by the department to be necessary in the public interest. Notwithstanding anything else herein, no public funds shall be spent restoring any beach where adequate public access to, and use of, the restored beach is not available.

(f) Local interests, as project sponsor, desiring to initiate and pay the entire cost of designing, constructing, and maintaining erosion control projects prior to the state's or, in the case of a federal aid project, the Federal Government's, initiating such construction may be reimbursed from state funds on the basis of the provisions of paragraphs (a), (b), and (d), provided the project is approved by the department prior to initiation, after construction and based on legislative appropriations. Such local interests shall, as project sponsor, be responsible for obtaining federal reimbursement in the case of federal aid projects.

(g) Local interests shall, as project sponsor, hold and save the state and its agencies, officers, and employees harmless from any and all liabilities which may result from the construction or operation of a project.

(h) The department is authorized to expend funds from the Erosion Control Trust Fund Account in order to alleviate emergency conditions related directly to shoreline stability, upon declaration by the Governor that a shoreline emergency of state concern exists.

(i) The department is authorized to expend funds from the Erosion Control Trust Fund Account to undertake such other erosion control, beach preservation, and hurricane protection work or activity as may be in the interest of the state, as determined by the department and subject to availability of funds as appropriated by the Legislature.

(j) The department is authorized to initiate, construct, and pay the entire costs of projects which involve shoreline of which the state is the upland owner.

(k) Twenty-five percent of any funds appropriated for implementation of this section shall be held by the department until the last quarter of the fiscal year for which the appropriation is made. This amount shall be used to meet emergencies prescribed in paragraph (h). If no such emergencies occur, then these funds may be released in the last quarter of the fiscal year in which the appropriation is made for projects.

(l) The department shall maintain a current project listing and may, in its discretion and dependent upon availability of local resources, revise the project listing.

(m) The department is authorized to pay 100 percent of the cost of studies and research it deems necessary for the state erosion control program.

(2) General revenue funds as appropriated by the Legislature shall be deposited in the Erosion Control Trust Fund Account upon appropriation. The Erosion Control Trust Fund Account and the moneys deposited therein shall be under the direct supervision and control of the department and such moneys may be disbursed by the Treasurer from time to time upon requisition as determined by the department.

(3) Notwithstanding the provisions of s. 216.292, the Erosion Control Trust Fund Account shall not be available for transfer for any purpose other than those provided for in this section.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 1, ch. 71-182; s. 1, ch. 72-170; ss. 1-3, ch. 74-102; s. 1, ch. 76-288; s. 1, ch. 77-379; s. 6, ch. 78-257; s. 5, ch. 80-187.

161.101 State participation in federally and nonfederally authorized projects and studies relating to beach erosion control.—

(1) To carry out the beach and shore preservation programs, the department is hereby constituted as the beach and shore preservation authority for the state. In this capacity, the executive director of the department may at his own initiative take all necessary steps as soon as practicable and desirable to implement the provisions of this chapter.

(2) Whenever a beach erosion control project has been authorized by Congress for federal financial participation in accordance with any Act of Congress relating to beach erosion control in which nonfederal participation is required, it shall be the policy of the state to assist with an equitable share of such funds to the extent that funds are available, as determined by the department.

(3) The department, for itself or on behalf of any and all duly established beach and shore preservation districts and boards of county commissioners within the state, may enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions (including, but not limited to, execution of indemnification agreements) of, federal, state, and other local governments and political entities, or any agencies or representatives thereof, for the purpose of improving, furthering, and expediting the beach and shore preservation program.

(4) The department is authorized, for and on behalf of the state, to accept such federal moneys for beach erosion control as are available and to sign all necessary agreements therefor and to do and perform all necessary acts in connection therewith to effectuate the intent and purposes of this act.

(5) The department is authorized to make application for federal participation in the cost of any beach and shore preservation program under any Acts of Congress and all amendments thereto.

(6) The department is authorized to pay up to 100 percent of the nonfederal construction and maintenance costs of projects authorized for construction by the United States Congress, including project sponsor costs as outlined in s. 161.091(1)(a), when construction and maintenance are on lands of which the state is the upland riparian owner.

(7) With regard to nonfederal aid projects the department is authorized to pay 100 percent of the project costs as outlined in s. 161.091(1)(b), (c), and

(d) on lands of which the state is the upland riparian owner.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106; s. 7, ch. 78-257.

161.111 Shore erosion emergency.—If a shore erosion emergency is declared by the Governor, the state, acting through the Department of Natural Resources, may spend whatever state funds are available to alleviate shore erosion, including such funds specifically set aside for such purposes in the erosion control account.

History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106.

161.121 Penalty.—Unless otherwise provided in this chapter, whoever shall fail to comply with the provisions of part I is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 65-408; s. 83, ch. 71-136; s. 2, ch. 77-12.
cf.—ss. 161.052, 161.053 Coastal construction and excavation; regulation.

161.131 Construction of ss. 161.011-161.121.—The provisions of ss. 161.011-161.121 shall be liberally construed by all concerned in a manner to best accomplish the beach and shore preservation purposes and programs.

History.—s. 3, ch. 65-408.

161.141 Declaration of public policy and permitting process.—

(1) Beach erosion being a serious menace to the economy and general welfare of the people of this state and having advanced to emergency proportions, it is hereby declared to be in the public interest that appropriate steps be taken to enhance and protect Florida beaches from erosion and that the Legislature make provision for beach nourishment and restoration and erosion control projects and establish and clarify the property rights of the state and private upland owners arising from or created by such projects. The Legislature hereby declares that it is the public policy of the state to cause to be fixed and determined, pursuant to beach nourishment and restoration and erosion control projects, the boundary line between sovereignty lands of the state bordering on the Atlantic Ocean, the Gulf of Mexico, and the bays, lagoons, and other tidal reaches thereof, and the upland properties adjacent thereto; except that such boundary line shall not be fixed for beach nourishment projects that result from inlet or navigation channel maintenance dredging projects unless such projects involve the construction of authorized beach restoration projects. However, prior to construction of such beach nourishment project, the local sponsor shall establish the line of mean high water for the area to be nourished; and any additions to the upland property seaward of the established line of mean high water which result from the nourishment project shall become the property of the upland owner subject to all governmental regulations and shall not be used to justify increased density or the relocation of the coastal construction control line as may be in effect for such upland property. Such resulting additions to upland property shall also be subject to a public easement for traditional uses of the sandy beach consistent with uses which would have been allowed prior to the need for such nourishment project. It is further declared that there is no intention on the part of the state to extend its claims to lands not already held by it or to deprive any upland or submerged land owner of the legitimate and constitutional use and enjoyment of his property. If a requested and authorized beach nourishment and restoration and erosion control project cannot reasonably be accomplished without the taking of private property, then such taking shall be made by the requesting authority by eminent domain proceedings.

(2) When the Department of Environmental Regulation has received all information necessary to evaluate the impact of the proposed project pursuant to chapters 253 and 403 and has concluded its evaluation, it shall notify the applicant within 10 days whether it intends to issue or deny the permit, regardless of whether the Board of Trustees of the Internal Improvement Trust Fund has given its consent to the use of state lands as required by s. 253.77. However, the Department of Environmental Regulation shall not issue any permit until the requirements of s. 253.77 have been complied with, and the deadline imposed pursuant to s. 120.60 shall not begin to run until s. 253.77 has been complied with.

History.—s. 1, ch. 70-276; s. 1, ch. 79-233; s. 1, ch. 82-144.

161.151 Definitions.—As used in ss. 161.141-161.211:

(1) "Board of trustees" means the Board of Trustees of the Internal Improvement Trust Fund.

(2) "Requesting authority" means any coastal county, municipality, or beach erosion control district which requests a survey by the board of trustees under the provisions of ss. 161.141-161.211.

(3) "Erosion control line" means the line determined in accordance with the provisions of ss. 161.141-161.211 which represents the landward extent of the claims of the state in its capacity as sovereign titleholder of the submerged bottoms and shores of the Atlantic Ocean, the Gulf of Mexico, and the bays, lagoons and other tidal reaches thereof on the date of the recording of the survey as authorized in s. 161.181.

(4) "Authorized beach restoration project" means a beach project authorized by the United States Congress or the department which involves a specific project engineering design and a project maintenance program for a period of not less than 10 years.

History.—s. 2, ch. 70-276; s. 1, ch. 70-429; s. 2, ch. 82-144.

161.161 Procedure for approval of projects.—

(1) Upon the request by written resolution of a requesting authority for a survey preliminary to the implementation of a beach erosion control project, the board of trustees shall first require the Department of Natural Resources to furnish a written recommendation approving or disapproving the requested project and, if approval be recommended, to certify in writing that:

(a) Severe beach erosion has occurred in the area encompassed by the requested survey; and

(b) The beach sought to be protected by an erosion control project has been or will be destroyed in the immediate future unless a publicly financed program is undertaken.

Upon receipt of the written recommendation and certification from the Department of Natural Resources, the board of trustees shall decide whether, in light of existing needs throughout the state, the project should be pursued. In determining the priority of projects to be undertaken, the board of trustees shall consider the relative need for protective measures, the availability of necessary equipment, and the anticipated local and federal contribution and cooperation. If the board of trustees determines that the requested project should be pursued, it shall forthwith conduct a survey of all or part of the shoreline within the jurisdiction of the requesting authority in order to establish the area of beach to be protected by the project and locate an erosion control line. However, no such line shall be fixed except in connection with an authorized beach erosion control project in which the requesting authority has secured the written consent of the owners of a majority of the lineal feet of contiguous riparian property which either abuts the requested erosion control line or would abut such line, if established at the line of mean high water, for the establishment of such a line. No provision of ss. 161.141-161.211 shall be construed as preventing a requesting authority from participating in the funding of erosion control projects or surveys undertaken in accordance with the provisions of ss. 161.141-161.211. In lieu of conducting a survey, the board of trustees may accept and approve a survey as initiated, conducted, and submitted by the requesting authority if said survey is made in conformity with the appropriate principles set forth in ss. 161.141-161.211.

(2) Upon completion of the survey depicting the area of the beach erosion control project and the proposed location of the erosion control line, the board of trustees shall give notice of the written resolution of the requesting authority, the survey, and the date on which the board of trustees will hold a public hearing for the purpose of receiving evidence on the merits of the requested project and, if approval be granted, of locating and establishing such requested erosion control line. Such notice shall be by publication in a newspaper of general circulation published in the county or counties in which the proposed beach erosion control project shall be located, not less than once a week for 3 consecutive weeks, and by mailing copies of such notice by certified or registered mail to each riparian owner of record of upland property lying within 1,000 feet (radial distance) of the shoreline to be extended through construction of the proposed beach erosion control project, as his name and address appear upon the latest tax assessment roll, in order that any persons who have an interest in the beach erosion control project or in the location of such requested erosion control line can be present at such hearing to submit their views concerning necessity for the project and the precise location of the requested erosion control line. Such notice shall be in addition to any notice requirement in chapter 120.

(3) The board of trustees shall approve or disapprove the beach erosion control project. If approval be granted, the board shall establish the location of the erosion control line. In locating said line, the board of trustees shall be guided generally by the existing line of mean high water, bearing in mind the requirements of proper engineering in the erosion control project, the extent to which erosion or avulsion has occurred, and the need to protect existing ownership of as much upland as is reasonably possible. In the event riparian upland owners agree to furnish financial or other acceptable assistance in the beach erosion control project, the board of trustees is authorized to locate the erosion control line a sufficient distance seaward of the existing line of mean high water in order to provide for an equitable distribution of the restored beach between the state and such existing upland owners.

History.—s. 3, ch. 70-276; s. 1, ch. 70-439; s. 21, ch. 78-95; s. 2, ch. 79-233.

161.181 Recording of resolution and survey of board of trustees.—If no review is taken within the time prescribed from the decision of the board of trustees or, if review be timely taken, in the absence of a final decision of a court of competent jurisdiction preventing the implementation of a beach erosion control project or invalidating, abolishing, or otherwise preventing the establishment and recordation of the erosion control line as provided herein, the board of trustees shall file in the public records of the county or counties in which the erosion control line lies, a copy of its resolution approving the beach erosion control project and locating the erosion control line and shall also file and cause to be recorded in the book of plats of said county or counties a survey showing the area of beach to be protected and the location of the erosion control line.

History.—s. 5, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

161.191 Vesting of title to lands.—

(1) Upon the filing of a copy of the board of trustees' resolution and the recording of the survey showing the location of the erosion control line and the area of beach to be protected as provided in s. 161.181, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of such line shall be vested in the riparian upland owners whose lands either abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

(2) Once the erosion control line along any segment of the shoreline has been established in accordance with the provisions of ss. 161.141-161.211, the common law shall no longer operate to increase or decrease the proportions of any upland property lying landward of such line, either by accretion or erosion or by any other natural or artificial process, except as provided in s. 161.211(2) and (3). However, the state shall not extend, or permit to be extended through artificial means, that portion of the protected beach lying seaward of the erosion control line beyond the limits set forth in the survey recorded by the board of trustees unless the state first obtains the written consent of all riparian upland owners whose view or access to the water's edge would be altered or impaired.

History.—s. 6, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

161.201 Preservation of common-law rights.—Any upland owner or lessee who by operation of ss. 161.141-161.211 ceases to be a holder of title to the mean high-water line shall, nonetheless, continue to be entitled to all common-law riparian rights except as otherwise provided in s. 161.191(2), including but not limited to rights of ingress, egress, view, boating, bathing, and fishing. In addition the state shall not allow any structure to be erected upon lands created, either naturally or artificially, seaward of any erosion control line fixed in accordance with the provisions of ss. 161.141-161.211, except such structures required for the prevention of erosion. Neither shall such use be permitted by the state as may be injurious to the person, business, or property of the upland owner or lessee; and the several municipalities, counties and special districts are authorized and directed to enforce this provision through the exercise of their respective police powers.

History.—s. 7, ch. 70-276.

161.211 Cancellation of resolution for nonperformance by board of trustees.—

(1) If for any reason construction of the beach erosion control project authorized by the board of trustees is not commenced within 2 years from the date of the recording of the board of trustees' survey, as provided in s. 161.181, or in the event construction is commenced but halted for a period exceeding 6 months from commencement, then, upon receipt of a written petition signed by those owners or lessees of a majority of the lineal feet of riparian property which either abuts or would have abutted the erosion control line if the same had been located at the line of mean high water on the date the board of trustees' survey was recorded, the board of trustees shall forthwith cause to be canceled and vacated of record the resolution authorizing the beach erosion control project and the survey locating the erosion control line, and the erosion control line shall be null and void and of no further force or effect.

(2) If the state, county, municipality, erosion control district, or other governmental agency charged with the responsibility of maintaining the protected beach fails to maintain the same and as a result thereof the shoreline gradually recedes to a point or points landward of the erosion control line as established herein, the provisions of s. 161.191(2) shall cease to be operative as to the affected upland.

(3) In the event a substantial portion of the shoreline encompassed within the erosion control project recedes landward of the erosion control line, the board of trustees, on its own initiative, may direct or request, or, upon receipt of a written petition signed by the owners or lessees of a majority of the lineal feet of riparian property lying within the erosion control project, shall direct or request, the agency charged with the responsibility of maintaining the beach to restore the same to the extent provided for in the board of trustees' recorded survey. If the beach is not restored as directed or requested by the board of trustees within a period of 1 year from the date of the directive or request, the board of trustees shall forthwith cause to be canceled and vacated of record the resolution authorizing the beach erosion control project and the survey locating the erosion control line, and the erosion control line shall be null and void and of no further force or effect.

History.—s. 8, ch. 70-276; s. 1, ch. 70-439; s. 3, ch. 79-233.

161.212 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.

PART II

BEACH AND SHORE PRESERVATION DISTRICTS

161.25 County beach and shore preservation authority; board of county commissioners.
161.26 Expenses; use of county funds.

161.27 Personnel and facilities.
161.28 Comprehensive county beach and shore preservation program.
161.29 Benefit categories or zones.
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161.32 Existing erosion prevention district.
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161.35 County shoreline; supervisory and regulatory powers of board of county commissioners.
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161.38 Issuance of bonds.
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161.40 Tax exemptions.
161.41 Construction of ss. 161.25-161.40.
161.45 Effect of repeal of ch. 158 on districts created prior to repeal.

161.25 County beach and shore preservation authority; board of county commissioners.—To carry out the beach and shore preservation program, the board of county commissioners of any county and its successors in office, as an ex officio duty, are hereby severally constituted as the beach and shore preservation authority for their county. In this capacity, any such board of county commissioners may at its own initiative take all necessary steps as soon as practicable and desirable to implement the provisions of this chapter.
History.—s. 1, ch. 65-408.

161.26 Expenses; use of county funds.—The board of county commissioners of any of the counties is authorized to use any available county funds to meet necessary expenses of its beach and shore preservation program. This may include, among other things, costs of studies, surveys, planning, engineering, coordination, negotiation, acquisition of lands, construction of works and facilities, operation and maintenance, and other activities incidental to acquisition and construction to the extent considered proper and desirable by the board of county commissioners.
History.—s. 1, ch. 65-408.

161.27 Personnel and facilities.—In carrying out the purposes of part II of this chapter, the board of county commissioners may use to the extent feasible any personnel or facilities employed by or available to the county. In addition, the board of county commissioners may hire such personnel and contract for such services as may prove necessary or desirable.
History.—s. 1, ch. 65-408.

161.28 Comprehensive county beach and shore preservation program.—The board of county commissioners of any of the counties may, by assignments to legally qualified personnel, whose services are made available as provided in s. 161.27, initiate and carry on such studies and investigations as may be necessary to plan a logical and suitable program for comprehensive beach and shore preservation within its county. This program may incorporate all or part of the recommendations of the United States Army Corps of Engineers concerning beach and shore restoration and erosion control, if there be any, and may additionally provide to an appropriate extent for the other aspects of beach and shore preservation. In conducting its studies and making its plans for a beach and shore preservation program, the board of county commissioners shall hold sufficient public hearings to ascertain the views and feelings of affected property owners in the various localities of the county regarding the needs to be served and manner in which they should best be served. The board of county commissioners shall give proper and reasonable consideration to all evidence received in planning the beach and shore preservation program.
History.—s. 1, ch. 65-408.

161.29 Benefit categories or zones.—Upon adoption of a reasonably final plan of improvement for the beach and shore preservation program for the entire county, the board of county commissioners shall conduct, through the use of personnel competent and qualified in this field, an economic analysis of the proposed program, determining the nature and extent of benefits expected to accrue from the program and allocating these benefits to their proper recipients by categories or zones of comparable benefits, and place in the same zone areas of equal benefit, or follow such other method as may be deemed suitable for the purposes of this section. From time to time, the board of county commissioners shall conduct in the same or similar manner a new analysis to better determine and allocate actual or expected benefits.
History.—s. 1, ch. 65-408.

161.31 Establishment of districts.—
(1) Districts established under the provisions of part II of this chapter shall constitute public bodies corporate and politic, exercising public powers and all other powers and duties incident to such bodies.
(2) The board of county commissioners shall serve as the governing body for all districts created under this authority and shall proceed as expeditiously as possible to determine and implement policy and program for each such district in accordance with the overall county program, except that the board of county commissioners may receive guidance in these matters for each district from an advisory group, consisting of not less than three nor more than five persons, which the board of county commissioners may appoint from any or each such district. Members of such advisory group shall have no definite term of office but shall serve at the pleasure of the board of county commissioners.
(3) To further provide for efficient administration of the district program, the board of county commissioners may hire such additional personnel or contract for such additional services as it considers necessary or desirable in each case.
(4) A uniform ad valorem tax not to exceed 1 mill per year on all nonexempt taxable property within the district may be levied for a period of not more

than 2 years to defray organizational and administrative costs of said district.
History.—s. 1, ch. 65-408; s. 3, ch. 71-14.

161.32 Existing erosion prevention district.—Part II of this chapter shall not be construed to impair the existence, powers or functions of any existing erosion prevention, beach or shore preservation districts created by special or local act; provided, however, that any such existing district may recreate and reestablish itself under the provisions of this act as if originally created and established hereunder in all respects, by resolution of its governing body adopting the provisions of chapter 161, in their entirety and thereafter shall function as a beach and shore preservation district created and established under the provisions of part II of this chapter.
History.—s. 1, ch. 65-408.

161.33 Cooperation with federal, state, and other governmental entities.—
(1) The board of county commissioners, for itself or on behalf of any and all duly established beach and shore preservation districts within the county, may enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions of, federal, state and other local governments and political entities, or any agencies or representative thereof, for the purpose of improving, furthering and expediting the beach and shore preservation program.
(2) The board of county commissioners and the Department of Natural Resources, for and on behalf of each or any district created in accordance with parts I and II of this chapter, are authorized to receive and accept from any federal agency, grants for or in aid of any beach and shore preservation program contemplated by part II of this chapter, and to receive and accept aid or contributions from any source, of money, property and other things of value. The board of county commissioners is authorized to make application for Federal participation in the cost of any beach and shore preservation program under any Acts of Congress and all amendments thereto.
History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106.

161.34 Coordination of county preservation activities.—The board of county commissioners shall coordinate the work and activity of all districts established hereunder within the county and, to further insure harmony and consistency with the overall county beach and shore preservation plan, shall establish working liaison with each municipality and other agencies and groups involved in beach and shore preservation activity within the county.
History.—s. 1, ch. 65-408.

161.35 County shoreline; supervisory and regulatory powers of board of county commissioners.—
(1) With the consent of the Department of Natural Resources and of any municipality or other political authority involved, the board of county commissioners may regulate and supervise all physical work or activity along the county shoreline which is likely to have a material physical effect on existing coastal conditions or natural shore processes. This regulatory and supervisory authority shall specifically include, but not be limited to, installation of groins, jetties, moles, breakwaters, seawalls, revetments, and other coastal construction as defined herein. For this purpose, the board of county commissioners, with assistance as required from its professional personnel, may develop standards and criteria, issue permits and conduct inspections.
(2) All regulations and requirements prescribed by the board of county commissioners pursuant to part II of this chapter may be enforced by mandatory injunction or other appropriate action in any court of competent jurisdiction. Such regulations and requirements shall in no way affect the regulatory authority of the Department of Natural Resources.
History.—s. 1, ch. 65-408; ss. 25, 35, ch. 69-106.

161.36 General powers of authority.—In order to most effectively carry out the purposes of part II of this chapter, the board of county commissioners, as the county beach and shore preservation authority and as the governing body of each beach and shore preservation district established thereby, shall be possessed of broad powers to do all manner of things necessary or desirable in pursuance of this end; provided, however, nothing herein shall diminish or impair the regulatory authority of the Department of Natural Resources or Division of Marine Resources under s. 370.02(2), or part I of this chapter, or the Board of Trustees of the Internal Improvement Trust Fund under chapter 253. Such powers shall specifically include, but not be limited to, the following:
(1) To make contracts and enter into agreements;
(2) To sue and be sued;
(3) To acquire and hold lands and property by any lawful means;
(4) To exercise the power of eminent domain;
(5) To enter upon private property for purposes of making surveys, soundings, drillings and examinations, and such entry shall not be deemed a trespass;
(6) To construct, acquire, operate and maintain works and facilities;
(7) To make rules and regulations; and
(8) To do any and all other things specified or implied in part II of this chapter.
History.—s. 1, ch. 65-408; ss. 25, 27, 35, ch. 69-106.

161.37 Capital, operation and maintenance costs; district benefits tax levy.—
(1) To provide for the capital, operation and maintenance cost of the beach and shore preservation program, either by debt service or direct expenditure, the board of county commissioners as the governing body of each district created in accordance with part II of this chapter may levy upon all taxable property within each district an ad valorem benefits tax in any amount necessary to meet the requirements of the program but not exceeding the reasonable ability of the district to pay.
(2) The tax shall be levied upon each taxable property in proportion to benefits said property will receive as determined by the most recent economic analysis of the program as provided for under s. 161.29. General benefits shall be uniformly applied

on an ad valorem basis to the entire assessed valuation of each district, while special benefits shall be assigned to groups of specific properties which shall constitute zones because of the equal or comparable benefits each included property will receive.

(3) Where the board of county commissioners levies any special benefits taxes, it shall consider the value of the property, its kind, susceptibility to improvement and the maximum annual benefits to be conferred thereon by the works or improvements in the district.

(4) The owner of lands where a special benefits tax is proposed to be levied shall be given written notice and an opportunity to be heard upon the amount of special benefits tax to be levied upon his lands. If the special benefits to all properties within any district are found to be equal or comparable, then the said district shall comprise only one tax zone. The proportional tax rate which each property within a district shall pay shall be determined by adding the general and special benefits assigned to its zone. The actual tax levy for any particular year shall depend on the revenue needs for that year.

(5) The board of county commissioners shall levy sufficient ad valorem and special benefits taxes to pay off debt service on any bonds issued. It shall be the duty of the board each year, sufficiently in advance of the preparation of the county tax roll, to establish the revenue requirements for each individual district for the fiscal year in question and certify this figure to the county property appraiser who shall then assign shares of this total to each zone within the respective district according to the proportion of total benefits previously assigned. The share of total required revenue assigned each zone shall then be collected by an ad valorem levy on each taxable property within the zone.

(6) All taxes provided for in part II of this chapter shall be levied and collected by the county in the same manner as other county taxes, and while unpaid shall constitute a lien of equal stature and dignity with other county taxes.

History.—s. 1, ch. 65-408; s. 1, ch. 77-102.

161.38 Issuance of bonds.—

(1) The board of county commissioners, for and on behalf of each or any district created in accordance with part II of this chapter, is authorized to provide from time to time for the issuance of bonds to obtain funds to meet the costs of the beach and shore preservation program; provided, however, that such issuance shall have first been approved at a duly conducted referendum election by freeholders within the subject district as provided for by law. The bonds of each issue shall be dated, shall bear interest at rates not to exceed 7.5 percent which mature at such time not to exceed 40 years from the date of issuance as determined by the board of county commissioners, and at the option of the board of county commissioners may be made redeemable before maturity under such terms and conditions and at such prices as fixed by the board of county commissioners prior to issuance.

(2) The board of county commissioners shall determine the form of such bonds, including any interest coupons to be attached thereto, the denomination of the bonds, and the place of payment of principal and interest which may be at any bank or trust company within or without the state.

(a) The resolution authorizing the issue may further provide that such bonds may be executed manually or by engraved, lithographed or facsimile signature.

(b) The appropriate seal may be affixed or lithographed, engraved or otherwise reproduced in facsimile on such bonds and shall be attested by the manual or facsimile signature of the county clerk; provided, however, that at least one of the signatures of executing officials on the bonds shall be manual. Signatures, manual or facsimile, of executing officials shall continue to be valid for all purposes whatsoever regardless of whether or not signing officials are still in office at the time bonds are actually delivered.

(c) Bonds may be issued in coupon or registered form as the board of county commissioners may decide and provision may be made for the registration of any coupon bonds as to principal alone or as to principal and interest, and for the reconversion of coupon bonds or any bond registered as to principal and interest.

(d) No sale of bonds shall be made at a price so low as to require the payment of interest on money received therefor at a rate in excess of 6 percent per annum, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, excluding from such computation, however, the amount of any premium to be paid for the redemption of any bonds prior to maturity.

(e) Prior to the preparation or issuance of definitive bonds, the board of county commissioners may under like restrictions issue interim receipts or temporary notes or other forms of such temporary obligations with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Such bonds may be issued under the provisions of part II of this chapter without obtaining the consent of any commission, board, bureau or agency of this state, and without any other proceeding or happening than specifically required by this chapter.

(3) All bonds issued under part II of this chapter shall constitute, and have all the qualities and incidents of, negotiable instruments under the law merchant and the Negotiable Instruments Law of Florida, and shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value.

(4) The provisions of part II of this chapter shall constitute an irrevocable contract between the board of county commissioners and the holders of such bonds or coupons thereof issued pursuant to the provisions hereof.

(5) Any holder of such bonds issued under the provisions of part II of this chapter, and the trustee under any trustee agreement, except to the extent the rights herein given may be restricted by such trust agreement, may either at law or in equity, by suit, action, or mandamus, force and compel the performance of the duties required by part II of this chapter or of any of the officers or persons herein mentioned in relation to said bonds, or the levy, assessment, collection and enforcement and application of the taxes pledged for the principal and interest thereof as provided for in s. 161.37.

(6) Bonds issued under the provisions of part II of this chapter shall not be subject to the consent or approval of any state board, commission, or agency, but such bonds shall be validated in accordance with the provisions of chapter 75.

History.—s. 1, ch. 65-408; s. 11, ch. 73-302; s. 5, ch. 80-98.

161.39 Cooperation between two or more counties.—

(1) When two or more counties have created one or more beach preservation districts as provided for under part II of this chapter or any other law with same or like intent, or desire to carry out programs of beach and shore preservation, and find it to be mutually beneficial, the boards of county commissioners of such counties may cooperate to any extent necessary or desirable to carry out the intent of part II of this chapter or any other law with same or like intent, in the implementation of any beach or shore preservation plan or project as defined herein. This cooperation may include but shall not be limited to cooperative participation in the nonfederal costs of federally authorized projects affecting one or more of the cooperating counties, plans or projects resulting from investigation, or studies made by any or all such counties, or other such plans or projects, which by their nature would prove to be beneficial to each such cooperating county as determined by the boards of county commissioners of each such county.

(2) The costs of any such plan or project shall be borne by each of the cooperating counties in accordance with the benefits expected to accrue to each county as determined in accordance with s. 161.29, or as determined and agreed upon by the boards of county commissioners of each such cooperating county.

(3) Any county may expend funds in any other county for the purposes provided herein if in the opinion of the board of county commissioners of one county such expenditure of its funds in other counties would be beneficial to the beaches and shores of that county.

History.—s. 1, ch. 65-408.

161.40 Tax exemptions.—All properties, revenues and other assets of the board of county commissioners acting as the beach and shore preservation authority, or of any of the districts created thereby, shall, by recognition of its essential public function, be exempt from all taxation by the state or any political subdivision, agency or instrumentality thereof.

History.—s. 1, ch. 65-408.

161.41 Construction of ss. 161.25-161.40.—The provisions of ss. 161.25-161.40 shall be liberally construed by all concerned in a manner to best accomplish the beach and shore preservation purposes and programs.

History.—s. 3, ch. 65-408.

161.45 Effect of repeal of ch. 158 on districts created prior to repeal.- The county erosion districts created under the provisions of chapter 158, and presently in existence shall not be affected by the repeal of chapter 158.

History.—s. 2, ch. 65-126.

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CHAPTER 201

EXCISE TAX ON DOCUMENTS

201.01 Documents taxable, generally.
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201.04 Tax on bills of sale, agreements, or transfers of stock or shares in corporations and interests therein.
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201.16 Other laws made applicable to chapter.
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201.01 Documents taxable, generally.—There shall be levied, collected, and paid the taxes specified in this chapter, for and in respect to the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things described in the following sections, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, is written or printed by any person who makes, signs, executes, issues, sells, removes, consigns, assigns, records, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, recorded, or shipped in the state. The documentary stamp taxes required under this chapter shall be affixed to and placed on all recordable instruments requiring documentary stamps according to law, prior to recordation. With respect to mortgages or trust deeds which do not incorporate the certificate of indebtedness, a notation shall be made on the note or certificate that the tax has been paid and that the proper stamps have been affixed to the mortgage or trust deed.

History.—s. 1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); s. 1, ch. 61-278; s. 1, ch. 77-414.

201.02 Tax on deeds and other instruments relating to realty or interests in realty.—

(1)(a) On deeds, instruments, or writings whereby any lands, tenements, or other realty, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or any other person by his direction, on each $100 of the consideration therefor the tax shall be 45 cents. When the full amount of the consideration for the execution, assignment, transfer, or conveyance is not shown in the face of such deed, instrument, document, or writing, the tax shall be at the rate of 45 cents for each $100 or fractional part thereof of the consideration therefor.

(b) The tax increase imposed by section 1 of chapter 81-33, Laws of Florida, is repealed effective July 1, 1991; and the tax rate shall be reduced to 40 cents for each $100 or fractional part thereof of the consideration.

(2) The tax imposed by subsection (1) shall also be payable upon documents by which the right is granted to a tenant-stockholder to occupy an apartment in a building owned by a cooperative apartment corporation.

(3) The tax imposed by subsection (2) shall be paid by the purchaser, and the document recorded in the office of the clerk of the circuit court as evidence of ownership.

(4) The tax imposed by subsection (1) shall also be payable upon documents which convey or transfer, pursuant to s. 689.071, any beneficial interest in lands, tenements, or other realty, or any interest therein, even though such interest may be designated as personal property, notwithstanding the provisions of s. 689.071(4). The tax shall be paid upon execution of any such document.

History.—s. 1, ch. 15787, 1931; CGL 1936 Supp. 1279(111); s. 1, ch. 57-397; s. 1, ch. 63-533; s. 1, ch. 70-304; s. 1, ch. 71-362; ss. 2, 3, ch. 79-350; ss. 1, 4, ch. 81-33.

201.04 Tax on bills of sale, agreements, or transfers of stock or shares in corporations and interests therein.—

(1) On all sales, agreements to sell or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to

and qualifications, all persons using or desiring to use the procedure authorized by this section shall be subject to audit and shall make their records available for ready inspection by the department and shall post a bond at their own expense as may be required by the department.

(6) Such persons shall keep a journal, or other account book or record of original entry, showing a listing of all documents executed and delivered. The journal shall show a daily listing of such documents unless another time period is required by the department. The journal shall show every transaction and the amount, whether the transaction is taxable or not. In the case of taxable transactions, the journal shall show the amount of tax payable with respect to each transaction. In the case of nontaxable transactions, the journal shall disclose the basis on which the exemption from tax is claimed. Such records shall be kept in permanent form and retained indefinitely in the files subject to verification by the representative of the department. The following notation or similar language along with the certificate of registration number shall be made on each individual document requiring tax: "Florida documentary stamp tax required by law in the amount of $____ has been paid or will be paid directly to the Department of Revenue. Certificate of Registration #____."

(7) The authority of any person described in subsection (1) to use the procedure authorized by this section may be canceled by the department if such person:

(a) Knowingly files a false monthly report of the data required by subsection (4);

(b) Fails, refuses, or neglects to file the report required by subsection (4);

(c) Fails to remit the tax collected; or

(d) Fails to adequately maintain the records required by subsection (6).

History.—s. 2, ch. 81-14.

201.14 Cancellation of stamps when used.—Whenever an adhesive stamp is used for denoting any tax imposed by this chapter on documents, the person using or affixing the same shall write or stamp or cause to be written or stamped thereon, the initials of his or its name, and the date upon which same is attached or used, so that the same may not again be used. Stamps shall be affixed in such manner that their removal will require continued application of steam or water; provided, that the Department of Revenue may prescribe such other method for the cancellation of such stamps as it may deem expedient.

History.—s. 5, ch. 15787, 1931; CGL 1936 Supp. 1279(116); ss. 21, 35, ch. 69-106.

201.15 Distribution of taxes collected.—

(1) All taxes collected under the provisions of this chapter shall be distributed as follows:

(a) Seventy-nine and one-half percent of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the General Revenue Fund of the state, to be used and expended for the purposes for which the General Revenue Fund was created and exists by law.

(b) Thirteen and three-tenths percent of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the Land Acquisition Trust Fund. Sums deposited in such fund pursuant to this section may be used for any purpose for which funds deposited in the Land Acquisition Trust Fund may lawfully be used and may be used to pay the cost of the collection and enforcement of the tax levied by this chapter.

(c) Seven and two-tenths percent of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the Water Management Lands Trust Fund. Sums deposited in that fund may be used for any purpose authorized in s. 373.59 and may be used to pay the cost of the collection and enforcement of the tax levied by this chapter.

(2) The change in the schedule of distributions imposed by s. 2 of chapter 81-33, Laws of Florida, is repealed effective August 1, 1991, at which time the schedule of distributions shall revert to the schedule existing at the time of passage of chapter 81-33, Laws of Florida.

History.—s. 6, ch. 15787, 1931; CGL 1936 Supp. 1279(117); s. 4, ch. 79-350; ss. 2, 4, ch. 81-33.

201.16 Other laws made applicable to chapter.—All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this chapter, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, or writing named herein.

History.—s. 3, ch. 15787, 1931; CGL 1936 Supp. 1279(115).

201.17 Penalties for failure to pay tax required.—

(1) Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this chapter without canceling or obliterating such stamps as herein provided, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any document, instrument, or paper upon which the tax under this chapter is imposed and which, upon audit or at time of recordation, does not show the proper amount of tax paid shall subject the person or persons liable for the tax upon the document, instrument, or paper to:

(a) Payment of the tax not paid.

(b) Payment of a penalty to the Department of Revenue equal to 25 percent of the tax not paid. If it is determined by clear and convincing evidence that any part of a deficiency is due to fraud, there shall be added to the tax as a civil penalty, in lieu of the aforementioned penalty under this paragraph, an amount equal to 100 percent of the deficiency. These penalties are to be in addition to, and not in lieu of, any other penalties imposed by law.

(c) Payment of interest to the Department of Revenue, accruing from the date of recordation until

CHAPTER 252

EMERGENCY MANAGEMENT

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252.40 Mutual aid arrangements.
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252.52 Liberality of construction.
252.55 Civil Air Patrol, Florida Wing; appropriations; procurement authority; wing commander bond.
252.60 Radiological emergency preparedness.

252.31 Short title.—Sections 252.31-252.60 shall be known and may be cited as the "State Emergency Management Act."

History.—s. 1, ch. 74-285; s. 13, ch. 83-334.

252.32 Policy and purpose.—

(1) Because of the existing and continuing possibility of the occurrence of emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action or from natural or manmade causes; in order to ensure that preparations of this state will be adequate to deal with, reduce vulnerability to, and recover from, such emergencies; generally to provide for the common defense and to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary:

(a) To create a state emergency management agency to be known as the "Division of Public Safety Planning and Assistance," to authorize the creation of local organizations for emergency management in the political subdivisions of the state, and to authorize cooperation with the Federal Government and the governments of other states.

(b) To confer upon the Governor, the Division of Public Safety Planning and Assistance, and the governing body of each political subdivision of the state the emergency powers provided herein.

(c) To provide for the rendering of mutual aid among the political subdivisions of the state, with other states, and with the Federal Government with respect to carrying out all emergency management functions and responsibilities.

(d) To authorize the establishment of such organizations and the development and employment of such measures as are necessary and appropriate to carry out the provisions of ss. 252.31-252.60.

(e) To provide the means to assist in the prevention or mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

(2) It is further declared to be the purpose of ss. 252.31-252.60 and the policy of the state that all emergency management functions of the state be coordinated to the maximum extent with comparable functions of the Federal Government, including its various departments, agencies of other states and localities, and private agencies of every type, to the end that the most effective preparation and use may be made of the manpower, resources, and facilities of the nation for dealing with any emergency that may occur.

History.—s. 1, ch. 74-285; s. 18, ch. 81-169; s. 14, ch. 83-334.
cf.—s. 255.042 Shelter in public buildings.

252.33 Limitations.—Nothing in ss. 252.31-252.60 shall be construed to:

(1) Interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by ss. 252.31-252.60 or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety.

(2) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including, but not limited to, radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency.

(3) Affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the Armed Forces of the United States, or any personnel thereof, when on active duty; but state, local, and interjurisdictional emergency plans shall place reliance upon the forces available for performance of functions related to emergencies.

(4) Limit, modify, or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this state independent of, or in conjunction with, any provisions of ss. 252.31-252.60.

History.—s. 1, ch. 74-285; s. 15, ch. 83-334.

252.34 Definitions.—As used in ss. 252.31-252.60:

(1) "Division" means the Division of Public Safety Planning and Assistance of the Department of Community Affairs, or the successor to that division.

(2) "Emergency" means any occurrence, or threat thereof, whether accidental, natural, or caused by man, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

(3) "Emergency management" means the preparation for, and the carrying out of, all emergency responsibilities and functions, other than those for which military forces or other federal agencies are primarily responsible, to prevent, mitigate, or repair injury and damage resulting from the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from emergencies. These responsibilities include, but are not limited to:

(a) Reduction of vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or manmade catastrophes or hostile military or paramilitary action.

(b) Preparation for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disasters.

(c) Provision of a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by emergencies.

(d) Provision of an emergency management system embodying all aspects of preemergency preparedness and postemergency response.

(e) Assistance in anticipation, recognition, appraisal, prevention, and mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

(4) "Local emergency management agency" means an organization created in accordance with the provisions of ss. 252.31-252.60 to discharge the emergency management responsibilities and functions of a political subdivision.

(5) "Political subdivision" means any county or municipality created pursuant to law.

History.—s. 1, ch. 74-285; s. 19, ch. 81-169; s. 22, ch. 82-55; s. 16, ch. 83-334.

252.35 Emergency management powers; Division of Public Safety Planning and Assistance.—

(1) The division shall be responsible for carrying out the provisions of ss. 252.31-252.60.

(2) In performing its duties under ss. 252.31-252.60, the division is authorized and empowered:

(a) In accordance with the provisions of chapter 120, to make, amend, and rescind rules, programs, and plans to carry out the provisions of ss. 252.31-252.60 with due consideration for, and in cooperation with, the plans and programs of the Federal Government.

(b) To prepare a comprehensive plan and program for emergency management in this state, such plan and program to be integrated into, and coordinated with, the survival plans and programs of the Federal Government.

(c) In accordance with such plan and program for emergency management, to ascertain the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of emergency; to plan for and procure supplies, medicines, materials, and equipment; to use and employ from time to time any of the property, services, and resources within the state in accordance with ss. 252.31-252.60; to institute training programs and public information programs; and to take all other preparatory steps, including the partial or full mobilization of emergency management forces and organizations in advance of actual emergency, to ensure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(d) To cooperate with the President, the heads of the Armed Forces, the various federal emergency management agencies, and the officers and agencies of other states in matters pertaining to emergency management in the state and the nation and incidents thereof and, in connection therewith, to take any measures which it may deem proper to carry into effect any request of the President and the appropriate federal officers and agencies for any emergency management action, including the direction or control of:

1. Emergency management drills, tests, or exercises of whatever nature.

2. Warnings and signals for tests and drills, attacks, or other imminent emergencies or threats thereof and the mechanical devices to be used in connection with such warnings and signals.

(e) To make recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other prevention, mitigation, and preparedness measures designed to eliminate emergencies or reduce their impact.

(f) To render assistance to political subdivisions in designing emergency action plans.

(g) To prepare and distribute to appropriate state and local officials catalogs of federal, state, and private assistance programs.

(h) To coordinate federal, state, and local emergency management activities.

(i) To promulgate standards and requirements for political subdivision emergency management plans.

(j) To review periodically political subdivision emergency management plans.

(k) To make such surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of ss. 252.31-252.60.

(l) To prepare, for issuance by the Governor, such executive orders, proclamations, and rules as are necessary or appropriate in coping with emergencies.

(m) To cooperate with the Federal Government and any public or private agency or entity in achieving any purpose of ss. 252.31-252.60 and in implementing programs for emergency prevention, mitigation, preparation, response, and recovery.

(n) To delegate authority vested in it under ss. 252.31-252.60 and to provide for the subdelegation of such authority.

(o) To report annually to the Governor and the Legislature, no later than February 1, the status of the emergency management capabilities of the state and its political subdivisions.

(9) To do other things necessary, incidental, or appropriate for the implementation of ss. 252.31-252.60.

History.—[illegible]

252.355 Registry of disabled citizens; notice.

(1) Each local emergency management agency in the state shall provide for the voluntary registration of disabled citizens located within the jurisdiction of the local agency. The registration shall be utilized to determine who would need assistance in case of evacuation because of an emergency and shall be updated annually.

(2) Each electric utility in the state shall annually notify residential customers in its service area of the availability of a volunteer program by their local emergency management agency to register all disabled citizens who may need assistance during an emergency.

(3) Any advertising required by this section shall, whenever possible, be done through the use of public service announcements of local radio stations and shall not require the expenditure of local government funds.

(4) This section is exempt from the provisions of chapter 119.

History.—[illegible]

252.36 Emergency management powers of the Governor.—

(1)(a) The Governor is responsible for meeting the dangers presented to this state and its people by emergencies. In the event of an emergency beyond local control, the Governor, or, in his absence, his successor as provided by law, may assume direct operational control over all or any part of the emergency management functions within this state, and he shall have the power through proper process of law to carry out the provisions of this section. The Governor is authorized to delegate such powers as he may deem prudent.

(b) Pursuant to the authority vested in him under paragraph (a), the Governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law.

(2) A state of emergency shall be declared by executive order or proclamation of the Governor if he finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor. The Legislature by concurrent resolution may terminate a state of emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of emergency. All executive orders or proclamations issued under this section shall indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination. An executive order or proclamation shall be promptly disseminated by means calculated to bring its contents to the attention of the general public; and, unless the circumstances attendant upon the emergency prevent or impede such filing, the order or proclamation shall be filed promptly with the Department of State and in the offices of the county commissioners in the counties to which the order or proclamation applies.

(3) An executive order or proclamation of a state of emergency shall:

(a) Activate the emergency mitigation, response, and recovery aspects of the state, local, and interjurisdictional emergency management plans applicable to the political subdivision or area in question; and

(b) Be authority for the deployment and use of any forces to which the plan or plans apply and for the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to ss. 252.31-252.60 or any other provision of law relating to emergencies.

(4) During the continuance of a state of emergency, the Governor is commander in chief of the organized and volunteer militia and of all other forces available for emergency duty. To the greatest extent practicable, the Governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or rules, but nothing herein restricts his authority to do so by orders issued at the time of the emergency.

(5) In addition to any other powers conferred upon the Governor by law, he may:

(a) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency.

(b) Utilize all available resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency.

(c) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services.

(d) Subject to any applicable requirements for compensation under s. 252.43, commandeer or utilize any private property if he finds this necessary to cope with the emergency.

(e) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other emergency mitigation, response, or recovery.

(f) Prescribe routes, modes of transportation, and destinations in connection with evacuation.

(g) Control ingress and egress to and from an emergency area, the movement of persons within the area, and the occupancy of premises therein.

(h) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

(i) Make provision for the availability and use of temporary emergency housing.

(j) Take effective measures for limiting or suspending lighting devices and appliances, gas and water mains, electric power distribution, and all other utility services in the general public interest.

(k) Take measures concerning the conduct of civilians, the movement and cessation of movement of pedestrian and vehicular traffic prior to, during, and subsequent to drills and actual or threatened emergencies, the calling of public meetings and gatherings, and the evacuation and reception of civilian population, as provided in the emergency management plan of the state and political subdivisions thereof.

(l) Authorize the use of forces already mobilized as the result of an executive order, rule, or proclamation to assist the private citizens of the state in cleanup and recovery operations during emergencies when proper permission to enter onto or into private property has been obtained from the property owner. The provisions of s. 768.28(9) apply to this paragraph.

(6) The Governor shall take such action and give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of ss. 252.31-252.60 and with the orders and rules made pursuant thereto.

(7) The Governor shall employ such measures and give such directions to the Department of Health and Rehabilitative Services as may be reasonably necessary for the purpose of securing compliance with the provisions of ss. 252.31-252.60 or with the findings or recommendations of such agency of health by reason of conditions arising from emergencies or threats of emergency.

(8) The Governor shall delegate emergency responsibilities to the officers and agencies of the state and of the political subdivisions thereof prior to an emergency or threat of an emergency and shall utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof, including their personnel and other resources, as the primary emergency management forces of the state, and all such officers and agencies shall cooperate with and extend their services and facilities to the division, as it may require.

(9) The Governor and the division shall establish agencies and offices and appoint executive, professional, technical, clerical, and other personnel as may be necessary to carry out the provisions of ss. 252.31-252.60.

(10) The Governor shall formulate and execute plans and rules for the control of traffic in order to provide for the rapid and safe movement or evacuation over public highways and streets of people, troops, or vehicles and materials for national defense or for use in any defense industry and may coordinate the activities of the departments or agencies of the state and the political subdivisions thereof concerned directly or indirectly with public highways and streets in a manner which will best effectuate such plans.

History.—[illegible]

252.37 Financing.—

(1) It is the intent of the Legislature and declared to be the policy of the state that funds to meet emergencies shall always be available.

(2) It is the legislative intent that the first recourse shall be to funds regularly appropriated to state and local agencies. If the Governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, he may make funds available by transferring and expending moneys appropriated for other purposes or out of any unappropriated surplus funds.

(3) Nothing contained in this section shall be construed to limit the authority of the Governor to apply for, administer, and expend any grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery.

(4)(a) Whenever the Federal Government or any agency or officer thereof offers to the state or, through the state, to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant, or loan for the purposes of emergency management, the state, acting through the division, or such political subdivision, acting with the consent of the Governor or his authorized representative, may accept such offer. Upon such acceptance, the division or the presiding officer or governing body of such political subdivision may authorize receipt of the gift, grant, or loan on behalf of the state or such political subdivision, subject to the terms of the offer and the rules and regulations of the agency making the offer.

(b) Whenever any person, firm, or corporation offers to the state or to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant, loan, or other agreement for the purpose of emergency management, the state, acting through the division, or such political subdivision, acting through its governing body or a local emergency management agency, may accept such offer. Upon such acceptance, the division or the presiding officer or governing body of the political subdivision may authorize receipt of the gift, grant, or loan on behalf of the state or such political subdivision, subject to the terms of the offer.

History.—[illegible]

252.38 Emergency management powers of political subdivisions.—

(1) Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state.

(2) In order to provide effective and orderly governmental control and coordination of emergency operations in emergencies within the scope of ss. 252.31-252.60, each county within this state shall be within the jurisdiction of, and served by, the division. Except as otherwise provided in ss. 252.31-252.60, each local emergency management agency shall have jurisdiction over and serve an entire county. Each political subdivision is authorized and directed to establish and maintain such an emergency management agency in support of the state comprehensive emergency management plan and program.

(3) Legally constituted municipalities are authorized and encouraged to create municipal emergency management agencies. Municipal emergency management agencies shall coordinate their activities

with those of the county emergency management agency. Municipalities without emergency management agencies shall be served by their respective county agencies.

(4) Each local emergency management agency created and established pursuant to the provisions of ss. 252.31-252.60 shall have a director who shall be appointed and have his annual salary fixed by the board of county commissioners of the county or the governing body of a city or town, as appropriate. Such a director shall meet the minimum training and education qualifications established in a job description approved by the Department of Administration or the political subdivision. Such directors shall be appointed by their respective political subdivisions, to serve at their pleasure, subject to their direction and control, in conformance with applicable resolutions, ordinances, and Florida statutes. Each political subdivision shall promptly inform the division of the appointment of directors and other personnel. Each director shall have direct responsibility for the organization, administration, and operation of the local emergency management agency, subject only to the direction and control of the governing body of the political subdivision and of the division. The director shall coordinate the activities, services, and programs for emergency management within the county or municipality and shall maintain liaison with other state and local emergency management agencies.

(5) Each local emergency management agency shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized and, in addition, shall conduct such activities outside its territorial limits as may be required pursuant to the provisions of ss. 252.31-252.60 and in accordance with state and county emergency management plans and mutual-aid agreements.

(6) In carrying out the provisions of ss. 252.31-252.60, each political subdivision shall have the power and authority:

(a) To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies.

(b) To appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers.

(c) To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.

(d) To assign and make available for duty the offices and agencies of the political subdivision, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the political subdivision for employment within or outside the political limits of the subdivision.

(e) To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one political subdivision. The duration of each state of emergency declared locally is limited to 7 days; it may be extended, as necessary, in 72-hour increments. Further, the political subdivision has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

1. Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.
2. Entering into contracts.
3. Incurring obligations.
4. Employment of permanent and temporary workers.
5. Utilization of volunteer workers.
6. Rental of equipment.
7. Acquisition and distribution, with or without compensation, of supplies, materials, and facilities.
8. Appropriation and expenditure of public funds.

(7) Upon the request of two or more adjoining political subdivisions, or if the Governor finds that two or more adjoining political subdivisions would be better served by an interjurisdictional arrangement than by maintaining separate emergency management agencies and services, the Governor may delineate by executive order or rule an interjurisdictional area adequate to plan for, prevent, mitigate, or respond to emergencies in such area and may direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint emergency plan, a provision for mutual aid, or an area organization for emergency planning and services. A finding of the Governor pursuant to this subsection shall be based on one or more factors related to the difficulty of maintaining an efficient and effective emergency prevention, mitigation, preparedness, response, and recovery system on a unijurisdictional basis, such as:

(a) Small or sparse population.

(b) Limitations on public financial resources severe enough to make maintenance of a separate emergency management agency and services unreasonably burdensome.

(c) Unusual vulnerability to emergencies as evidenced by a past history of emergencies, topographical features, drainage characteristics, emergency potential, and presence of emergency-prone facilities or operations.

(d) The interrelated character of the counties in a multicounty area.

(e) Other relevant conditions or circumstances.

History.—s. 1, ch. 74-295; s. 1, ch. 77-174; s. 22, ch. 81-169; s. 21, ch. 83-334.

252.39 Local services.—

(1) Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in s. 252.38, such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in

the political subdivisions in which they are normally employed.

(2)(a) The political subdivision in which any equipment is used pursuant to this section shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for such loss, damage, or expense shall be allowed unless an itemized notice of such claim under oath is served by mail or otherwise upon the chief fiscal officer of the political subdivision in which the equipment was used within 60 days after the loss, damage, or expense is sustained or incurred.

(b) The political subdivision which is aided pursuant to this section shall also pay and reimburse the political subdivision furnishing such aid for compensation paid to employees furnished under this section during the time of the rendition of such aid and shall defray the actual traveling and maintenance expenses of such employees while they are rendering such aid. Such reimbursement shall include any amounts paid or due for compensation due to personal injury or death while such employees are engaged in rendering such aid. The term "employee" as used in this section means, and the provisions of this section apply with equal effect to, paid, volunteer, and auxiliary employees and emergency management services workers.

History.—s. 1, ch. 74-295; s. 22, ch. 83-334.

252.40 Mutual-aid arrangements.—

(1) The governing body of each political subdivision of the state is authorized to develop and enter into mutual-aid agreements within the state for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted. Copies of such agreements shall be sent to the division. Such agreements shall be consistent with the state comprehensive emergency management plan and program, and in time of emergency it shall be the duty of each local emergency management agency to render assistance in accordance with the provisions of such mutual-aid agreements to the fullest possible extent.

(2) The Governor may enter into a compact with any state if he finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency management planning or emergency prevention, mitigation, response, and recovery.

History.—s. 1, ch. 74-295; s. 23, ch. 83-334.

*Note.—The sentence "Copies of such agreements shall be sent to the division" was substituted by the editors for the words "with copies to the division."

252.41 Emergency management support forces.—

(1) The division is authorized to provide, within or without the state, such support from available personnel, equipment, and other resources of state agencies and the political subdivisions of the state as may be necessary to reinforce emergency management agencies in areas stricken by emergency. Such support shall be rendered with due consideration of the plans of the Federal Government, this state, the other states, and of the criticalness of the existing situation. Emergency management support forces shall be called to duty upon orders of the division and shall perform functions in any part of the state or, upon the conditions specified in this section, in other states.

(2) Personnel of emergency management support forces while on duty, whether within or without the state, shall:

(a) If they are employees of the state, have the powers, duties, rights, privileges, and immunities, and receive the compensation, incidental to their employment.

(b) If they are employees of a political subdivision of the state, whether serving within or without such political subdivision, have the powers, duties, rights, privileges, and immunities, and receive the compensation, incidental to their employment.

(c) If they are not employees of the state or a political subdivision thereof, they shall be entitled to the same rights and immunities as are provided by law for the employees of this state and to such compensation as may be fixed by the division. All personnel of emergency management support forces shall, while on duty, be subject to the operational control of the authority in charge of emergency management activities in the area in which they are serving and shall be reimbursed for all actual and necessary travel and subsistence expenses to the extent of funds available.

History.—s. 1, ch. 74-295; s. 24, ch. 83-334.

252.42 Government equipment, services, and facilities.—In the event of any emergency, the division may make available any equipment, services, or facilities owned or organized by the state or its political subdivisions for use in the affected area upon request of the duly constituted authority of the area or upon the request of any recognized and accredited relief agency through such duly constituted authority.

History.—s. 1, ch. 74-295; s. 25, ch. 83-334.

252.43 Compensation.—

(1) Compensation for services or for the taking or use of property shall be owed only to the extent that a claimant may not be deemed to have volunteered his services or property without compensation and only to the extent that such taking exceeds the legal responsibility of a claimant to render such services or make such property so available.

(2) Compensation owed for personal services shall be only such as may be fixed by the division.

(3) Compensation for property shall be owed only if the property was commandeered or otherwise used in coping with an emergency and its use or destruction was ordered by the Governor or a member of the emergency forces of this state.

(4) Any person claiming compensation for the use, damage, loss, or destruction of property under ss. 252.31-252.60 shall file a claim therefor with the division in the form and manner that the division provides.

(5) Unless the amount of compensation owed on account of property damaged, lost, or destroyed is agreed between the claimant and the division, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

(6) Nothing in this section applies to or authorizes compensation for the destruction or damaging of standing timber or other property in order to provide a firebreak or damage resulting from the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood or applies to or authorizes compensation beyond the extent of funds available for such compensation.

History.—s. 1, ch. 74-285; s. 1, ch. 77-174; s. 25, ch. 83-334.

252.41 Emergency mitigation.—

(1) In addition to prevention measures included in the state and local comprehensive emergency management plans, the Governor shall consider on a continuing basis steps that could be taken to mitigate the harmful consequences of emergencies. At his direction and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards, shall make studies of emergency-mitigation-related matters. The Governor, from time to time, shall make such recommendations to the Legislature, local governments, and other appropriate public and private entities as may facilitate measures for mitigation of the harmful consequences of emergencies.

(2) The appropriate state agencies, in conjunction with the division, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence, manmade or natural. The studies under this subsection shall concentrate on means of reducing or avoiding the dangers caused by these occurrences or the consequences thereof.

(3) If the division believes, on the basis of the studies or other competent evidence, that an area is susceptible to an emergency of catastrophic proportions without adequate warning; that existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the emergency; and that changes in zoning regulations, other land use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the Governor. If the Governor upon review of the recommendation finds after public hearing that changes are essential, he shall so recommend to the agencies or political subdivisions with jurisdiction over the area and subject matter. If no action, or insufficient action, pursuant to his recommendations is taken within the time specified by the Governor, he shall so inform the Legislature and request legislative action appropriate to mitigate the impact of such an emergency.

History.—s. 1, ch. 74-285; s. 27, ch. 83-334.

252.45 Lease or loan of state property; transfer of state personnel.—Notwithstanding any inconsistent provision of law:

(1) Whenever the Governor deems it to be in the public interest, he may:

(a) Authorize any department or agency of the state to lease or lend, on such terms and conditions as it may deem necessary to promote the public welfare and protect the interests of the state, any real or personal property of the state government to the President, the heads of the Armed Forces, or the various federal emergency management agencies of the United States.

(b) Enter into a contract on behalf of the state for the lease or loan to any political subdivision of the state, on such terms and conditions as he may deem necessary to promote the public welfare and protect the interests of the state, of any real or personal property of the state government or the temporary transfer or employment of personnel of the state government to or by any political subdivision of the state.

(2) The governing body of each political subdivision of the state may:

(a) Enter into such contract or lease with the state, accept any such loan, or employ such personnel, and such political subdivision may equip, maintain, utilize, and operate any such property and employ necessary personnel therefor in accordance with the purposes for which such contract is executed.

(b) Do all things and perform any and all acts which it may deem necessary to effectuate the purpose for which such contract was entered into.

History.—s. 1, ch. 74-285; s. 28, ch. 83-334.

252.46 Orders, rules, and regulations.—

(1) In accordance with the provisions of chapter 120, the political subdivisions of the state and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of the provisions of ss. 252.31-252.60, but which are not inconsistent with any orders or rules promulgated by the division or by any state agency exercising a power delegated to it by the Governor or the division.

(2) All orders, rules, and regulations promulgated by the division or any political subdivision or other agency authorized by ss. 252.31-252.60 to make orders, rules, and regulations shall have full force and effect of law after adoption in accordance with the provisions of chapter 120 in the event of issuance by the division or any state agency or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk or recorder of the political subdivision or agency promulgating the same. All existing laws, ordinances, rules, and regulations inconsistent with the provisions of ss. 252.31-252.60, or any order, rule, or regulation issued under the authority of ss. 252.31-252.60, shall be suspended during the period of time and to the extent that such conflict exists.

(3) In order to attain uniformity so far as practicable throughout the country in measures taken to aid emergency management, all action taken under ss. 252.31-252.60 and all orders, rules, and regulations made pursuant to such sections shall be taken or made with due consideration of the orders, rules, regulations, actions, recommendations, and requests of federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, regulations, actions, recommendations, and requests.

History.—s. 1, ch. 74-285; s. 1, ch. 77-174; s. 12, ch. 78-95; s. 23, ch. 81-169; s. 29, ch. 83-334.

252.47 Enforcement.—The law enforcement authorities of the state and the political subdivisions thereof shall enforce the orders, rules, and regulations issued pursuant to ss. 252.31-252.60.

History.—s. 1, ch. 74-285; s. 30, ch. 83-334.

252.50 Penalties.—Any person violating any provision of ss. 252.31-252.60 or any rule, order, or regulation made pursuant to ss. 252.31-252.60 is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 74-285; s. 31, ch. 83-334.

252.51 Liability.—Any person or organization, public or private, owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege or otherwise permits the designation by the local emergency management agency or use of the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice emergency, together with his successor in interest, if any, shall not be liable for the death of, or injury to, any person on or about such real estate or premises during the actual, impending, mock, or practice emergency, or for loss of, or damage to, the property of such person, solely by reason or as a result of such license, privilege, designation, or use, unless the gross negligence or the willful and wanton misconduct of such person owning or controlling such real estate or premises or his successor in interest is the proximate cause of such death, injury, loss, or damage occurring during such sheltering period.

History.—s. 1, ch. 74-285; s. 32, ch. 83-334.

252.52 Liberality of construction.—Sections 252.31-252.60 shall be construed liberally in order to effectuate their purposes.

History.—s. 1, ch. 74-285; s. 33, ch. 83-334.

252.55 Civil Air Patrol, Florida Wing; appropriations; procurement authority; wing commander bond.—

(1) The Florida Wing of the Civil Air Patrol, an auxiliary of the United States Air Force, shall be recognized as a nonprofit, educational, and emergency-management-related organization and shall be eligible to purchase materials from the various surplus warehouses of the state.

(2) The sum of $50,000 shall be appropriated annually from the General Revenue Fund for the purpose of acquisition, installation, conditioning, and maintenance of the Florida Wing of the Civil Air Patrol. However, no part of the annual appropriation shall be expended for the purchase of uniforms or personal effects of members of the organization or for compensation or salary to such members.

(3) The wing commander of the Florida Wing of the Civil Air Patrol may employ administrative help and purchase educational materials for the training of Florida youth for which funds from the annual appropriation may be used.

(4) Purchase of aircraft shall be limited to not more than $15,000 per year, and not more than $15,000 per year may be placed in a building reserve fund toward acquisition of a permanent state headquarters and operations facility.

(5) The wing commander of the Florida Wing of the Civil Air Patrol shall furnish to the Comptroller of the state a surety company bond, payable to the Governor in a principal amount of not less than $50,000.

(6) The wing commander of the Florida Wing of the Civil Air Patrol shall furnish the Bureau of Emergency Management an annual projection of the goals and objectives of the Civil Air Patrol for the following year. These will be reported to the Governor in the annual report of the division on February 1 of each year.

History.—ss. 1, 2, 3, 4, ch. 74-330; s. 34, ch. 83-334.

252.60 Radiological emergency preparedness.—

(1) PURPOSE AND INTENT.—It is the purpose of this section to establish the means by which certain radiological emergency response plans and preparedness requirements of the United States Nuclear Regulatory Commission and the Federal Emergency Management Agency can be developed and tested by the state, the appropriate counties, and each operator licensed by the United States Nuclear Regulatory Commission to operate a commercial nuclear electric generating facility. It is the expressed intent of the Legislature that no department, commission, agency, or political subdivision of the state be considered to have assumed or be responsible for the funding of any activity or program required by this section from any sources of funds other than those specifically identified in this section.

(2) DEFINITIONS.—For the purposes of this section, the following terms shall have the meanings indicated:

(a) "Facility" means a commercial nuclear electric generating reactor operated for the purpose of providing heat to produce electricity for sale to persons other than the owner of the facility.

(b) "Operator" means that person who has applied for or who has been granted a license by the United States Nuclear Regulatory Commission for the operation of a facility.

(c) "Appropriate county" means a county which is required by the United States Nuclear Regulatory Commission or the Federal Emergency Management Agency to be designated a risk or a host county.

(d) "Plans" means the radiological emergency response plans and preparedness in support of nuclear power plants requirements, including facilities and equipment, currently contained in NUREG-0654 and FEMA-REP-1 or as may be required by cognizant federal agencies in the future.

(3) EMERGENCY RESPONSE PLANS.—In addition to the other plans required by this chapter, the Division of Public Safety Planning and Assis-

turice shall develop, prepare, test, and implement as needed, in conjunction with the appropriate counties and the affected operator, such radiological emergency response plans and preparedness requirements as may be imposed by the United States Nuclear Regulatory Commission or the Federal Emergency Management Agency as a requirement for obtaining or continuing the appropriate licenses for a commercial nuclear electric generating facility.

(4) POWERS AND DUTIES.—In implementing the requirements of this section, the secretary of the department, or his designated representative, shall:

(a) Negotiate and enter into such additional contracts and arrangements among the division, appropriate counties, and each operator to provide for the level of funding and the respective roles of each in the development, preparation, testing, and implementation of the plans.

(b) Evaluate and determine the adequacy of the plans based upon consultations with the United States Nuclear Regulatory Commission and other agencies, as appropriate, and upon the results of such tests as may be conducted.

(c) Limited to such funding as is available based upon the requirements of subsection (5), require the participation of appropriate counties and operators in the development, preparation, testing, or implementation of the plans as needed.

(d) Determine the reasonableness and adequacy of the provisions, terms, and conditions of the plans and, in the event the appropriate counties and the operators cannot agree, resolve such differences and require compliance by the appropriate counties and the operators with the plans. In resolving such differences, the secretary shall consider:

1. The requirements and parameters placed on the operators by federal law and agencies;

2. The reasonableness and adequacy of the funding for appropriate counties from any sources of funds other than local revenue sources; and

3. The reasonableness and appropriateness of the costs to the appropriate counties likely to be incurred in complying with provisions, terms, and conditions of the plans.

(e) Receive, expend, and disburse such funds as are made available by each licensee pursuant to this section.

(f) Limited to such funding as is available based upon the requirements of subsection (5), coordinate all activities undertaken pursuant to this section or required of appropriate counties and operators by any federal or state agency.

(5) FUNDING.—All funds for the implementation of this section shall be provided by the operators as required by subsection (4), except that operators may enter into bilateral agreements with other state agencies or appropriate counties when necessary. No political subdivision of the state shall be considered to have obligated or consented to have obligated any funds from any local revenue source whatsoever by complying with the provisions of this section.

History.—s. 29, ch. 82-196.

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TITLE XVIII

PUBLIC LANDS AND PROPERTY

CHAPTER 253

STATE LANDS

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253.001 Board of Trustees of the Internal Improvement Trust Fund; duty to hold lands in trust.—The existence of the Board of Trustees of the Internal Improvement Trust Fund is reaffirmed. All lands held in the name of the board of trustees shall continue to be held in trust for the use and benefit of the people of the state pursuant to s. 7, Art. II, and s. 11, Art. X of the State Constitution.

History.—s. 1, ch. 79-255.

253.002 Division of State Lands; powers and duties with respect to state lands.—The Division of State Lands shall perform all staff duties and functions related to acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund.

History.—s. 4, ch. 79-255.

253.01 Internal Improvement Trust Fund established.—

(1) So much of the 500,000 acres of land granted to this state for internal improvement purposes, by an Act of Congress passed March 3, A. D. 1845, as remains unsold, and the proceeds of the sales of such said lands heretofore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also, all the swampland or lands subject to overflow, granted this state by an Act of Congress approved September 28, A. D. 1850, together with all the proceeds that have accrued or may hereafter accrue to the state from the sale of such lands, are set apart, and declared a separate and distinct fund called the Internal Improvement Trust Fund of the state, and are to be strictly applied according to the provisions of this chapter.

(2) All revenues accruing from sources designated by law for deposit in the Internal Improvement Trust Fund shall be used for the acquisition, management, administration, protection, and conservation of state-owned lands.

History.—s. 1, ch. 610, 1854; RS 426; GS 616; RGS 1064; CGL 1304; s. 2, ch. 61-119; s. 1, ch. 82-185.
cf.—s. 270.06 Sale of public lands.

253.02 Board of trustees; powers and duties.—

(1) For the purpose of assuring the proper application of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund for the purposes of this chapter, the land provided for in ss. 253.01 and 253.03, and all the funds arising from the sale thereof, *after paying the necessary expense of selection*, management, and sale, are irrevocably vested in a board of seven trustees, to wit: The Governor, the Secretary of State, the Attorney General, the Comptroller, the State Treasurer, the Commissioner of Education, and the Commissioner of Agriculture and their successors in office, to hold the same in trust for the uses and purposes provided in this chapter, with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in stocks of the United States, stocks of the several states, or the internal improvement bonds issued under the provisions of law; also, the surplus interest accruing from such investments. Said board of trustees have all the rights, powers, property, claims, remedies, actions, suits, and things whatsoever belonging to them, or appertaining before and at the time of the enactment hereof, and they shall remain subject to and pay, fulfill, perform, and discharge all debts, duties, and obligations of their trust, existing at the time of the enactment hereof or provided in this chapter.

(2) The board of trustees shall not sell, transfer, or otherwise dispose of any lands the title to which is vested in the board of trustees except by vote of at least five of the seven trustees.

(3) In the event submerged tidal land is to be sold and transferred by said board of trustees, the board of trustees shall first require the Department of Natural Resources to inspect said lands and to file a written report with the board of trustees which report shall state whether or not the development of said lands would be detrimental to established conservation practices.

(4) The board of trustees is authorized to acquire by condemnation such submerged lands, except Mur-

phy Act Lands and Holland Act Lands, as shall be in the public interest and for a public purpose.

(5) The board of trustees shall be a necessary party to any action or petition which seeks to acquire submerged lands or lands lying beneath any navigable waters in the state through eminent domain proceedings.

History.—s. 2, ch. 610, 1854; RS 429; GS 617; RGS 1055; CGL 1388; s. 2, ch. 61-119; s. 1, ch. 67-5; s. 1, ch. 67-269; s. 1, ch. 67-2236; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 70-358; s. 8, ch. 79-65; s. 2, ch. 82-155.

253.022 Land Management Advisory Committee.—

(1) There is established a Land Management Advisory Committee to provide assistance to the Board of Trustees of the Internal Improvement Trust Fund in reviewing the recommendations and plans for state-owned lands required by s. 253.034. The committee shall be composed of the executive director of the Department of Natural Resources; the Commissioner of Agriculture; the Secretary of State; the executive director of the Game and Fresh Water Fish Commission; the secretary of the Department of Environmental Regulation; the secretary of the Department of Corrections; and the Commissioner of Education, or their respective designees. The chairmanship of the committee shall rotate annually in the order specified in the preceding sentence.

(2) The committee shall hold periodic meetings at the request of the chairman. The Division of State Lands shall provide primary staff support to the committee and ensure that committee meetings are electronically recorded. Such recordings shall be preserved pursuant to chapters 119 and 267.

History.—s. 3, ch. 83-223.

253.023 Conservation and Recreation Lands Trust Fund; purpose.—

(1) It is the policy of the state that the citizens of this state shall be assured the availability of public lands on which to recreate. In recognition of this policy, it is the intent of the Legislature to provide such public lands for the people residing in urban and metropolitan areas of the state as well as those residing in less populated, rural areas; it is the further intent of the Legislature, with regard to the lands described in paragraph (3)(b), that a high priority be given to the acquisition of such lands in or near counties exhibiting the greatest concentration of population and, with regard to the lands described in subsection (3), that a high priority be given to acquiring lands within any area designated as an area of critical state concern under s. 380.05 which, in the judgment of the selection committee established pursuant to s. 259.035, cannot be adequately protected by application of land development regulations adopted pursuant to s. 380.05.

(2) There is established within the Department of Natural Resources the Conservation and Recreation Lands Trust Fund, to be used as a nonlapsing, revolving fund exclusively for the purposes of this section. To the fund shall be credited 50 percent of the total moneys collected from the excise tax on the severance of:

(a) Oil, such moneys to be taken from the first oil tax provided in s. 211.02(1)(a);

(b) Gas, such moneys to be taken from the first gas tax provided in s. 211.02(1)(c);

(c) Solid minerals other than phosphate rock, such moneys to comprise that portion of the tax paid into the State Treasury in accordance with part II of chapter 211; and

(d) Phosphate rock, such moneys to be taken from that portion of the tax paid into the State Treasury in accordance with part II of chapter 211.

The Department of Revenue, upon compilation of each month's receipts of the severance tax, shall credit the amount provided in this section to the fund, commencing with the funds collected in October 1979. If the moneys credited to the fund at any time during the fiscal year exceed $3 million for fiscal year 1979-1980 or 1980-1981, the excess shall be transferred to the General Revenue Fund. If the moneys credited to the fund at any time during the fiscal year exceed $20 million for fiscal year 1981-1982 or any fiscal year thereafter, the excess shall be transferred to the General Revenue Fund.

(3) The Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, may allocate moneys from the fund in any one year to acquire the fee or any lesser interest in land in each of the following categories:

(a) Lands qualified for purchase as environmentally endangered lands as defined in s. 259.03(2), or

(b) Lands which the board of trustees determines should be acquired in the public interest for the following purposes:

1. For use and protection as natural flood plain, marsh, or estuary, if the protection and conservation of such lands is necessary to enhance or protect water quality or quantity or to protect fish or wildlife habitat which cannot otherwise be accomplished through local and state regulatory programs;

2. For use as state parks, recreation areas, public beaches, state forests, wilderness areas, or wildlife management areas;

3. For restoration of altered ecosystems to correct environmental damage that has already occurred; or

4. For preservation of significant archaeological or historical sites.

(4) The board of trustees may allocate, in any year, an amount not to exceed 5 percent of the money credited to the fund in that year, such allocation to be used for the initiation and maintenance of a natural areas inventory to aid in the identification of areas to be acquired pursuant to this section.

(5) Moneys in the fund not needed to meet obligations incurred under this section shall be deposited with the Treasurer to the credit of the fund and may be invested in the manner provided by law. Interest received on such investments shall be credited to the Conservation and Recreation Lands Trust Fund.

(6)(a) The board of trustees may enter into any contract necessary to accomplish the purposes of this section.

(b) On behalf of the board and before the appraisal of parcels approved for purchase under chapter 259, the executive director of the Department of Natural Resources or the director of the Division of State Lands may enter into option contracts to buy such parcels. Any such option contract shall state

that the final purchase price is subject to approval by the board and that the final purchase price may not exceed the maximum offer allowed by law. The consideration for such an option may not exceed $1,000 or 0.01 percent of the estimate by the department of the value of the parcel, whichever amount is greater.

(7) Prior to or concurrent with the acquisition under this section of any interest in lands, the board of trustees shall designate an agency or agencies to manage such lands and shall make a preliminary determination as to the extent and nature of public use for which the lands will be available.

(8) Lands to be considered for purchase under this section shall be subject to the selection procedures of s. 259.035 and shall be acquired in accordance with acquisition procedures for state lands provided for in s. 253.025, except as otherwise provided by the Legislature. Moneys from the fund may be used for title work, appraisal fees, and survey costs related to acquisition expenses for lands to be acquired, donated, or exchanged which qualify under the categories of this section, at the discretion of the board. When the Legislature has authorized the Department of Natural Resources to condemn a specific parcel of land and such parcel has already been approved for acquisition under this section, the land may be acquired in accordance with the provisions of chapter 73 or chapter 74, and the fund may be used to pay the condemnation award and all costs, including a reasonable attorney's fee, associated with condemnation.

(9) Agencies designated to manage lands under this section shall develop and adopt, with the approval of the board of trustees, individual management plans for each project designed to conserve and protect such lands and their associated natural resources.

(10) The board of trustees may allocate, in any year, an amount not to exceed 10 percent of the moneys credited to the fund in that year, such allocation to be used for maintenance and management of any lands acquired pursuant to this section.

(11) All lands managed under this section shall be open for public use and enjoyment to the extent the board of trustees find compatible with the conservation and protection of public lands. Such public use may include, upon approval of the board of trustees, fishing, hunting, camping, hiking, nature study, swimming, boating, and canoeing.

(12) The board of trustees may adopt rules to further define the categories of land for acquisition under this section and under chapter 259.

History.—s. 8, ch. 79-236; s. 16, ch. 80-356; s. 5, ch. 81-35; s. 1, ch. 81-210; s. 165, ch. 81-259; s. 1, ch. 82-152; s. 2, ch. 83-90; s. 1, ch. 83-114.

253.025 Acquisition of state lands.—

(1) Neither the Board of Trustees of the Internal Improvement Trust Fund nor its duly authorized agent shall commit the state, through any instrument of negotiated contract or agreement for purchase, to the purchase of lands with or without appurtenances unless the provisions of this section have been fully complied with. However, the board of trustees may substitute federally mandated acquisition procedures for the provisions of this section when federal funds are available and will be utilized for the purchase of lands, title to which will vest in the board of trustees, and qualification for such federal funds requires compliance with federally mandated acquisition procedures.

(2) Prior to any state agency initiating any land acquisition, except as pertains to the purchase of rights-of-way and borrow pits for road building purposes, the agency shall coordinate with the Division of State Lands to determine the availability of existing, suitable state-owned lands in the area and the public purpose for which the acquisition is being proposed. If the state agency determines that no suitable state-owned lands exist, the state agency may proceed to acquire such lands by employing all available statutory authority for acquisition.

(3) Land acquisition procedures provided for in this section are for voluntary, negotiated acquisitions.

(4) For the purposes of this section, the term "negotiations" does not include preliminary contacts with the property owner to determine the availability of the property, existing appraisal data, existing abstracts, and surveys.

(5)(a) Purchase negotiations for the acquisition of any land from the Conservation and Recreation Lands Trust Fund or Land Acquisition Trust Fund shall be initiated within 6 months of approval by the Governor and Cabinet of the lists developed pursuant to s. 259.035.

(b) Title shall be conveyed, or a written agreement to transfer title shall be executed, within 6 months of the initiation of purchase negotiations unless the Department of Natural Resources formally abandons that acquisition prior to the conclusion of such 6-month period.

(c) If, within such 6-month period, title is not conveyed, an agreement to purchase is not executed, or a project is not formally abandoned, the Division of State Lands shall notify the Governor and Cabinet. Within 30 days after such notification, the Governor and Cabinet shall instruct the division to continue or abandon the project, in whole or in part.

(6) Evidence of marketable title shall be provided by the landowner prior to the conveyance of title, as provided in the final agreement for purchase. Such evidence of marketability shall be in the form of title insurance or an abstract of title with a title opinion. The board of trustees may waive the requirement that the landowner provide evidence of marketable title, and, in such case, the acquiring agency shall provide evidence of marketable title.

(7) Prior to approval by the board of trustees of any agreement to purchase land pursuant to s. 253.023, chapter 259, or chapter 375, and prior to negotiations with the parcel owner to purchase any other land, title to which will vest in the board of trustees, an appraisal of the parcel shall be required as follows:

(a) Each parcel to be acquired shall have at least one appraisal. Two appraisals are required when the value of the first appraisal exceeds $250,000. However, when the values of both appraisals exceed $250,000 and differ significantly, a third appraisal may be obtained.

(b) Appraisal fees shall be paid by the agency

proposing the acquisition. The board of trustees shall approve qualified fee appraisal organizations which shall include, but not be limited to, the American Association of Certified Appraisers, the American Institute of Real Estate Appraisers, the American Society of Appraisers, the American Society of Farm Managers and Rural Appraisers, the National Association of Independent Fee Appraisers, the National Society of Fee Appraisers, and the Society of Real Estate Appraisers. The Division of State Lands shall maintain a current list of all fee appraisers who are members of the professional organizations approved by the board of trustees and who desire to conduct appraisals under contract for the division. The list of qualified fee appraisers shall contain information relative to the fee appraiser's qualifications, location of practice, business reputation, and areas of specialization, if any. The board of trustees shall adopt minimum criteria for selection of prequalified fee appraisers in order to solicit proposals for appraisal services under this section. The Division of State Lands shall maintain a current list of prequalified fee appraisers from which selection will be made by the division when appraisals are required by an acquiring agency under this section. Each fee appraiser selected to appraise a particular parcel shall, prior to contracting with the agency, submit to that agency an affidavit substantiating that he has no vested or fiduciary interest in such parcel.

(c) After the contract between the agency and the fee appraiser is signed, the agency shall transmit to the fee appraiser all pertinent title information developed, pursuant to rules adopted by the board of trustees: a specification of the rights to be acquired; a list of items, if any, considered to be noncompensable; minimum appraisal requirements that apply; required appraisal forms; and a certified survey which meets the minimum requirements for upland parcels established by the "Minimum Technical Standards for Land Surveying in Florida" of the Department of Professional Regulation and which accurately portrays to the greatest extent practicable the condition of the parcel as it currently exists. However, in cases where a survey cannot be practically completed or where the cost of the survey will be prohibitive relative to the expected value of the parcel, the requirement for such certified survey may, in part or in whole, be waived by the board of trustees any time prior to submission of the agreement for purchase to the division. When an existing boundary map and description of a parcel are determined by the division to be sufficient for appraisal purposes, the division director may temporarily waive a survey until any time prior to conveyance of title to such parcel. The fee appraiser and the review appraiser for the agency shall not act in any way that may be construed as negotiating with the property owner. Appraisal reports for property on the priority acquisition lists prepared pursuant to chapter 259 shall be confidential and exempt from the provisions of chapter 119, for use by the agency and the board of trustees, until an option contract is executed or, if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees.

(d) Prior to acceptance, the agency shall submit a copy of such report to the Division of State Lands. The division shall review such report in accordance with generally accepted professional standards of appraisal review. With respect to proposed purchases in excess of $250,000, this review shall include a general field inspection of the subject property by the review appraiser. The review appraiser may reject an appraisal report following a desk review, but is prohibited from approving an appraisal report in excess of $250,000 without a field review. This review shall include a check for comparable sales which may have been omitted by the fee appraiser. Prior to acceptance of an appraisal report, the review appraiser shall request the appropriate local property appraiser's comments on the value of the proposed acquisition. Any questions of applicability of laws affecting an appraisal shall be addressed by the legal office of the agency.

(e) Techniques and methods used by a fee appraiser shall be consistent with generally accepted appraisal standards. If the fee appraiser uses comparable sales in determining value, he shall thoroughly describe each such sale including date of sale, legal description, present use, highest and best use, the official record book and page where the transaction is recorded, the grantor and grantee, purchase price, terms and conditions of the sale, and when and with whom verified. The fee appraiser shall consider any enhanced value to adjoining property of the landowner whose land is being considered for acquisition and which may occur as a proximate result of the proposed acquisition.

(f) The appraisal report shall state any assumption made by the appraiser in determining land value and shall document and adequately support the fee appraiser's estimate of conclusion as to value. The report shall include a description of the location, size, shape, topography, access, highway frontage, and present zoning of the property. The report shall address other factors relevant to the potential of the property for development, including, but not limited to, local government land use restrictions and permit moratoria, environmental sensitivity of the property, and the likelihood of obtaining any pending or required local, state, or federal permits. In determining land value, the fee appraiser shall primarily consider the present market value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length. This fair market value should, as much as practicable, be based on comparable arm's length sales of similar property. The fee appraiser shall also consider:

1. The present use of the property, taking into consideration any applicable local or state land use regulation and any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium prohibits or restricts the development or improvement of property as otherwise authorized by applicable law;
2. The highest and best use to which the property can be expected to be put in the immediate future.

The term "immediate future" as used in this section means a period of time not to exceed 5 years;

3. The location of the property;
4. The quantity or size of the property;
5. The cost of the property and the present depreciated reproduction costs of any improvements thereon;
6. The condition of the property; and
7. The income from the property.

The availability of utilities, if any, and a detailed description of any appurtenances shall also be included.

(g) The appraisal report shall be accompanied by the sales history of the parcel for at least the prior 5 years. Such sales history shall include all parties and considerations with the amount of consideration verified, if possible, and the amount of assessed value of the parcel. If a sales history would not be useful, or its cost prohibitive compared to the value of a parcel, the sales history may be waived by the executive director of the Department of Natural Resources or the director of the Division of State Lands. The department shall adopt a rule specifying guidelines for waiver of a sales history.

(h) The board of trustees may consider an appraisal acquired by a seller, or any part thereof, in negotiating to purchase a parcel, but such appraisal may not be used in lieu of an appraisal required by this subsection or to determine the maximum offer allowed by law.

(8)(a) When the owner is represented by an agent or broker, negotiations may not be initiated or continued until a written statement verifying such agent's or broker's legal or fiduciary relationship with the owner is on file with the agency.

(b) Upon the initiation of negotiations, the state agency shall inform the owner in writing that all agreements for purchase are subject to approval by the board of trustees.

(c) All offers or counteroffers shall be in writing and shall be confidential and exempt from the provisions of chapter 119 until an option contract is executed, or if no option contract is executed, until 2 weeks before a contract or agreement for purchase is considered for approval by the board of trustees. The agency shall maintain complete and accurate records of all offers and counteroffers for all projects.

(d) No offer by a state agency may exceed the value for that parcel as determined pursuant to a single appraisal, the average of two appraisals if two are obtained, or the average of the two closest appraisals if more than two are obtained. The provisions of this paragraph do not apply to the acquisition of historically unique or significant property as determined by the Division of Archives of the Department of State.

(e) When making an offer to a landowner, a state agency shall consider the desirability of a single cash payment in relation to the maximum offer allowed by law.

(f) The state shall have the authority to reimburse the owner for the cost of the survey when deemed appropriate. The reimbursement shall not be considered a part of the purchase price.

(g) All offers by the agency, including the final offer, shall be reviewed by the legal counsel of the agency. Final offers shall be in the form of an agreement for purchase and shall be signed and attested to by the owner and the representative of the agency. Before the agency signs the agreement for purchase, the provisions of s. 286.23 shall be complied with. Within 10 days after the signing of the agreement for purchase, the state agency shall furnish the Division of State Lands with the original of the agreement for purchase along with copies of the disclosure notice, evidence of marketability, the accepted appraisal report, the fee appraiser's affidavit, a statement that the inventory of existing state-owned lands was examined and contained no available suitable land in the area, and a statement outlining the public purpose for which the acquisition is being made and the statutory authority therefor.

(h) Within 45 days of receipt by the Division of State Lands of the agreement for purchase and the required documentation, the board of trustees shall either reject or approve the agreement. Approved agreements for purchase shall be binding on both parties. Agreements disapproved shall be returned to the agency, along with a statement as to the deficiencies of the agreement or the supporting documentation. Agreements for purchase disapproved by the board of trustees may be resubmitted when such deficiencies have been corrected.

(9) No dedication, gift, grant, or bequest of lands and appurtenances shall be accepted by the board of trustees until the receiving state agency supplies sufficient evidence of marketability of title. The board of trustees may not accept by dedication, gift, grant, or bequest any lands and appurtenances that are determined as being owned by the state either in fee or by virtue of the state's sovereignty or which are so encumbered so as to preclude use of such land and appurtenances for any reasonable public purpose. The state is not required to appraise the value of such donated lands and appurtenances as a condition of receipt.

(10) Any conveyance to the board of trustees of fee title shall be made by no less than a special warranty deed, unless the conveyance is from the Federal Government or another state agency. The title to lands acquired pursuant to this section shall vest in the board of trustees as provided in s. 253.03(1). All such lands, title to which is vested in the board pursuant to this section, shall be administered pursuant to the provisions of s. 253.03.

(11) The Auditor General shall conduct performance postaudits of acquisitions and divestitures which according to his review of the overall land acquisition program he deems necessary. These selected reviews will be initiated within 60 days following the final approval by the board of land acquisitions under this section. The Auditor General shall submit an audit report to the board of trustees, the President of the Senate, the Speaker of the House of Representatives, and their designees.

(12) The board of trustees and all affected agencies shall adopt and may modify or repeal such rules and regulations as are necessary to carry out the purposes of this section, including rules governing the terms and conditions of land purchases. Such rules shall address the procedures to be followed, when multiple landowners are involved in an acquisition, in

obtaining written option agreements so that the interests of the state are fully protected.

History.—s. 9, ch. 79-255; s. 7, ch. 80-356; s. 166, ch. 81-259; s. 2, ch. 82-152; s. 2, ch. 83-114.

*Note.—The official name of the division to which reference is made is the "Division of Archives, History and Records Management"; see s. 20.10.

253.03 Board of trustees to administer state lands; lands enumerated.—

(1) The Board of Trustees of the Internal Improvement Trust Fund of the state is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards, or commissions, excluding lands held for road and canal rights-of-way, spoil areas and lands required for disposal of materials or borrow pits, any land, title to which is vested or may become vested in any port authority, flood control district, or water management district or navigation district or agency created by any general or special act, and any lands, including the Camp Blanding Military Reservation, which have been conveyed to the state for military purposes only, and which are subject to reversion if conveyed by the original grantee, or if the conveyance to the Board of Trustees of the Internal Improvement Trust Fund under this act would work a reversion from any other cause, or where any conveyance of lands held by a state agency which are encumbered by or subject to liens, trust agreements, or any form of contract which encumbers state lands for the repayment of funded debt. Lands vested in the Board of Trustees of the Internal Improvement Trust Fund shall be deemed to be:

(a) All swamp and overflowed lands held by the state, or which may hereafter inure to said state;

(b) All lands owned by the state by right of its sovereignty;

(c) All internal improvement lands proper;

(d) All tidal lands;

(e) All lands covered by shallow waters of the ocean, gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water;

(f) All parks, reservations, or lands or bottoms set aside in the name of the state, excluding lands held for road and canal rights-of-way;

(g) All lands which have accrued, or which may hereafter accrue, to the state from any source whatsoever, excluding lands held for road and canal rights-of-way or spoil areas or borrow pits or any land, title to which is vested or may become vested in any port authority, flood control district, water management district, or navigation district or agency created by any general or special act.

(2) It is the intent of the Legislature that the Board of Trustees of the Internal Improvement Trust Fund continue to receive proceeds from the sale or disposition of the products of lands and the sale of lands of which the use and possession are not subsequently transferred by appropriate lease or similar instrument from the board of trustees to the proper using agency. Such using agency shall be entitled to the proceeds from the sale of products on, under, growing out of, or connected with lands which such using agency holds under lease or similar instrument from the board of trustees. The Board of Trustees of the Internal Improvement Trust Fund is directed and authorized to enter into leases or similar instruments, without consideration, for the use, benefit, and possession of public lands by state agencies which may properly use and possess them for the benefit of the state.

(3) The provisions of s. 270.11, requiring the board of trustees to reserve unto itself certain oil and mineral interests in all deeds of conveyances executed by said board of trustees, shall not have application to any lands that inure to the board of trustees from other state agencies, departments, boards, or commissions under the terms and provisions of this act.

(4) It is the intent of the Legislature that where title to any lands is in the State of Florida, with no specific agency authorized by the Legislature to convey or otherwise dispose of such lands, the Board of Trustees of the Internal Improvement Trust Fund shall be vested with such title and shall hereafter be authorized to exercise over such lands such authority as may be provided by law.

(5) It is the specific intent of the Legislature that this act repeal any provision of state law which may require the Board of Trustees of the Internal Improvement Trust Fund to pay taxes or assessments of any kind to any state or local public agency on lands which are transferred or conveyed to the Board of Trustees of the Internal Improvement Trust Fund under the terms of this act and which at the time of the passage of this act are entitled to tax-exempt status under the constitution or laws of the state.

(6) Commencing September 1, 1967, all land held in the name of the state or any of its boards, departments, agencies, or commissions shall be deemed to be vested in the Board of Trustees of the Internal Improvement Trust Fund for the use and benefit of the state. By October 1, 1967, any board, commission, department, or agency holding title to any state lands used for public purpose shall execute all instruments necessary to transfer such title to the said Board of Trustees of the Internal Improvement Trust Fund for the use and benefit of the state, except lands which reverted to the state under the provisions of chapter 18296, Laws of Florida, 1937, commonly known and referred to as the "Murphy Act."

(7) The Board of Trustees of the Internal Improvement Trust Fund is hereby authorized and directed to administer all state-owned lands and shall be responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management, and disposition of state-owned lands so as to ensure maximum benefit and use. The Board of Trustees of the Internal Improvement Trust Fund shall adopt rules and regulations necessary to carry out the purposes of this act as herein set forth.

(8)(a) The Board of Trustees of the Internal Improvement Trust Fund shall prepare, using tax roll data provided by the Department of Revenue, an annual inventory of all publicly owned lands within the state. Such inventory shall include all lands owned by any unit of state government or local government; by the Federal Government, to the greatest extent possible; and by any other public entity. The board shall submit a summary report of the inventory and a list

of major discrepancies between the inventory and the tax roll data to the President of the Senate and the Speaker of the House of Representatives on or before March 1 of each year.

(b) In addition to any other parcel data available, the inventory shall include a legal description or proper reference thereto, the number of acres or square feet within the boundaries, and the assessed value of all publicly owned uplands. To the greatest extent practicable, the legal description or proper reference thereto and the number of acres or square feet shall be determined for all publicly owned submerged lands. For the purposes of this subsection, the term "submerged lands" means publicly owned lands below the ordinary high-water mark of freshwaters and below the mean high-water line of salt waters extending seaward to the outer jurisdiction of the state. By October 31 of each year, the Department of Revenue shall furnish, in machine-readable form, annual, current tax roll data for public lands to the board to be used in compiling the inventory.

(c) By December 31 of each year, the board shall prepare and provide to each state agency and local government and any other public entity which holds title to real property, including any water management district, drainage district, navigation district, or special taxing district, a list of the real property owned by such entity, required to be listed on county assessment rolls, using tax roll data provided by the Department of Revenue. By March 31 of the following year, each such entity shall review its list and inform the appropriate property appraiser of any corrections to the list. The Department of Revenue shall provide for entering such corrections on the appropriate county tax roll.

(9) The Board of Trustees of the Internal Improvement Trust Fund shall be responsible for the acquisition and disposal of federal lands and buildings which are declared surplus or excess. The Board of Trustees of the Internal Improvement Trust Fund shall establish regular procedures to assure that state and local agencies are made aware of the availability of federal lands and buildings.

(10) The Board of Trustees of the Internal Improvement Trust Fund and the State of Florida through any of its agencies are hereby prohibited from levying any charge, by whatever name known, or attaching any lien, on any and all materials dredged from state-sovereignty tidal lands or submerged bottom lands or on the lands constituting the spoil areas on which such dredged materials are placed, except as otherwise provided for in this subsection, when such materials are dredged by or on behalf of the United States or the local sponsors of active federal navigation projects in the pursuance of the improvement, construction, maintenance, and operation of such projects or by a public body authorized to operate a public port facility (all such parties referred to herein shall hereafter be called "public body") in pursuance of the improvement, construction, maintenance, and operation of such facility, including any public transfer and terminal facilities, which actions are hereby declared to be for a public purpose. "Local sponsor" means the local agency designated pursuant to an act of Congress to assume a portion of the navigation project costs and duties. Active federal navigation projects are those congressionally approved projects which are being performed by the Corps of Engineers, United States Army, or maintained by the local sponsors.

(a) Except for beach nourishment seaward of existing lines of vegetation on privately owned or publicly owned uplands fronting on the waters of the Atlantic Ocean or Gulf of Mexico, and authorized pursuant to the provisions of part I of chapter 161, no materials dredged from state-sovereignty tidal or submerged bottom lands by a public body shall be deposited on private lands until:

1. The United States Army Corps of Engineers or the local sponsor has first certified that no public lands are available within a reasonable distance of the dredging site; and

2. The public body has published notice of its intention to utilize certain private lands for the deposit of materials, in a newspaper published and having general circulation in the appropriate county at least three times within a 60-day period prior to the date of the scheduled deposit of any such material, and therein advised the general public of the opportunity to bid on the purchase of such materials for deposit on the purchaser's designated site, provided any such deposit shall be at no increased cost to the public body. Such notice shall state the terms, location, and conditions for receipt of bids and shall state that the public body shall accept the highest responsible bid. All bids shall be submitted to the Trustees of the Internal Improvement Trust Fund. All moneys obtained from such purchases of materials shall be remitted forthwith to the Trustees of the Internal Improvement Trust Fund. Compliance with this subsection shall vest, without any obligation, full title to the said materials in the owner of the land where deposited.

(b) When public lands on which are deposited materials dredged from state-sovereignty tidal or submerged bottom lands by the public body are sold or leased for a period in excess of 20 years, which term includes any options to a private party, 50 percent of any remuneration received shall forthwith be remitted to the Trustees of the Internal Improvement Trust Fund and the balance shall be retained by the public body owning the land.

(c) Any materials which have been dredged from state-sovereignty tidal or submerged bottom lands by the public body and deposited on public lands may be removed by the public body to private lands or interests only after due advertisement for bids, which means a notice published at least three times within a 60-day period in a newspaper published and having general circulation in the appropriate county. The purchase price submitted by the highest responsible bidder shall be remitted to the Trustees of the Internal Improvement Trust Fund. If no bid is received, the public body shall have the right to fully convey title to, and dispose of, any such material on its land, with no requirement of payment to the Trustees of the Internal Improvement Trust Fund.

(d) Nothing in this subsection shall affect any preexisting contract or permit to engage in dredging of materials from state-sovereignty tidal and submerged bottom lands, nor shall it be construed to void any preexisting agreement or lien against the

lands upon which dredged materials have been placed or to have any retroactive effect.

(11) The Board of Trustees of the Internal Improvement Trust Fund may adopt rules to provide for the assessment and collection of reasonable fees, commensurate with the actual cost to the board, for disclaimers, easements, exchanges, gifts, leases, releases, or sales of any interest in lands or any applications therefor and for reproduction of documents.

(12) The Board of Trustees of the Internal Improvement Trust Fund is hereby authorized to administer, manage, control, conserve, and protect all real property forfeited to the state pursuant to ss. 895.01-895.05. The board is directed to immediately determine the value of all such property and shall ascertain whether the property is in any way encumbered. If the board determines that it is in the best interest of the state to do so, funds from the Land Acquisition Trust Fund may be used to satisfy any such encumbrances. All property acquired by the board pursuant to ss. 895.01-895.05 shall be sold as soon as commercially feasible. The proceeds of the sale shall be distributed as follows:

(a) Any moneys used to satisfy encumbrances and expended as costs of administration, appraisal, management, conservation, protection, and sale shall be replaced in the Land Acquisition Trust Fund; and

(b) The remainder shall be distributed as set forth in s. 895.05.

History.—s. 1, ch. 15642, 1931; CGL 1936 Supp. 1449(1); s. 2, ch. 61-119; ss. 2, 3, ch. 67-299; s. 2, ch. 67-2296; ss. 27, 35, ch. 69-106; s. 9, ch. 71-298; s. 1, ch. 73-78; s. 1, ch. 78-251; s. 10, ch. 79-253; s. 15, ch. 80-254; s. 3, ch. 82-144; s. 2, ch. 83-227.

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253.031 Land office; custody of documents concerning land; moneys; plats.—

(1) The Board of Trustees of the Internal Improvement Trust Fund, hereinafter called the "board," shall establish and maintain a public land office to be located at the seat of government of the state, in which office shall be deposited and preserved all records, surveys, plats, maps, field notes, and patents, and all other evidence touching the title and description of the public domain, and all lands granted by Congress to this state, or which may hereafter be granted, for whatever purpose the same may be given.

(2) The Board of Trustees of the Internal Improvement Trust Fund shall have custody of all the records, surveys, plats, maps, field notes, and patents and all other evidence touching the title and description of the public domain.

(3) The board shall draw all deeds and conveyances and deliver the same for all sales and transfers, and other disposition of the public domain, that may from time to time be ordered and made by authority of law, and keep a true and faithful record of the same. The board shall keep accounts of the several grants or donations for fixing the seat of government, for seminaries of learning, for common schools, for internal improvements, or for any other purpose, in separate books, accounts, and reports, so that the rights and interests of one shall not be blended or mixed with the rights and interests of another; and each class of land shall pay the expenses of locating the same.

(4) The board shall, in behalf of this state, receive from the Treasury of the United States the 5 percent on sales of the public lands, or any other sums accruing from the general government to the seminary, common school, internal improvement, or land acquisition funds; and shall pay the same into the treasury of this state, or, if they shall belong to a fund, to the treasurer of such fund keeping the same separate and distinct under their respective proper heads. The board shall hold all needful correspondence with the several land offices of the United States in this state, or with the general land office at Washington, and shall attend the public land sales in this state, and visit the said land offices whenever, in its opinion, the interest of the state shall require it, and do and perform all things needful and proper to advance and promote the interests of the same.

(5) The board shall make selections of and secure all swamp and overflowed lands and any other lands inuring to the state under the several acts of Congress providing therefor, and shall provide plats or maps of all lands selected and secured, and append thereto an accurate description of the quality, situation, and location of the same, and whatever else may affect the value of each tract or body of land selected and secured, taking care to keep in separate books, and maps or plats, the lands belonging to each separate fund, which books and maps and plats, with the description thereof, shall be kept and preserved in the office of the board.

(6) Upon the discontinuance by the federal authorities of the office of surveyor-general for the state, the board shall receive all of the field notes, surveys, maps, plats, papers, and records heretofore kept in the office of said surveyor-general as part of the public records of its office, and shall at all times allow any duly accredited authority of the United States full and free access to any and all of such field notes, surveys, maps, plats, papers, and records; and may make and furnish under their hands and seal certified copies of any or all of the same to any person making application therefor.

(7) The board shall receive all of the tract books, plats, and such records and papers heretofore kept in the United States Land Office at Gainesville, Alachua County, as may be surrendered by the Secretary of the Interior; and the board shall carefully and safely keep and preserve all of said tract books, plats, records, and papers as part of the public records of its office, and at any time allow any duly accredited authority of the United States, full and free access to any and all of such tract books, plats, records, and papers, and shall furnish any duly accredited authority of the United States with copies of any such records without charge.

(8) The board shall keep a suitable seal of office. An impression of this seal shall be made upon the deeds conveying lands sold by the state, by the Board of Education, and by the Board of Trustees of the Internal Improvement Trust Fund of this state; and all such deeds shall be personally signed by the officers or trustees making the same and impressed with said seal and shall be operative and valid without witnesses to the execution thereof; and the impression of such seal on any such deeds shall entitle the same to record and to be received in evidence in all courts.

(9) The fees of the board in the following matters shall be as follows: certification under seal of copies of maps or records in the office will be performed for a fee of $1.50 minimum. The charges for copying, making record searches, and compiling reports and statistical data shall be commensurate with the work involved and cost of material used.

History.—s. 1, ch. 63-294; ss. 27, 35, ch. 69-106; s. 1, ch. 74-176; s. 9, ch. 79-65; s. 3, ch. 82-185.

253.033 Inter-American Center property; transfer to board; continued use for government purposes.—

(1) All real and personal property presently owned by the Inter-American Center Authority, pursuant to s. 554.072 or otherwise, and all existing liabilities of said authority are hereby transferred to the Board of Trustees of the Internal Improvement Trust Fund. However, the liability to the Department of Transportation for road and bridge work is hereby waived and satisfied. Except as provided in s. 4, chapter 75-131, Laws of Florida, all obligations in connection with contracts and bond issues of the authority shall be assumed and performed by the trustees as provided by law or contract. No action shall be taken as a result of this act that will impair the obligations of any such contract or outstanding bonds.

(2) It is hereby recognized that certain governmental entities have expended substantial public funds in acquiring, planning for, or constructing public facilities for the purpose of carrying out or undertaking governmental functions on property formerly under the jurisdiction of the authority. All property owned or controlled by any governmental entity shall be exempt from any local building and zoning regulations which might otherwise be applicable in the absence of this section in carrying out or undertaking any such governmental function and purpose.

(3) In no event shall any of the lands known as "the Graves tract," including, without limitation, the land previously transferred to the Cities of Miami and North Miami and Dade County by the Inter-American Center Authority and the lands transferred pursuant to this act, be used for other than public purposes.

(4) The Board of Trustees of the Internal Improvement Trust Fund may lease to Dade County approximately 300 acres of land, and approximately 90 acres of abutting lagoon and waterways, designated as the Primary Development Area, and may also transfer to Dade County all or any part of the plans, drawings, maps, etc., of the Inter-American Center Authority existing at the date of transfer, provided Dade County:

(a) Assumes responsibilities of the following agreements:

1. That certain agreement entered into on June 12, 1972, between the City of Miami and Inter-American Center Authority whereby the authority agreed to repurchase, with revenues derived from the net operating revenue of the project developed on the leased lands after expenses and debt service requirements, the approximately 93 acres of lands previously deeded to the City of Miami as security for repayment of the $8,500,000 owed by the authority to the City of Miami. Title to the land repurchased pursuant to the provisions of this subsection shall be conveyed to the State of Florida.

2. Those certain rights granted to the City of North Miami pursuant to the provisions of paragraph 554.29(1)(a) and section 554.30 obligating the authority to issue a revenue bond to the City of North Miami, containing provisions to be determined by Dade County, to be repaid from all ad valorem taxes, occupational license fees, franchise taxes, utility taxes, and cigarette taxes which would have accrued to the authority or the City of North Miami by nature of property owned by the authority having been in the City of North Miami and from the excess revenue after operating expenses, development cost and debt service requirements, of the project developed on the leased lands.

(b) Develops a plan for the use of the land that meets the approval of the Board of Trustees of the Internal Improvement Trust Fund or that meets the following purposes heretofore authorized:

1. To provide a permanent international center which will serve as a meeting ground for the governments and industries of the Western Hemisphere and of other areas of the world.

2. To facilitate broad and continuous exchanges of ideas, persons, and products through cultural, educational, and other exchanges.

3. By appropriate means, to promote mutual understanding between the peoples of the Western Hemisphere and to strengthen the ties which unite the United States with other nations of the free world.

Any property leased under this subsection shall not be leased for less than fair market value.

History.—ss. 2, 3, 5, 7, 8, ch. 75-131.

253.034 State-owned lands; uses.—

(1) As used in this section, the following phrases shall have the following meanings:

(a) "Single use" means management for one particular purpose to the exclusion of all other purposes, except that the using agency shall have the option of including in its management program compatible secondary purposes which will not detract from or interfere with the primary management purpose. Such single uses may include, but are not necessarily restricted to, the use of agricultural lands for production of food and livestock, the use of improved sites and grounds for institutional purposes, and the use of lands for parks, preserves, wildlife management, archaeological or historic sites, or wilderness areas where the maintenance of essentially natural conditions is important. All submerged lands shall be considered single-use lands and shall be managed primarily for the maintenance of essentially natural conditions, the propagation of fish and wildlife, and public recreation, including hunting and fishing where deemed appropriate by the managing agency.

(b) "Multiple use" means the harmonious and coordinated management of timber, recreation, wildlife, forage, archaeological and historic sites, or water resources so that they are utilized in the combination that will best serve the people of the state, making the most judicious use of the land for some or all of

these resources and giving consideration to the relative values of the various resources.

(2) All lands owned by the Board of Trustees of the Internal Improvement Trust Fund shall be managed in a manner that will provide the greatest combination of benefits to the people of the state. All such lands not designated in the land-management plan required by subsection (4) for a specific single use shall receive multiple-use management.

(3) No management agreement, lease, or other instrument authorizing the use of lands owned by the Board of Trustees of the Internal Improvement Trust Fund shall be executed for a period greater than is necessary to provide for the reasonable use of the land for the existing or planned life cycle or amortization of the improvements. An agency managing or leasing state-owned lands from the Board of Trustees of the Internal Improvement Trust Fund may not sublease such lands without prior review by the division and by the Land Management Advisory Committee created in s. 253.022 and approval by the board. The Land Management Advisory Committee is not required to review subleases of parcels which are less than 160 acres in size.

(4) Each state agency managing lands owned by the Board of Trustees of the Internal Improvement Trust Fund shall submit to the Division of State Lands a land-management plan no later than July 1, 1984, and at least every 5 years thereafter, in a form and manner prescribed by rule by the board no later than January 1, 1984. All management plans, whether for single-use or multiple-use properties, shall specifically describe how the managing agency plans to identify, locate, protect and preserve, or otherwise use fragile nonrenewable resources, such as archaeological and historic sites, as well as other fragile resources, including endangered plant and animal species. Land-management plans submitted by an agency shall include reference to appropriate statutory authority for such use or uses and shall conform to the appropriate policies and guidelines of the state land-management plan.

(a) The Division of State Lands shall submit a copy of each land-management plan for parcels which exceed 160 acres in size to each member of the Land Management Advisory Committee. The committee shall, within 60 days after receiving a plan from the division, review each plan for compliance with the requirements of this subsection and with the requirements of the rules established by the board pursuant to this subsection. The committee shall also consider the propriety of the recommendations of the managing agency with regard to the future use of the property, the protection of fragile or nonrenewable resources, the potential for alternative or multiple uses not recognized by the managing agency, and the possibility of disposal of the property by the board. After its review, the committee shall submit the plan, along with its recommendations and comments, to the board. The committee shall specifically recommend to the board whether to approve the plan as submitted, approve the plan with modifications, or reject the plan.

(b) The Board of Trustees of the Internal Improvement Trust Fund shall consider the land-management plan submitted by each state agency and the recommendations of the Land Management Advisory Committee and the Division of State Lands and shall approve the plan with or without modification or reject such plan. The use or possession of any such lands which is not in accordance with an approved land-management plan shall be subject to termination by the board.

(5) The Board of Trustees of the Internal Improvement Trust Fund shall determine which lands, the title to which is vested in the board, and which Murphy Act lands, the title to which is held by the state, are of no benefit to the public and shall dispose of such lands pursuant to law.

(a) No later than July 1, 1984, and at least every 5 years thereafter, in a form and manner prescribed by rule by the board, each state agency shall indicate to the board those lands which the agency manages which are not being used for the purpose for which they were originally leased. Such lands shall be reviewed by the Land Management Advisory Committee for its recommendation as to whether such lands shall be disposed of by the board.

(b) Lands owned by the board which are not actively managed by any state agency or for which a land-management plan has not been completed pursuant to subsection (4) shall be reviewed by the Land Management Advisory Committee for its recommendation as to whether such lands shall be disposed of by the board.

(c) In reviewing lands owned by the board pursuant to paragraphs (a) and (b), the Land Management Advisory Committee shall consider whether such lands would be more appropriately owned or managed by the county or other unit of local government in which the land is located. The committee shall recommend to the board whether a sale, lease, or other conveyance to a local government would be in the best interests of the state and local government. The provisions of this paragraph shall in no way limit the provisions of ss. 253.111 and 253.115.

(d) After reviewing the recommendations of the Land Management Advisory Committee, the board shall determine whether lands identified in paragraphs (a) and (b) shall be held for other public purposes or whether such lands are of no benefit to the public. The board may require an agency to release its interest in such lands. Lands determined to be of no benefit to the public shall be disposed of pursuant to law. The proceeds from the disposal of such lands shall be placed in the Conservation and Recreation Lands Trust Fund.

(6) This section shall not be construed so as to affect:

(a) Other provisions of this chapter relating to oil, gas, or mineral resources.

(b) The exclusive use of state-owned land subject to a lease authorized and executed by the Board of Trustees of the Internal Improvement Trust Fund leasing state-owned land for private uses and purposes.

(c) Sovereignty lands not leased for private uses and purposes.

History.—s. 2, ch. 80-290; s. 167, ch. 81-259; s. 1, ch. 82-36; s. 3, ch. 83-223.

253.037 Use of state-owned land for correctional facilities.—

(1) The Department of Natural Resources shall

review, identify, and secure state-owned lands which may be used for correctional facilities subject to determination by the Department of Corrections of where sites are needed and their appropriateness for use as prisons or other correctional facilities.

(2) Notwithstanding the provisions of s. 253.025, the Board of Trustees of the Internal Improvement Trust Fund may purchase federal surplus lands for use as sites for correctional facilities, using federal land purchasing procedures, regulations, and requirements.

(3) The Auditor General is directed to conduct performance audits of any purchases made pursuant to the provisions of subsection (2).

History.—s. 30, ch. 83-131.

253.04 Duty of board to protect, etc., state lands; state may join in any action brought.—The Board of Trustees of the Internal Improvement Trust Fund may police, protect, conserve, improve; prevent trespass, damage, or depredation upon the lands and the products thereof, on or under the same, owned by the state as set forth in s. 253.03. Said board may bring in the name of the board all suits in ejectment, suits for damage, and suits in trespass, which in the judgment of the said board may be necessary to the full protection and conservation of the said lands, or take such other action or do such other things as may in the judgment of the board be necessary for the full protection and conservation of the said lands, and the state may join with the said board in any action or suit, or take part in any proceeding, when it may deem necessary, in the name of this state through the Department of Legal Affairs.

History.—s. 2, ch. 15642, 1931; CGL 1936 Supp. 1446(14); s. 11, ch. 25025, 1949; s. 2, ch. 61-119; ss. 11, 27, 35, ch. 69-106.

253.05 Prosecuting officers to assist in protecting state lands.—State attorneys, other prosecuting officers of the state or county, wildlife officers of the Florida Game and Fresh Water Fish Commission, conservation officers, together with the executive director of the Department of Natural Resources, and county sheriffs and their deputies shall see that the lands owned by the state, as described in ss. 253.01 and 253.03, shall not be the object of damage, trespass, depredation, or unlawful use by any person. The said officers and their deputies shall, upon information that unlawful use is being made of state lands, report the same, together with the information in their possession relating thereto, to the Board of Trustees of the Internal Improvement Trust Fund and shall cooperate with the said board in carrying out the purposes of ss. 253.01-253.04 and this section. State attorneys and other prosecuting officers of the state or any county, upon request of the Governor or Board of Trustees of the Internal Improvement Trust Fund, shall institute and maintain such legal proceedings as may be necessary to carry out the purpose of said sections.

History.—s. 3, ch. 15642, 1931; CGL 1936 Supp. 1446(15); s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 1, ch. 70-117.

cf.—ch. 27 State attorneys, duties.
ch. 30 Sheriffs, duties.

253.111 Notice to board of county commissioners before sale.—The Board of Trustees of the Internal Improvement Trust Fund of the state may not sell or convey any land to which they hold title unless and until they afford an opportunity to the county in which such land is situated to receive such land for public purposes on the following terms and conditions:

(1) If an application is filed with the board requesting that they sell certain land to which they hold title and the board decides to sell such land or if the board, without such application, decides to sell such land, the board shall, before consideration of any private offers, notify the board of county commissioners of the county in which such land is situated that such land is available to such county. Such notification shall be given by registered mail, return receipt requested.

(2) The board of county commissioners of the county in which such land is situated shall, within 40 days after receipt of such notification from the board, determine by resolution whether or not it proposes to devote such land to public parks, public beaches, public fishing piers, public boat ramps, public dockage facilities, or other public purposes, hereinafter referred to generally as "public purposes."

(3) If the board of county commissioners determines that it proposes to devote such land in perpetuity to public purposes, it shall adopt, within 90 days after receiving such notification from the board, a resolution specifying such determination and setting forth:

(a) The specific public purpose or purposes to which it proposes to devote such land;

(b) A tentative plan of development for such land;

(c) A tentative time schedule of development, which tentative time schedule shall set a date of commencement of development not later than 2 years after the date of such resolution and a date of conclusion of development not later than 4 years after the date of such resolution.

A certified copy of such resolution shall be furnished to the board by registered mail, return receipt requested, within 5 days after adoption.

(4) If the board of county commissioners determines that it does not propose to devote such land to public purposes, it shall notify the board of such determination by sending within 5 days after adoption a certified copy of the resolution so specifying to the board by registered mail, return receipt requested. If the board of county commissioners fails to act as provided in subsection (3) or as provided in this subsection, that failure shall constitute a determination that the board does not propose to devote such land to public purposes.

(5) If the board receives within the 90-day period the certified copy of the resolution provided in subsection (3), the board shall forthwith convey to the county such land upon such terms and conditions and at such price as the board determines (but in no case at a price higher than such property would be disposed of under any other provision of this chapter), but subject to a reverter to the board if such land is not devoted to the public purpose or purposes specified in such resolution in substantial accordance

with the plan of development and the time schedule for development set forth in such resolution and is not devoted in perpetuity to some public purpose.

(6)(a) If the board of county commissioners determines that it does not propose to devote the land to public purposes, the board may dispose of the property as otherwise provided in this chapter.

(b) It is not a violation of the reverter clause of any deed from the board to a county under this section if the county in fact uses the property for a public purpose other than that specified in the resolution provided in subsection (3) or not in substantial accordance with the plan of development and time schedule set forth in such resolution if the board by appropriate resolution approves such change or such failure to act in substantial accordance with the plan of development or time schedule.

(c) Nothing in this section restricts any right otherwise granted to the board by this chapter to convey land to which they hold title to the state or any department, office, authority, board, bureau, commission, institution, court, tribunal, agency, or other instrumentality of or under the state. The word "land" as used in this act means all lands vested in the Board of Trustees of the Internal Improvement Trust Fund.

(7) If any riparian owner exists with respect to any land to be sold by the board, such riparian owner shall have a right to secure such land, which right is prior in interest to the right in the county created by this section, provided that such riparian owner shall be required to pay for such land upon such prices, terms, and conditions as determined by the trustees. Such riparian owner may waive this prior right, in which case this section shall apply.

(8) The provisions of this section do not apply to any land exchange approved by the board.

History.—s. 1, ch. 65-324; ss. 27, 35, ch. 69-106; s. 1, ch. 79-83; s. 4, ch. 83-223.

cf.—s. 270.08 Notice of sale of public lands.

253.115 Public notice and hearings.—

(1) After receiving an application in compliance with such forms as may be required by this chapter requesting the board to sell, exchange, or lease any land to which it holds title, the board shall arrange for publishing notice of the application in a newspaper published in the county in which the lands are located not less than once a week for 3 consecutive weeks and for mailing copies of such notice by certified or registered mail to each owner of land lying within 500 feet of the land proposed to be leased, sold, or exchanged, addressed to such owner as his name and address appears on the latest county tax assessment roll.

(2) If no written objections are filed within 30 days after the date of first publication of the notice, and if the board finds that the proposed lease, sale, or exchange is not incompatible with the public interest, the board has authority to consummate the contract. However, failure to mail the notice to all landowners as set out in subsection (1) shall not invalidate the conveyance.

(3) If written objections are filed, the board shall consider them in determining whether or not to consummate the contract. Any required hearing shall be held in the county in which the lands are located. If the lands are located in more than one county, the required hearing may be held in any county in which the lands lie. Timely notice of the hearing shall be given by at least one publication in a newspaper published in the county in which the lands are located and by certified or registered mail to each owner of land lying within 500 feet of the land proposed to be leased, sold, or exchanged, addressed to such owner as his name and address appears on the latest county tax assessment roll, in addition to any notice required by chapter 120.

(4) This section does not apply to:

(a) The release of any reservations contained in Murphy Act deeds or deeds of the board of trustees;

(b) Any conveyance of land lying landward of the line of mean high water, which land does not exceed 2 acres in area;

(c) Any lands covered by the provisions of ss. 253.12(6) and 253.129;

(d) The lease of any land when the land is being leased to a state agency or political subdivision of the state;

(e) Sovereignty land leases for existing structures built prior to March 10, 1970; or

(f) The conversion of existing marina licenses to sovereignty land leases.

History.—s. 1, ch. 74-29; s. 1, ch. 77-130; s. 23, ch. 79-95; s. 3, ch. 82-152; s. 5, ch. 83-223.

253.12 Title to tidal lands vested in state.—

(1) Except submerged lands heretofore conveyed by deed or statute, the title to all sovereignty tidal and submerged bottom lands, including all islands, sandbars, shallow banks, and small islands made by the process of dredging any channel by the United States Government and similar or other islands, sandbars, and shallow banks located in the navigable waters, and including all coastal and intracoastal waters of the state and all submerged lands owned by the state by right of its sovereignty in navigable freshwater lakes, rivers, and streams, is vested in the Board of Trustees of the Internal Improvement Trust Fund. For purposes of fixing bulkhead lines, restrictions on filling land and dredging beyond bulkhead lines, and permits required for filling and dredging, the board shall exercise the same authority over submerged lands owned by the state by right of its sovereignty in navigable freshwater lakes, rivers, and streams as it does over submerged lands otherwise defined in this subsection. Submerged lands owned by the state by right of its sovereignty in navigable meandered freshwater lakes shall be administered in accordance with the provisions of s. 253.151, and the provisions of s. 253.151 shall be controlling when in conflict with other statutory provisions.

(2)(a) The Board of Trustees of the Internal Improvement Trust Fund may sell and convey such islands and submerged lands if determined by the board to be in the public interest, upon such prices, terms, and conditions as it sees fit. However, prior to consummating any such sale, the board shall determine to what extent the sale of such islands or submerged lands and their ownership by private persons or the conveyance of such islands or submerged lands to political subdivisions or public agencies would interfere with the conservation of fish, marine and other wildlife, or other natural resources, including beaches and shores, and would result in destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life, and if so, in what respect and to what extent, and it shall consider any other factors affecting the public interests.

(b) In addition to the requirements in paragraph (a), the board shall not sell or convey any interest in such islands and submerged lands to any applicant who does not, at the time of making application for purchase or conveyance, also have before the board:

1. An application for the establishment of a bulkhead line, in the event no bulkhead line is established for the lands subject to the application; and

2. An application for approval of a fill permit issued in accordance with the provisions of this chapter; and

3. A permit or application for a permit to dredge fill material from beneath the navigable waters of the state, in accordance with the provisions of this chapter, in the event the applicant intends to secure such fill material. However, such islands or submerged lands may be sold or conveyed to an applicant who does not have such an application for a permit to dredge or fill lands before the board, upon the condition that the sale or conveyance to such an applicant shall contain a restrictive covenant prohibiting dredging, except for navigation purposes, or filling of such islands or submerged lands. The board shall reserve the authority to waive such restrictive covenant when such waiver is in the public interest, pursuant to such terms and conditions as the board may impose.

(3) After receiving application in compliance with such forms as may be required to show clearly what is intended to be accomplished in any proposed development of said lands and the manner in which said development will be accomplished, and after making the determination required by paragraph (2)(a), the board shall give notice by publication in a newspaper published in the county in which such islands or submerged lands are located, not less than once a week for 3 consecutive weeks, and mail copies of such notice by certified or registered mail to each riparian owner of upland lying within 1,000 feet of the island or submerged land proposed to be conveyed, addressed to such owner as his name and address appear upon the latest county tax assessment roll, in order that any persons who have objections to the sale or conveyance may have the opportunity to present the same. If no objections are filed within 30 days after the date of first publication of the aforesaid notice, the board has authority to consummate such sale or conveyance except as hereinafter provided. However, failure to mail the notice herein provided to such riparian upland owners shall not invalidate such sale or conveyance or the title or interest conveyed by the board pursuant thereto.

(4) If objections are filed, the board shall proceed to determine the merits of the objections. The report required by subsection (7) shall be made part of the record and duly considered at any hearing. If it appears that the sale of such islands and submerged lands and their ownership by private persons or the conveyance of such islands or submerged lands to political subdivisions or public agencies would:

(a) Be contrary to the public interest;

(b) Interfere with the lawful rights granted riparian owners;

(c) Be, or result in, a serious impediment to navigation;

(d) Interfere with the conservation of fish, marine and other wildlife, or other natural resources, including beaches and shores, to such an extent as to be contrary to the public interest; or

(e) Result in the destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of natural marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life to such an extent as to be contrary to the public interest,

the board shall withdraw the lands from sale. Prior to making the determinations above required, the board may consider any other factors affecting the public interest. Anything in this section to the contrary notwithstanding, lands defined herein lying between the ordinary mean high-water line and any bulkhead line established hereunder shall be sold only to the upland riparian owner and to no other person, firm, or corporation; and such sale to the upland riparian owner shall be made pursuant to the provisions herein.

(5)(a) When any state agency or county, city, or other political subdivision extends or adds to existing lands or islands bordering on or being in the navigable waters, as defined in this section, of the state by filling in or causing to be filled in or by draining or causing to be drained such waters, the board may, upon application therefor, convey to the riparian owner or owners of the upland so extended or added to so much of such extended or added land as is not required exclusively for a municipal, county, state, or other public purpose. The board may, however, require a deposit to accompany such application of a sum sufficient to cover the actual cost and expenses of processing such application and preparing instruments of conveyance.

(b) Neither this subsection nor any other provision of this chapter shall be construed to permit any state agency or county, city, or other political subdivision to construct islands or extend or add to existing lands or islands bordering on or being in the navigable waters as defined herein or drain such waters for a municipal, county, state, or other public purpose unless such agency is the riparian upland owner or holds the consent in writing of the riparian upland owner consenting to such construction or extension or drainage operation. For the purposes of this subsection, "riparian upland owners" shall be defined as those persons owning upland property abutting those portions of the waters to be filled or drained, which are within 1,000 feet outboard of said riparian up-

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land, but not more than one-half the distance to the opposite upland, if any, and within the extensions of the side boundary lines thereof, when said side boundary lines are extended in the direction of the channel along an alignment which would be required to distribute equitably the submerged land between the upland and the channel. However, nothing herein shall be construed to deny or limit any state agency or county, city, or other political subdivision from exercising the right of eminent domain to the extent and for the purposes authorized by law in connection with such construction, extension, or drainage projects; and nothing herein shall be construed to have application in those instances when the board is authorized by law to establish an erosion control line to implement an authorized beach nourishment, replenishment, or erosion-control project, or for the placement of sand dredged from navigation channels on beaches fronting the waters of the Atlantic Ocean or the Gulf of Mexico, provided such sand is not placed landward of existing lines of vegetation.

(6) Where any person, state agency, county, city, or other political subdivision prior to June 11, 1957, extended or added to existing lands or islands bordering on or being in the navigable waters as defined in this section by filling in or causing to be filled in such lands, the board shall upon application therefor convey said land so filled to the riparian owner or owners of the upland so extended or added to. The consideration for such conveyance shall be the appraised value of said lands as they existed prior to such filling.

(7)(a) In order to assist it in making the determination required by paragraph (2)(a), the board shall require that a biological survey and an ecological study of the lands or interests therein proposed to be sold or conveyed pursuant to any particular application be made, and, when determined by the Department of Natural Resources to be necessary, that a hydrographic survey be made. All such surveys and studies shall be made by or under the direction of the Department of Natural Resources, which shall make a report of all such surveys and studies to the board together with its recommendations. The board may adopt regulations requiring that the cost of making any such survey and report be paid by the applicant for purchase of such lands, requiring a deposit by the applicant sufficient to ensure such payment, and providing procedures to be followed in applying for and obtaining such survey and report.

(b) If, in accordance with the provisions of paragraph (2)(b), the surveys and study required by paragraph (a) have already been made, the provisions of this section shall not operate to require an applicant to pay for any additional surveys or studies within 3 years prior to the issuance of such permit.

(8) All conveyances of sovereignty lands or fill material therein heretofore made by the Board of Trustees of the Internal Improvement Trust Fund of Florida subsequent to the enactment of chapter 6451, Acts of 1913, chapter 7304, Acts of 1917, and chapter 57-362, as amended, are hereby ratified, confirmed, and validated in all respects.

History.—s. 1, ch. 7304, 1917; RGS 1061; CGL 1491; ss. 1, 2, ch. 25776, 1951; s. 1, ch. 57-362; s. 2, ch. 61-119; s. 1, ch. 67-393; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 69-309; s. 1, ch. 70-81; s. 1, ch. 70-97; s. 1, ch. 70-147; s. 1, ch. 70-439; s. 1, ch. 72-214; s. 23, ch. 78-95; s. 4, ch. 82-144; s. 122, ch. 83-217.

[1]Note.—Section 253.151 was repealed by s. 4, ch. 83-214.

[2]Note.—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.12211), which reestablished all bulkhead lines previously established pursuant to s. 253.122 at the line of mean high water or ordinary high water.

253.121 Conveyances of such lands heretofore made, ratified, confirmed, and validated.—All conveyances of sovereignty lands heretofore made by the Board of Trustees of the Internal Improvement Trust Fund subsequent to the enactment of chapter 6451 (June 5, 1913), 6960 (June 2, 1915) and 7304 (May 21, 1917), Acts of 1913, 1915 and 1917, respectively, where advertisement therefor was published in the county of sale but not in the county seat, are hereby ratified, confirmed and validated in all respects, including all defects subject to ratification, confirmance and validation by the Legislature. Said conveyances shall be deemed valid notwithstanding defects in the publication of newspaper notices and the publication of such newspaper notices in newspapers not published at the county seat of the county in which the lands are located.

History.—s. 1, ch. 29763, 1955; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.1221 Bulkhead lines; reestablishment.—All bulkhead lines heretofore established pursuant to former s. 253.122 are hereby established at the line of mean high water or ordinary high water. There shall be no filling waterward of the line of mean high water or ordinary high water except upon compliance with this chapter.

History.—s. 7, ch. 75-22.

253.123 Restrictions on filling land and dredging.—

(1) For the purposes of this section and ss. 253.124 and 253.1245, the word "department" means the Department of Environmental Regulation.

(2) No person, firm, or corporation shall construct islands or add to or extend existing lands or islands bordering on or being in the navigable waters of the state by pumping sand, rock, or earth from such waters or by any other means without first complying with [1]s. 253.122; provided, nothing herein contained shall relate to artificially created navigable waters.

(3) The removal of sand, rock, or earth from the navigable waters of the state and the submerged bottoms thereof by dredging, pumping, digging, or any other means shall not be permitted except in the following instances:

(a) For the construction, improvement, or maintenance of navigation channels and drainage and water-control facilities;

(b) For the construction of trenches for the burial or installation of water, sewer, gas, oil, gasoline, fuel, electric, telegraph, or telephone lines, cables, or mains;

(c) For the operation of sand transfer plants and for the placement of sand dredged from navigation channels on beaches fronting on the waters of the Atlantic Ocean or the Gulf of Mexico, provided such sand is not placed landward of existing general lines of vegetation; and

(d) For other purposes when, but only when, the department has determined, after consideration of a biological survey and an ecological study and a hydrographic survey, if such hydrographic survey is required by the department, made by or under the supervision of the department of the area from which such sand, rock, or earth is proposed to be removed, that such surveys and study show that such removal will not interfere with the conservation of fish, marine and other wildlife, or other natural resources, to such an extent as to be contrary to the public interest, and will not result in the destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of natural marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life or natural shoreline processes to such an extent as to be contrary to the public interests.

(4)(a) Works authorized under paragraphs (a) and (b) of subsection (3) shall only be undertaken after receipt of a permit from the department, which permit shall be granted after consideration of a biological or ecological study and upon a showing of the public interest which will be served by such works.

(b) The provisions of paragraph (d) of subsection (3) shall not be construed to eliminate the requirement of obtaining a permit for the removal of sand, rock, or earth from any part of the navigable waters of the state, and the submerged bottoms thereof, from the appropriate authority as elsewhere in this chapter or otherwise by law provided.

(5) Neither the sale and conveyance of islands and lands by the Board of Trustees of the Internal Improvement Trust Fund under the provisions of s. 253.12 nor the granting of a construction permit under the provisions of s. 253.124 shall operate to vest any right whatsoever in the grantee, upland owner, or construction permitholder to remove sand, rock, or earth from the navigable waters of the state, and the submerged bottoms thereof, unless a construction permit issued pursuant to the provisions of s. 253.124 and of this section specifically permits such removal.

History.—s. 3, ch. 57-362; s. 2, ch. 61-119; s. 5, ch. 67-393; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 70-118; s. 1, ch. 70-167; s. 1, ch. 70-439; s. 1, ch. 72-27; s. 5, ch. 82-144; s. 123, ch. 83-217.

[1]Note.—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.12211), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

253.124 Application for filling land.—

(1) Any person, firm, or corporation desiring to construct islands or add to or extend existing lands or islands bordering on or in the navigable waters of the state by pumping sand, rock, or earth from such waters or by any other means shall make application in writing to the department for a permit authorizing such person, firm, or corporation to engage in such construction.

(2) The written application herein provided for shall be accompanied by a plan or drawing showing the proposed construction and the manner in which the construction will be accomplished and also the area from which any fill material is to be dredged if the proposed construction is intended to be created from dredged material. In the event the department finds that such proposed extension or filling of land or such proposed dredging is not violative of any statute, rule, or other restriction which may be applicable thereto, that no harmful obstruction to or alteration of the natural flow of the navigable water within such area will arise from the proposed construction, that no harmful or increased erosion, shoaling of channels, or stagnant areas of water will be created thereby, and that no material injury or monetary damage to adjoining land will accrue therefrom, the permit shall be granted to the applicant; however, prior to the issuance of such permit, the department or other authorized body shall determine whether the granting of such permit and the construction to be done pursuant thereto would interfere with the conservation of fish, marine and other wildlife, or other natural resources to such an extent as to be contrary to the public interest and whether the destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of natural marine habitats, grass flats suitable as nursery or feeding grounds for marine life, including established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life, will result therefrom to such an extent as to be contrary to the public interest. The department shall also consider any other factors affecting the public interests.

(3) No construction permit shall be issued or approved until the department has obtained, at the expense of the applicant, a biological survey, an ecological study, and, where deemed necessary by the department, a hydrographic survey of the area within which such construction and dredging is proposed, each by or under the supervision of the department, and has in hand the report and findings thereof.

(4) No construction permit issued under chapters 253 and 403 shall authorize work for a period of time in excess of 5 years. After approval and issuance of such permit, such 5-year period shall commence upon receipt by the applicant of all governmental authorizations, local, state, and federal, including such license, permit, or variance from the department under chapter 403 as may be required for completion of the proposed work. The department may grant a permit for a period of time of less than 5 years, depending upon the size and scope of the construction. The department may revoke such construction permit if the applicant fails to use due diligence in obtaining the required governmental authorizations. Such time may be extended for additional periods of up to 3 years by the department for good cause, upon showing that all due efforts and diligence toward completion of the work have been made. Before such time may be extended, the studies required by s. 253.123 shall be brought up to date to assist the department in determining if such extension of time would not be contrary to the public interest. The construction permit herein provided for may be revoked by the department for noncompliance with, or violation of, its terms.

(5) The department or the Board of Trustees of the Internal Improvement Trust Fund shall have the authority to direct the abutting upland owner to remove any fill created in violation of this section. In the event that the abutting upland owner does not remove such fill as directed, the department or board may remove it at its own expense; and the costs thereof shall become a lien upon the property of such abutting upland owner. However, the department and board may, if they choose, allow such fill to re-

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main as state-owned land, and may employ a surveyor to determine the boundary between such state land and that of the previous abutting upland owner. The amount of the cost of such survey shall become a lien upon the property of the previous abutting upland owner. Nothing herein shall be construed to grant the department or board authority to direct an upland owner to adjust, alter, or remove silt, fill, or other solid material which has accumulated or been deposited seaward of his property through no action on his part.

(6)(a) The department shall in no case issue an after-the-fact construction permit to any applicant authorizing construction regulated by this section subsequent to the time it has occurred, unless, upon consideration of a report by the department, the department finds that the exercise of any other remedy or penalty available to it, either as provided by subsection (5) or otherwise by law or by rule, would be more damaging to the environment or the marine resources sought to be protected by this chapter than would be the granting of such permit.

(b) The granting of such an after-the-fact construction permit shall not absolve any applicant from the provisions of subsection (5).

(7) Any riparian upland owner of land bordering on or in the navigable waters of the state who desires to repair, rebuild, replace, or reconstruct coastal structures in the nature of seawalls, revetments, retaining walls, bulkheads, or other similar protective structures installed upon his riparian upland, or who desires to restore such uplands after damage by avulsion or by artificially induced erosion, shall, before undertaking such project, obtain a permit for such work from the department, except as provided in s. 403.813(2). A biological survey and ecological study may not be required if the proposed work lies at no greater distance than 25 feet into the waters where such work is proposed from the existing and established line of mean high water or existing coastal structure. A permit issued under the provisions of this subsection shall not be construed to allow construction of coastal structures or restoration of lands that may be subject to the provisions of chapter 161. In an emergency threatening damage to life or public property, the Department of Transportation will be permitted temporarily to repair, reconstruct, rebuild, or replace any structures or roadways on the state-maintained transportation system, subject to immediate notification of the secretary of the department and his subsequent review and approval.

(8)(a) The written application herein provided for shall indicate whether the applicant holds title to the submerged land or islands upon which he seeks permission to dredge or fill lands and whether he is a riparian owner with respect to such submerged lands or islands. If the applicant does not hold title to such lands and is not a riparian owner with respect to such lands and his application so indicates, the board of county commissioners shall, upon receipt of the application, be on notice that the applicant intends to apply to the Board of Trustees of the Internal Improvement Trust Fund for purchase of such lands, and the provisions of s. 253.111(2)-(5) shall become operative.

(b) If, as a result of the provisions of paragraph (a), the provisions of s. 253.111(2)-(5) become operative and the board of county commissioners determines that it does not propose to devote the land to public outdoor recreational purposes, the board of county commissioners shall proceed to comment upon the application pursuant to s. 253.1245.

History.—s. 4, ch. 57-362; s. 2, ch. 61-119; s. 7, ch. 61-530; s. 10, ch. 63-512; s. 4, ch. 67-393; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 69-336; s. 3, ch. 70-81; s. 1, ch. 70-116; s. 1, ch. 70-333; s. 1, ch. 70-439; s. 153, ch. 71-136; s. 1, ch. 71-89; ss. 2, 3, 4, ch. 72-214; s. 23, ch. 76-95; s. 1, ch. 78-368; s. 2, ch. 82-27; s. 3, ch. 83-214.

*Note.—The word "other" was inserted by the editors.

*Note.—This reference to subsection (5) does not refer to present subsection (5) but to former subsection (5) which was repealed by s. 3, ch. 83-214.

253.1241 Studies.—The Department of Natural Resources, or the Department of Environmental Regulation, where appropriate, shall have a period of 90 days, after application therefor, in which to make the studies and surveys required by ss. 253.12, 253.123, and 253.124. The Board of Trustees of the Internal Improvement Trust Fund and others required by those sections to obtain such studies and surveys shall request them within 30 days after the receipt of an application for sale or for a dredge or fill permit, as the case may be.

History.—s. 6, ch. 67-393; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 69-337; s. 79, ch. 77-104; s. 3, ch. 82-27.

253.1245 Consideration by local government.—

(1) Within 10 days of receipt of an application for a permit pursuant to s. 253.124, the department shall request comments on the application from the governing body of each local government in which the activity is located. The governing body may comment or object to an application pursuant to this section. However, if the local government is the applicant or has supported the application by resolution, no local comments shall be required.

(a) If the governing body wishes to review any biological or hydrographic surveys conducted on the application, the governing body or its designated agent shall request copies of the results of such surveys within 15 days of receipt of the application. The department shall furnish such copies as soon as practicable after completion of any surveys necessary for the application. Upon receipt of such results, the governing body shall provide the department with any comments or objections pursuant to subsection (2) within 30 days.

(b) If the governing body does not wish to review any biological or hydrographic surveys, it shall furnish the department with any comments or objections pursuant to subsection (2) within 60 days of receipt of a copy of the application.

(2) The failure of a governing body to comment or object within the times established in subsection (1) shall constitute approval by the local governing body. The comments or objections shall be based solely upon the results of the surveys, if requested, or such environmental studies as may be provided by local government and whether the application does or does not conform to a local government comprehensive plan adopted pursuant to chapter 163; or whether such activity is consistent with public access for fishing, recreational, and other activities which the local government determines to be in the public interest; or whether such activity is in conformance with the applicable ordinances or development regulations. If a majority of the local governing body objects by resolution or other formal action to the application, the department shall deny the application without prejudice. The resolution or formal action shall set forth the reasons for the objection of the local governing body.

(3) In any county in which the Legislature, by special law or general law of local application, has heretofore transferred or delegated to a county board or agency, other than the board of county commissioners or the governing body of a municipality, powers and duties over dredging permits, fill permits, seawall construction, or any other powers of a like nature, such agency shall have jurisdiction under this section in lieu of the board of county commissioners or the governing body of the municipality. In any charter county operating under a charter established pursuant to s. 9, s. 10, s. 11, or s. 24 of Article VIII of the Constitution of 1885, when the governing body has, by ordinance, indicated its desire to exercise such jurisdiction and when the governing body has been designated as an authorized pollution control program pursuant to s. 403.182, the governing body shall have jurisdiction under this section throughout the county in lieu of the governing body of any affected municipality.

(4) Notwithstanding the provisions of s. 253.126, in the case of any multicounty water resource project approved by the governing board of a water management district which is designed to protect and conserve water resources, improve water quality, or restore the hydroperiod of rivers, lakes, and streams and associated wetlands, the provisions of this section do not apply.

History.—s. 4, ch. 82-27.

253.1252 Citation of rule.—In addition to any other provisions within this chapter or any rules promulgated hereunder, the permitting agency shall, when requesting information for a permit application pursuant to this chapter 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. 2, ch. 79-161.

253.126 Legislative intent.—The limitations and restrictions imposed by this chapter as amended by chapter 67-393 upon the construction of islands or the extension or addition to existing lands or islands bordering on or being in the navigable waters, as defined in s. 253.12, shall apply to the state, its agencies and all political subdivisions and governmental units. No other general or special act shall operate to grant exceptions to this section unless this section is specifically repealed thereby.

(1) Notwithstanding any other provision of this chapter, the Department of Environmental Regulation may authorize, by rule, the Department of Transportation to perform any activity covered by this chapter, upon certification by the agency that it will meet all requirements imposed by statute, rule, or standard for environmental control and protection as such statute, rule, or standard applies to a governmental program. To this end, the department may accept such certification of compliance for programs of the agency, conduct investigations for compliance, and, if a violation is found to exist, take all necessary enforcement action pertaining thereto, including, but not limited to, the revocation of certification. The authorization shall be by rule of the department, shall be limited to the maintenance, repair, or replacement of existing structures, and shall be conditioned upon compliance by the agency with specific guidelines or requirements which are set forth in the formal acceptance and deemed necessary by the department to assure future compliance with this chapter and applicable department rules. Failure of the agency to comply with any provision of the written acceptance shall constitute grounds for its revocation by the department.

(2) The provisions of chapter 120 shall be accorded any person where substantial interests will be affected by an activity proposed to be conducted by such agency pursuant to its certification and the department's acceptance. If a proceeding is conducted pursuant to s. 120.57, the department may intervene as a party. Should a hearing officer of the Division of Administrative Hearings of the Department of Administration submit a recommended order pursuant to s. 120.57, the Department of Environmental Regulation shall issue a final department order adopting, rejecting, or modifying the recommended order pursuant to such action.

History.—s. 5, ch. 57-362; ss. 8, 9, ch. 67-393; s. 75, ch. 71-355; s. 1, ch. 78-437.

253.127 Enforcement.—The Board of Trustees of the Internal Improvement Trust Fund, the board of county commissioners or governing body of any municipality, or any aggrieved person, shall have the power to enforce the provisions of this law by appropriate suit in equity.

History.—s. 7, ch. 57-362; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.128 Enforcement; board or agency under special law.—In any county where the Legislature by special law or general law with local application has heretofore or hereafter transferred or delegated to any county board or agency other than the board of county commissioners or the governing body of any municipality powers and duties over the establishment of bulkhead line or lines, dredging permits, fill permits, seawall construction or any other powers of a like nature such agency shall have jurisdiction under this law in lieu of the board of county commissioners or the governing body of any municipality as the case may be.

History.—s. 8, ch. 57-362.

253.1281 Review by board.—

(1) All special acts granting exceptions to the provisions of this chapter relating to issuance of dredge or fill permits shall provide that all action on applications for such permits shall be subject to approval of the Board of Trustees of the Internal Improvement Trust Fund, which shall have the power to reject such permits.

(2) Notwithstanding any provisions to the contrary, any action after July 7, 1970, on any application for a dredge or fill permit pursuant to any special act heretofore or hereafter enacted shall be subject to approval of the board of trustees, which shall have the power to reject such permit.

History.—s. 1, ch. 70-375.

253.129 Confirmation of title in upland owners.—The title to all lands heretofore filled or developed is herewith confirmed in the upland owners and the trustees shall on request issue a disclaimer to each such owner.

History.—s. 9, ch. 57-362; s. 13, ch. 59-1.

253.135 Construction of ss. 253.12, 253.123, 253.124, 253.126, 253.127, 253.128, and 253.129.—

(1) This law shall not be construed to be in conflict with any general or special law whereby the state has divested itself of title to submerged land or has granted such title to another.

(2) The provisions of ss. 253.12, 253.123, 253.124, 253.126, 253.127, 253.128, and 253.129 shall not affect or apply to the construction of islands or the extension or addition to existing lands or islands bordering on or being in the navigable waters as defined in s. 253.12 of the state which was commenced or application for permit to fill which was filed with the United States Corps of Engineers prior to June 11, 1957, as to lands or bottoms lying between ordinary high-water mark and a bulkhead line heretofore established by any county, city, or other political subdivision of the state by official action of its governing body.

History.—ss. 10, 11, 12, ch. 57-362; s. 1, ch. 71-261; s. 79, ch. 77-104; s. 18, ch. 81-216.

Note.—Former s. 253.0013.

253.14 Rights of riparian owners; board of trustees to defend suit.—

(1) It is expressly provided that nothing contained in this chapter shall be so construed as to deprive any private riparian owner from bringing an injunction suit in equity against the sale provided for in s. 253.12 on the ground that he would be thereby deprived of his riparian rights granted to him by law; provided, that such suit must be commenced within 30 days after the board of trustees shall have overruled the objections of such owner to such proposed sale.

(2) In case suit is brought by any private owner to enjoin such sale, it shall be in the discretion of the board of trustees to defend such suit or to withdraw said lands from sale.

History.—ss. 3, 4, ch. 7304, 1919; RGS 1063; CGL 1393; ss. 27, 35, ch. 69-106.

253.21 Board of trustees may surrender certain lands to the United States and receive indemnity.—Whenever it may appear that any of the swamplands, granted by the United States to this state by Act of Congress approved September 28, 1850, entitled "An Act to enable the State of Arkansas and other states to reclaim the swamplands within their limits," have been sold or located, the Board of Trustees of the Internal Improvement Trust Fund may surrender to the United States the right, title and claim of the state to said lands, and receive from the United States, in lieu thereof, such reclamation as may be due.

History.—Ch. 631, 1855; RS 439; GS 627; RGS 1076; CGL 1401; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.29 Board of trustees to refund money paid where title to land fails.—Any person having heretofore, or who may hereafter purchase in good faith and for value, any lands in the state from the Board of Trustees of the Internal Improvement Trust Fund of the state, and which title has failed by reason of the fact that the Board of Trustees of the Internal Improvement Trust Fund had no title or right to convey the same, the Board of Trustees of the Internal Improvement Trust Fund shall refund to said party the sums of money so paid for said lands without interest thereon upon due proof being made.

History.—s. 1, ch. 5175, 1903; GS 635; RGS 1084; CGL 1415; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.34 Transfer of notes owned by board.—The Board of Trustees of the Internal Improvement Trust Fund may endorse and transfer to any person, with or without recourse, any bills, notes or other obligations which the said board may now own, or may hereafter acquire.

History.—s. 5, ch. 6483, 1913; RGS 1089; CGL 1420; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.36 Title to reclaimed marshlands, wetlands, or lowlands in board of trustees.—The title to all marsh, wet or lowlands as have become permanently reclaimed, title to which is in the state, is vested in the Board of Trustees of the Internal Improvement Trust Fund to be held by the state and disposed of, as provided in this chapter.

History.—s. 1, ch. 7891, 1919; CGL 1425; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.37 Survey to be made; sale of lands; preference to buyers.—When it shall be brought to the attention of the Board of Trustees of the Internal Improvement Trust Fund that such lands exist as are defined in s. 253.36, the board may cause a survey of the same to be made, which survey shall be connected with the surveys of the United States Government, or other surveys adjoining such lands, as far as may be practicable, and shall be made in conformity with the rules and regulations prescribed by the Department of the Interior for making federal surveys. When such surveys have been completed and, with the plats thereof, have been filed in the office of the said board, the board may proceed to sell and convey the said lands so surveyed in the same manner that other swamp and overflowed lands are sold and disposed of; provided, that in making sales of such land the board shall give first right to purchase to any adjacent owner thereof who desires to complete or square up any fractional section now owned by him or to any person who has settled on, or preempted the same, in amounts not exceeding 80 acres; and, provided further, that any and all other such lands as are covered hereby shall be sold by the board to bona fide settlers in amounts not exceeding 80 acres to each settler.

History.—s. 2, ch. 7891, 1919; CGL 1426; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.38 Riparian rights not affected.—Nothing in ss. 253.36 and 253.37 shall be construed as in anywise affecting the riparian rights now or heretofore existing under the laws of this state; but it is expressly provided that the provisions of said sections shall apply only to such lands as the Department of the Interior has declined to convey to the state, or which have become permanently reclaimed; and in making sales thereof, the board of trustees may provide for a complete system of reclamation as part of the consideration thereof, or contract for such permanent reclamation in the manner it deems advisable.

History.—s. 3, ch. 7891, 1919; CGL 1427; ss. 27, 35, ch. 69-106.

253.381 Unsurveyed marshlands; sale to upland owners.—The Board of Trustees of the Internal Improvement Trust Fund of the state and the State Board of Education are hereby authorized to make sales of unsurveyed marshlands to record owners of uplands which have been surveyed by the United States, and to make equitable divisions of unsurveyed marsh areas and allocations of the same for sales with due respect to upland ownership, sales heretofore made, natural divisions of the unsurveyed marshes which are indicated by the general courses of water channels within or across the unsurveyed marshes and to other topographical features of the affected areas.

History.—s. 1, ch. 59-497; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.382 Oyster beds, minerals, and oils reserved to state.—The state saves, reserves and excepts all natural oyster beds upon and all minerals and oils in or under the submerged lands until the same shall be filled in and improved by the riparian owner.

History.—s. 4, ch. 8537, 1921; CGL 1777.

Note.—Former s. 271.04.

253.39 Surveys approved by chief cadastral surveyor validated.—All surveys of lands into townships, sections or other regular land divisions, heretofore or hereafter made in this state, and which have or may hereafter be approved by the chief cadastral surveyor for the Board of Trustees of the Internal Improvement Trust Fund, together with the field notes, plats, or other accessories pertaining thereto, are validated and confirmed and are official public surveys of this state of equal force, tenor and effect as surveys made by or under the direction of the United States Government.

History.—s. 1, ch. 7892, 1919; CGL 1428; s. 1, ch. 61-187; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.40 To what lands applicable.—The provisions for land surveys in ss. 253.39 and 253.41 shall only apply to such lands as have not heretofore been surveyed by the Federal Government; and all acts of the Board of Trustees of the Internal Improvement Trust Fund, together with any and all contracts, resolutions and instructions relating to such surveys, are approved, validated and confirmed.

History.—s. 2, ch. 7892, 1919; CGL 1429; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.41 Plats and field notes filed in office of Board of Trustees of Internal Improvement Trust Fund.—When such surveys, as provided for in ss. 253.39 and 253.40, shall have been made and approved by the chief cadastral surveyor, the plats and field notes thereof shall be filed in the office of the Board of Trustees of the Internal Improvement Trust Fund of this state, which shall be the custodian of such plats and field notes for the use of the public, under such regulations as may apply to the use of plats and field notes of the public land surveys of the United States, and a duly certified copy of the same shall be admissible as evidence in any court of this state.

History.—s. 3, ch. 7892, 1919; CGL 1430; s. 5, ch. 61-294; ss. 27, 35, ch. 69-106.

253.42 Board of trustees may exchange lands.—The Board of Trustees of the Internal Improvement Trust Fund of the state may exchange lands held or owned by, or vested in, said board for other lands in the state owned by private individuals or corporations, and fix the terms and conditions of any such exchange, and select and agree upon the lands to be so conveyed by said board; and the lands to be conveyed to said board in exchange therefor; and agree upon and pay or receive, as the case may in the judgment of said board require, any sum or sums of money deemed necessary by said board for the purpose of equalizing the values of such exchanged property, and make and enter into contracts or agreements for such purpose or purposes.

History.—s. 1, ch. 8525, 1921; CGL 1432; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

cf.—ss. 285.04, 285.08 Exchange of state lands for benefit of Seminole Indians.

253.43 Convey by deed.—The Board of Trustees of the Internal Improvement Trust Fund may execute and deliver a deed of conveyance, in its discretion necessary or proper, for the purpose of carrying into effect any such exchange or any contract or agreement therefor, made by said board under or pursuant to the power vested in it by this chapter, or otherwise; and any such deed shall fully convey to and vest in the purchaser or grantee the property so conveyed.

History.—s. 2, ch. 8525, 1921; CGL 1433; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.431 Agents may act on behalf of board of trustees.—The Board of Trustees of the Internal Improvement Trust Fund may, by resolution duly recorded in the records of said board, authorize or employ agents or employees to act in its behalf in the execution and delivery of deeds of conveyance, for the purpose of carrying into effect any exchange or contract or agreement therefor made by said board under or pursuant to the power vested in said board by this chapter, by virtue of the state's equity in lands under chapter 197, pursuant to conveyances by authority of s. 258.14 or chapter 270, by authority of s. 591.19 or s. 255.14, and by such agents or employees issue disclaimers, releases of oil and mineral rights, quitclaim deeds, releases of any and all reservations of whatever kind in the lands of the state, and such other documents as may be authorized by the board to release or convey the state's interests. Any deed executed by said agents or employees shall fully con-

vey to and vest in the purchaser or grantee the property so conveyed.
History.—s. 3, ch. 67-5; ss. 27, 35, ch. 69-106.

253.44 Disposal of lands received.—All lands conveyed to the Board of Trustees of the Internal Improvement Trust Fund, pursuant to ss. 253.42, 253.43, 253.44, or ratified by s. 253.43, shall be held and disposed of by said board, pursuant to the laws of the state affecting said Board of Trustees of the Internal Improvement Trust Fund, and acts amendatory thereto.
History.—s. 3, ch. 8525, 1921; CGL 1434; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.45 Sale or lease of phosphate, clay, minerals, etc., in or under state lands.—
(1) The Board of Trustees of the Internal Improvement Trust Fund may sell or lease any phosphate, earth or clay, sand, gravel, shell, mineral, metal, timber or water, or any other substance similar to the foregoing, in, on, or under, any land the title to which is vested in the state, the Department of General Services, the Department of Natural Resources, the Game and Fresh Water Fish Commission, the State Board of Education, or any other state board, department, or agency; provided that the board of trustees may not grant such a sale or lease on the land of any other state board, department or agency without first obtaining approval therefrom. No sale or lease provided for in this section shall be allowed on hard-surfaced beaches that are used for bathing or driving and areas contiguous thereto out to a mean low-water depth of 3 feet and landward to the nearest paved public road. Any sale or lease provided for in this section shall be conducted by competitive bidding as provided for in ss. 253.52, 253.53 and 253.54. The proceeds of such sales or leases are to be credited to the board of trustees, board, department or agency which has title or control of the land involved.
(2) The Board of Trustees of the Internal Improvement Trust Fund or any other state agency authorized to grant leases under this section shall specify in each such lease, in clear and precise terms, the particular minerals for which the lessee is permitted to drill or mine and the manner in which the same may be extracted.
History.—s. 1, ch. 9289, 1923; ss. 1, 2, ch. 5315, 1923; s. 1, ch. 13670, 1929; CGL 1936 Supp. 1436(11); s. 1, ch. 59-178; s. 2, ch. 61-119; s. 1, ch. 69-181; s. 1, ch. 69-279; s. 1, ch. 69-369; ss. 22, 25, 27, 35, ch. 69-106.

253.451 Construction of term "land the title to which is vested in the state."—For the purposes of ss. 253.45-253.61 the phrase "land the title to which is vested in the state" or words of similar import shall include lands previously held by the state or any agency thereof, in which mineral rights have been retained by the state or such agency.
History.—s. 10, ch. 69-369.

253.47 Board of trustees may lease, sell, etc., bottoms of bays, lagoons, straits, etc., owned by state, for petroleum purposes.—The Board of Trustees of the Internal Improvement Trust Fund of the state may lease for royalties or for other agreed compensation, or sell and otherwise dispose of the right to drill wells for the discovery and the production of petroleum and natural gas in the bottoms, owned by the state in its sovereign capacity, of the bays, lagoons, straits, sounds, gulf, streams and lakes within the state; provided, that such leases or sales shall not confer upon the person acquiring the same the right to enter upon any private property of another, nor the right to drill any well or otherwise place permanent or stationary obstruction in such waters or upon such bottoms within one-quarter of 1 mile of the shoreline of the lands of any upland owner, without first having the written consent of such upland owner so to do. The leases and sales so made shall convey to the lessee or vendee the rights of ingress and egress to, from, and over the bottoms leased or acquired, and the right to construct and maintain on and over such leased or acquired bottoms, in such manner as not to obstruct transportation, any structures, tanks, docks, stations and other equipment, as may be required for the proper development of such leases and the purposes for which the same are made.
History.—s. 1, ch. 12429, 1927; CGL 1445; s. 7, ch. 22858, 1945; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

253.51 Oil and gas leases on state lands by the board of trustees.—The Board of Trustees of the Internal Improvement Trust Fund is hereby authorized and empowered to negotiate, sell, and convey leasehold estates in and to lands the title to which is vested in any state board, department or agency thereof or lands the title to which is vested in the state with its control and management in any such board, department or agency, for the purpose of the development thereof, and the production therefrom, of oil and gas, to any person, firm, corporation or association authorized to do business in the state, upon such terms and conditions as may be agreed upon by the contracting parties, not inconsistent with law and the provisions of the chapter.
History.—s. 1, ch. 22824, 1945; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 2, ch. 69-369.

253.511 Reports by lessees of oil and mineral rights, state lands.—
(1) The Board of Trustees of the Internal Improvement Trust Fund shall require from each lessee of public land under s. 253.45, s. 253.47 or s. 253.51 an annual notarized report as to the status of operations on the land under lease. Such report shall include the number of holes drilled, the dates of drilling, the depth of drilling, and the results of the operation. Reports of mining operations shall also include the number of cubic yards mined. The notarized report of both mining or drilling operations shall include a financial report of moneys paid over to the state, if any. The board may require reasonable additional information, as may be necessary, for a better understanding of the operation under lease; provided, that this shall not be construed as authorizing the board to require any lessee to divulge information relating to its work product, trade secrets, or methods of operation not commonly shared with a leasing agency. Failure to submit the report required by this section within 90 days following the anniversary date of the respective lease may be grounds for revoking and setting aside any lease as to which such report should have been made.
(2) The report required by this section may be introduced in evidence in behalf of the state or any agency thereof in any court proceeding as prima facie evidence of the information contained therein.
History.—s. 1, ch. 69-226; ss. 27, 35, ch. 69-106.

253.512 Applicants for lease of gas, oil, or mineral rights; report as to lease holdings.—Each applicant for a lease concerning oil, gas, or mineral exploitation or exploration in the state shall submit to the agency of the state issuing the lease a certified statement as to any lease holdings regarding oil, gas, or minerals the applicant has which were granted by the same or any other agency of the state. Such statement shall also include the number and identification of such leases issued and the state agency which issued the lease or leases.
History.—s. 1, ch. 69-217.

253.52 Placing oil and gas leases on market by board.—Whenever in the opinion of the Board of Trustees of the Internal Improvement Trust Fund there shall be a demand for the purchase of oil and gas leases on any area, tract, or parcel of the land so owned, controlled, or managed, by any state board, department, or agency, then the board shall place such oil and gas lease or leases on the market in such blocks, tracts, or parcels as it may designate. The lease or leases shall only be made after notice by publication thereof has been made not less than once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County, and in a similar newspaper for a similar period of time published in the vicinity of the lands offered to be leased, the last publication in both newspapers to be not less than 5 days in advance of the sale date. Such notice shall be to the effect that a lease or leases will be offered for sale at such date and time as may be named in said notice and shall describe the land upon which such lease, or leases, will be offered. Before any lease of any block, tract, or parcel of land, submerged, or unsubmerged, within a radius of 3 miles of the boundaries of any incorporated city, or town, or within such radius of any bathing beach, or beaches, outside thereof, such board, department, or agency, shall through one or more of its members hold a public hearing, after notice thereof by publication once in a newspaper of general circulation published at least 1 week prior to said hearing in the vicinity of the land, or lands, offered to be leased, of the offer to lease the same, calling upon all interested persons to attend said hearing where they would be given the opportunity to be heard, all of which shall be considered by the board prior to the execution of any lease or leases to said land, and the board may withdraw said land, or any part thereof, from the market, and refuse to execute such lease or leases if after such hearing, or otherwise, it considers such execution contrary to the public welfare. Before advertising any land for lease the form of the lease or leases to be offered for sale, not inconsistent with law, or the provisions of this section, shall be prescribed by the board and a copy, or copies, thereof, shall be available to the general public at the office of the Board of Trustees of the Internal Improvement Trust Fund and the advertisements of such sale shall so state.
History.—s. 2, ch. 22824, 1945; s. 1, ch. 24739, 1947; s. 11, ch. 25038, 1949; s. 10, ch. 26494, 1951; ss. 27, 35, ch. 69-106; s. 3, ch. 69-369.

253.53 Sealed bids required.—All lands subject to this law shall be leased upon sealed bids. All bids shall be directed to the Board of Trustees of the Internal Improvement Trust Fund. The board shall determine in advance the amount of royalty, never less than one-eighth in kind, or in value, and a definite rental, increasing annually after the first 2 years, upon lands not developed for oil or gas, or upon which no well has been commenced in good faith to secure production in paying quantities of gas or oil. The board may, in its discretion, incorporate within the terms of any lease provisions for pooling or unitizing the leased premises, in whole or in part, with other lands or leases, and provisions for payments that may be made in lieu of royalty on wells which have been completed as gas wells and are capable of producing gas in paying quantities but are shut in pending development of a satisfactory market outlet, provided this shut-in period pending development of a satisfactory market outlet shall not exceed 48 months from the date of completion of such gas well or wells as herein described, if the lease is not being otherwise maintained by drilling or reworking or by production, which, if made, shall operate to cause the lease to be considered as producing in paying quantities for all purposes thereof. In addition to such fixed charges for said lease, there shall be a cash consideration. The bids shall be for this cash consideration, offered for said lease, in addition to such fixed charges for royalty, rental, and payments in lieu of royalty, and shall be payable upon acceptance of said bid. All bids shall be accompanied by a cashier's check, or certified check, for the amount of such cash consideration and shall be payable to the state board, department, or agency which holds title to or controls the land offered for lease. No bid filed subsequent to the date and hour of sale specified in the advertisement of sale shall be considered.
History.—s. 3, ch. 22824, 1945; s. 6, ch. 69-369; s. 1, ch. 69-408; ss. 27, 35, ch. 69-106.

253.54 Competitive bidding.—On the date and at the hour specified in the advertisement of sale, the Board of Trustees of the Internal Improvement Trust Fund shall at a public meeting, open and consider any and all bids submitted prior to such date and hour for the leasing of the land, or lands, so advertised, and, in the discretion of the board, award the lease to the highest and best bidder submitting a bid therefor; provided, that if, in the judgment of the board, the bids submitted do not represent the fair value of such lease, or leases, or the execution of same is contrary to the public welfare, or the responsibility of the bidder offering the highest amount has not been established to its satisfaction, or for any other reason, it may in its discretion reject said bids, give notice and call for new or other bids, or withdraw said land from the market. If several distinct blocks, parcels, or tracts of land can be separately considered, then, and in that event, the board may so consider them, but, if they cannot be so considered, then

the rejection for any cause of the highest and best bid shall result in the rejection of all bids.

History.—s. 4, ch. 22824, 1945; ss. 27, 35, ch. 69-106; s. 5, ch. 69-369.

253.55 Limitation on term of lease.—

(1) Subject to the further provisions hereof, each lease shall be for a primary term prescribed by the Board of Trustees of the Internal Improvement Trust Fund not to exceed 10 years from the date of the lease, and shall provide that such lease, upon which operations are being carried on in good faith and in a workmanlike and diligent manner with no cessation of more than 30 consecutive days, or oil or gas is being produced therefrom in paying quantities, shall remain in force and effect. The lease shall provide that if, after production is obtained therefrom, such production should cease, the lease may be maintained, if it is within the primary term, by commencing or resuming the payment of rentals or commencing operations for drilling or reworking said land, in good faith and in a workmanlike and diligent manner, on or before the rental payment date next ensuing after the expiration of 60 days, or, if it be after the expiration of the primary term, the lease may be maintained in force and effect by commencing and continuing operations for drilling or reworking said land for the development and production of oil or gas on or before 60 days after the cessation of production and prosecuting same with diligence and in a workmanlike manner with no cessation for more than 30 consecutive days, and if such operations within a reasonable time thereafter result in the production of oil or gas from such leased land in paying quantities, the lease shall remain in effect thereafter as long as oil or gas is produced therefrom in paying quantities. The provisions of this section shall not be construed to permit the automatic renewal of a lease by option after the expiration of the primary term, nor to permit the continuance of any lease except in accordance with the provisions of this section.

(2) Each lease shall provide for its termination in the absence of drilling or reworking operations or production of oil or gas therefrom in paying quantities.

(3) Every such lease executed by the board of trustees shall require the lessee and his assigns to commence and complete operations for the drilling of at least one test well on the lands leased within the first 2½-year period of the term of such lease and to commence and complete operations for the drilling of at least one additional well in each succeeding 2½-year period of the term of such lease, until the total number of wells drilled equals one-half the number of sections of land embraced in the lease, and, after commencing such operations, to prosecute same in good faith, and with reasonable diligence and in a workmanlike manner, to discover and to develop such land for the production of oil and gas, until such well is completed or abandoned. The lessee and his assigns, at the time the drilling of each well is commenced, shall file with the lessor a written declaration describing the two sections of land to which such well shall apply. If no well is commenced and continued to completion with reasonable diligence and in a workmanlike manner, to discover and develop such land for the production of oil and gas, until such well is completed or abandoned, within the first 2½-year period of the term of such lease, the entire lease shall be void. If no additional well is commenced and continued to completion with reasonable diligence and in a workmanlike manner, to discover and develop such land for the production of oil and gas, until such well is completed or abandoned, then such lease at the end of such applicable 2½-year period of the term of such lease shall become forfeited and void as to all of the land covered by the lease except that upon which wells have been drilled in accordance with the provisions of this law.

History.—s. 5, ch. 22824, 1945; s. 1, ch. 69-238; ss. 27, 35, ch. 69-106; s. 6, ch. 69-369; s. 124, ch. 83-217.

253.56 Responsibility of bidder.—Before the acceptance of any bid for such lease the Board of Trustees of the Internal Improvement Trust Fund shall establish to its satisfaction the responsibility of the bidder. And no lease shall be assigned in whole, or in part, nor any land covered thereby, until and except the board shall approve and consent to such assignment, and such permission shall not be unreasonably withheld.

History.—s. 6, ch. 22824, 1945; ss. 27, 35, ch. 69-106; s. 7, ch. 69-369.

253.57 Royalties.—The state's royalties, a part of the consideration of every lease, shall be computed after deducting any oil or gas reasonably used for the production hereof.

History.—s. 7, ch. 22824, 1945.

253.571 Surety or property bond required of lessee prior to commencement of drilling.—The Board of Trustees of the Internal Improvement Trust Fund shall require a surety or property bond from each lessee of public land prior to the time such lessee mines, drills or extracts in any manner, petroleum, petroleum products, gas, sulphur, or any other mineral from such land. The surety bond shall be from a surety company authorized to do business in the state. The bond shall serve as security and is to be forfeited to the board to pay for any damages caused by mining or drilling operations of the lessee. In the case of operations planned in the waters of the state or under other particular circumstances which, by their nature warrant greater security in view of possible damages, the board shall give special consideration to the extent of such possible damages and shall set the amount of an adequate and sufficient bond accordingly. For the purposes of this section damages shall include, but not be limited to, air and water pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the state.

History.—s. 1, ch. 69-367; ss. 27, 35, ch. 69-106.

253.58 Manner of drilling.—All wells in this law referred to required in the several periods of said lease to be drilled, shall be drilled in an efficient, diligent, and workmanlike manner, and in accordance with the best practice, to a depth of 6,000 feet before the abandonment thereof, unless oil or gas has been found in paying quantities at a lesser depth.

History.—s. 8, ch. 22824, 1945.

253.60 Conflicting laws.—The development of the lands leased by the Board of Trustees of the Internal Improvement Trust Fund for the production of oil and gas therefrom shall be in accord with the laws of Florida relating to conservation and control and, if herein is found any conflict with those laws, such laws relating to conservation and control shall prevail.

History.—s. 10, ch. 22824, 1945; ss. 27, 35, ch. 69-106; s. 8, ch. 69-369.

253.61 Lands not subject to lease.—

(1) Regardless of anything to the contrary contained in this law in any previous section or part thereof, no board or agency mentioned therein or the state shall have the power or authority to sell, execute or enter into any lease of the type covered by this law relating to any of the following lands, submerged or unsubmerged, except under the circumstances and conditions as hereinafter set out in this section, to wit:

(a) No lease of the type covered by this law shall be granted, sold or executed covering such lands within the corporate limits of any municipality unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.

(b) No lease of the type covered by this law shall be granted, sold or executed covering any such lands in the tidal waters of the state, abutting on or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.

(c) No lease of the type covered by this law shall be granted, sold or executed covering such lands on any improved beach, located outside of an incorporated town or municipality, or covering such lands in the tidal waters of the state abutting on or immediately adjacent to any improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly consented to the granting or sale of such lease by resolution.

(2) For the purposes of this section and law an improved beach, situated outside of the corporate limits of any municipality or town, shall be and is hereby defined to be any beach adjacent to or abutting upon the tidal waters of the state and having not less than ten hotels, apartment buildings, residences or other structures, used for residential purposes, on or to any given miles of such beach.

History.—s. 11, ch. 22824, 1945.

253.62 Board of trustees authorized to convey certain lands without reservation.—

(1) The Board of Trustees of the Internal Improvement Trust Fund in making exchanges of land under ss. 253.42 and 253.43, is hereby authorized in its discretion to convey said land without reservations of oil and gas or of phosphate and other minerals required by s. 270.11, where deeds to lands received in exchange convey title in fee simple without such reservations or to determine the part or parts to be reserved and the part or parts to be conveyed, so as to facilitate exchange on a basis as nearly equal as may be.

(2) The Board of Trustees of the Internal Improvement Trust Fund is further authorized in its discretion to convey land to the United States free from reservations for oil, gas, phosphate and other minerals, provided agreement satisfactory to the board be effectuated with the United States whereby, in the event oil, gas, phosphate or other minerals are ever produced from said land, said board shall receive the customary royalty therefrom. In any conveyance heretofore made to the United States for national park or related purpose subsequent to June 30, 1943, which contained such reservations, said board shall have authority to convey said reservations subject to the conditions hereof in respect to customary royalty.

(3) The authority to convey, granted in subsection (2), shall apply to the conveyance of lands by the board of trustees to the United States for the establishment of the Biscayne National Monument, as defined by Pub. L. No. 90-606 of the United States, and the board is authorized to convey public lands to the United States for the establishment of the Biscayne National Monument. All acts and actions of the board of trustees and all agreements between the board and the United States Government regarding the conveyance of any state lands to the United States for the establishment of the Biscayne National Monument are hereby ratified, confirmed, and validated. For the purposes of the conveyance authorized by this subsection, no provision of this chapter shall apply, and the board of trustees shall not be required, prior to such conveyance, to comply with any conditions precedent to sale of lands set out in this chapter, nor shall the board be required to reserve oil, gas, phosphate, or other mineral rights, or enter into an agreement for royalties, if any, if same are produced from said lands. However, the waiver herein shall not apply to the requirements of this chapter relating to the setting of bulkhead lines and to dredging and filling.

(4) The legislative intent embodied in this section is to authorize the board of trustees to convey or obligate itself to convey the herein referred to state-owned lands in accordance with the provisions of Pub. L. No. 90-606. Upon certification to the board by the United States Government that all private lands intended to be acquired have been acquired and that owners of private property who have not donated or otherwise conveyed their lands have been paid therefor, the conveyance herein authorized shall become absolute. Nothing herein shall alter the right of the United States Government to immediate possession of said state-owned lands.

History.—ss. 1, 2, ch. 28617, 1947; s. 11, ch. 25035, 1949; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106; s. 1, ch. 72-364; s. 1, ch. 79-439.

253.66 Change in bulkhead lines, Pinellas County.—

(1) As soon as a county bulkhead line as provided in s. 253.122 has been fixed by the water and navigation control authority of Pinellas County around the mainland of the county and the offshore islands therein, and the bulkhead line has been formally ap-

proved by the Board of Trustees of the Internal Improvement Trust Fund of the state, all in accordance with the provisions of s. 253.122, no further change in said bulkhead line shall be made notwithstanding the provisions of s. 253.122(5).

(2) It is hereby declared to be the intent of the Legislature that subsection (1) is necessary for the protection of navigable waters in Pinellas County and the fish, wildlife and natural resources therein.

History.—ss. 1, 2, 3, 4, 5, ch. 59-527; s. 2, ch. 61-119; s. 1, ch. 61-264; ss. 27, 35, ch. 69-106.

Note.—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power in fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

253.665 Grant of easements, licenses, and leases.—

(1) The Board of Trustees of the Internal Improvement Trust Fund of this state is authorized and empowered to grant unto riparian owners as herein defined, their heirs, successors and assigns, perpetual easements and easements, licenses and leases for specified terms of years, permitting such riparian owners, their heirs, successors and assigns, to construct, maintain and operate structures and facilities on, in and under the bed of any navigable stream or any river owned in whole or in part by the state, for the purpose of providing water of a suitable quality for industrial, domestic or other use; provided, however, any instrument granting such easement, lease or license may contain provisions to the effect that such structures and facilities shall be so constructed as not to obstruct the channel of the stream or river or unreasonably interfere with navigation, commerce or fishing thereon.

(2) For the purposes of this section, the term "riparian owners" shall include the owners of uplands bounded by either the high-water or low-water mark of any stream or river and shall include lessees and licensees of any such owners or grantees in easements from such owners of such uplands or river bottoms. The term "channel" shall mean the marked, buoyed, or artificially dredged channel, if any, and if none, shall mean a space equal to 20 percent of the average width of the river or stream at the point concerned which furnishes uninterruptedly, through its course, the deepest water at mean low water.

(3) This section is cumulative and shall not restrict or limit any title, right, interest or privilege of any riparian owner under the common law.

History.—ss. 1, 2, 3, ch. 57-925; s. 2, ch. 61-119; ss. 27, 35, ch. 69-106.

Note.—Formerly s. 253.13.

253.67 Definitions.—As used in ss. 253.67-253.75.

(1) "Aquaculture" means the cultivation of animal and plant life in a water environment.

(2) "Water column" means the vertical extent of water, including the surface thereof, above a designated area of submerged bottom land.

(3) "Department" means the Department of Natural Resources.

(4) "Board" means the Board of Trustees of the Internal Improvement Trust Fund.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106.

253.68 Authority to lease submerged land and water column.—To the extent that it is not contrary to the public interest, and subject to limitations contained in ss. 253.67-253.75, the board of trustees may lease submerged lands to which it has title for the conduct of aquaculture activities and grant exclusive use of the bottom and the water column to the extent required by such activities. Such leases may authorize use of the submerged land and water column for either commercial or experimental purposes. However no lease shall be granted by the board when there is filed with it a resolution of objection adopted by a majority of the county commission of a county within whose boundaries, if the same were extended to the extent of the interest of the state, the proposed leased area would lie. Said resolution shall be filed with the board of trustees within 30 days of the date of the first publication of notice as required by s. 253.70. Prior to the granting of any such leases, the board shall establish and publish a list of guidelines to be followed when considering applications for lease. Such guidelines shall be designed to protect the public's interest in submerged lands and the publicly owned water column.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106.

253.69 Application to lease submerged land and water column.—Any applicant desiring to lease a portion of the submerged lands of this state for the purpose of conducting aquaculture activities shall file with the board a written application in such form as it may prescribe, setting forth the following information:

(1) The name and address of the applicant.

(2) A reasonably concise description of the location and amount of submerged land desired and either:

(a) Attaching a map or plat of a survey of such lands; or

(b) Enclosing a sum sufficient to defray the cost of such a survey as estimated by the department.

(3) A description of the aquaculture activities to be conducted, including a specification whether such activities are to be experimental or commercial and an assessment of the current capability of the applicant to carry on such activities.

(4) Such other information as the board of trustees may by regulation require.

History.—s. 1, ch. 69-46; ss. 26, 27, 35, ch. 69-106.

253.70 Public notice and hearings.—

(1) Upon receiving an application under this act that satisfactorily sets forth the information required by s. 253.69, the board shall give notice of the application by publication in a newspaper published in the county in which the submerged lands are located not less than once a week for 3 consecutive weeks and mail copies of such notice by certified or registered mail to each riparian owner of upland lying within 1,000 feet of the submerged land proposed to be leased, addressed to such owner as his name and address appears on the latest county tax assessment roll.

(2) If no written objections are filed within 30 days after the date of first publication of the notice and if the board finds that the proposed lease is not incompatible with the public interest, the board has

authority to consummate the lease contract as hereinafter provided. However, failure to mail the notice to the riparian upland owners shall not invalidate such lease.

(3) If written objections are filed, the board shall proceed to determine the same. Any required hearing shall be held in the county from which the application was received. Timely notice of such hearing shall be given by at least one publication in a newspaper published in the county in which the submerged lands are located and by certified or registered mail to each riparian owner of upland lying within 1,000 feet of the submerged land proposed to be leased, addressed to such owner as his name and address appears on the latest county tax assessment roll, in addition to any other notice required by law.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106; s. 23, ch. 78-95.

253.71 The lease contract.—When the board has determined that the proposed lease is not incompatible with the public interest and that the applicant has demonstrated his capacity to perform the operations upon which the application is based, it may proceed to consummate a lease contract having the following features in addition to others deemed desirable by the board:

(1) TERM.—The maximum initial terms shall be 10 years. Leases shall be renewable for successive terms up to the same maximum upon agreement of the parties. However, before renewing the term of any lease, the board shall invite objections by following the publication procedures of s. 253.70.

(2) RENTAL FEES.—

(a) The lease contract shall specify such amount of rental per acre of leased bottom as may be agreed to by the parties and shall take the form of:

1. Fixed rental to be paid throughout the term of the lease; or

2. A basic rental charge which will be supplemented by royalties after the productivity of the aquaculture enterprise has been established.

(b) In setting the amount of the rental charge or royalties the board shall consider such factors as the probable rates of productivity and the marketability and value of the product of the enterprise.

(c) All leases shall stipulate for the payment of the annual rental in advance on or before January 1. Failure of the lessee to pay such rent within 30 days of such date shall constitute ground for cancellation of the lease and forfeiture to the state of all works, improvements, and animal and plant life in and upon the leased land and water column.

(3) MAXIMUM AREA TO BE LEASED.—The board shall not lease a larger area of submerged land to any single lessee than has been demonstrated to be within his capacity to utilize efficiently and consistent with the public interest. However, the board may hold a reasonable area of adjacent bottom land in reserve for the time when a holder of an experimental lease will begin operation under a commercial lease. Successful conduct of aquaculture activities on an experimental basis may be accepted as a demonstration of capacity to conduct such operations on a commercial basis.

(4) PERFORMANCE REQUIREMENTS; BOND.—Failure of the lessee to perform substantially the aquaculture activities for which the lease was granted shall constitute ground for cancellation of the lease and forfeiture to the state of all the works, improvements, and animal and plant life in and upon the leased land and water column. In addition, the board shall require execution of a bond in an amount and with a surety satisfactory to it and conditioned upon the active pursuit of the aquaculture activities specified in the lease.

(5) DISPOSITION OF IMPROVEMENTS AT TERMINATION OF CONTRACT.—Each contract entered into under this act shall stipulate the disposition of improvements and assets upon the leased lands and waters, including animal and plant life resulting from aquaculture activities.

(6) ASSIGNABILITY OF LEASES.—Leases granted under this act shall be assignable in whole or in part with the approval of the board.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106.

253.72 Marking of leased areas; restrictions on public use.—

(1) The board shall require all lessees to stake off and mark the areas under lease by appropriate ranges, monuments, stakes, buoys, and fences, so placed as not to interfere unnecessarily with navigation and other traditional uses of the surface. All lessees shall cause the area under lease and the names of the lessees to be shown by signs appropriately placed pursuant to regulations of the board.

(2) Except to the extent necessary to permit the effective development of the species of animal or plant life being cultivated by the lessee, the public shall be provided with means of reasonable ingress and egress to and from the leased area for traditional water activities such as boating, swimming, and fishing. All limitations upon the use by the public of the areas under lease that are authorized by the terms of the lease shall be clearly posted by the lessee pursuant to regulations by the board. Any person willfully violating posted restrictions shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106; s. 154, ch. 71-136.

253.73 Rules and regulations; ss. 253.67-253.75.—Subject to the requirements of chapter 120, the board may adopt rules and regulations necessary and appropriate to carry out the provisions of ss. 253.67-253.75.

History.—s. 1, ch. 69-46; ss. 27, 35, ch. 69-106.

253.74 Penalties.—

(1) Any person who conducts aquaculture activities in excess of those authorized by lease agreement with the board or who conducts such activities on state-owned submerged lands without having previously leased the same shall be guilty of a misdemeanor and subject to imprisonment for not more than 6 months or fine of not more than $1,000, or both. In addition to such fine and imprisonment, all works, improvements, animal and plant life involved in the project, may be forfeited to the state.

(2) Any person who is found by the Department

of Natural Resources or the Department of Environmental Regulation to have violated the provisions of chapter 403 shall be subject to having his lease of state-owned submerged lands canceled.

History.—s. 1, ch. 69-46; ss. 25, 26, 27, 35, ch. 69-106; s. 2, ch. 71-137; s. 10, ch. 79-65.

253.75 Studies and recommendations by the Department of Natural Resources and the Game and Fresh Water Fish Commission; designation of recommended traditional and other use zones; supervision of aquaculture operations.—

(1) Prior to the granting of any lease under this act, the board shall request a recommendation by the [1]Department of Natural Resources, when the application relates to tidal bottoms, and by the Game and Fresh Water Fish Commission, when the application relates to bottom land covered by fresh water. Such recommendations shall be based on such factors as an assessment of the probable effect of the proposed leasing arrangement on the lawful rights of riparian owners, navigation, commercial and sport fishing, and the conservation of fish or other wildlife or other natural resources, including beaches and shores.

(2) The [1]department and the Game and Fresh Water Fish Commission shall both have the following responsibilities with respect to submerged land and water column falling within their respective jurisdictions:

(a) To undertake, or cause to be undertaken, the studies and surveys necessary to support their respective recommendations to the board;

(b) To institute procedures for supervising the aquaculture activities of lessees holding under this act and reporting thereon from time to time to the board; and

(c) To designate in advance areas of submerged land and water column owned by the state for which they recommend reservation for uses that may possibly be inconsistent with the conduct of aquaculture activities. Such uses shall include, but not be limited to, recreational, commercial and sport fishing and other traditional uses, exploration for petroleum and other minerals, and scientific instrumentation. The existence of such designated areas shall be considered by the board in granting leases under this act.

History.—s. 1, ch. 69-46; ss. 25, 27, 35, ch. 69-106.

[1]Note.—See s. 11, ch. 75-22, which transfers all powers of the Department of Natural Resources relating to permits, licenses, and exemptions to the Department of Environmental Regulation.

253.76 Appeals; proceedings.—The Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund and as the owners of state lands are vested with the authority to hear and decide appeals of decisions of the Department of Environmental Regulation under this chapter. Notice of such appeal shall be filed with the Governor and Cabinet within 15 days of such decision. The hearing shall be appellate in nature; however, the Governor and Cabinet may, at their discretion, take additional testimony. Such hearings shall be completed and a decision rendered within 60 days of receipt of the appeal. Hearings shall be in accordance with provisions of chapter 120.

History.—s. 5, ch. 75-22; s. 11, ch. 79-65.

253.763 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.

253.77 State lands; state agency authorization for use prohibited without consent of agency in which title vested.—

(1) No department, including any division, bureau, section, or other subdivision thereof, or any other agency of the state possessing regulatory powers involving the issuance of permits shall issue any permit, license, or other evidence of authority involving the use of sovereignty or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources under chapter 253, until the applicant for such permit, license, or other evidence of permission shall have received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement, or other form of consent authorizing the proposed use and exhibited it to such agency or department or subdivision thereof having regulatory power to permit such use.

(2) The permitting agency shall, within 30 days after receipt of a permit application, notify the applicant and the executive director of the Department of Natural Resources or his designee that a lease, license, easement, or other form of consent of the Board of Trustees of the Internal Improvement Trust Fund authorizing the proposed use may be required. However, this subsection shall not apply to any permit, license, or other form of consent to take the regulated action which was issued and outstanding on July 1, 1980.

(3) This act shall not apply to any permit, license, or other form of consent to take the regulated action which was issued and outstanding on June 23, 1976.

History.—ss. 1, 2, ch. 76-245; s. 11, ch. 80-66.

[1]**253.781 Authority to convey state-owned lands in the Oklawaha River and Valley to the Federal Government for inclusion in Ocala National Forest.**—

(1) It is the intent of the Legislature to conserve and protect the natural resources and scenic beauty of the Oklawaha River and Valley bounding the Ocala National Forest in Putnam and Marion Counties. It is the finding of the Legislature that said Oklawaha River and Valley bounding the Ocala National Forest are areas containing and having a significant impact upon environmental and recreational resources of statewide importance and that public ownership of and access to such areas are necessary and desirable to protect the health, welfare, safety, and quality of life of the residents of this state and to implement s. 7, Art. II of the State Constitution. It is further the finding of the Legislature that ownership and control of the said lands by the Federal Government as part of the Ocala National Forest will properly protect and conserve the natural resources and scenic beauty of Florida, enhance recreational opportunities, and be in the public interest.

(2) The Department of Natural Resources is authorized and directed to transfer ownership of all lands or interests in lands owned by the Board of Trustees of the Internal Improvement Trust Fund, including all fee and less-than-fee interests in lands previously owned by the canal authority, contained within the extended boundary of the Ocala National Forest as shown on the map dated July 1978 on file with the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia, and available to the public in the office of the appropriate United States regional forester, forest supervisor, or forest ranger and in the office of the Department of Natural Resources, to the United States Department of Agriculture for the purpose of inclusion in the Ocala National Forest. The Department of Natural Resources shall make such conveyance for payment of no less than the fair market value for such lands as authorized by the head of the Department of Natural Resources. Any conveyance by the Department of Natural Resources to the United States Department of Agriculture or other federal department or agency shall include the lands which comprise the Rodman Dam and Rodman Reservoir, also known as Lake Ocklawaha, only if the Governor and Cabinet, as the head of the Department of Natural Resources, shall determine that such conveyance is consistent with the conclusions of the land management plan required herein. If such plan shall provide for the continued use and maintenance of the Lake Ocklawaha lands for recreational and scientific purposes, any deed conveying such lands shall contain appropriate restrictions assuring such continued use.

(3) The Governor and Cabinet as the head of the Department of Natural Resources are empowered and authorized to acquire by purchase, exchange of other state lands, or the exercise of the power of eminent domain the fee title to lands acquired in less-than-fee title along the canal route within the area described in subsection (2). The Legislature finds that such exercise of the power of eminent domain to accomplish the purposes of this section is necessary and for a public purpose. Such power of eminent domain shall be exercised pursuant to the provisions of chapter 73.

(4) Lands transferred pursuant to this section by the Department of Natural Resources may reserve existing road rights-of-way.

History.—s. 2, ch. 79-167.

[1]Note.—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

[1]**253.782 Retention of state-owned lands in and around Lake Rousseau and the Cross Florida Barge Canal right-of-way from Lake Rousseau west to the Withlacoochee River.**—

(1) It is the intent of the Legislature to conserve, protect, and maintain the natural resources, recreational values, and water management capabilities of Lake Rousseau and the Withlacoochee River. It is the finding of the Legislature that said lands and waters are areas containing and having a significant impact on environmental and recreational resources of statewide importance and that public ownership of and access to such areas are necessary and desirable to protect the health, welfare, safety, and quality of life of the residents of this state and to implement s. 7, Art. II of the State Constitution. It is further the finding of the Legislature that retention of ownership and control of said lands by the state will properly protect and conserve the natural resources of Florida, enhance recreational opportunities, and be in the public interest.

(2) The Department of Natural Resources is authorized and directed to retain ownership of and maintain all lands or interests in land owned by the Board of Trustees of the Internal Improvement Trust Fund including all fee and less-than-fee interests in lands previously owned by the canal authority in Lake Rousseau and the Cross Florida Barge Canal right-of-way from Lake Rousseau at U.S. Highway 41 west to and including the Withlacoochee River.

(3) The Governor and Cabinet as head of the De-

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partment of Natural Resources are empowered, authorized, and directed to acquire by purchase, exchange of other state lands, or the exercise of the power of eminent domain the fee title to any less-than-fee title interest in land owned by the Board of Trustees of the Internal Improvement Trust Fund, including interests previously owned by the canal authority, as described in subsection (2). The Legislature finds that such exercise of the power of eminent domain to accomplish the purposes of this section is necessary and for a public purpose. Such power of eminent domain shall be exercised pursuant to the provisions of chapter 73.

(4) The Department of Natural Resources shall recommend to the Governor and Cabinet the establishment of an interagency advisory committee to report to the department regarding restoration and management of the Withlacoochee River, with special emphasis on control of saltwater intrusion.

History.—s. 2, ch. 79-167.

[1]Note.—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

[1]253.783 Additional powers and duties of the Department of Natural Resources.—

(1) The Department of Natural Resources shall make no further expenditures for the purpose of acquiring land for constructing, operating, or promoting a canal across the peninsula of Florida connecting the waters of the Atlantic Ocean with the waters of the Gulf of Mexico via the St. Johns River.

(2) It is declared to be in the public interest that the department shall do and is hereby authorized to do any and all things and incur and pay from the Cross Florida Barge Canal Trust Fund, for the public purposes described herein, any and all expenses necessary, convenient, and proper to:

(a) Develop a management plan to be submitted to the Legislature no later than 1 year from the effective date of this act for the retention or disposition of lands acquired for the Cross Florida Barge Canal and not disposed of by this act, which plan shall reflect a consideration of alternatives for disposition of all lands in fee or less than fee owned by the Board of Trustees of the Internal Improvement Trust Fund, including those previously owned by the canal authority and the U.S. Army Corps of Engineers, from the western boundary of the expanded Ocala National Forest west to U.S. Highway 41, the Cross Florida Barge Canal right-of-way from the Withlacoochee River west to the Gulf of Mexico, and from the eastern boundary of the expanded Ocala National Forest, as depicted by the map referred to in s. 253.781(2), east to the St. Johns River. Such alternatives for disposition will include possible retention by any interested state agency for specific public purposes and a declaration of lands not to be retained as surplus lands to be disposed of pursuant to paragraph (d), paragraph (e), or paragraph (f). The management plan shall also address any remedial measures necessary to correct any environmental or economic damage caused by works constructed as a part of or as a result of the uncompleted sections of the Cross Florida Barge Canal.

(b) Develop a management plan for the lands comprising the Rodman Dam and Rodman Reservoir, also known as Lake Ocklawaha, identifying the recreational and scientific management options which are most environmentally desirable and cost-effective. Such management plan shall contain a specific determination regarding the continued maintenance of the Rodman Dam and Reservoir (Lake Ocklawaha) or the drainage of the reservoir and restoration of the area to its former natural state, as the case may be.

(c) Operate and maintain existing lands and interests in lands, appurtenances, structures, and facilities until further disposition is directed by the Legislature pursuant to the management plan.

(d) Offer any land declared surplus, at current appraised value, to only the original owner from whom the Canal Authority of the State of Florida or the U.S. Army Corps of Engineers acquired the land but not to his heirs or assigns or any other person. The department shall offer and is authorized to reconvey, for no consideration, any donated land declared surplus to only the original donor or his heirs but not his assigns or any other person. These offers shall be made by public advertisement in not less than three newspapers of general circulation within the area of the canal route, one of which shall be a newspaper in the county where the lands declared surplus are located. These offers shall be valid for 1 calendar year from the date the management plan is adopted by the Legislature.

(e) Extend the second right of refusal to counties in which the surplus land lies for acquisition for specific public purposes with any such sale price at current appraised value charged against the dollar figure, including interest, of the repayment to be made to that county.

(f) Offer surplus lands not purchased or transferred under paragraph (c) or paragraph (d) to the highest bidder at public sale. Such surplus lands and the public sale shall be described and advertised in a newspaper of general circulation within the county in which the lands are located not less than 14 calendar days prior to the date on which the public sale is to be held. The current appraised value of such surplus lands will be the minimum acceptable bid.

(g) Refund to the counties of the Cross Florida Canal Navigation District funds derived from the conveyance of lands of the project to the Federal Government or any agency thereof, pursuant to s. 253.781, and from the sales of surplus lands pursuant to this section. Such refunds shall be in proportion to the ad valorem tax share paid to the Cross Florida Canal Navigation District by the respective counties. Refunds to the counties shall include interest on the amounts from the time of their payment by the counties to the date of repayment pursuant to this act. Interest to be refunded to the counties shall be compounded annually at the following rates: 1937-1950, 4 percent; 1951-1960, 5 percent; 1961-1970, 6 percent; 1971-1975, 7 percent; 1976-refund date, 8 percent. In computing interest, amounts already repaid to the counties shall not be subject to further assessments of interest. Any partial-repayments provided to the counties under this act shall be considered as contributing to the total repayment owed to the counties. Should the funds generated by conveyance to

the Federal Government and sales of surplus lands be more than sufficient to repay said counties in accordance with this section, such excess funds shall be deposited in the Cross Florida Barge Canal Trust Fund. In no case shall general revenue funds be used to repay interest owed to the counties.

(h) Establish an advisory committee to report to the department regarding the development of the management plan. This committee shall be composed of one representative from each of the following: Department of Natural Resources, Department of Environmental Regulation, Game and Fresh Water Fish Commission, Department of Transportation, [2]Department of Administration-Division of State Planning, Southwest Florida Water Management District, St. Johns Water Management District, Duval County, Clay County, Putnam County, Marion County, Levy County, and Citrus County, and it shall also be composed of four members of the public at large appointed by the Governor and Cabinet. The department shall conduct public hearings to receive comments and recommendations as to the disposition of lands under the management plan.

(i) Carry out the purposes of this act.

(3) The department shall seek and utilize federal funds and enter into agreements with the Federal Government or any agency thereof to effectuate the purposes of this act.

History.—s. 4, ch. 79-167.

[1]Note.—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

[2]Note.—See s. 2, ch. 79-190, which abolished the Division of State Planning and transferred the both of its powers, duties, and functions to the Executive Office of the Governor.

[1]253.784 Contracts.—The Department of Natural Resources shall have the power and authority to enter into any and all contracts necessary or convenient to the exercise of any of the powers granted to the department by this act. The department is authorized to assign, transfer, and convey to the United States, or to any appropriate agency thereof, such assets, franchises, and property, or interests therein, of the department, including lands, easements, and rights-of-way acquired by the state, and to accept moneys for the same as may be necessary or convenient to the exercise of such powers consistent with this act. The department is authorized to receive by dedication, grant, or transfer any fee or less-than-fee lands owned by the U.S. Army Corps of Engineers. The department is authorized to enter into agreements with the Federal Government for restoration of areas or receipt of funds for restoration of areas in and around Lake Rousseau, the Cross Florida Barge Canal right-of-way from Lake Rousseau to the Withlacoochee River, the Withlacoochee River, and the Cross Florida Barge Canal right-of-way from the eastern boundary of the expanded Ocala National Forest to the St. Johns River.

History.—s. 6, ch. 79-167.

[1]Note.—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

[1]253.785 Liberal construction of act.—It is intended that the provisions of this act shall be liberally construed for accomplishing the work authorized and provided for or intended to be provided for by this act, and when strict construction would result in the defeat of the accomplishment of any part of the work authorized by this act, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen.

History.—s. 10, ch. 79-167.

[1]Note.—Effective only upon deauthorization of the Cross Florida Barge Canal Project by the United States Congress, on the effective date of such deauthorization by the United States Congress.

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CHAPTER 258

STATE PARKS AND PRESERVES

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258.001 Park regions.—For the purpose of administering this chapter, regulating the public parks, monuments and memorials of this state, the state is divided into five park regions which are defined as:

(1) FIRST REGION.—The Counties of Escambia, Santa Rosa, Okaloosa, Walton, Bay, Washington, Holmes, Jackson, Calhoun, Gulf, Gadsden, Liberty, Franklin, Wakulla, Leon, and Jefferson shall constitute the First Park Region.

(2) SECOND REGION.—The Counties of Madison, Taylor, Hamilton, Suwannee, Lafayette, Dixie, Levy, Gilchrist, Columbia, Baker, Union, Bradford, Alachua, Marion, Putnam, Clay, Duval, Nassau, and St. Johns shall constitute the Second Park Region.

(3) THIRD REGION.—The Counties of Citrus, Sumter, Lake, Hernando, Pasco, Hillsborough, Pinellas, Polk, Manatee, Hardee, Highlands, Sarasota, DeSoto, Charlotte, and Glades shall constitute the Third Park Region.

(4) FOURTH REGION.—The Counties of Flagler, Volusia, Seminole, Orange, Osceola, Brevard, Indian River, Okeechobee, St. Lucie, and Martin shall constitute the Fourth Park Region.

(5) FIFTH REGION.—The Counties of Lee, Hendry, Palm Beach, Collier, Broward, Dade, and Monroe shall constitute the Fifth Park Region.

History.—s. 2, ch. 25353, 1949; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.02.

258.004 Duties of division.—

(1) It shall be the duty of the Division of Recreation and Parks of the Department of Natural Resources to supervise, administer, regulate, and control the operation of all public parks, including all monuments, memorials, sites of historic interest and value, sites of archaeological interest and value owned, or which may be acquired, by the state, or to the operation, development, preservation, and maintenance of which the state may have made or may make contribution or appropriation of public funds.

(2) The Division of Recreation and Parks shall preserve, manage, regulate, and protect all parks and recreational areas held by the state and may provide these services by contract or interagency agreement for any water management district when the governing board of a water management district designates or sets aside any park or recreation area within its boundaries.

History.—s. 6, ch. 25353, 1949; ss. 25, 35, ch. 69-106; s. 254, ch. 71-377; s. 14, ch. 75-22.
Note.—Former s. 592.06.

258.007 Powers of division.—

(1) The Division of Recreation and Parks shall have power to acquire, in the name of the state, any property real or personal, by purchase, grant, devise, condemnation, donation, or otherwise, in which in its judgment may be necessary or proper toward the administration of the purposes of this chapter, provided, however, that no property of any nature may be acquired by purchase, lease, grant, donation, devise, or otherwise, under conditions which shall pledge the credit of, or obligate in any manner whatsoever the state to pay any sum of money; provided, that the power of condemnation as herein granted is limited to the acquisition of property or property rights which may be required for park purposes and which are contiguous to areas under the jurisdiction of the Board of Parks and Historic Memorials on July 1, 1949. Express legislative approval is required for the acquisition by condemnation of any new area or memorial which the division may desire for the purposes set forth in this chapter, except that the division may maintain and insure with the Florida fire insurance trust fund buildings on property owned by the state or any of its agencies.

(2) The division shall make and publish such rules and regulations as it may deem necessary or proper for the management and use of the parks, monuments, and memorials under its jurisdiction, and the violation of any of the rules and regulations authorized by this section shall be a misdemeanor and punishable accordingly.

(3) The division may grant privileges, leases, concessions, and permits for the use of land for the accommodation of visitors in the various parks, monuments, and memorials, provided no natural curiosities or objects of interest shall be granted, leased, or rented on such terms as shall deny or interfere with free access to them by the public; provided further, such grants, leases, and permits may be made and given without advertisement or securing competitive bids; and provided further, that no such grant, lease, or permit shall be assigned or transferred by any grantee without consent of the division.

(4) The division is authorized to grant easements for rights-of-way over, across, and upon lands of the state for the maintenance of poles and lines for the transmission and distribution of electrical power and for telephone and telegraphic purposes, under such conditions and with such limitations as the division may impose.

(5)(a) The division is authorized and empowered to select and designate sites of historic interest and value of statewide significance and to erect and maintain appropriate signs or markers indicating said sites upon public property as well as upon private property where permission is obtained.

(b) The Department of Transportation, the governing body of each county and municipality is authorized to permit the Division of Recreation and Parks to erect and maintain said historic signs or markers within the right-of-way of any state highway, county road, or municipal street, or any other property under their jurisdiction and control, under such conditions and limitations as may be appropriate. The division is hereby vested with the exclusive authority and power to erect and maintain said historic signs or markers within the right-of-way of any state highway.

(c) The division is authorized to receive gifts and donations from any source to carry out the purpose of this section.

History.—s. 7, ch. 25353, 1949; s. 1, ch. 29615, 1955; s. 1, ch. 59-392; ss. 23, 25, 35, ch. 69-106; s. 1, ch. 70-302; s. 1, ch. 70-439.
Note.—Former s. 592.07.

258.011 Rules and regulations for certain parks.—The Division of Recreation and Parks may adopt and enforce such rules and regulations as may be necessary for the protection, utilization, development, occupancy, and use of said parks, and consistent with existing law, and with the purpose, or purposes, for which said areas were acquired, designated, and dedicated, and when such rules and regulations shall have been adopted they shall have the force and effect of law.

History.—s. 5, ch. [illegible], 19[illegible]; CGL 1936 Supp. 4151(10e); ss. 25, 35, ch. 69-106.
Note.—Former s. 589.22; s. 592.071.

258.014 Fees for use of state parks.—

(1) The Division of Recreation and Parks shall have the power to charge reasonable fees, rentals or charges for the use or operation of facilities and concessions in state parks, and all such fees, rentals, and charges so collected shall be deposited in the State Treasury to the credit of "State Park Trust Fund," which is hereby created, the continuing balance of which fund is hereby appropriated to be expended by said division for the administration, improvement and maintenance of state parks and for the acquisition and development of lands hereafter acquired for state park purposes. The appropriation of said fund shall be continuing, and shall not revert to the General Revenue Fund at the end of any fiscal year or at any other time but shall, until expended, be continually available to said division for the uses and purposes set forth.

(2) Any moneys received in trust by the division by gift, devise, appropriation, or otherwise shall, subject to the terms of such trust, be deposited with the State Treasurer in a fund to be known as the "State Park Trust Fund," and shall be subject to withdrawal upon application of said division for expenditure or investment in accordance with the terms of said trust. Unless prohibited by the terms of the trust by which said moneys are derived, all of such moneys may be invested as provided by law.

History.—ss. 1, 2, ch. [illegible], 1941; s. 2, ch. 61-119; s. 9, ch. 67-354; ss. 25, 35, ch. 69-106.
Note.—Former s. 589.25; s. 592.072.

258.017 Dedication of state park lands for public use.—The Division of Recreation and Parks is authorized and empowered, from time to time, by resolution, to dedicate and reserve for the use of the public all or any part of the lands acquired by the division for park purposes; provided however, that said dedication and reservation shall be subject to such rules and regulations, as to reasonable use by the public, as may be adopted by the division.

History.—s. 7B, ch. 29615, 1955; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.073.
cf.—s. 589.26 Dedication of state park lands for public use by Division of Forestry.

258.021 Power of eminent domain; procedure.—Whenever the Division of Recreation and Parks shall find it necessary to acquire private property for state parks, or rights-of-way for state parks, or for exercising any of the powers and duties authorized and prescribed by law to be exercised and performed by the division, the division is hereby empowered and authorized to exercise the right of eminent domain and to proceed to condemn said property in

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the same manner as provided by law for the condemnation of private property by counties.

History.—s. 25, ch. [illegible], 1949; ss. 25, 35, ch. 69-106.
Note.—Former s. [illegible].
cf.—chs. 73, 74, 127 Eminent Domain.
s. 589.27 Power of eminent domain; Division of Forestry.

258.024 Police powers of director and park officers.—

(1) The Governor and Cabinet as the head of the Department of Natural Resources are authorized to designate the director of the Division of Recreation and Parks. The director and such number of park officers as may be deemed necessary at each park site shall be constituted police officers having the following powers:

(a) To make arrest without warrant under circumstances set forth in s. 901.15 only when such violations occur upon lands under jurisdiction of the division and only if the director and the park officers have been certified in compliance with s. 943.14 or are on temporary waiver as provided by s. 943.14 until certified; however, such employees shall not be eligible for membership in the special risk class of the Florida Retirement System.

(b) To bear arms while in the performance of their official duties.

(c) To have the powers of search and seizure, as set forth in s. 901.21.

(2) The park officers so designated as officers having the power to arrest shall:

(a) Meet the requirements of the Criminal Justice Standards and Training Commission; and

(b) Be assigned to one regular duty station only and perform such services in addition to their other regular duties as park officers.

(3) The Division of Recreation and Parks is not authorized by this section to establish a special law enforcement unit or division within that agency, and the park officers designated as having arrest powers shall not be employed as a patrol to move from one state park to another.

(4) It is unlawful for any person to resist arrest or otherwise interfere with the director or park officers in the performance of their lawful duties.

History.—s. 1, ch. [illegible]; s. [illegible], ch. 73-[illegible]; s. 1, ch. 80-201; s. 169, ch. 81-259; s. [illegible], ch. 83-167.
Note.—Former s. [illegible].

258.027 Division to take over certain functions.—The Division of Recreation and Parks is vested with all rights, powers, duties, privileges, and authority relating to park matters heretofore vested in and exercised by the Florida Board of Forestry and Parks and is charged with the responsibility of carrying out, performing and discharging all duties and liabilities, contractual and otherwise heretofore imposed upon or incurred by the Florida Board of Forestry and Parks in connection with or appertaining to the management, control, improvement, operation, and administration of state parks. All park property, real, personal and mixed now owned by, or held under management, direction and control, of Florida Board of Forestry is transferred to and vested in division.

History.—s. [illegible], ch. [illegible], 1949; ss. 25, 35, ch. 69-106.
Note.—Former s. [illegible].

258.031 Department of Transportation to assist division.—The [1]Division of Road Operations of the Department of Transportation is authorized and directed to construct, reconstruct, maintain, and improve, in cooperation with and under the direction of the Division of Recreation and Parks, roads, and trails, including necessary bridges, within and adjacent to state parks, monuments, and memorials which roads and trails when constructed, reconstructed, and improved shall become a part of the state system of highways, provided the Division of Recreation and Parks is vested with and shall exercise jurisdiction over the use of all such roads and trails lying within state parks, monuments, and memorials and shall make and enforce reasonable rules and regulations regarding their use for travel.

History.—s. 9, ch. 25353, 1949; ss. 21, 25, 35, ch. 69-106.
[1]Note.—See s. 1, ch. 81-209, which reorganized, in part, the division structure within the Department of Transportation.
Note.—Former s. 592.09.

258.034 State Park Trust Fund created.—There is created a "State Park Trust Fund" to which shall be credited all money deposited in the State Treasury by appropriations, or from any other source, whether in trust, by gift, devise, fees, rentals, and charges, together with any unexpended balance of any appropriation heretofore made for the expenditure of public funds toward the support, maintenance, and preservation of any monument, memorial, or historic site which under this chapter comes under the jurisdiction of the Division of Recreation and Parks, to be expended by the division for the administration, improvement, and maintenance of state parks and historic memorials by this chapter placed under the jurisdiction of the division and for the acquisition and development of lands hereafter acquired for state park purposes.

History.—s. 11, ch. 25353, 1949; s. 2, ch. 61-119; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.11.

258.037 Policy of division.—It shall be the policy of the Division of Recreation and Parks: To promote the state park system for the use, enjoyment, and benefit of the people of Florida and visitors; to acquire typical portions of the original domain of the state which will be accessible to all of the people, and of such character as to emblemize the state's natural values; conserve these natural values for all time; administer the development, use and maintenance of these lands and render such public service in so doing, in such a manner as to enable the people of Florida and visitors to enjoy these values without depleting them; to contribute materially to the development of a strong mental, moral, and physical fiber in the people; to provide for perpetual preservation of historic sites and memorials of statewide significance and interpretation of their history to the people; to contribute to the tourist appeal of Florida.

History.—s. 12, ch. 25353, 1949; ss. 25, 35, ch. 69-106.
Note.—Former s. 592.12.

258.041 Cooperation of division with counties, etc.—The Division of Recreation and Parks may cooperate with counties in county and state park work, and in this connection county commissioners may acquire, by gift, devise, or purchase from general

funds, from individuals, corporations, the United States Government, or any of its departments or agencies, any lands, which are suitable for public parks or for the preservation of natural beauty or places of historic association, and operate the same as public parks. Said county commissioners may also convey any such lands so acquired to the Board of Trustees of the Internal Improvement Trust Fund or the division, provided such lands are acceptable by said board of trustees or division.

History.—ss. 4, 5, 6, ch. 17075, 1935; CGL 1936 Supp. 1749(41)(6); s. 2, ch. 61-119; ss. 25, 27, 35, ch. 69-106.
Note.—Former s. 589.24, s. 592.121.

258.08 Guide meridian and base parallel park located.—Guide meridian and base parallel park, a park for the perpetuation and preservation of the point or place from which the state was surveyed, is established and located in Tallahassee, Leon County, on a parcel of land one-half acre square, having for its center the intersection of the guide meridian and the base parallel of Florida, more particularly described as follows, to wit:

One-eighth of an acre in the form of a square, in the northwest corner of section six in township one south, range one east; one-eighth of an acre in the form of a square, in the southwest corner of section thirty-one in township one north, range one east; one-eighth of an acre in the form of a square, in the southeast corner of section thirty-six in township one north, range one west; and one-eighth of an acre in the form of a square in the northeast corner of section one in township one south, range one west.

History.—s. 1, ch. 10188, 1925; ss. 1, 2, ch. 11902, 1927; CGL 1740, 1742, 1743.

258.081 Stephen Foster Memorial.—The division shall maintain and operate the Stephen Foster Memorial facility in such manner that the performing arts component of the Florida Folklife Program provided in ss. 265.136 and 265.137 shall have priority use of the facility.

History.—s. 7, ch. 79-372; s. 126, ch. 83-217.

258.083 John Pennekamp Coral Reef State Park; taking or damaging of coral prohibited.—

(1) It is unlawful for any person, firm, or corporation to bring into or transport through any part of the state, including its waters, any coral or other material taken from the subsoil or seabed of any portion of the John Pennekamp Coral Reef State Park adjacent to or in the vicinity of the state which has been taken in violation of any law or regulation of the Federal Government.

(2) It is unlawful for any person, firm, or corporation to destroy, damage, remove, deface, or take away any coral, rock, or other formation or any part thereof, of any portion of the John Pennekamp Coral Reef State Park adjacent to or in the vicinity of the state in which such action is in violation of any law or regulation of the Federal Government.

(3) Violation of any of the provisions of this act shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, 3, ch. 61-454; s. 620, ch. 71-136.
Note.—Former s. 592.17.

258.09 Rauscher Park designated.—There is designated and established as a state park to be known as Rauscher Park, in Escambia County, the lands lying between the Big Lagoon and the Gulf of Mexico, now owned by Escambia County, or hereafter acquired by Escambia County, adjacent or contiguous thereto, from private owners or from the United States Government; and the board of county commissioners of Escambia County may execute proper conveyance to the board of commissioners of state institutions covering the property now owned by Escambia County, as aforesaid, and said board of county commissioners of Escambia County may acquire in the name of the Division of Recreation and Parks of the Department of Natural Resources any property adjacent or contiguous thereto, from private owners or from the United States Government; and said division may accept in the name of the state the title to any such lands, whether from said Escambia County, or whether same be property acquired from private owners or the United States Government.

History.—s. 1, ch. 19345, 1939; ss. 25, 35, ch. 69-106.

258.10 Division of Recreation and Parks to supervise and maintain Rauscher Park.—After the conveyance of said lands and such additional land as may, from time to time, be acquired, under the provisions of s. 258.09, said lands shall be deemed and held to be a state park, under the supervision of the Division of Recreation and Parks of the Department of Natural Resources, and the said division is charged with the duty of providing for the development, care, upkeep, maintenance and beautification of said Rauscher Park.

History.—s. 2, ch. 19345, 1939; s. 24, ch. 57-1; ss. 25, 35, ch. 69-106.

258.11 Land ceded for Royal Palm State Park; proviso.—Section fifteen, and the north half of section twenty-two of township fifty-eight south, range thirty-seven east, situated in Dade County, is ceded to the Florida Federation of Women's Clubs and designated as the "Royal Palm State Park," to be cared for, protected, and to remain in the full possession and enjoyment, with all the possessory rights and privileges thereunto, belonging to the Florida Federation of Women's Clubs, for the purpose of a state park, for the benefit and use of all the people of Florida, perpetually; provided, that the Florida Federation of Women's Clubs shall procure a deed to 960 acres of land in Dade County, in the vicinity of said state park, suitable for agricultural purposes, conveying to said Florida Federation of Women's Clubs fee simple title thereto, said land to be used as an endowment for the perpetual use and benefit of the said park, its protection, improvement and the beautifying thereof, including the construction of roads and other improvements, either in kind or by the use of the rents and profits accruing therefrom, or the proceeds of sale thereof or any part of said endowment tract.

History.—s. 1, ch. 6949, 1915; RGS 1210; CGL 1701.

258.12 Additional lands ceded for Royal Palm State Park.—For the use and benefit of all the people of the state, the state cedes to the Florida Federation of Women's Clubs the south half of sec-

tion ten, southwest quarter of section eleven, west half of section fourteen, west half of section twenty-three, south half of section twenty-two, northwest quarter of section twenty-seven, north half of section twenty-eight, and northeast quarter of section twenty-nine, township fifty-eight south, range thirty-seven east, *situated in Dade County, as additional* acreage to "Royal Palm State Park," to be cared for and remain in the full possession and enjoyment of said Florida Federation of Women's Clubs, with all the possessory rights and privileges to the same belonging or in anywise appertaining; provided, that said land is granted to the said Florida Federation of Women's Clubs upon the express condition that said *land and every part thereof shall be used as a state* park for the use and benefit of all the people of Florida, and for no other purpose; and in the event said grantee shall permit or suffer the use of said land for any other purpose, or shall discontinue the use thereof for such purpose, such misuse or discontinuance shall operate as a defeasance and said land and every part thereof shall revert to the state.

History.—s. 1, ch. 8577, 1921; CGL 1705.

258.14 Royal Palm State Park and endowment lands exempt from taxation.—The lands described in ss. 258.11 and 258.12 as the Royal Palm State Park, and the lands conveyed, and to be conveyed to the Florida Federation of Women's Clubs as an endowment for the use and benefit of said state *property, are exempt from the payment of state,* county, municipal, or any special assessment or any assessment of taxes.

History.—s. 3, ch. 6949, 1915; RGS 1212; s. 2, ch. 8577, 1921; CGL 1704, 1706.

258.15 St. Michael's Cemetery designated a state park.—

(1) St. Michael's Cemetery in Pensacola is designated and declared to be a state park.

(2) The Division of Recreation and Parks of the Department of Natural Resources shall manage and operate the said cemetery and shall be authorized to make such reasonable rules and regulations with respect to the said cemetery as the said division shall deem necessary for the orderly operation, protection and preservation of said cemetery. However, this section shall not be construed to prevent, and no rule and regulation shall be made which will prevent, the continued interment of bodies in the cemetery lots which are privately owned.

History.—ss. 1, 2, 3, ch. 25464, 1949; ss. 25, 35, ch. 69-106; s. 63, ch. 77-104.

258.16 Boca Ciega Bay Aquatic Preserve.—

(1) Boca Ciega Bay, in Pinellas County, as hereinafter described, is designated and established as an aquatic preserve under the provisions of this section. It is the intent of the Legislature that Boca Ciega Bay be preserved, insofar as possible, in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations.

(2)(a) For the purposes of this section, Boca Ciega Bay, sometimes referred to in this section as "the preserve," shall be comprised of that body of water in Pinellas County which lies south of the State Road 688 bridge at, or near, Indian Rocks Beach and within the area enclosed by a line as follows: Beginning at a point where the east end of said bridge crosses the western shoreline of mainland Pinellas County and extending in a generally southerly direction along the western shoreline of mainland Pinellas County to the *west end of the Seminole Bridge following the bridge* easterly to exclude Long Bayou and Cross Bayou, thence in a southerly direction including the western shoreline of the Sunshine Skyway Causeway and extending to the southern boundary of Pinellas County, thence westerly along the Pinellas County line and around Mullet Key along a line 100 yards seaward of the shoreline of Mullet Key and northerly along a *line passing 100 yards to the west of the shorelines of* Summer Resort Key, Cabbage Key and Shell Key to the southernmost point of Long Key, thence in a generally northerly direction along the inner shoreline of Long Key, Treasure Island and Sand Key to a point where the west end of the State Road 688 bridge crosses the inner shoreline of Sand Key, thence easterly along the south side of said bridge to the point of beginning. The boundary of the preserve designated as the shoreline shall mean the line of mean high water along such shoreline.

(b) The preserve established by this section shall include the submerged bottom lands, the water column upon such lands, and the islands owned by the state within the boundaries of the preserve. Any privately held land or submerged land within the established bulkhead lines or privately held islands within the preserve shall be deemed to be excluded therefrom. The Board of Trustees of the Internal Improvement Trust Fund may negotiate an arrangement with any such private owner whereby such lands or water bottoms may be included within the preserve.

(3) The Board of Trustees of the Internal Improvement Trust Fund are hereby directed to maintain Boca Ciega Bay as an aquatic preserve subject to the following provisions:

(a) No further sale, transfer, or lease of sovereignty submerged lands within the preserve shall be approved or consummated by the board of trustees except upon a showing of extreme hardship on the part of the applicant or when the overwhelming public interest so demands.

(b) No further dredging or filling of submerged lands within the preserve shall be approved or tolerated by the board of trustees except:

1. Such minimum dredging and spoiling as may be authorized for public navigation projects;

2. Such other alteration of physical conditions as may be necessary to enhance the quality or utility of the preserve as determined by the Pinellas County Water and Navigation Control Authority in a public hearing; and

3. Such dredging as is necessary for the purpose of eliminating conditions hazardous to the public health or for the purpose of eliminating stagnant waters, unsightly mud flats, islands, and spoil banks the dredging of which would enhance the aesthetic quality and utility of the preserve and is clearly in the public interest as determined by the Pinellas County Water and Navigation Control Authority in a public hearing.

There shall be no dredging beyond the bulkhead line for the sole purpose of providing fill for upland or submerged land within the bulkhead line. In addition there shall be no drilling of wells, excavation for shell or minerals, and no erection of structures (other than docks) within the preserve, unless such activity is associated with activity authorized by this section.

[1](c) The board of trustees shall not approve any seaward relocation of bulkhead lines or further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline.

(4)(a) The board of trustees shall adopt and enforce reasonable rules and regulations to carry out the provisions of this section and specifically to provide:

1. Additional preserve management criteria as may be necessary to accommodate special circumstances; and

2. Regulation of human activity within the preserve in such a manner as not to interfere unreasonably with such lawful and traditional public uses of the preserve as fishing (both sport and commercial), boating, and swimming.

(b) Other uses of the preserve, or human activity within the preserve, although not originally contemplated, may be permitted by the board of trustees, but only subsequent to a formal finding of compatibility with the purposes of this section.

(5) Neither the establishment nor the management of the Boca Ciega Bay Aquatic Preserve shall operate to infringe upon the riparian rights of upland property owners adjacent to or within the preserve. Reasonable improvement for ingress and egress, mosquito control, shore protection, bridges, causeways, and similar purposes may be permitted by the board of trustees, subject to the provisions of any other applicable laws under the jurisdiction of other agencies.

(6) Nothing herein shall be construed to deprive the Pinellas County Water and Navigation Control Authority of its jurisdiction, powers, and duties.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 69-342; ss. 27, 35, ch. 69-106.

[1]*Note.*—See s. 26, ch. 75-22, which repealed s. 253.172, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

258.165 Biscayne Bay Aquatic Preserve.—

(1) DESIGNATION.—Biscayne Bay in Dade and Monroe Counties, as hereinafter described to include Card Sound, is designated and established as an aquatic preserve under the provisions of this section. It is the intent of the Legislature that Biscayne Bay be preserved in an essentially natural condition so that its biological and aesthetic values may endure *for the enjoyment of future generations.*

(2) BOUNDARIES.—

(a) For the purposes of this section, Biscayne Bay, sometimes referred to in this section as "the preserve," shall be comprised of the body of water in Dade and Monroe Counties known as Biscayne Bay whose boundaries are generally defined as follows:

Begin at the southwest intersection of the *right-of-way of State Road 826 and the mean* high-water line of Biscayne Bay (Township 52 South, Range 42 East, Dade County); thence southerly along the westerly mean high-water line of Biscayne Bay to its intersection with the right-of-way of State Road 905A (Township 59 South, Range 40 East, Monroe County); thence easterly along such right-of-way to the easterly mean high-water line of Biscayne Bay; thence northerly along the easterly mean high-water line of Biscayne Bay following the westerly shores of the most easterly islands and Keys with connecting lines drawn between the closest points of adjacent islands to the southeasterly intersection of the right-of-way of State Road 826 and the mean high-water line of Biscayne Bay; thence westerly to the point of beginning. Said boundary extends across the mouths of all artificial waterways, but includes all natural waterways tidally connected to Biscayne Bay. Excluded from the preserve are those submerged lands conveyed to the United States for the establishment of the Biscayne National Monument as defined by Pub. L. No. 90-606 of the United States.

(b) The preserve established by this section shall include the submerged bottom lands and the water column upon such lands, as well as all publicly owned islands, within the boundaries of the preserve. Any privately held upland within the boundaries of the preserve shall be deemed to be excluded therefrom. However, the Board of Trustees of the Internal Improvement Trust Fund may negotiate an arrangement with any such private upland owner by which such land may be included in the preserve.

(c) The board of trustees may transfer to the United States any interest in lands, title to which is vested in the board of trustees, which are presently within the boundaries of the preserve for inclusion in the Biscayne National Monument or its successor should the area be designated a national park. Transfers of interest under this paragraph shall be subject to the following conditions:

1. All interests in oil, gas, or other mineral rights held by the board of trustees shall be retained and not transferred to the United States.

2. All rights to fish on the waters shall be retained and not transferred to the United States.

3. All rights to impose and collect state excise taxes on the sales of alcohol or tobacco shall be retained and not transferred to the United States.

4. Transfers of interest shall be subject to outstanding easements, reservations, or other interests *appearing of record.*

(3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the Internal Improvement Trust Fund is authorized and directed to maintain the aquatic preserve hereby created pursuant and subject to the following provisions:

(a) No further sale, transfer, or lease of sovereignty submerged lands in the preserve shall be approved or consummated by the board of trustees, except upon a showing of extreme hardship on the part of the applicant and a determination by the board of trustees that such sale, transfer, or lease is in the public interest.

(b) No further dredging or filling of submerged lands of the preserve shall be approved or tolerated by the board of trustees except:

1. *Such minimum dredging and spoiling as may* be authorized for public navigation projects or for such minimum dredging and spoiling as may be constituted as a public necessity or for preservation of

the bay according to the expressed intent of this section.

2. Such other alteration of physical conditions as may be necessary to enhance the quality or utility of the preserve.

3. Such minimum dredging and filling as may be authorized for the creation and maintenance of marinas, piers, and docks and their attendant navigation channels and access roads. Such projects may only be authorized upon a specific finding by the board of trustees that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality of the preserve. This subparagraph shall not approve the connection of upland canals to the waters of the preserve.

4. Such dredging as is necessary for the purpose of eliminating conditions hazardous to the public health or for the purpose of eliminating stagnant waters, unsightly mud flats, islands, and spoil banks, the dredging of which would enhance the aesthetic quality and utility of the preserve and be clearly in the public interest as determined by the board of trustees.

Any dredging or filling under this subsection or improvements under subsection (5) shall be approved only after public notice and hearings in the area affected, pursuant to chapter 120.

(c) There shall be no drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with activity authorized by this section.

'(d) The board of trustees shall not approve any seaward relocation of bulkhead lines or further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline. Construction, replacement, or relocation of seawalls shall be prohibited without the approval of the board of trustees, which approval may be granted only if riprap construction is used in the seawall.

(e) Notwithstanding other provisions of this section, the board of trustees may, respecting lands lying within Biscayne Bay:

1. Enter into agreements for and establish lines delineating sovereignty and privately owned lands.

2. Enter into agreements for the exchange of, and exchange, sovereignty lands for privately owned lands.

3. Accept gifts of land within or contiguous to the preserve.

4. Negotiate for, and enter into agreements with owners of lands contiguous to sovereignty lands for, any public and private use of any of such lands.

5. Take any and all actions convenient for, or necessary to, the accomplishment of any and all of the acts and matters authorized by this paragraph.

(4) RULES.—

(a) The board of trustees shall adopt and enforce reasonable rules and regulations to carry out the provisions of this section and specifically to provide:

1. Additional preserve management criteria as may be necessary to accommodate special circumstances.

2. Regulation of human activity within the preserve in such a manner as not to interfere unreasonably with lawful and traditional public uses of the preserve, such as fishing (both sport and commercial), boating, and swimming.

(b) Other uses of the preserve, or human activity within the preserve, although not originally contemplated, may be permitted by the board of trustees, but only subsequent to a formal finding of compatibility with the purposes of this section.

(c) Fishing involving the use of seines or nets is prohibited in the preserve, except when the fishing is for shrimp or mullet and such fishing is otherwise permitted by state law or rules promulgated by the Department of Natural Resources.

(5) RIPARIAN RIGHTS.—Neither the establishment nor the management of the Biscayne Bay Aquatic Preserve shall operate to infringe upon the riparian rights of upland property owners adjacent to or within the preserve. Reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, and similar purposes may be permitted by the board of trustees or Department of Environmental Regulation, subject to the provisions of any other applicable laws under the jurisdiction of other agencies.

(6) DISCHARGE OF WASTES PROHIBITED.—No wastes or effluents which substantially inhibit the accomplishment of the purposes of this section shall be discharged into the preserve.

(7) ENFORCEMENT.—The provisions of this section may be enforced in accordance with the provisions of s. 403.412. In addition, the Department of Legal Affairs is authorized to bring an action for civil penalties of $5,000 per day against any person, natural or corporate, who violates the provisions of this section or any rule or regulation issued hereunder.

(8) SECTIONS 403.501-403.515 APPLICABLE.—The provisions of this section shall be subject to the provisions of ss. 403.501-403.515.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 74-171; s. 2, ch. 78-109; s. 1, ch. 77-174; s. 1, ch. 78-628; s. 12, ch. 79-65; s. 1, ch. 80-204.

'Note.—Section 26, ch. 75-22, repealed s. 253.122, relating to the power to fix bulkhead lines.

258.17 Short title.—Sections 258.17-258.32 shall be known and may be cited as the "State Wilderness System Act."

History.—s. 1, ch. 70-355; s. 1, ch. 77-126.

258.18 Statement of legislative intent.—It is the legislative intent to establish a state wilderness system consisting of designated wilderness areas which shall be set aside in permanent preserves, forever off limits to incompatible human activity. These areas shall be dedicated in perpetuity as wilderness areas and shall be managed in such a way as to protect and enhance their basic natural qualities for public enjoyment and utilization as reminders of the natural conditions that preceded man.

History.—s. 2, ch. 70-355.

258.19 Definitions.—As used in ss. 258.17-258.32:

(1) "Wilderness area" means an area formally set aside for preservation essentially in its natural or existing condition by regulating all human activity which might have an effect on it. Such an area is generally unaltered by man and provides a feeling of solitude and remoteness. These areas are set aside for aesthetic, biological, or scientific reasons.

(2) "Department" means the Department of Natural Resources.

History.—s. 3, ch. 70-355; s. 1, ch. 70-439; s. 2, ch. 77-126.

258.21 Use of areas.—

(1) Wilderness areas may be available for use by the public, to the extent compatible with the purposes for which the areas are established, for the following activities:

(a) Hiking;
(b) Swimming;
(c) Fishing;
(d) Restricted boating;
(e) Hunting;
(f) Picnicking;
(g) Sightseeing;
(h) Primitive camping;
(i) Nature study; and
(j) Research.

(2) Wilderness areas may also be designated for use for, but not limited to, the following purposes:

(a) Natural water storage;
(b) Ground water recharge areas;
(c) Preservation of estuarine and marsh systems; and
(d) Fish and wildlife breeding grounds and refuges.

(3) Artificial manipulation to further the purposes enumerated in subsection (2) is prohibited, except for the purpose of restoring and maintaining optimum natural conditions.

History.—s. 5, ch. 70-355; s. 3, ch. 77-126.

258.22 Selection of wilderness areas.—

(1) The Department of Natural Resources may, upon recommendation of the state agency which manages any lands involved and after public notice and a public meeting in each county in which the area is to be located, establish wilderness areas, formally setting aside such areas by proper resolution.

(2) The resolution establishing a wilderness area shall include:

(a) A legal description of the area to be included.
(b) Dedication of the area in perpetuity.
(c) A general statement of what is sought to be preserved.
(d) A clear statement of the management objectives and procedures for the area.

(3) Such resolutions shall be filed for record in each county in which a portion of the wilderness area is located.

(4) Lands owned by the Board of Trustees of the Internal Improvement Trust Fund may, upon recommendation of the state agency which manages such lands, be included in wilderness areas if accepted by the department. Lands owned by any governmental agency may be included in a wilderness area, subject to affirmative action of the governmental agency owning the land and acceptance by the department.

History.—s. 6, ch. 70-355; s. 1, ch. 70-439; s. 4, ch. 77-126.

258.23 Authorization to acquire lands; dedication by lease agreement.—

(1) For the purpose of establishing wilderness areas, the Department of Natural Resources is authorized to acquire lands by any lawful means other than through the use of the power of eminent domain. Lands shall be acquired in accordance with acquisition procedures for state lands provided for in s. 253.025.

(2) Notwithstanding the provisions of s. 258.18 and s. 258.22(2)(b) requiring dedication in perpetuity, the department is authorized to lease privately owned lands to be included in the wilderness system upon the recommendation of the interagency advisory committee established pursuant to s. 258.28 and upon application by the owner of the property. Such lease shall be evidenced by a written instrument containing the following conditions:

(a) Term of the lease shall be for a minimum period of 50 years.

(b) The department shall have the power and duty to enforce the provisions of each lease agreement and shall additionally have the power to terminate any lease if the termination is demonstrated to be in the best interest of the wilderness system.

(c) The department shall pay no more than $1 per year for any such lease.

(d) The owner of such leased land is prohibited from any use of the land which use is incompatible with ss. 258.17-258.32.

(3) In assessing the leased land, the property appraiser of the county in which the land is located shall give full recognition to the duration of the lease and the extent of the restrictions imposed therein.

History.—s. 7, ch. 70-355; s. 1, ch. 70-439; s. 1, ch. 72-309; s. 1, ch. 77-102; s. 5, ch. 77-126; s. 12, ch. 79-255.

258.24 Size.—The size of a wilderness area shall be large enough to include the principal features which justify its establishment.

History.—s. 8, ch. 70-355.

258.25 Number.—There shall be no fixed limit on the number of wilderness areas to be established, but each such area shall be justified by its intrinsic merit, as determined by the department.

History.—s. 9, ch. 70-355; s. 1, ch. 70-439; s. 6, ch. 77-126.

258.26 Priority of establishment.—The order of selection and establishment of wilderness areas shall be governed by the relative vulnerability of the features of the area sought to be preserved. The Department of Natural Resources is directed to give early consideration to wilderness areas which:

(1) Are in close proximity to urban or rapidly developing areas.

(2) Are in imminent danger from some other source.

(3) Are designed to protect rare or endangered species or other unique natural features.

(4) Constitute the last vestiges of natural conditions within a given region.

History.—s. 10, ch. 70-355; s. 1, ch. 70-439; s. 7, ch. 77-126.

'258.28 Interagency advisory committee.—The Department of Natural Resources shall create a continuing interagency advisory committee to advise and assist in:

(1) The selection of wilderness areas; and
(2) The formulation of rules and regulations for the use of such areas.
History.—s. 12, ch. 70-355; s. 1, ch. 70-439; s. 8, ch. 77-126; s. 1, ch. 82-46; s. 2, ch. 83-265.
*Note.—Repealed effective October 1, 1989, by s. 1, ch. 82-46, as amended by s. 2, ch. 83-265, and scheduled for review pursuant to s. 11.611 in advance of that date.

258.29 Atlas of areas.—The Department of Natural Resources shall maintain an atlas of wilderness areas, on maps of suitable scale.
History.—s. 13, ch. 70-355; s. 1, ch. 70-439; s. 9, ch. 77-126.

258.30 Rules and regulations.—The Department of Natural Resources shall adopt rules and regulations prescribing a uniform set of general management criteria covering all wilderness areas.
(1) No alteration of physical conditions within a wilderness area shall be permitted except to provide:
(a) Minimal use facilities, such as hiking trails, pit toilets, manually operated water pumps, and primitive camp sites; and
(b) Minimum management facilities, which may include boundary fences and unimproved vehicle trails for control purposes and emergency access.
(2) The following are specifically prohibited activities or uses:
(a) Dredging and dredge spoil dumping;
(b) Artificial drainage or impoundments;
(c) Farming;
(d) Clearing of land;
(e) Dumping of wastes;
(f) Mining;
(g) Pesticide spraying, except emergency measures required to protect public health and spraying for forestry disease control;
(h) The use of motorized vehicles on land or water, except for emergencies or valid management purposes; and
(i) Removal of timber, except to restore original plant communities.
(3) All human activity within each wilderness area shall be subject to special rules and regulations for implementing the intent and purpose of ss. 258.17-258.32 for the particular area involved.
(4) Other uses of a wilderness area, or human activity within the area, although not originally contemplated, may be permitted by the department, but only after a formal finding of compatibility made by the department, and subject to regulation.
History.—s. 14, ch. 70-355; s. 1, ch. 70-439; s. 10, ch. 77-126; s. 115, ch. 79-400.

258.31 Signs and markers.—Wilderness areas shall be identified by appropriate signs and boundary markers.
History.—s. 15, ch. 70-355.

258.32 Withdrawal of lands from system.—Except pursuant to s. 258.23(2)(b), no part of any wilderness area may be withdrawn from the state wilderness system except by resolution of the Department of Natural Resources and only after notice of such proposed withdrawal is published in each county in which the area affected is located, in the manner prescribed by law and after a public meeting is held, if requested.
History.—s. 16, ch. 70-355; s. 2, ch. 72-309; s. 11, ch. 77-126.

258.331 Penalty for violation of ss. 258.17-258.32.—Any violation by any person, natural or corporate, of the provisions of this act or any rule or regulation issued hereunder shall be punishable by a fine not to exceed $500 per violation.
History.—s. 12, ch. 77-126.

258.332 Construction of ch. 77-126, Laws of Florida.—Nothing in this act shall be construed so as to prevent the lawful management of water resources by any water management district created pursuant to chapter 373, or so as to divest any lawful rights acquired prior to the effective date of this act.
History.—s. 13, ch. 77-126.

258.35 Short title; ss. 258.35-258.46.—Sections 258.35-258.46 shall be known and may be cited as the "Florida Aquatic Preserve Act of 1975."
History.—s. 1, ch. 75-172.

258.36 Legislative intent.—It is the intent of the Legislature that the state-owned submerged lands in areas which have exceptional biological, aesthetic, and scientific value, as hereinafter described, be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.
History.—s. 1, ch. 75-172.

258.37 Definitions.—As used in ss. 258.35 through 258.46:
(1) "Aquatic preserve" means an exceptional area of submerged lands and its associated waters set aside for being maintained essentially in its natural or existing condition.
(2) "Biological type" means an area set aside to promote certain forms of animal or plant life or their supporting habitat.
(3) "Aesthetic type" means an area set aside to maintain certain scenic qualities or amenities.
(4) "Scientific type" means an area set aside to maintain certain qualities or features which have scientific value or significance.
(5) "Board" means the Board of Trustees of the Internal Improvement Trust Fund.
History.—s. 1, ch. 75-172.

258.38 Types of aquatic preserves.—Each aquatic preserve shall be characterized as being one or more of the following principal types:
(1) Biological.
(2) Aesthetic.
(3) Scientific.
History.—s. 1, ch. 75-172.

258.39 Boundaries of preserves.—The submerged lands included within the boundaries of Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Charlotte, Pinellas, Martin, Palm Beach, Broward, Dade, Monroe, Collier, Lee, Citrus, Franklin, Gulf, Bay, Okaloosa, Santa Rosa, and Escambia Counties, as hereinafter described, with the exception of privately held submerged lands lying

landward of established bulkheads and of privately held submerged lands within Monroe County where the establishment of bulkhead lines is not required, are hereby declared to be aquatic preserves. Such aquatic preserve areas include:
(1) The Fort Clinch State Park Aquatic Preserve, as described in the Official Records of Nassau County in Book 108, pages 343-346, and in Book 111, page 409.
(2) Nassau River-St. Johns River Marshes Aquatic Preserve, as described in the Official Records of Duval County in Volume 3183, pages 547-552, and in the Official Records of Nassau County in Book 108, pages 232-237.
(3) Pellicer Creek Aquatic Preserve, as described in the Official Records of St. Johns County in Book 181, pages 363-366, and in the Official Records of Flagler County in Book 33, pages 131-134.
(4) Tomoka Marsh Aquatic Preserve, as described in the Official Records of Flagler County in Book 33, pages 135-138, and in the Official Records of Volusia County in Book 1244, pages 615-618.
(5) Mosquito Lagoon Aquatic Preserve, as described in the Official Records of Volusia County in Book 1244, pages 619-623, and in the Official Records of Brevard County in Book 1143, pages 190-194.
(6) Banana River Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 195-198.
(7) Indian River-Malabar to Sebastian Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 199-202, and in the Official Records of Indian River County in Book 368, pages 5-8.
(8) Indian River-Vero Beach to Fort Pierce Aquatic Preserve, as described in the Official Records of Indian River County in Book 368, pages 9-12, and in the Official Records of St. Lucie County in Book 187, pages 1083-1086.
(9) Jensen Beach to Jupiter Inlet Aquatic Preserve, as described in the Official Records of St. Lucie County in Book 218, pages 2865-2869.
(10) Loxahatchee River-Lake Worth Creek Aquatic Preserve, as described in the Official Records of Martin County in Book 320, pages 193-196, and in the Official Records of Palm Beach County in Volume 1860, pages 806-809.
(11) Biscayne Bay-Cape Florida to Monroe County Line Aquatic Preserve, as described in the Official Records of Dade County in Book 7055, pages 852-856, less, however, those lands and waters as described in s. 258.165.
(12) North Fork, St. Lucie Aquatic Preserve, as described in the Official Records of Martin County in Book 337, pages 2159-2162, and in the Official Records of St. Lucie County in Book 201, pages 1676-1679.
(13) Yellow River Marsh Aquatic Preserve, as described in the Official Records of Santa Rosa County in Book 206, pages 568-571.
(14) Fort Pickens State Park Aquatic Preserve, as described in the Official Records of Santa Rosa County in Book 220, pages 60-63, and in the Official Records of Escambia County in Book 518, pages 659-662.
(15) Rocky Bayou State Park Aquatic Preserve, as described in the Official Records of Okaloosa County in Book 593, pages 742-745.
(16) St. Andrews State Park Aquatic Preserve, as described in the Official Records of Bay County in Book 379, pages 547-550.
(17) St. Joseph Bay Aquatic Preserve, as described in the Official Records of Gulf County in Book 46, pages 73-76.
(18) Apalachicola Bay Aquatic Preserve, as described in the Official Records of Gulf County in Book 46, pages 77-81, and in the Official Records of Franklin County in Volume 98, pages 102-106.
(19) Alligator Harbor Aquatic Preserve, as described in the Official Records of Franklin County in Volume 98, pages 82-85.
(20) St. Martins Marsh Aquatic Preserve, as described in the Official Records of Citrus County in Book 276, pages 238-241.
(21) Matlacha Pass Aquatic Preserve, as described in the Official Records of Lee County in Book 800, pages 725-728.
(22) Pine Island Sound Aquatic Preserve, as described in the Official Records of Lee County in Book 648, pages 732-736.
(23) Cape Romano-Ten Thousand Islands Aquatic Preserve, as described in the Official Records of Collier County in Book 381, pages 298-301.
(24) Lignumvitae Key Aquatic Preserve, as described in the Official Records of Monroe County in Book 502, pages 139-142.
(25) Coupon Bight Aquatic Preserve, as described in the Official Records of Monroe County in Book 502, pages 143-146.
(26) Lake Jackson Aquatic Preserve, as established by chapter 73-534, Laws of Florida, and defined as authorized by s. 253.151 or as otherwise authorized by law.
(27) Pinellas County Aquatic Preserve, as established by chapter 72-663, Laws of Florida; Boca Ciega Aquatic Preserve, as established by s. 258.16; and the Biscayne Bay Aquatic Preserve, as established by s. 258.165. If any provision of this act is in conflict with an aquatic preserve established by s. 258.16, chapter 72-663, Laws of Florida, or s. 258.165, the stronger provision for the maintenance of the aquatic preserve shall prevail.
(28) Estero Bay Aquatic Preserve, the boundaries of which are generally: All of those sovereignty submerged lands located bayward of the mean high-water line being in Sections 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 35, and 36, Township 46 South, Range 24 East; and in Sections 19, 20, 28, 29, and 34, Township 46 South, Range 24 East, lying north and east of Matanzas Pass Channel; and in Sections 19, 30, and 31, Township 46 South, Range 25 East; and in Sections 6, 7, 17, 18, 19, 20, 29, 30, 31, and 32, Township 47 South, Range 25 East; and in Sections 1, 2, 3, 11, 12, 13, 14, 24, and 25, Township 47 South, Range 24 East, in Lee County, Florida. Any and all submerged lands conveyed by the Trustees of the Internal Improvement Trust Fund prior to October 12, 1966, and any and all uplands now in private ownership are specifically exempted from this preserve.

(29) Cape Haze Aquatic Preserve, the boundaries of which are generally: That part of Gasparilla Sound, Catfish Creek, Whiddon Creek, "The Cutoff," Turtle Bay, and Charlotte Harbor lying within the following described limits: Northerly limits: Commence at the northwest corner of Section 18, Township 42 South, Range 21 East, thence south along the west line of said Section 18 to its intersection with the Government Meander Line of 1843-1844, and the point of beginning, thence southeasterly along said meander line to the northwesterly shoreline of Catfish Creek, thence northeasterly along said shoreline to the north line of said Section 18, thence east along said north line to the easterly shoreline of Catfish Creek, thence southeasterly along said shoreline to the east line of said Section 18, thence south along said east line, crossing an arm of said Catfish Creek to the southerly shoreline of said creek, thence westerly along said southerly shoreline and southerly along the easterly shoreline of Catfish Creek to said Government Meander Line, thence easterly and southeasterly along said meander line to the northerly shoreline of Gasparilla Sound in Section 21, Township 42 South, Range 21 East, thence easterly along said northerly shoreline and northeasterly along the westerly shoreline of Whiddon Creek to the east west quarter line in Section 16, Township 42 South, Range 21 East, thence east along said quarter line and the quarter Section line of Section 15, Township 42 South, Range 21 East to the easterly shoreline of Whiddon Creek, thence southerly along said shoreline to the northerly shoreline of "The Cutoff," thence easterly along said shoreline to the westerly shoreline of Turtle Bay, thence northeasterly along said shoreline to its intersection with said Government Meander Line in Section 23, Township 42 South, Range 21 East, thence northeasterly along said meander line to the east line of Section 12, Township 42 South, Range 21 East, thence north along the east line of said Section 12, and the east line of Section 1, Township 42 South, Range 21 East to the northwest corner of Section 6, Township 42 South, Range 22 East, thence east along the north line and extension thereof of said Section 6 to a point 2,640 feet east of the westerly shoreline of Charlotte Harbor and the end of the northerly limits. Easterly limits: Commence at the northwest corner of Section 6, Township 42 South, Range 22 East, thence east along the north line of said Section 6 and extension thereof to a point 2,640 feet east of the westerly shoreline of Charlotte Harbor and the point of beginning, thence southerly along a line 2,640 feet easterly of and parallel with the westerly shoreline of Charlotte Harbor and along a southerly extension of said line to the line dividing Charlotte and Lee Counties and the end of the easterly limits. Southerly limits: Begin at the point of ending of the easterly limits, above described, said point being in the line dividing Charlotte and Lee Counties, thence southwesterly along a straight line to the most southerly point of Devil Fish Key, thence continue along said line to the easterly right-of-way of the Intracoastal Waterway and the end of the southerly limits. Westerly limits: Begin at the point of ending of the southerly limits as described above, thence northerly along the easterly right-of-way line of the Intracoastal Waterway to its intersection with a southerly extension of the west line of Section 18, Township 42 South, Range 21 East, thence north along said line to point of beginning.

(30) Wekiva River Aquatic Preserve, the boundaries of which are generally: All the state-owned sovereignty lands lying waterward of the ordinary high-water mark of the Wekiva River and the Little Wekiva River and their tributaries lying and being in Lake, Seminole, and Orange counties and more particularly described as follows:

(a) In Sections 15, 16, 17, 20, 21, 22, 27, 28, 29, and 30, Township 20 South, Range 29 East. These sections are also depicted on the Forest City Quadrangle (U.S.G.S. 7.5 minute series-topographic) 1959 (70PR); and

(b) In Sections 3, 4, 8, 9, and 10, Township 20 South, Range 29 East and in Sections 21, 28, and 33, Township 19 South, Range 29 East lying north of the right-of-way for the Atlantic Coast Line Railroad and that part of Section 33, Township 19 South, Range 29 East lying between the Lake and Orange County lines and the right-of-way of the Atlantic Coast Line Railroad. These sections are also depicted on the Sanford SW Quadrangle (U.S.G.S. 7.5 minute series-topographic) 1965 (70-1); and

(c) All state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high-water mark of the Wekiva River and the Little Wekiva and their tributaries within the Peter Miranda Grant in Lake County lying below the 10 foot m.s.l. contour line nearest the meander line of the Wekiva River and all state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high-water mark of the Wekiva River and the Little Wekiva and their tributaries within the Moses E. Levy Grant in Lake County below the 10 foot m.s.l. contour line nearest the meander lines of the Wekiva River and Black Water Creek as depicted on the PINE LAKES 1962 (70-1), ORANGE CITY 1964 (70PR), SANFORD 1965 (70-1), and SANFORD S.W. 1965 (70-1) QUADRANGLES (U.S.G.S. 7.5 minute topographic); and

(d) All state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high-water mark of the Wekiva River and the Little Wekiva River and their tributaries lying below the 10 foot m.s.l. contour line nearest the meander line of the Wekiva and St. John's Rivers as shown on the ORANGE CITY 1964 (70PR), SANFORD 1965 (70-1), and SANFORD S.W. 1965 (70-1) QUADRANGLES (U.S.G.S. 7.5 minute topographic) within the following described property: Beginning at a point on the south boundary of the Moses E. Levy Grant, Township 19 South, Range 29 East, at its intersection with the meander line of the Wekiva River; thence south 60¼ degrees east along said boundary line 4,915.68 feet; thence north 29¼ degrees east 15,516.5 feet to the meander line of the St. John's River; thence northerly along the meander line of the St. John's River to the mouth of the Wekiva River; thence southerly along the meander line of the Wekiva River to the beginning; and

(e) All state-owned sovereignty lands, public lands, and lands whether public or private below the ordinary high-water mark of the Wekiva River and the Little Wekiva River and their tributaries within the Peter Miranda Grant lying east of the Wekiva River, less the following:

1. State Road 46 and all land lying south of said State Road No. 46.

2. Beginning 15.56 chains West of the Southeast corner of the SW ¼ of the NE ¼ of Section 21, Township 19 South, Range 29 East, run east 600 feet; thence north 960 feet; thence west 340 feet to the Wekiva River; thence southwesterly along said Wekiva River to point of beginning.

3. That part of the east ¼ of the SW ¼ of Section 22, Township 19 South, Range 29 East, lying within the Peter Miranda Grant east of the Wekiva River.

(31) Rookery Bay Aquatic Preserve, the boundaries of which are generally: All of the state-owned sovereignty lands lying waterward of the mean high-water line in Rookery Bay and in Henderson Creek and the tributaries thereto in Collier County, Florida. Said lands being more particularly described as lying and being in Sections 1, 2, 11, 12, and 13, Township 51 South, Range 25 East and in Sections 7, 8, 9, 16, 17, 18, 19, and 20, Township 51 South, Range 26 East, Collier County, Florida.

Any and all submerged lands theretofore conveyed by the Trustees of the Internal Improvement Trust Fund and any and all uplands now in private ownership are specifically exempted from this dedication.

History.—s. 1, ch. 75-172; s. 1, ch. 76-109; s. 1, ch. 76-211; s. 84, ch. 77-104; s. 1, ch. 83-62.

[1]Note.—See *former* s. 253.151, F.S. '81.

258.391 Cockroach Bay Aquatic Preserve.—The designation by the Board of Trustees of the Internal Improvement Trust Fund on May 18, 1976, of the following described area in Hillsborough County for inclusion in the aquatic preserve system under the Florida Aquatic Preserve Act of 1975 is hereby confirmed. Such area, to be known as the Cockroach Bay Aquatic Preserve, shall be included in the aquatic preserve system for the period of a 40-year lease of such area by the board from the Tampa Port Authority and shall include the following described real property: Begin at the northeast corner of Section 1, Township 33 South, Range 17 East, Manatee County, thence west along the north line of said Section 1 to its intersection with the mean high-water line of Tampa Bay, said point being the point of beginning; from said point of beginning continue west 500 feet into the waters of Tampa Bay, thence northeasterly along a line 500 feet westerly of the mean high-water line of Tampa Bay, said line also being 500 feet westerly of the mean high-water line on Beacon Key, Snake Key, Camp Key, Big Pass Key, Little Cockroach Island, and Sand Key, to a point due west from Bird Key, thence east to the most southwesterly point of Bird Key, thence easterly along a channel along the northerly side of Tropical Island and of Goat Island to the most easterly point of said Goat Island, thence south to the intersection of the mean high-water line of the southerly shore of the Little Manatee River, thence in a northwesterly, westerly, and southwesterly direction along the mean high-water line of Tampa Bay and Cockroach Bay to the point of beginning. Less any islands, submerged lands, or uplands not owned by the Tampa Port Authority.

History.—s. 1, ch. 76-197.

258.392 Gasparilla Sound-Charlotte Harbor Aquatic Preserve.—The following described area in Lee and Charlotte Counties is designated by the Legislature for inclusion in the aquatic preserve system under the Florida Aquatic Preserve Act of 1975. Such area, to be known as the Gasparilla Sound-Charlotte Harbor Aquatic Preserve, shall be included in the aquatic preserve system and shall include the following described real property: Commence at the northwest corner of Section 18, Township 42 South, Range 21 East; thence northerly along the line of mean high water to the intersection of State Road 776 with said mean high-water line; thence south-southwesterly along said road to the intersection of said road with the mean high-water line of Gasparilla Island; thence southerly along said mean high-water line to the most southerly point of Gasparilla Island; thence southeasterly to the northernmost point at the mean high-water line on Lacosta Island; thence southeasterly along said mean high-water line to the northwest corner of Section 6, Township 44 South, Range 21 East; thence east to a northerly extension of the east line of Section 25, Township 44 South, Range 21 East; thence southeasterly along the mean high-water line of Pine Island to the intersection of the east line of Section 28, Township 43 South, Range 22 East, with said mean high-water line; thence northeasterly to the intersection of the north line of Section 23, Township 43 South, Range 22 East with the mean high-water line; thence northerly along said mean high-water line to the intersection of State Road 45 (U.S. Highway 41) with said mean high-water line; thence northwesterly along said road to the intersection of said road with the mean high-water line at Live Oak Point; thence westerly along the mean high-water line to the intersection of State Road 771 with said mean high-water line; thence south-southwesterly along said road to the intersection of said road with the mean high-water line, on the southern shore of the Myakka River; thence southerly along the mean high-water line of the westerly shore of Charlotte Harbor to the northwest corner of Section 6, Township 42 South, Range 22 East; thence east along the north line and extension thereof of said Section 6 to a point 2,640 feet east of the westerly shoreline of Charlotte Harbor; thence southerly along a line 2,640 feet easterly of and parallel with the westerly shoreline of Charlotte Harbor and along a southerly extension of said line to the line dividing Charlotte and Lee Counties; thence southwesterly along a straight line to the most southerly point of Devil Fish Key; thence along said line to the easterly right-of-way of the Intracoastal Waterway; thence northerly along the easterly right-of-way of the Intracoastal Waterway to its intersection with a southerly extension of the west line of Section 18, Township 42 South, Range 21 East; thence north along said line to the point of beginning. Said boundary extends across the mouths of all artificial waterways, but includes all tidally connected natural waterways.

History.—s. 1, ch. 79-115.

258.40 Scope of preserves.—

(1) The aquatic preserves established under this act shall include only lands or water bottoms owned by the state as set forth in s. 253.03 and such lands or water bottoms owned by other governmental agencies as may be specifically authorized for inclusion by appropriate instrument in writing from such agency. Any privately owned lands or water bottoms shall be deemed to be excluded therefrom; however, the board may negotiate an arrangement with any such private owner by which such land may be included in the preserves.

(2) Any publicly owned and maintained navigation channel or other public works project authorized by the United States Congress designed to improve or maintain commerce and navigation shall be deemed excluded from the aquatic preserves established under this act.

(3) All lands lost by avulsion or by artificially induced erosion shall be deemed excluded from the provisions of this act.

History.—s. 1, ch. 75-172.

258.41 Establishment of aquatic preserves.—

(1) The board may establish additional areas to be included in the aquatic preserve system, subject to confirmation by the Legislature.

(2) The board may, after public notice and public hearing in the county or counties in which the proposed preserve is to be located, adopt a resolution formally setting aside such areas to be included in the aquatic preserve system.

(3) The resolution setting aside an aquatic preserve area shall include:

(a) A legal description of the area to be included.

(b) The designation of the type of aquatic preserve being set aside.

(c) A general statement of what is sought to be preserved.

(d) A clear statement of the management responsibilities for the area.

(4) Lands and water bottoms owned by other governmental agencies may be included in an aquatic preserve upon specific authorization for inclusion by an appropriate instrument in writing from the governmental agency.

(5) Lands and water bottoms in private ownership may be included in an aquatic preserve upon specific authorization for inclusion by an appropriate instrument in writing from the owner. The appropriate instrument shall be either a dedication in perpetuity or a lease. Such lease shall contain the following conditions:

(a) Term of the lease shall be for a minimum period of 10 years.

(b) The board shall have the power and duty to enforce the provisions of each lease agreement and shall additionally have the power to terminate any lease if the termination is in the best interest of the aquatic preserve system.

(c) The board shall pay no more than $1 per year for any such lease.

(6) Except as provided in subsection (5) no aquatic preserve or any part thereof shall be withdrawn from the state aquatic preserve system except by an act of the Legislature. Notice of such proposed legislation shall be published in each county in which the affected area is located, in the manner prescribed by law relating to local legislation.

(7) Within 30 days of the designation and establishment of an aquatic preserve, the Board of Trustees of the Internal Improvement Trust Fund shall record in the public records of the county or counties in which the aquatic preserve is located a legal description of the aquatic preserve.

History.—s. 1, ch. 75-172.

258.42 Maintenance of preserves.—The Board of Trustees of the Internal Improvement Trust Fund shall maintain such aquatic preserves subject to the following provisions:

(1) No further sale, lease, or transfer of sovereignty submerged lands shall be approved or consummated by the trustees except when such sale, lease, or transfer is in the public interest.

(2) The trustees shall not approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.

(3)(a) No further dredging or filling of submerged lands shall be approved by the trustees except the following activities may be authorized pursuant to a permit:

1. Such minimum dredging and spoiling as may be authorized for public navigation projects.

2. Such minimum dredging and spoiling as may be authorized for the creation and maintenance of marinas, piers, and docks and their attendant navigation channels.

3. Such other alteration of physical conditions as may, in the opinion of the trustees, be necessary to enhance the quality or utility of the preserve or the public health generally.

4. Such other maintenance dredging as may be required for existing navigation channels.

5. Such restoration of land as authorized by s. 253.124(8).

6. Such reasonable improvements as may be necessary for public utility installation or expansion.

7. Installation and maintenance of oil and gas transportation facilities, provided such facilities are properly marked with marine aids to navigation as prescribed by federal law.

(b) There shall, in no case, be any dredging seaward of a bulkhead line for the sole or primary purpose of providing fill for any area landward of a bulkhead line.

(c) There shall be no drilling of gas or oil wells. However, this will not prohibit the state from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the board.

(d) There shall be no excavation of minerals, except the dredging of dead oyster shells as approved by the Department of Natural Resources.

(e) There shall be no erection of structures within the preserve, except:

1. Private docks for reasonable ingress or egress of riparian owners;

2. Commercial docking facilities shown to be consistent with the use or management criteria of the preserve; and

3. Structures for shore protection, approved navigational aids, or public utility crossings authorized under subsection (3)(a).

(f) No wastes or effluents shall be discharged into the preserve which substantially inhibit the accomplishment of the purposes of this act.

(g) No nonpermitted wastes or effluents shall be directly discharged into the preserve which substantially inhibit the accomplishment of the purposes of this act.

History.—ss. 1, 2, 4, ch. 75-172; s. 1, ch. 77-174.

*Note.—See s. 26, ch. 75-22, which repealed s. 253.122, relating to the power to fix bulkhead lines, and s. 7(3), ch. 75-22 (s. 253.1221), which reestablished all previously established bulkhead lines at the line of mean high water or ordinary high water.

258.43 Rules and regulations.—

(1) The Board of Trustees of the Internal Improvement Trust Fund shall adopt and enforce reasonable rules and regulations to carry out the provisions of this act and specifically to provide regulation of human activity within the preserve in such a manner as not to unreasonably interfere with lawful and traditional public uses of the preserve, such as sport and commercial fishing, boating, and swimming.

(2) Other uses of the preserve, or human activity within the preserve, although not originally contemplated, may be permitted by the trustees, but only subsequent to a formal finding of compatibility with the purposes of this act.

History.—s. 1, ch. 75-172.

258.44 Effect of preserves.—Neither the establishment nor the management of the aquatic preserves under the provisions of this act shall operate to infringe upon the traditional riparian rights of upland property owners adjacent to or within the preserves. Reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, surface water drainage, installation and maintenance of oil and gas transportation facilities, and similar purposes may be permitted by the trustees subject to the provisions of any other applicable laws under the jurisdiction of other agencies.

History.—s. 1, ch. 75-172.

258.45 Provisions not superseded.—The provisions of this act shall not supersede, but shall be subject to, the provisions of ss. 403.501 through 403.515.

History.—ss. 3, 6, ch. 75-172.

258.46 Enforcement; violations; penalty.—The provisions of this act may be enforced by the Board of Trustees of the Internal Improvement Trust Fund or in accordance with the provisions of s. 403.412. However, any violation by any person, natural or corporate, of the provisions of this act or any rule or regulation issued hereunder shall be further punishable by a civil penalty of not less than $500 per day or more than $5,000 per day of such violation.

History.—s. 5, ch. 75-172.

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CHAPTER 259

LAND ACQUISITIONS FOR CONSERVATION OR RECREATION

259.01 Short title.
259.02 Authority; full faith and credit bonds.
259.03 Definitions.
259.035 Selection committee; powers and duties.
259.04 Board; powers and duties.
259.045 Purchase of lands in areas of critical state concern; recommendations by department.
259.05 Issuance of bonds.
259.06 Construction.
259.07 Public meetings.

259.01 Short title.—This chapter shall be known and may be cited as the "Land Conservation Act of 1972."

History.—s. 1, ch. 72-349.

259.02 Authority; full faith and credit bonds.—Pursuant to the provisions of s. 11(a) of Art. VII of the State Constitution and s. 215.59, the issuance of state bonds pledging the full faith and credit of the state in the principal amount, including any refinancing, not to exceed $200 million for state capital projects for environmentally endangered lands and $40 million for state capital projects for outdoor recreation lands is hereby authorized, subject to the provisions of ss. 259.01-259.06.

History.—s. 1, ch. 72-349.

259.03 Definitions.—The following terms and phrases when used in ss. 259.01-259.06 shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Selection committee" means that committee established pursuant to s. 259.035.

(2) "State capital projects for environmentally endangered lands" means a state capital project, as required by s. 11(a) of Art. VII of the State Constitution, which shall have as its purpose the conservation and protection of environmentally unique and irreplaceable lands as valued ecological resources of this state.

(3) "State capital project for outdoor recreation lands" means a state capital project, as required by s. 11(a) of Art. VII of the State Constitution, which shall be for the purposes set out in chapter 375.

(4) "Board" means the Governor and Cabinet, as the Board of Trustees of the Internal Improvement Trust Fund.

(5) "Division" means the Division of Bond Finance of the Department of General Services.

History.—s. 1, ch. 72-349; s. 13, ch. 79-255; s. 2, ch. 81-210.

[1]259.035 Selection committee; powers and duties.—

(1) There is created a selection committee to be composed of the secretary of the Department of Environmental Regulation, the executive director of the Department of Natural Resources, the director of the Division of Forestry of the Department of Agriculture and Consumer Services, the executive director of the Game and Fresh Water Fish Commission, the director of the Division of Archives, History and Records Management of the Department of State, and the secretary of the Department of Community Affairs, or their respective designees. The chairmanship of the committee shall rotate annually in the foregoing order. The committee shall hold periodic meetings at the request of the chairman. The Division of State Lands shall provide primary staff support to the committee and shall ensure that committee meetings are electronically recorded. Such recordings shall be preserved pursuant to chapters 119 and 267.

(2)(a) The committee shall, by the time of the first board meeting in July of each year, establish or update a list of acquisition projects selected for purchase pursuant to this chapter or s. 253.023 and, by the time of the first board meeting in January of each year, establish or update a list of acquisition projects valued in excess of $250,000 for purchase pursuant to chapter 375. The lists shall be mutually exclusive. Acquisition projects shall be ranked in order of priority individually or in groups not to exceed 10 in number. Each project on an acquisition list shall include the best estimate of land value available to the department, a boundary map and description, preacquisition planning and budgeting, a preliminary statement of the extent and nature of public use, and designation of a management agency or agencies. The Division of State Lands shall prepare the information required by this section for each acquisition project selected for purchase pursuant to this chapter or s. 253.023. The Division of Recreation and Parks shall prepare the information required by this section for each acquisition project to be purchased pursuant to chapter 375.

(b) An affirmative vote of four members of the committee shall be required in order to place a proposed project on a list. Each list shall contain at least twice the number of projects in terms of estimated cost as there are anticipated funds for purchase. The anticipated cost of each project shall include proposed costs for development of the lands necessary to meet the public purpose for which such lands are to be purchased.

(c) All proposals for acquisition projects pursuant to this chapter, chapter 375, or s. 253.023 shall originate from the committee. The committee shall consider and evaluate in writing the merits and demerits of each proposed project submitted for acquisition and shall ensure that each proposed acquisition project will meet a stated public purpose for the preservation of environmentally endangered lands, for the development of outdoor recreation lands, or as provided in s. 253.023(3)(b) and shall determine whether each acquisition project conforms with the comprehensive plan developed pursuant to s. 259.041(1)(a), the comprehensive outdoor recreation and conservation plan developed pursuant to s. 375.021, and the state lands management plan adopted pursuant to s. 253.03(7). Copies of a written report on each project evaluated or considered for acquisition shall be submitted to the board of trustees. The committee shall

consider and include in each report its assessment of a project's ecological value, vulnerability, endangerment, ownership pattern, utilization, location, and cost and other pertinent factors in determining whether to recommend for or against a purchase.

History.—s. 14, ch. 79-255; s. 3, ch. 81-210; s. 1, ch. 82-46; s. 4, ch. 82-152; s. 24, ch. 83-55; s. 3, ch. 83-144; s. 2, ch. 83-265.

[1]Note.—Repealed effective October 1, 1989, by s. 1, ch. 82-46, as amended by s. 2, ch. 83-265, and scheduled for review pursuant to s. 11.611 in advance of that date.

259.04 Board; powers and duties.—

(1) For state capital projects selected for purchase pursuant to s. 259.035:

(a) The board is given the responsibility, authority, and power to develop and execute a comprehensive plan to conserve and protect environmentally endangered lands in this state. This plan shall be kept current through continual reevaluation and revision.

(b) The board may enter into contracts with the government of the United States or any agency or instrumentality thereof; the state or any county, municipality, district authority, or political subdivision; or any private corporation, partnership, association, or person providing for or relating to the conservation or protection of certain lands in accomplishing the purposes of ss. 259.01-259.06.

(c) Within 45 days after the selection committee submits either list of acquisition projects to the board, the board shall approve, in whole or in part, the list of acquisition projects in the order of priority in which such projects are presented. To the greatest extent practicable, projects on the list shall be acquired in their approved order of priority.

(d) The board is authorized to acquire, by purchase, gift, or devise or otherwise, the fee title or any lesser interest of lands, water areas, and related resources sufficient to meet the purposes specified in s. 259.03(2) for environmentally endangered lands.

(2) For state capital projects for outdoor recreation lands, the provisions of chapter 375 and s. 253.025 shall also apply.

History.—s. 1, ch. 72-349; s. 13, ch. 79-255; s. 4, ch. 80-270; s. 4, ch. 83-114.

259.045 Purchase of lands in areas of critical state concern; recommendations by department.—Within 45 days of the designation by the Administration Commission of an area as an area of critical state concern under s. 380.05, the Department of Natural Resources shall consider the recommendations of the state land planning agency pursuant to s. 380.05(1)(a) relating to purchase of lands within the proposed area and shall make recommendations to the board with respect to the purchase of the fee or any lesser interest in any lands situated in such area of critical state concern as environmentally endangered lands or outdoor recreation lands. The department may make recommendations with respect to additional purchases which were not included in the state land planning agency recommendations.

History.—s. 3, ch. 79-73.

259.05 Issuance of bonds.—

(1) Upon request of the board, by appropriate resolution, the Division of Bond Finance from time to time, subject to the debt limitation provided herein, may issue bonds pledging the full faith and credit of the state as shall be necessary to provide sufficient funds to achieve the purposes set out in such request.

(2) The issuance of such bonds to finance state capital projects for environmentally endangered lands or outdoor recreation lands is authorized in the manner, and subject to the limitations, provided by the State Bond Act, except as otherwise expressly provided herein.

History.—s. 1, ch. 72-349.

cf.—ss. 215.57-215.83, State Bond Act.

259.06 Construction.—The provisions of ss. 259.01-259.06 shall be liberally construed in a manner to accomplish the purposes thereof.

History.—s. 1, ch. 72-349.

259.07 Public meetings.—The Department of Natural Resources, before making recommendations to the board for the purchase of any environmentally endangered land, shall hold a public meeting on the proposed purchase of such land in the county where a major portion of such land is situated. At least 30 days in advance of such public meeting, notice shall be published in a newspaper of general circulation in the area where such land is located, indicating the date, time, and place of such public meeting. A report of the public meeting shall be submitted to the board along with the recommendation for purchase of such land.

History.—s. 1, ch. 74-359.

CHAPTER 260

RECREATIONAL TRAILS SYSTEM

260.011 Short title.
260.012 Declaration of policy and legislative intent.
260.013 Definitions.
260.014 Florida Recreational Trails System.
260.015 Acquisition of land.
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260.011 Short title.—Sections 260.011-260.018 shall be known and may be cited as the "Florida Recreational Trails Act of 1979."

History.—s. 1, ch. 79-110.

260.012 Declaration of policy and legislative intent.—

(1) In order to provide the public with access to the use, enjoyment, and appreciation of the outdoor areas of Florida, and in order to conserve, develop, and use the natural resources of this state for healthful and recreational purposes, it is declared to be the public policy of this state and the purpose of ss. 260.011-260.018 to provide the means and procedures for establishing and expanding a network of recreational and scenic trails designated as the "Florida Recreational Trails System." The standards by which the trails system shall be administered, maintained, used, and expanded shall be consistent with the provisions of ss. 260.011-260.018. It is the intent of the Legislature that these recreational trails will serve to encourage horseback riding, hiking, bicycling, canoeing, and jogging and thereby improve the health and welfare of the people.

(2) It is the intent of the Legislature that recreational trails be established within and without boundaries of state parks and state forests and, when feasible, to interconnect units of the state park and forest system, as well as national forests and parks and such locally maintained parks as may be appropriate. It is also the intent of the Legislature to perpetuate the use of and provide access to regions and trails of special historic interest within the state; to encourage the multiple use of public rights-of-way and use to the fullest extent existing and future scenic roads, highways, park roads, parkways, and national recreational trails; to encourage the development of recreational trails by counties, cities, and special districts and to assist in such development by any means available; to coordinate recreational trail plans and development by local governments with one another and with the state government and Federal Government; and to encourage, whenever possible, the development of recreational trails on federal lands by the Federal Government.

(3) The planning, development, operation, and maintenance of the Florida Recreational Trails System authorized by ss. 260.011-260.018 is declared to be a public purpose, and the Department of Natural Resources, together with other governments and agencies of this state and all counties, municipalities, and special districts of this state, is authorized to spend public funds for such purposes and to accept gifts and grants of funds, property, or property rights from public or private sources to be used for such purposes.

(4) The provisions of s. 375.251 relating to the liability of persons making lands available for outdoor recreational purposes shall be applicable to ss. 260.011-260.018.

History.—s. 2, ch. 79-110.

260.013 Definitions.—As used in ss. 260.011-260.018, unless the context otherwise requires:

(1) "Recreational trails" means riding, hiking, canoeing, bicycling, or jogging trails for the use of the public.

(2) "Riders" and "riding" mean horseback riders and horseback riding.

(3) "Department" means the Department of Natural Resources.

(4) "Division" means the Division of Recreation and Parks of the Department of Natural Resources.

History.—s. 4, ch. 79-110.

260.014 Florida Recreational Trails System.—

(1) The Florida Recreational Trails System shall consist of individual trails and networks of trails designated as a part of the Florida Recreational Trails System by the department and administered in accordance with the rules published by the department.

(2) Insofar as is practicable, maps indicating the location of Florida recreational trails shall be published and distributed by the division. The description of canoe trails shall include a generalized map delineating the water body or section thereof designated, locations of suitable launch and takeout sites, as well as other points of interest to enhance the recreational opportunities of the public.

History.—s. 4, ch. 79-110.

260.015 Acquisition of land.—

(1) The division is authorized to acquire by gift or purchase the fee title or any lesser interest in land, including easements, for the purposes of ss. 260.011-260.018 pursuant to the provisions of chapter 375, except that no power of eminent domain is conveyed to the division by ss. 260.011-260.018.

(2) Easements and rights-of-way upon, over, under, across, or along any land, the fee title of which has been acquired for the purposes of ss. 260.011-260.018, may be granted by the division so long as the use permitted by the easement does not interfere with the purposes of ss. 260.011-260.018.

(3) The division may transfer any recreational trail or easement to a local governmental agency having jurisdiction over the area in which the easement is located upon agreement by such local agency to maintain and operate the recreational trail in a manner consistent with department rules and the intent of ss. 260.011-260.018.

History.—s. 5, ch. 79-110.

260.016 General powers of Division of Recreation and Parks.—The Division of Recreation and Parks may:

(1) Publish and distribute appropriate maps of recreational trails, including recommended extensions thereof.

(2) Establish access routes and related primitive public-use facilities along recreational trails which will not substantially interfere with the nature and purposes of the trail.

(3) Promulgate appropriate rules for the use of recreational trails.

(4) Coordinate the activities of all governmental units and bodies and special districts that desire to participate in the development of the Florida Recreational Trails System.

History.—s. 6, ch. 79-110.

260.017 Restrictions; rules.—The department may establish restrictions on the use of motorized watercraft within any defined canoe trail necessary to ensure the safe use of a water body for canoes. Restrictions established pursuant to this section must be adopted as a rule pursuant to s. 120.54, after proper notice and hearing, and may be enforced by any state or local law enforcement agency having jurisdiction over the area within which the trail is designated.

History.—s. 7, ch. 79-110.

260.018 Agency recognition.—All agencies of the state shall recognize the special character of the waters designated as canoe trails and shall not take any action which will impair their use as designated.

History.—s. 8, ch. 79-110.

CHAPTER 267

ARCHIVES, HISTORY, AND RECORDS MANAGEMENT

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267.12 Research permits; procedure.
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267.011 Short title.—This act shall be known as the "Florida Archives and History Act."

History.—s. 1, ch. 67-50.

267.021 Definitions.—For the purpose of this act:

(1) "Division" shall mean the Division of Archives, History and Records Management of the Department of State.

(2) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(3) "Agency" shall mean any state, county, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

(4) "Florida State Archives" shall mean an establishment maintained by the division for the preservation of those public records and other papers that have been determined by the division to have sufficient historical or other value to warrant their continued preservation by the state and have been accepted by the division for deposit in its custody.

(5) "Records center" shall mean an establishment maintained by the division primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space.

(6) "Historic sites and properties" shall mean real or personal property of historical value.

History.—s. 2, ch. 67-50; ss. 10, 35, ch. 69-106; s. 72, ch. 71-377.

267.031 Division of Archives, History and Records Management.—

(1) The Division of Archives, History and Records Management shall be organized into as many bureaus as deemed necessary by the division for the proper discharge of its duties and responsibilities under this chapter. The division may employ a chief to administer each such bureau and may prescribe such qualifications of training and experience for each such bureau chief as may be required to perform the duties of the chief and carry out the programs of the division.

(2) The division may employ a director of the division and shall establish his qualifications. The director shall act as the agent of the division in coordinating, directing, and administering the activities and responsibilities of the division. The division may employ other employees as deemed necessary for the performance of its duties under this chapter.

(3) The division shall adopt such rules as deemed necessary to carry out its duties and responsibilities under this chapter, which rules shall be binding on all agencies and persons affected thereby. The willful violation of any of the rules adopted by the division shall constitute a misdemeanor.

(4) The division may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations and individuals, or federal agencies as it may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its powers under this chapter.

(5) The division may accept gifts, grants, bequests, loans, and endowments for purposes not inconsistent with its responsibilities under this chapter.

(6) All law enforcement agencies and offices are authorized and directed to assist the division in carrying out its duties under this chapter.

History.—s. 3, ch. 67-50; ss. 10, 25, 27, 35, ch. 69-106; s. 73, ch. 71-377; s. 1, ch. 73-280; s. 4, ch. 78-323; s. 1, ch. 81-173; s. 11, ch. 83-85; s. 130, ch. 83-217.

267.041 Office of the director.—

(1) It is the duty and responsibility of the office of the director to render all services required by the division and the several bureaus that can be advantageously and effectively centralized. The office shall perform such other functions and duties as the division may direct.

(2) The director shall supervise, direct, and coordinate the activities of the division and its bureaus.

History.—s. 4, ch. 67-50; ss. 10, 35, ch. 69-106; s. 2, ch. 81-173.

267.042 Florida State Archives.—

(1) It is the duty and responsibility of the division to:

(a) Organize and administer the Florida State Archives.

(b) Preserve and administer such records as shall be transferred to its custody; accept, arrange, and preserve them, according to approved archival practices; and permit them, at reasonable times and under the supervision of the division, to be inspected, examined, and copied, except that any record placed in the keeping of the division under special terms or conditions restricting its use shall be made accessible only in accordance with such terms and conditions.

(c) Assist the records and information management program in the determination of retention values for records.

(d) Cooperate with and assist insofar as practicable state institutions, departments, agencies, counties, municipalities, and individuals engaged in activities in the field of state archives, manuscripts, and history and accept from any person any paper, book, record, or similar material which in the judgment of the division warrants preservation in the state archives.

(e) Provide a public research room where, under rules established by the division, the materials in the state archives may be studied.

(f) Conduct, promote, and encourage research in Florida history, government, and culture and maintain a program of information, assistance, coordination, and guidance for public officials, educational institutions, libraries, the scholarly community, and the general public engaged in such research.

(g) Cooperate with and, insofar as practicable, assist agencies, libraries, institutions, and individuals in projects designed to preserve original source materials relating to Florida history, government, and culture and prepare and publish handbooks, guides, indexes, and other literature directed toward encouraging the preservation and use of the state's documentary resources.

(h) Encourage and initiate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government.

(i) Assist and cooperate with the records and information management program in the training and information program described in s. 267.051(1)(f).

(2) Any agency is authorized and empowered to turn over to the division any record no longer in current official use. The division, in its discretion, is authorized to accept such record and, having done so, shall provide for its administration and preservation as herein provided and, upon acceptance, shall be considered the legal custodian of such record.

(3) Title to any record transferred to the Florida State Archives, as authorized in this chapter, shall be vested in the division.

(4) The division shall make certified copies under seal of any record transferred to it upon the application of any person, and said certificates shall have the same force and effect as if made by the agency from which the record was received. The division may charge a fee for this service based upon the cost of service.

(5) The division may establish and maintain as part of the state archives a Florida State Photographic Collection. The division shall:

(a) Acquire, identify, appraise, arrange, index, restore, and preserve photographs, motion pictures, drawings, and other iconographic material considered appropriate for preservation.

(b) Initiate appropriate action to acquire, identify, preserve, recover, and restore photographs, motion pictures, and other iconographic material considered appropriate for preservation.

(c) Provide for an index to the historical photographic holdings of the Florida State Photographic Collection and the State of Florida.

Any use or reproduction of material deposited with the Florida State Photographic Collection shall be allowed pursuant to the provisions of paragraph (1)(b) and subsection (4) provided that appropriate credit for its use is given.

(6) The division shall promulgate such rules as are necessary to implement the provisions of this act.

History.—s. 3, ch. 81-173; s. 131, ch. 83-217.

267.051 Records and information management.—

(1) It is the duty and responsibility of the division to:

(a) Establish and administer a records management program, including the operation of a records center or centers directed to the application of efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.

(b) Analyze, develop, establish, and coordinate standards, procedures, and techniques of recordmaking and recordkeeping.

(c) Ensure the maintenance and security of records which are deemed appropriate for preservation.

(d) Establish safeguards against unauthorized or unlawful removal or loss of records.

(e) Initiate appropriate action to recover records removed unlawfully or without authorization.

(f) Institute and maintain a training and information program in all phases of records and information management to bring approved and current practices, methods, procedures, and devices for the efficient and economical management of records to the attention of all agencies.

(g) Provide a centralized program of microfilming for the benefit of all agencies.

(h) Make continuous surveys of recordkeeping operations.

(i) Recommend improvements in current records management practices, including the use of space, equipment, supplies, and personnel in creating, maintaining, and servicing records.

(j) Establish and maintain a program in cooperation with each agency for the selection and preservation of records considered essential to the operation of government and to the protection of the rights and privileges of citizens.

(k) Make, or have made, preservation duplicates, or designate existing copies as preservation duplicates, to be preserved in the place and manner of safekeeping as prescribed by the division.

(2)(a) All records transferred to the division may be held by it in a records center or centers, to be designated by it, for such time as in its judgment retention therein is deemed necessary. At such time as it is established by the division, such records as are determined by it as having historical or other value warranting continued preservation shall be transferred to the Florida State Archives.

(b) Title to any record detained in any records center shall remain in the agency transferring such record to the division.

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(c) When a record held in a records center is eligible for destruction, the division shall notify, in writing, by certified mail, the agency which transferred the record. The agency shall have 90 days from receipt of that notice to respond requesting continued retention or authorizing destruction or disposal of the record. If the agency does not respond within that time, title to the record shall pass to the division.

(d) The Florida State Records Center may charge fees for supplies and services, including, but not limited to, shipping containers, pickup, delivery, reference, and storage. Fees shall be based upon the actual cost of the supplies and services and shall be deposited in the operating trust fund. The operating trust fund shall be subject to the service charge imposed pursuant to chapter 215.

(3) Any preservation duplicate of any record made pursuant to this chapter shall have the same force and effect for all purposes as the original record. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed, for all purposes, to be a transcript, exemplification, or certified copy of the original record.

(4) It is the duty of each agency to:

(a) Cooperate with the division in complying with the provisions of this chapter and designate a records management liaison officer.

(b) Establish and maintain an active and continuing program for the economical and efficient management of records.

(5) Each agency shall submit to the division in accordance with the rules of the division a list or schedule of records in its custody that are not needed in the transaction of current business and that do not have sufficient administrative, legal, or fiscal significance to warrant further retention by the agency. Such records shall, in the discretion of the division, be transferred to it for further retention and preservation, as herein provided, or may be destroyed upon its approval.

(6) No record shall be destroyed or disposed of by any agency unless approval of the division is first obtained. The division shall adopt reasonable rules not inconsistent with this chapter which shall be binding on all agencies relating to the destruction and disposal of records. Such rules shall provide but not be limited to:

(a) Procedures for complying and submitting to the division lists and schedules of records proposed for disposal.

(b) Procedures for the physical destruction or other disposal of records.

(c) Standards for the reproduction of records for security or with a view to the disposal of the original record.

History.—s. 5, ch. 67-50; ss. 10, 35, ch. 69-106; s. 4, ch. 81-173; s. 24, ch. 83-189.

ref.—ss. 215.20, 215.22 Service charge deduction for cost of general government paid from General Revenue Fund.

267.061 Historic sites and properties; state policy, responsibilities.—

(1) STATE POLICY RELATIVE TO HISTORIC SITES AND PROPERTIES.—

(a) It is hereby declared to be the public policy of the state to protect and preserve historic sites and properties, buildings, artifacts, treasure trove, and objects of antiquity which have scientific or historical value or are of interest to the public, including, but not limited to, monuments, memorials, fossil deposits, Indian habitations, ceremonial sites, abandoned settlements, caves, sunken or abandoned ships, historical sites and properties and buildings or objects, or any part thereof, relating to the history, government, and culture of the state.

(b) It is further declared to be the public policy of the state that all treasure trove, artifacts, and such objects having intrinsic or historical and archaeological value which have been abandoned on state-owned lands or state-owned sovereignty submerged lands shall belong to the state with the title thereto vested in the Division of Archives, History and Records Management of the Department of State for the purposes of administration and protection.

(2) DIVISION RESPONSIBILITY.—It is the responsibility of the division to:

(a) Locate, acquire, protect, preserve, and promote the location, acquisition, and preservation of historic sites and properties, buildings, artifacts, treasure trove, and objects of antiquity which have scientific or historical value or are of interest to the public, including, but not limited to, monuments, memorials, fossil deposits, Indian habitations, ceremonial sites, abandoned settlements, caves, sunken or abandoned ships, or any part thereof.

(b) Develop a comprehensive statewide historic preservation plan.

(c) Encourage and promote the acquisition, preservation, restoration, and operation of historic sites and properties by other agencies so that such property may be utilized to foster and promote appreciation of Florida history; however, no acquisition, preservation, restoration, or operation of any such site shall be made by the state and no contribution shall be paid from state funds for such purposes until:

1. The division has determined that there exists historical authenticity and a feasible means of providing for the acquisition, preservation, restoration, or operation of such property.

2. The property has been approved for such purpose by the division.

(d) Cooperate and coordinate with the Division of Recreation and Parks of the Department of Natural Resources in the operation and management of historic sites and properties subject to the Division of Archives, History and Records Management.

(3) STATE ARCHAEOLOGIST.—The division shall employ a State Archaeologist, and such other archaeologists as deemed necessary, who shall possess such qualifications as the division may prescribe. The State Archaeologist shall serve at the pleasure of the division. The State Archaeologist shall conduct, with emphasis on salvage archaeology, an archaeological survey of the state and shall perform such other duties as the division may prescribe.

History.—s. 6, ch. 67-50; ss. 10, 23, 35, ch. 69-106; s. 5, ch. 81-173; s. 19, ch. 83-216.

[1]267.0612 Historic Preservation Advisory Council; creation; membership; powers and duties.—In order to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties, there is created within the Department of State the "Historic Preservation Advisory Council."

(1) The council shall consist of nine members who represent different areas of the state, are appointed by the Secretary of State, and are qualified, through the demonstration of special interest, experience, or education, in the preservation of the state's historic and archaeological sites and properties, as follows:

(a) At least three members shall have practical experience in the preservation of historic or archaeological sites and properties as demonstrated in one or more of the following fields: architecture, architectural history, historic preservation, history, or archaeology.

(b) Each of at least three members shall be the president, chief elected officer, or other duly authorized representative of a statewide historic preservation, architectural, historical, or archaeological organization.

(c) Each of at least three members shall be the president, chief elected officer, or other duly authorized representative of a local historic preservation board, commission, or nonprofit organization.

(2) The initial appointments shall be for terms as follows: Three members shall be appointed for terms of 2 years, three members shall be appointed for terms of 3 years, and three members shall be appointed for terms of 4 years. Thereafter, members shall be appointed for 4-year terms, except for an appointment to fill an unexpired term, in which event the appointment shall be for the remainder of the unexpired term only. No person shall serve more than two consecutive terms on the council.

(3) Members shall elect a chairperson annually. No member shall be elected to consecutive terms as chairperson.

(4) The council shall meet at the call of its chairperson, at the request of a majority of its membership, or at the request of the division. Members shall serve without pay, but shall be entitled to reimbursement for their expenses in carrying out their official duties, as provided in s. 112.061.

(5) All action taken by the council shall be by majority vote of those present. The director of the Division of Archives, History and Records Management, or his designee, shall serve without voting rights as secretary to the council. The division shall provide necessary staff assistance to the council.

(6) It shall be the responsibility of the council to provide assistance, advice, and recommendations to the division in:

(a) Establishing priorities for the identification, acquisition, protection, and preservation of historic and archaeological sites and properties.

(b) Establishing criteria for use in assessing the significance of historic and archaeological sites and properties.

(c) Evaluating proposals for state historic markers.

(d) Evaluating proposals for awards of historic preservation grants-in-aid administered by the division. Pursuant thereto, the council shall review and evaluate all proposals for grants-in-aid and shall make recommendations, including a priority ranking, reflecting such evaluation. In making such evaluation and recommendations, the council shall, at a minimum, consider the purpose, economic and other public benefit, location, compatibility with statewide historic preservation priorities, and cost of each proposal for grant assistance.

(e) Providing an active outreach program to encourage public understanding of and involvement in the preservation of the state's historic and archaeological sites and properties.

(f) Identifying and expressing public goals for historic preservation and gathering public ideas necessary for the formulation of alternative policies.

(g) Preparing rules relating to the historic preservation programs administered by the division pursuant to this chapter.

(7) It shall be the additional responsibility of the council to provide such other assistance and advice to the division as may be required from time to time in matters pertaining to the protection and preservation of the state's historic and archaeological sites and properties.

History.—ss. 1, 2, ch. 83-193.

[1]Note.—Expires October 1, 1986, pursuant to s. 2, ch. 83-193, the Historic Preservation Advisory Council shall be reviewed pursuant to s. 11.611.

267.0617 Historic Preservation Trust Fund.—

(1) There is hereby created within the Division of Archives, History and Records Management of the Department of State the Historic Preservation Trust Fund, which shall consist of moneys appropriated by the Legislature, moneys deposited pursuant to s. 550.03(2)(l), and moneys contributed to the fund from any other source. The fund shall be administered by the Department of State through the Division of Archives, History and Records Management for the purpose of financing grants in furtherance of the purposes of this section.

(2) The division is authorized to conduct and carry out a program of historic preservation grants-in-aid, including matching grants, to any department or agency of the state; any unit of county, municipal, or other local government; or any nonprofit corporation or organization meeting the requirements of chapter 617 for projects having as their purpose the identification, acquisition, protection, preservation, rehabilitation, restoration, or construction of historic sites and properties, or the planning of any such activities. All moneys received from any source as appropriations, deposits, or contributions to this program shall be paid and credited to the Historic Preservation Trust Fund.

History.—s. 3, ch. 74-357; s. 1, ch. 81-126; s. 170, ch. 81-259.

267.062 Naming of state buildings and other facilities.—

(1) Except as specifically provided by law, no state building, road, bridge, park, recreational complex, or other similar facility shall be named for any living person.

(2) The Division of Archives, History and Records Management of the Department of State shall, after consulting with appropriate citizens' committees, recommend several persons whose contributions to the state have been of such significance that the

division may recommend that state buildings and facilities be named for them.
History.—ss. 1, 2, ch. 71-267.

267.071 Historical museums.—It is the duty of the division to:

(1) Promote and encourage throughout the state knowledge and appreciation of Florida history by encouraging the people of the state to engage in the preservation and care of artifacts, museum items, treasure trove, and other historical properties; the collection, research, fabrication, exhibition, preservation, and interpretation of historical materials; the publicizing of the state's history through media of public information; and other activities in historical and allied fields.

(2) Encourage, promote, maintain, and operate historical museums, including, but not limited to, mobile museums, junior museums, and the Museum of Florida History in the state capital.

(3) Plan and develop, in cooperation with other state agencies and local municipalities, programs to promote and encourage the teaching of Florida's history and heritage in Florida schools and other educational institutions and other such educational programs as may be appropriate.
History.—s. 7, ch. 67-50; ss. 10, 35, ch. 69-106; s. 6, ch. 81-173.

267.072 Museum of Florida History programs; trust fund.—

(1) There is created the Museum of Florida History Trust Fund to be administered by the Department of State for the purposes set forth in this act.

(2) It is the duty of the division to:

(a) Establish and administer a museum store in the Museum of Florida History to provide information and materials relating to museum exhibits, collections, and programs to the public. The store may produce, acquire, and sell craft products, replicas and reproductions of artifacts, documents, and other merchandise relating to historical and cultural resources and may make a reasonable charge for such merchandise. All profits received from sales shall be deposited into the Museum of Florida History Trust Fund to be used by the museum exclusively for the acquisition and production of exhibits or products for resale in the museum store.

(b) Support the establishment of a nonprofit organization or association to promote and encourage knowledge and appreciation of Florida history and the programs of the Museum of Florida History and to cooperate with historical societies and other organizations to provide funding and promotional support for the programs of the museum. Such organization or association may, with the consent of the division, operate the museum store or conduct special events and programs in the museum. All proceeds shall be used to support the programs of the Museum of Florida History.

(3) The division is authorized to accept gifts and donations for the purpose of assisting the Museum of Florida History and its programs, which shall be deposited in the Museum of Florida History Trust Fund to be used exclusively for the acquisition and production of exhibits or for the purchase of items for resale in the museum store.

(4) The museum store of the Museum of Florida History is authorized to enter into agreements and accept credit card payments as compensation for goods and products sold. The division is further authorized to establish accounts in credit card banks for the deposit of credit card sales invoices and to pay discounts and service charges in connection with the use of credit cards.
History.—ss. 2, 3, 4, ch. 80-159; s. 7, ch. 81-173; s. 2, ch. 83-243.

267.081 Publications.—It is the duty of the division to:

(1) Promote and encourage the writing of Florida history.

(2) Collect, edit, publish, and print pamphlets, papers, manuscripts, documents, books, monographs, and other materials relating to Florida history, archives, and records management. The division may establish a reasonable charge for such publications.

(3) Cooperate with and coordinate research and publication activities of other agencies, organizations, historical commissions and societies, corporations, and individuals, which relate to archival and historical matters.
History.—s. 8, ch. 67-50; ss. 10, 35, ch. 69-106; s. 8, ch. 81-173.

267.09 Certain powers and duties transferred.—

(1) All powers and duties heretofore set forth in chapter 257, pertaining to the State Library, insofar as they may relate to historical archives or public records as set forth in chapter 257, are hereby transferred to the division to be administered pursuant to this law.

(2) All the powers and duties heretofore set forth in chapter 592 relating to the Division of Recreation and Parks of the Department of Natural Resources, insofar as they shall relate to historical memorials, shall be transferred to the division to be administered pursuant to this law.
History.—s. 9, ch. 67-50; ss. 10, 25, 35, ch. 69-106.

267.10 Legislative intent.—In enacting this law, the Legislature is cognizant of the fact that there may be instances where an agency may be microfilming and destroying public records or performing other records management programs, pursuant to local or special acts; the Legislature is further aware that it may not be possible to implement this chapter in its entirety immediately upon its enactment and it is not the legislative intent by this chapter to disrupt the orderly microfilming and destruction of public records pursuant to such local or special acts above referred to; provided, however, that such agencies make no further disposition of public records without approval of the Division of Archives, History and Records Management of the Department of State pursuant to such rules and regulations as it may establish.
History.—s. 11, ch. 67-50; ss. 10, 35, ch. 69-106.

267.11 Designation of archaeological sites.—The Division of Archives, History and Records Management may publicly designate an archaeological site of significance to the scientific study or public representation of the state's historical, prehistoric, or aboriginal past as a "state archaeological landmark."

In addition, the division may publicly designate an interrelated grouping of significant archaeological sites as a "state archaeological landmark zone." However, no site or grouping of sites shall be so designated without the express written consent of the private owner thereof. Upon designation of an archaeological site, the owners and occupants of each designated state archaeological landmark or landmark zone shall be given written notification of such designation by the division. Once so designated, no person may conduct field investigation activities without first securing a permit from the division.
History.—s. 1, ch. 73-166.

267.12 Research permits; procedure.—

(1) The division may issue permits for excavation and surface reconnaissance on state lands or lands within the boundaries of designated state archaeological landmarks or landmark zones to institutions which the division shall deem to be properly qualified to conduct such activity, subject to such rules and regulations as the division may prescribe, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs, such reports to be submitted to the division.

(2) Those state institutions considered by the division permanently to possess the required archaeological expertise to conduct the archaeological activities allowed under the provisions of the permit may be designated as accredited institutions which will be allowed to conduct archaeological field activities on state-owned or controlled lands or within the boundaries of any designated state archaeological landmark or any landmark zone without obtaining an individual permit for each project, except that those accredited institutions will be required to give prior written notice of all anticipated archaeological field activities on state-owned or controlled lands or within the boundaries of any designated state archaeological landmark or landmark zone to the division, together with such information as may reasonably be required by the division to insure the proper preservation, protection, and excavation of the archaeological resources. However, no archaeological activity may be commenced by the accredited institution until the division has determined that the planned project will be in conformity with the guidelines, regulations, and criteria adopted pursuant to ss. 267.11-267.14. Such determination will be made by the division and notification to the institution given within a period of 15 days from the time of receipt of the prior notification by the division.

(3) All specimens collected under a permit issued by the division or under the procedures adopted for accredited institutions shall belong to the state with the title thereto vested in the Division of Archives, History and Records Management of the Department of State for the purpose of administration and protection. The division may arrange for the disposition of the specimens so collected by accredited state institutions at those institutions and for the temporary or permanent loan of such specimens at permitholding institutions for the purpose of further scientific study, interpretative displays, and curatorial responsibilities.
History.—s. 1, ch. 73-166.

267.13 Prohibited practices; penalties.—

(1) Any person who conducts field investigations on any land owned or controlled by the state or its departments or institutions or within the boundaries of any designated state archaeological landmark or landmark zone without first obtaining a permit or having first received from the division a notice to proceed under the procedures relating to accredited institutions, or any person who appropriates, defaces, destroys, or otherwise alters any archaeological site or specimen located upon any land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit or under procedures relating to accredited institutions granted by the division, is guilty of a misdemeanor punishable by a fine not exceeding $500 or by imprisonment in the county jail for a period not to exceed 6 months, or both, and, in addition, shall forfeit to the state all specimens, objects, and materials collected or excavated, together with all photographs and records relating to such material.

(2)(a) The division may institute an administrative proceeding to impose an administrative fine of not more than $500 a day on any person or business organization that, without written permission of the division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located on state-owned or state-controlled lands, including state sovereignty submerged lands.

(b) The division shall institute an administrative proceeding by serving written notice of a violation by certified mail upon the alleged violator. The notice shall specify the law or rule allegedly violated and the facts upon which the allegation is based. The notice shall also specify the amount of the administrative fine sought by the division. The fine shall not become due until after service of notice and an administrative hearing. However, the alleged violator shall have 20 days from service of notice to request an administrative hearing. Failure to respond within that time shall constitute a waiver, and the fine shall become due without a hearing.

(c) The division may enter its judgment for the amount of the administrative penalty imposed in a court of competent jurisdiction, pursuant to s. 120.69. The judgment may be enforced as any other judgment.

(d) The division may apply to a court of competent jurisdiction for injunctive relief against any person or business organization that explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located on state-owned or state-controlled land, including state sovereignty submerged land, without the written permission of the division.

(3) Any person who:

(a) Reproduces, retouches, reworks, or forges any archaeological or historical object originating from an archaeological site as designated by ss. 267.11-267.14 and deriving its principal value from its antiquity or makes any such object, whether a copy or not;

(b) Falsely labels, describes, identifies, or offers for sale or exchange any object with intent to represent the same to be an original and genuine archaeological or historical specimen; or

(c) Offers for sale or exchange any object with knowledge that it has previously been collected or excavated in violation of any of the terms of ss. 267.11-267.14,

is guilty of a misdemeanor punishable by a fine not exceeding $500 or by imprisonment in the county jail for a period not to exceed 6 months or both.

History.—s. 1, ch. 73-166; s. 9, ch. 81-173.

267.14 Legislative intent.—It is the declared intention of the Legislature that field investigation activities on privately owned lands should be discouraged except in accordance with both the provisions and spirit of ss. 267.11-267.14; and persons having knowledge of the location of archaeological sites are encouraged to communicate such information to the Division of Archives, History and Records Management.

History.—s. 1, ch. 73-166.

CHAPTER 288

COMMERCIAL DEVELOPMENT AND CAPITAL IMPROVEMENTS

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288.011 Department of Commerce; travel and entertainment expenses.—

(1) As used in this section:

(a) "Business client" means any person, other than a state official or state employee, who receives the services of, or is the subject of solicitation by, representatives of the Department of Commerce in connection with the performance of its statutory duties, including purchasers or prospective purchasers of Florida products; persons or representatives of firms considering or being solicited for investment in the state; persons or representatives of firms considering or being solicited for location, relocation, or expansion of a business within the state; and business, financial, or travel writers, tour brokers, travel agents, and other persons connected with the tourist industry.

(b) "Entertainment expenses" means the actual, necessary, and reasonable costs of providing hospitality for business clients or guests, which costs are defined and prescribed by rules adopted by the Department of Commerce, subject to approval by the Comptroller.

(c) "Guest" means a person, other than a state official or state employee, authorized by the Secretary of the Department of Commerce or his designee to receive the hospitality of the Department of Commerce in connection with the performance of its statutory duties.

(d) "Travel expenses" means the actual, necessary, and reasonable costs of transportation, meals, lodging, and incidental expenses normally incurred by a traveler, which costs are defined and prescribed by rules adopted by the Department of Commerce, subject to approval by the Comptroller.

(2) Notwithstanding the provisions of s. 112.061, the Department of Commerce shall adopt rules by which it may make expenditures by advancement or reimbursement, or a combination thereof, to state officers and state employees; by which it may reimburse business clients, guests, and authorized persons as defined in s. 112.061(2)(e); and by which it may make direct payments to third-party vendors:

(a) For travel expenses of business clients, guests, and authorized persons as defined in s. 112.061(2)(e) incurred by the Department of Commerce in connection with the performance of its statutory duties, and for travel expenses incurred by state officials and

state employees while accompanying business clients or guests or when authorized by the Secretary of the Department of Commerce or his designee.

(b) For entertainment expenses of guests, business clients, and authorized persons as defined in s. 112.061(2)(e) incurred by the Department of Commerce in connection with the performance of its statutory duties, and for entertainment expenses incurred for state officials and state employees when such expenses are incurred while in the physical presence of business clients or guests.

The rules shall be subject to approval by the Comptroller prior to promulgation. The rules shall require the submission of paid receipts, or other proof prescribed by the Comptroller, with any claim for reimbursement and shall require, as a condition for any advancement, an agreement to submit paid receipts or other proof and to refund any unused portion of the advancement within 15 days after the expense is incurred or, if the advancement is made in connection with travel, within 15 days after completion of the travel. However, with respect to an advancement made solely for travel expenses, the rules may allow paid receipts or other proof to be submitted, and any unused portion of the advancement to be refunded, within 30 days after completion of the travel. Operational or promotional advancements, as defined in s. 288.35(4), obtained pursuant to this section shall not be commingled with any other state funds.

(3) An annual report shall be made to the Legislature not later than December 30 of each year for the previous fiscal year, which report shall consist of a synopsis concisely summarizing entertainment and incidental expenses incurred within the United States and all travel, entertainment, and incidental expenses incurred outside the United States. Nothing in this section shall be construed to exempt the Department of Commerce from the reporting requirements of s. 112.061(3)(e).

(4) Any claim submitted under this section shall not be required to be sworn to before a notary public or other officer authorized to administer oaths, but any claim authorized or required to be made under any provision of this section shall contain a statement that the expenses were actually incurred as necessary travel or entertainment expenses in the performance of official duties of the Department of Commerce and shall be verified by written declaration that it is true and correct as to every material matter. Any person who willfully makes and subscribes to any such claim which he does not believe to be true and correct as to every material matter or who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation of a claim pursuant to this section, which claim is fraudulent or false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such claim, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Whoever receives an advancement or reimbursement by means of a false claim is civilly liable, in the amount of the overpayment, for the reimbursement of the public fund from which the claim was paid.

History.—s. 1, ch. 80-224; s. 3, ch. 83-307.

288.012 Department of Commerce; foreign offices.—

(1) The Department of Commerce is authorized to:

(a) Establish and operate offices in foreign countries in the execution of its responsibilities for promoting the development of tourism and the economic development of the state.

(b) Enter into agreements necessary to establish and operate an office in a foreign country containing provisions which may be in conflict with general laws of the state pertaining to the purchase of office space, employment of personnel, and contracts for services. When agreements pursuant to this section are made which set compensation in foreign currency, such agreements shall be subject to the requirements of s. 215.425, but the purchase of foreign currency by the department to meet such obligations shall be subject only to s. 216.311.

(2) The department, in connection with the establishment, operation and management of any of its offices located in a foreign country, is exempt from the provisions of ss. 255.21, 255.25, and 255.254 relating to leasing of buildings; ss. 283.33, 283.35, and 283.42 relating to bids for printing; and ss. 287.012-287.29 relating to purchasing, motor vehicles, and communications and from all statutory provisions relating to state employment, if the laws, administrative code, or business practices or customs of the foreign country, or political or administrative subdivision thereof, in which such office is located are in conflict with these provisions.

(a) The department may exercise such exemptions only upon prior approval of the Governor.

(b) If approval for an exemption under this section is granted as an integral part of a plan of operation for a specified foreign office, such action shall constitute continuing authority for the department to exercise the exemption, but only in the context and upon the terms originally granted. Any modification of the approved plan of operation with respect to an exemption contained therein must be resubmitted to the Governor for his approval. An approval granted to exercise an exemption in any other context shall be restricted to the specific instance for which the exemption is to be exercised.

(c) As used in this subsection, the term "plan of operation" means a compilation of the specific policies and procedures encompassing the entire scope of the operation and management of an office established by the department in a foreign country.

(d) Upon final action by the Governor with respect to a request to exercise the exemption authorized in this subsection, the department shall report such action, along with the original request and any modifications thereto, to the President of the Senate and Speaker of the House of Representatives within 30 days.

History.—s. 1, ch. 80-401; s. 1, ch. 82-115; ss. 1, 6, ch. 83-252.

*Note.—As amended, effective January 1, 1984, expires effective January 1, 1989, and is scheduled for review by the Legislature before that date.

288.03 Powers and duties of division.—The general purposes of the Division of Economic Development of the Department of Commerce shall be to guide, stimulate, and promote the coordinated, effi-

cient, and beneficial development of the state and its regions, counties, and municipalities in accordance with present and future needs and resources and the requirements of the prosperity, convenience, comfort, health, safety, and general welfare of the people of the state. For the accomplishment of such purposes, the division shall have the power and authority to make expenditures for and to:

(1) Create and build Florida industries.

(2) Promote commerce and the sale of Florida products.

(3) Encourage employment for Florida citizens.

(4) Raise the earning level of Florida's citizens.

(5) In order to promote and develop business, agriculture, industry, commerce, and employment for citizens of the state, plan and conduct a campaign of information, advertising, and publicity relating to the business, industrial, commercial, agricultural, educational, transportation, and residential facilities, advantages, and products of the state and all parts thereof.

(6) Disseminate any such information pertaining to Florida by:

(a) Preparing and circulating motion pictures.

(b) Preparing, purchasing, and distributing by mail or other means of advertising, literature, and other material, including exhibits.

(c) Although not specifically detailed but nevertheless included in such media, promoting and encouraging of, and, if necessary, contributing to, the happening and the holding of events and activities within the state, including follow-up contacts by personnel of the division within or without the state which in the judgment of the division will beneficially publicize the state in furtherance of the purposes, powers, and duties of the division as prescribed in this chapter.

(7) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the agricultural and industrial advantages of the state, including the establishment of, and expenditure for, a program of cooperative advertising with such public and private organizations or groups in accordance with rules promulgated by the division pursuant to chapter 120.

(8) Plan and carry out programs designed to enlarge and improve trade with other states and with foreign countries, and particularly with countries in the Western Hemisphere.

(9) Study trends and developments in the industries of the state and analyze the reasons underlying such trends; study current business activities in the state, with emphasis to be placed on major changes in employment by industrial classification, changes in the number of establishments, and changes in sales volume; study employment trends by standard industrial classification and geographic distribution in manufacturing and any other industries pertinent to the economic development program of the state and monitor manufacturing companies of 100 employees or more to determine trends or patterns of changes in new establishments, establishments halting operations, and major employment expansions or layoffs; investigate significant issues pertaining to barriers to the free and advantageous flow of commerce, restrictions and burdens imposed by law or otherwise which retard or adversely affect the legitimate expansion and development of commerce and industry, and costs and other facts affecting successful operation of business within the state; and make an annual report by January 15 to the Governor and to the Legislature of the findings of the foregoing studies and investigations with a list of policy alternatives, when indicated.

(10) Encourage research designed to further new and more extensive uses of the natural and other resources of the state, with a view to the development of new products and industrial processes.

(11) Promote and encourage the expansion and development of markets for Florida products.

(12) Serve as a clearinghouse for research, planning, and programs to relieve the industrial problems of the state.

(13) Investigate and study conditions affecting Florida business, industry, and commerce; collect and disseminate information; and encourage technical studies, scientific investigations, statistical research, and educational activities necessary or useful for the proper execution of the powers and duties of the Division of Economic Development.

(14) Plan and develop an effective business information service that will directly assist Florida industry and also encourage industries outside the state to use business facilities within the state.

(15) Compile, collect, and periodically make available scientific indexes and other information relating to current business conditions.

(16) Upon request of the Governor, inquire into and report to him concerning any program of public state improvements and the financing thereof.

(17) Advise, assist, and cooperate with municipal, county, regional, metropolitan area, and other local planning and development agencies within the state in preparing plans and programs for physical and economic development of such areas.

(18) In accordance and compliance with any federal law or regulation now enacted or hereafter to be enacted, act as the official agency of the state to work with federal agencies in matters affecting any purpose as to which the Legislature has not designated another state officer, board, bureau, commission, department, or agency in relation thereto; state, regional, county, metropolitan area or municipal planning, planning or construction of public works, urban redevelopment, and other matters concerning the acquisition, planning, construction, development, financing, control, improvement, or distribution of lands, buildings, structures, facilities, goods or services in the interest of the public, or for public purposes, or involving the expenditure of public funds, and act as the official agency of the state in connection with the grant or advance of any federal or other funds or credits to the state or through the state to its local governing bodies, in compliance with any such federal law.

(19) Accept and expend any gift or grant of money made to the division for any or all of the purposes specified in this section.

(20) Charge and collect registration fees at any conference, seminar, or other meeting conducted in furtherance of the duties, powers, and purposes of the division. Such fees shall be deposited in the State Treasury and restored to the expense appropriation

of the division and shall be disbursed exclusively for the reasonable and necessary expenses of the conference, seminar, or meeting for which they were collected. Any funds collected pursuant to this subsection which remain unexpended after the expenses of the conference, seminar, or meeting have been paid shall be deposited into the General Revenue Fund, unallocated.

(21) Subject to the concurrence of the Treasurer, deposit sufficient state funds in a foreign bank, or purchase foreign currency at the current market rate, for the purpose of paying for salaries, expenses, promotional activities, and other services and material rendered in connection with the operation of division offices outside the United States or in the conduct of any statutory duties by the division outside the United States. The amount of state funds deposited in any foreign bank, or the amount of foreign currency bought, for the operation of any single office, or any division promotional activity, outside the United States shall not exceed at any time an amount equal to 25 percent of the annual budget of such division offices. All payments from these funds must have prior audit approval from the office of the Comptroller.

(22) Make grants of funds in accordance with this section pursuant to appropriations for such grants made by the Legislature.

(23) Notwithstanding the provisions of part I of chapter 287, promulgate rules for the purpose of entering into contracts which are primarily for promotional and advertising services and promotional events which may include commodities involving a service. Such rules shall include the authority to negotiate costs with the offerors of such services and commodities who have been determined to be qualified on the basis of technical merit, creative ability, and professional competency.

(24) Provide and arrange for reasonable and necessary items and services for such necessary persons as the division deems proper in connection with the performance of promotional and other duties of the division.

(25) Promote the establishment, preservation, and expansion of small businesses by providing assistance and information through programs designed to achieve these objectives.

History.—s. 3, ch. 29788, 1955; s. 1, ch. 65-8; s. 2, ch. 65-173; ss. 1, 3, ch. 65-179; ss. 17, 35, ch. 69-106; s. 82, ch. 71-355; s. 1, ch. 73-283; s. 1, ch. 74-230; s. 1, ch. 76-202; s. 1, ch. 77-18; s. 1, ch. 77-174; s. 1, ch. 78-184; s. 1, ch. 78-375; s. 1, ch. 80-319; s. 2, ch. 80-224; s. 9, ch. 80-374; s. 2, ch. 81-244; s. 180, ch. 81-259.

288.06 Division of Economic Development: power to contract.—In the performance of its duties, the Division of Economic Development of the Department of Commerce is empowered and authorized to make and enter into contracts and to assume such other functions as are necessary to carry out the provisions of this chapter that are not inconsistent with this or other laws.

History.—s. 6, ch. 29788, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174; s. 2, ch. 80-259.

288.063 Contracts for transportation projects.—

(1) The Division of Economic Development is authorized to make expenditures and enter into contracts for direct costs of transportation projects with the appropriate governmental body.

(2) Any contract with a governmental body for construction of any transportation project, executed by the Division of Economic Development, shall:

(a) Specify and identify the transportation project to be constructed under construction, or which was constructed after July 1, 1980, for a new or expanding business.

(b) Effective December 1, 1981, require that the appropriate governmental body award the construction of the particular transportation project to the lowest and best bidder in accordance with applicable state and federal statutes or regulations when the construction cost exceeds $50,000, not inclusive of local in-kind costs. If no bids are received, the work may be performed by the appropriate governmental body.

(c) Require that the appropriate governmental body provide the division with copies of progress reports, copies of all progress payments made for work in connection with such transportation projects, and any change orders executed by the appropriate governmental body and payments made pursuant thereto. In addition, the appropriate governmental body, upon completion and acceptance of the transportation project, shall make certification to the division that the project has been completed in compliance with the terms and conditions of the contractual agreements between the division and the appropriate governmental body and meets minimum construction standards established in accordance with s. 335.075.

(d) Require that the Division of Economic Development transfer funds for each transportation project to the designated governmental body when the contract or agreement is executed by the division.

(e) Require that the governing board of the appropriate local governmental body agree by resolution to accept future maintenance and other attendant costs occurring after completion of the transportation project if the project is construction on a county or municipal system.

(3) With respect to any contracts executed pursuant to this section, "transportation project" means roads, as defined in s. 334.021(4)(b), which are necessary in the judgment of the Division of Economic Development to facilitate the economic development and growth of the state.

(4) The Division of Economic Development shall promulgate rules pursuant to chapter 120 setting forth the criteria by which transportation projects are to be specified and identified.

(5) No project that has not been specified and identified by the division in accordance with subsection (4) prior to the initiation of construction shall be eligible for funding after December 1, 1981.

(6) The Department of Transportation shall be the contracting agency when the project is on the state highway system. In addition, upon request by the appropriate governmental body, the department may advise and assist it or plan and construct other such transportation projects for it.

(7) Notwithstanding the provisions of s. 216.301, funds appropriated for this purpose shall not be subject to reversion.

History.—s. 7, ch. 80-299; s. [illegible] ch. 81-171.

288.07 Accessibility of records, data, and information of other state agencies.—In collecting and assembling information, the Division of Economic Development of the Department of Commerce is authorized to make use of such pertinent data as may be secured from boards, commissions, officials, agencies and institutions in the state. The division shall have access to records, data, information and statistics of such other boards, commissions, agencies, officials and institutions, except such records or information that may be required by law to be confidential or secret, and any and all such state agencies are required to furnish or make available to the division, as requested, such records, data, information and statistics necessary or proper for the operation of the division.

History.—s. 7, ch. 29788, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.

288.075 Confidentiality of records.—

(1) "Economic development agency" means the Division of Economic Development of the Department of Commerce, any industrial development authority created in accordance with part III of chapter 159 or by special law, or any research and development authority created in accordance with part V of chapter 159.

(2) Upon written request from a private corporation, partnership, or person, information, records, reports, data, and documents of an economic development agency which contain or would provide information concerning plans, intentions, or interests of such private corporation, partnership, or person to locate, relocate, or expand any of its manufacturing or other business activities in this state shall be privileged and confidential and shall not be published or open to public inspection and shall be exempt from the provisions of s. 119.07(1). This privilege and confidentiality shall only apply for a period not to exceed 24 months from the date an initial inquiry is received by the economic development agency, except upon petition by any party to a court of competent jurisdiction and upon determination by the court that the petitioner has proven, in the opinion of the court, need for access to such documents.

(3) Nothing herein shall be construed to waive any provision of chapter 120 or any other provision of law requiring a public hearing.

(4) No public officer or employee acting in his individual capacity shall enter into a binding agreement with any corporation, partnership, or person when such public officer or employee has knowledge that information concerning such corporation, partnership, or person is confidential pursuant to this section, until 90 days after such information is made public.

(5) Any person who is an employee of an economic development agency who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 77-73; s. 1, ch. 79-329; s. 3, ch. 83-47.

288.08 Publications; sale at cost.—The Division of Economic Development shall have authority to sell at approximate cost to the state such of its publications as, in its judgment, should not be furnished gratis to those who wish to use publications of the division in the conduct of their business; and any amounts of money received by the division from said source shall be added to amounts duly appropriated for its use in the prosecution of its purposes, powers and duties hereunder.

History.—s. 8, ch. 29788, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.

288.09 Acceptance of gifts or grants.—The Division of Economic Development is authorized to accept any grant, payment or gift of funds or property made by the United States or any department or agency thereof, or by any individual, firm or corporation, municipality or county or organization for any or all of the purposes specified in this chapter, and the division may expend said funds in accordance with the terms and conditions of any such grant, payment or gift.

History.—s. 9, ch. 29788, 1955; ss. 17, 35, ch. 69-106; s. 1, ch. 73-283; s. 1, ch. 77-174.

288.115 Department of Commerce; membership dues; presentments for outstanding service.—The Department of Commerce may incur expenses for membership dues of departmental employees in associations and other organizations affiliated with commerce and for presentment of plaques, framed certificates, or other items, not exceeding $100 for such other items, expressing appreciation to persons who are not state of Florida public employees for outstanding and meritorious service to the tourist industry or economic development of the state. This section shall not delete authority of the department to make reasonable and necessary expenditures for promotional items pursuant to s. 288.03(24) or s. 288.34(1).

History.—s. 1, ch. 80-200; s. 3, ch. 81-244.

288.13 Cooperation with other units, boards, agencies, and individuals.—Express authority and power is hereby given any county, municipality, drainage district, road or bridge district, school district or any other political subdivision, board or commission in the state to make and enter into with the Division of Bond Finance of the Department of General Services, contracts and leases, within the provisions and purposes of this chapter. The division is hereby expressly authorized to make agreements with and enter into any and all contracts with any political subdivisions of the state.

History.—s. 3, ch. 15681, 1933; CGL 1936 Supp. 4181 (1127); s. 2, ch. 22821, 1945; s. 11, ch. 29788, 1955; ss. 22, 35, ch. 69-106.

Note.—Former s. 420.04.

288.14 Board of Trustees of Internal Improvement Trust Fund may cooperate.—The Board of Trustees of the Internal Improvement Trust Fund may convey and grant to the Division of Bond Finance of the Department of General Services, and enter into agreements permitting the use and occupation by the division, with or without compensation, of land under its control and not in use for state purposes, including swamps, overflowed lands, bottoms of streams, lakes, rivers, bays, and other waters of the state, and the riparian rights thereto appertaining, as, in the judgment of said board may be rea-

interest-bearing revenue bonds, notes or certificates in its own name for the purpose of constructing, within the county, school buildings or additions thereto for rent, lease or purchase by the school board of the district. The Division of Bond Finance may, by contract, make the school board its agent for the acquisition or construction of such school buildings, classrooms, or facilities.

(2) Any school board, making application to the Division of Bond Finance pursuant to this section may prescribe the terms, conditions and limitations under which said bonds, notes, or certificates shall be issued and sold and the proceeds of the sale of said bonds, notes, and certificates shall be applied.

(3) Under no circumstances shall any bonds, notes or certificates issued under this section by the division be construed as an obligation of the state nor of its subdivisions nor shall the state or its subdivisions under any theory be bound therefor. They shall be solely and only the obligations of the division in its corporate and representative capacity and shall be secured only by such revenues as shall be pledged as security for the payment thereof.

(4) Any revenue bonds, notes or certificates issued by the Division of Bond Finance pursuant to this section may be secured by a lease-purchase agreement executed by the school board, which agreement may remain in effect until the bonds and all interest thereon and any refunding thereof have been paid in full. As security for the rentals agreed to be paid under the terms of the lease-purchase agreement, the school board may pledge and agree to pay as such rentals any moneys legally available for school purposes to such school board not prohibited by the Florida Constitution. Each school board requesting the construction of school buildings under this section shall annually request in its budget sufficient funds to meet the annual rentals agreed to be paid the Division of Bond Finance for lease or purchase of said buildings.

(5) As further security for the repayment of said revenue bonds, notes or certificates, the said school board is authorized to pledge as rentals any funds which may be appropriated by the Legislature for school purposes to said school board. The authority to pledge funds provided for in this subsection is expressly limited to any funds as, if, and when appropriated, in that the Legislature is under no obligation to make any future appropriation.

(6) Any school board requesting the Division of Bond Finance to construct school buildings pursuant to this section shall use said leased buildings for school purposes so long as a need exists therefor and until all of said revenue bonds, notes or certificates and the interest thereon, including any refundings thereof are paid in full; and thereupon title to said buildings shall vest in the school board.

(7) This section is intended to be cumulative to the other powers granted to the Division of Bond Finance and is not intended to repeal or abrogate any such other powers. In financing school buildings pursuant to this section the division may utilize all the powers granted under this chapter.

(8) No approval of any other state board, body, agency, or official other than as specified herein, shall be required for the issuance of such revenue bonds, notes or certificates as provided in this section except the approval of the State Board of Administration in the manner now provided by law.

History.—s. 1, ch. 67-428; ss. 22, 28, 35, ch. 69-106; s. 1, ch. 69-300.

288.34 Division of Tourism; powers and duties.—

(1) The general purposes of the Division of Tourism of the Department of Commerce shall be to guide, stimulate, and promote the coordinated, efficient, and beneficial travel and leisure development of the state and its regions, counties, and municipalities in accordance with present and future needs and resources and the requirements of the prosperity, convenience, comfort, health, safety, and general welfare of the people of the state. For the accomplishment of such purposes, the division shall have the power and authority to make expenditures for and to:

(a) Create and build Florida tourism.

(b) Encourage employment for state citizens.

(c)1. Encourage visitors from other states and other countries to come to Florida.

2. Manage and otherwise coordinate its activities and functions of visitors' centers and welcome stations within the state.

3. Provide services and information designed to inform tourists and other visitors concerning Florida's many tourist and visitor attractions and disseminate any such information by means of commonly used media within the state.

(d) Plan and conduct campaigns of information, advertising, and publicity relating to the recreational, scenic, historic, and transportation facilities and attractions of the state and all parts thereof and disseminate such information pertaining to Florida through and by means of the following media:

1. Newspaper advertising outside and inside the state;

2. Magazine advertising in magazines of state, national, and international circulation;

3. Outdoor advertising outside and inside the state;

4. Radio and television advertising over stations outside and inside the state or networks extending outside the state;

5. Preparation and circulation of motion pictures;

6. Preparation, purchase, and distribution by mail, or by other means, of advertising, literature, and other material, including exhibits; and, although not specifically detailed but nevertheless included in such media, promotion and encouragement of, and, if necessary, contribution to, the happening and the holding of events and activities within and without the state, including follow-up contacts by personnel of the division within or without the state, which in the judgment of the division will beneficially publicize the state in furtherance of the purposes, powers, and duties of the division as prescribed in this section.

(e) Assist in carrying out any program of information, special events, and publicity designed to attract Florida tourists, visitors, and other interested persons from outside the state.

(f) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions and vacation advantages of the state, including the establishment of and expend-

iture for a program of cooperative advertising with such public and private organizations and groups in accordance with rules promulgated by the division pursuant to chapter 120.

(g) Promote and encourage conventions, sporting events, and other special events.

(h) Charge and collect a reasonable fee equal to the approximate cost to the state for researching or compiling information or handling charges, publications, materials, or services which, in its judgment, should not be furnished gratis to those requesting the information, research, handling, material, publication, or other services. Any amounts of money received by the division from such sources shall be restored to the appropriations of the division and otherwise made available for its use in the performance of its duties, powers, and purposes.

(i) Charge and collect registration fees at conferences, seminars, and other meetings conducted in furtherance of the duties, powers, and purposes of the division. Such fees shall be deposited in the State Treasury and restored to the expense appropriation of the division and shall be disbursed exclusively for the reasonable and necessary expenses of the conference, seminar, or meeting for which they were collected. Any funds collected pursuant to this paragraph which remain unexpended after the expenses of the conference, seminar, or meeting have been paid shall be deposited into the General Revenue Fund, unallocated.

(j) Subject to the concurrence of the Treasurer, deposit sufficient state funds in a foreign bank, or purchase foreign currency at the current market rate, for the purpose of paying for salaries, expenses, promotional activities, and other services and material rendered in connection with the operation of division offices outside the United States or in the conduct of any statutory duties by the division outside the United States. The amount of state funds deposited in any foreign bank, or the amount of foreign currency bought, for the operation of any single office or any division promotional activity outside the United States shall not exceed at any time an amount equal to 25 percent of the annual budget of such division offices. All payments from such funds must have prior audit approval from the office of the Comptroller.

(k) Provide and arrange for reasonable and necessary items and services for such persons as the division deems proper in connection with the performance of the promotional and other duties of the division.

(2) In the performance of its duties, the division is empowered and authorized to make and enter into contracts and to assume such other functions as are necessary to carry out the provisions of this section that are not inconsistent with this or other laws.

(3) The division is authorized to encourage the organization of advisory boards or committees among interested groups of citizens. Such boards or committees shall advise the division as to its work, and it shall, as far as practicable, cooperate with such advisory boards or committees to secure the active aid thereof in the accomplishment of the aims and fulfillment of the duties of the division.

(4) The Division of Tourism, upon receipt of a declaration, petition, resolution, certified copy of an ordinance, or other clear directions from a community, board of county commissioners, municipality, county, city, specified region or area of the state, or other governmental or quasi-governmental agency whose substantial interests are affected that removal of motorist services directional signs, as defined in s. 479.01(18), from specific defined areas would cause a substantial economic hardship in such defined areas, shall forward such declaration, resolution, or finding, together with such supportive information as is available and a certification by the Division of Tourism that such removal would, in fact, cause a substantial economic hardship in a specific defined area, to the Department of Transportation for transmittal to the United States Secretary of Transportation for approval as provided in 23 U.S.C. s. 131(o).

(5) The division is authorized to make grants of funds in accordance with this section pursuant to appropriations for such grants made by the Legislature.

(6) Notwithstanding the provisions of part I of chapter 287, the division shall promulgate rules for the purpose of entering into contracts which are primarily for promotional and advertising services and promotional events which may include commodities involving a service. Such rules shall include the authority to negotiate costs with offerors of such services and commodities who have been determined to be qualified on the basis of technical merit, creative ability, and professional competency.

(7) The division is authorized to accept any grant, payment, or gift of funds or property made by the United States or any department or agency thereof or by any individual, firm, corporation, municipality, county, or organization for any or all of the purposes specified in this chapter; and the division may expend such funds in accordance with the terms and conditions of any such grant, payment, or gift.

History.—s. 2, ch. 74-230; s. 2, ch. 75-276; s. 2, ch. 77-18; s. 3, ch. 77-110; s. 4, ch. 78-6; s. 2, ch. 78-375; s. 118, ch. 79-400; s. 3, ch. 80-209; s. 2, ch. 80-224; s. 9, ch. 80-374; s. 4, ch. 81-244.

288.342 Tourism Promotional Trust Fund.—

(1) There is created within the Division of Tourism the Tourism Promotional Trust Fund.

(2) The division is empowered to purchase and hold for resale promotional items and products, the proceeds from the sale of which shall be deposited in the Tourism Promotional Trust Fund. As used in this subsection, "promotional products and items" means beverages and foodstuffs commonly distributed from vending machines and literature of an informational or promotional nature.

(3) Moneys deposited in the Tourism Promotional Trust Fund shall only be used to support the authorized activities and operations of the division, including, but not limited to, the purchase of additional promotional items and products.

History.—s. 1, ch. 80-234.

[1]288.347 Tourism Advisory Council; creation; membership; function.—

(1) There is created within the Division of Tourism of the Department of Commerce the Tourism Advisory Council, hereinafter referred to as the "council." The council shall consist of 37 persons who

(b) Assist and counsel small businesses on:

1. How to deal with federal, state, or local governmental agencies.
2. How to meet federal, state, or local regulation.
3. Policies of federal, state, and local governments relating to procurement and disposal of government property and government contracts.

(c) Receive complaints and suggestions concerning policies and activities of federal, state, and local governmental agencies which affect small businesses; develop, in cooperation with the agency, proposals for changes in policies or activities to alleviate any unnecessary adverse effects to small businesses; and work with the agency in implementing the changes.

(d) Conduct studies, workshops, and seminars dealing with small businesses.

(4) ANNUAL REPORTS.—On March 1 of each year, beginning with March 1, 1978, the Division of Economic Development of the Department of Commerce shall make a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives with respect to the implementation of this section. The report shall contain information on:

(a) The establishment and administration of the information system, including:

1. The information available.
2. How the information is disseminated.
3. The number and types of small businesses which have used the information system and what percentage the number using the system represents of the total number of small businesses in the state.

(b) The types of assistance and counseling that are available to small businesses from the department and contract agents; the number and types of businesses which have requested assistance or counseling, whether or not the assistance or counseling requested was provided, and, if such assistance or counseling was provided, the nature of the assistance or counseling; and what percentage the number of businesses assisted or counseled represents of the total number of small businesses in the state.

(c) The complaints and suggestions received by the department or contract agents and any changes in policies which have been developed or implemented to alleviate unnecessary adverse effects to small businesses.

(d) How the appropriations to carry out this section were spent and will be spent for the remainder of the current fiscal year.

(e) Plans and specific objectives to be accomplished by the department in the next fiscal year to further the purpose of this section. Except for the first report required by this section, each report shall contain information on whether or not the plans and specific objectives of the department were accomplished.

(f) Recommended amendments to this section.

(g) The budget for the next fiscal year.

(5) COOPERATION WITH FEDERAL AGENCIES.—The Division of Economic Development of the Department of Commerce, with the approval of the Legislature, shall cooperate with any federal agency which offers any program that is of benefit to small businesses and that is consistent with the purpose and the programs of this section.

(6) FOUR-YEAR REPORT; TERMINATION OF PROGRAMS; AUTOMATIC TERMINATION.—

(a) On March 1, 1981, in addition to the annual report required by subsection (4), the Department of Commerce shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive analysis of the cost of each program provided under subsection (3) or any amendment thereto, as compared to the benefits which have accrued to small businesses of this state and to the economy of this state as a result of that program and a recommendation as to whether or not that program should be continued.

(b) If the Legislature fails to enact legislation to continue any program provided under subsection (3) or any amendment thereto in the regular session which follows the date the report required by this subsection is made, or if the Governor vetoes such legislation, that program shall be terminated by the department as of July 1, 1981. If no program provided under subsection (3) or any amendment thereto is continued, this section and all amendments hereto are repealed effective July 1, 1981.

History.—s. 1, 2, 3, 4, 5, 6, 7, 8, ch. 77-214; s. 4, ch. 78-323; s. 119, ch. 79-400; s. 1, ch. 80-284; s. 15, ch. 81-95.

288.501 Short title.—Sections 288.501-288.518 shall be known and may be cited as the "Florida Industrial Siting Act."

History.—s. 1, ch. 79-147.

288.502 Legislative intent.—

(1) The Legislature finds and declares that, in order to protect and promote the health, safety, welfare, and prosperity of the state and its citizens and improve the quality of life of the citizens of the state, it is appropriate to promote the creation of new jobs for Florida's citizens and expansion of the industrial economy of the state, so long as such projects are consistent with the protection of our natural resources and environment and are located, constructed, and operated in a manner that facilitates orderly and planned growth and development in the state. The Legislature further finds that the accomplishment of such public purposes requires that the state establish procedures to coordinate and facilitate state decisions relating to industrial plant siting, new business development, and expansion of existing facilities so as to enhance job opportunities for citizens of this state who are unemployed or underemployed.

(2) The Legislature finds that these objectives can best be achieved by the implementation of a process whereby all state permit applications are centrally coordinated and all state permit decisions are reviewed on the basis of standards and recommendations of the deciding state agencies. It is the intent of the Legislature that this procedure shall not compromise standards or policies for the protection or enhancement of the state's natural resources and environment.

(3) It is the intent of the Legislature that the procedures for certification established by this act shall be applicable to a proposed project at the option of the applicant. The initial decision to apply for certifi-

cation under this act shall be solely within the discretion of the developer of a project.

(4) It is the intent of the Legislature that applicants applying for certification, to the maximum possible extent, should hire full-time workers from among the unemployed and underemployed citizens of the state and should fully utilize available on-the-job programs.

History.—s. 1, ch. 79-147.

288.503 Definitions.—As used in ss. 288.501-288.518, unless the context otherwise requires:

(1) "Agency" means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government, including each state agency. The term does not include any local governmental entity other than a multicounty water management district.

(2) "Application" means the documents required by the department to be filed to initiate a certification proceeding.

(3) "Board" means the Governor and Cabinet, with the Governor acting as chairman.

(4) "Certification" means the written order of the board approving an application in whole or with such modifications or conditions as the board may deem appropriate.

(5) "Completeness" means a condition which exists when the application addresses all applicable sections of the prescribed application form adopted by the department, but does not mean that said sections are sufficient in comprehensiveness of data or in quality of information provided.

(6) "Department" means the Department of Environmental Regulation.

(7) "State land planning agency" means the Department of Community Affairs and is synonymous with the "state land planning agency" referred to in chapter 380.

(8) "Hearing officer" means the hearing officer assigned by the Division of Administrative Hearings pursuant to s. 120.65(2) to conduct the hearings required by this act.

(9) "License" shall have the same meaning when used in this act as that term is defined in chapter 120.

(10) "Local governmental entity" means a governmental entity which is authorized to exercise zoning and land use regulatory authority over the jurisdiction wherein the proposed project is to be located.

(11) "Notice of intent" means that notice filed with the department by the developer of an industrial project prior to submission of an application pursuant to this act.

(12) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, governmental agency, or public utility district or any other entity, public or private, however organized.

(13) "Industrial project" or "project" means any new business activity or any expansion of or addition to an existing business activity which:

(a) Has the potential for creating 50 or more full-time employment opportunities;

(b) Is engaged in industrial, commercial, wholesale, or retail business activity; and

(c) Must secure licenses from two or more agencies.

The term "industrial project" or "project" does not include residential housing construction or development or electrical power plants certified pursuant to ss. 403.501-403.517 or projects which are located in or discharge into Outstanding Florida Waters as defined in chapter 17-3, Florida Administrative Code, as amended. A person proposing construction within aquatic preserves may use the procedures established pursuant to this act only so long as such construction is water-dependent and consistent with the applicable aquatic preserves acts contained in chapter 258. A person proposing construction within the special waters category of Outstanding Florida Waters may use the procedures established pursuant to this act only so long as such construction is consistent with chapter 17-3, Florida Administrative Code, as amended.

(14) "State comprehensive plan" means that plan prepared in accordance with the provisions of part I of chapter 23.

(15) "Sufficient" or "sufficiency" means the application is "complete" and that it also contains an adequate quality and volume of information to enable the department or its consultants to commence the studies required by s. 288.509. An application which is determined to be sufficient as to a majority of its sections shall be processed for certification on a schedule agreed to by the applicant and the parties so long as the schedule provides that a sufficient application is available to all parties at least 60 days prior to the certification hearing. Failure to provide these materials within such time shall be deemed good cause for delaying the certification hearing. If such materials are not provided within 6 months of the filing of the complete application with the department, the application shall be considered to have been withdrawn unless a later time has been agreed to by the applicant, the department, and all parties.

(16) "Water management district" means the water management district created pursuant to chapter 373 which exercises jurisdiction over the area wherein the proposed project is to be located.

History.—s. 1, ch. 79-147; s. 26, ch. 81-169; s. 181, ch. 81-259; s. 26, ch. 83-88.

288.504 Department of Environmental Regulation; powers and duties.—The Department of Environmental Regulation shall have the following powers and duties in relation to this act:

(1) To adopt, promulgate, or amend reasonable procedural rules to implement the provisions of this act.

(2) To prescribe the form, content, and necessary supporting documentation required for the submission of complete and sufficient applications and notices of intent.

(3) After January 1, 1980, to receive notices of intent and applications and to initially determine the completeness and sufficiency thereof, subject to review of such determinations by the hearing officer.

(4) To make or contract for studies of applications.

(5) To administer the processing of applications for project certifications and to ensure that the applications are processed as expeditiously as possible.

(6) To notify all affected agencies of the filing of a notice of intent within 15 days of receipt of the notice and to publish public notice that the department has received such notice of intent.

(7) To notify all affected agencies of the filing of an application within 15 days of receiving the application and to publish public notice that the department is processing such application.

(8) To require an application fee not to exceed $25,000. The application fee shall be paid to the department upon the filing of each application. A fee schedule shall be adopted by the department by rule on a sliding scale related to the size and type of project being proposed by the applicant. A minimum fee of $2,500 shall be required for each application. All reasonable expenses and costs of these proceedings incurred by the department, the local governmental agency, the Division of Administrative Hearings, the state land planning agency, and the water management district, including those which are associated with the cost of publication of public notices, the preparation and conduct of the hearing, the recording and transcription of proceedings, and the studies of project certification required by this act, shall be paid from the application fee or notice-of-intent fee. Any sums remaining after the payment of authorized costs shall be refunded to the applicant within 90 days of the issuance or denial of certification or withdrawal of the application or notice of intent. The applicant shall be provided with an itemized accounting of the expenditures.

(9) To prepare a written analysis which shall be filed with the hearing officer and served on all parties no later than 3 months after the complete application is filed with the department, which analysis shall include:

(a) A statement indicating whether the proposed project will be in compliance with the rules of the department and of other agencies.

(b) The report from the state land planning agency as required by s. 288.509.

(c) The report of the water management district as required by s. 288.509.

(d) The studies conducted pursuant to s. 288.509.

(e) The comments received by the department from any other state, local, or federal agency.

(f) A summary of the comments received by the department from any person not party to this proceeding.

(g) The statement of approval of the local government required by s. 288.505, including such modifications or conditions as the local governmental entity within its authority may deem appropriate.

(h) The recommendation of the department as to the disposition of the application and any proposed conditions of certification which the department believes should be imposed.

(10) To publish public notice of the filing of the notice of intent and the application and of all hearings conducted pursuant to this act.

(11) To prescribe reasonable means for monitoring the effects arising from the construction and operation of projects which have been granted a certification under this act to assure continued compliance with the terms of the certification.

History.—s. 1, ch. 79-147; s. 27, ch. 81-169.

288.505 Local government approval.—

(1)(a) No certification hearing shall be held until the hearing officer has received a final statement of approval from the local governmental entity that the project is in compliance with chapter 380, if applicable to the project, and all local development ordinances, including, but not limited to, the local government comprehensive plan, if one has been adopted, and zoning, land use, and local pollution control ordinances. The statement of approval granted by the local governmental entity, including such modifications or conditions as the local governmental entity within its authority may deem appropriate, shall be filed with all parties and the hearing officer at least 60 days prior to the certification hearing.

(b) In the event the statement of approval from the local government is not submitted within 60 days prior to the certification hearing, such hearing shall be delayed until all parties have had a 60-day period in which to review the local government's statement of approval. A certification hearing under s. 288.51 shall be canceled and the application shall be withdrawn if a statement of approval is not received within 6 months of the filing of the complete application with the department. Upon approval, the local governmental entity may not change such ordinances, plans, or development orders so as to affect the project until the procedures of this act, including any board or court reviews, are completed.

(2) A statement of approval of a project which is the subject of an application for certification shall not eliminate any requirements of any other statutes administered by a local government. A denial by a local government of an application for a statement of approval for a project shall not be appealable to the board under this act.

(3) The local governmental entity's statement of approval shall be effective for 2 years, during which time the zoning and land use of the project may not be altered except with the concurrence of the applicant or as provided in s. 163.3191.

History.—s. 1, ch. 79-147.

288.506 Applicability and certification.—The provisions of this act shall apply only to those projects for which an application for certification has been submitted pursuant to this act after January 1, 1980. The determination to submit an application for certification under this act shall be solely within the discretion of the applicant. When a person does not choose to submit an application for certification pursuant to this act, all state permitting or licensing provisions otherwise in effect shall continue to apply to said project. However, no permit application which is the same as, or substantially similar to, any application which has been submitted pursuant to the permitting or licensing provisions otherwise in effect shall be resubmitted under this act once the issuance of a notice of intent to deny the application or final agency action has taken place. Once an application is submitted pursuant to this act and processed to the point that the recommendation of the department

pursuant to s. 288.504(9) has been filed, no application which is the same or substantially similar shall be resubmitted pursuant to the permitting or licensing provisions otherwise in effect.

History.—s. 1, ch. 79-147.

288.507 Appointment of hearing officer; determination of completeness and sufficiency.—

(1) Within 7 days of receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate a hearing officer to conduct the hearings required by this act. The division director shall designate a hearing officer within 7 days of receipt of the request from the department. Upon being advised that a hearing officer has been appointed, the department shall immediately file a copy of the application and all supporting documents with the hearing officer, who shall docket the application.

(2) Within 10 days of receipt of an application, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the completeness, not the sufficiency, of the application. If the department declares the application to be incomplete, then, within 15 days of the receipt by the department of the application, the applicant shall file with the Division of Administrative Hearings and with the department a statement agreeing with the statement of the department and withdrawing the application or contesting the statement of the department. If the application is not withdrawn, the hearing officer shall schedule a hearing on the statement of completeness. The hearing shall be scheduled as expeditiously as possible, but no later than 30 days after the receipt of the application by the department. The hearing officer shall make his decision within 10 days of the hearing. If the hearing officer determines that the application was not complete as filed, then the applicant shall either complete the application or shall withdraw the application. If the hearing officer determines that the application was complete at the time it was filed, then the times provided in this act shall run from the date of the filing of such application.

(3) Should the department determine within 15 days after initiation of the studies required by this act that an application is so insufficient as to prevent proper evaluation of a project, it shall consult with the applicant to determine if the insufficiency can be timely rectified. If the consultation indicates that the insufficiency cannot be timely rectified, the department, after notice to the applicant, shall so advise the hearing officer and other parties. Within 15 days of being advised, the hearing officer shall schedule a hearing on this issue. The hearing shall be held no later than 30 days after the receipt of the department's position. The hearing officer shall make a decision on this issue within 10 days of the hearing. If the hearing officer determines that the application is so insufficient as to prevent proper evaluation of a project, then the applicant shall correct this deficiency, and the time limits shall be adjusted accordingly. If the hearing officer determines that the application is sufficient, then the times provided in this act shall run from the date of filing of the application.

History.—s. 1, ch. 79-147.

288.508 Notice of intent to file application.—

(1) In order to facilitate the conduct of studies required by this act and expedite the processing of the application which may be filed subsequently, the applicant for a proposed project may file a notice of intent to file an application with the department.

(2) The department shall establish by rule a procedure by which an applicant, after public notice, may enter into binding written agreements with the department as to the data and the level of information which must be included in an application filed pursuant to this act. It is the legislative intent of this subsection to encourage paperwork reduction, to discourage unnecessary data gathering, and to encourage coordination of this process with federal environmental reviews when such are required by law.

History.—s. 1, ch. 79-147.

288.509 Reports and studies.—

(1) It shall be the duty of the department to provide copies of the application and notice of intent as filed within 7 days of receipt thereof to the state land planning agency, the water management district and the regional planning agency which have jurisdiction over the area wherein the proposed project is to be located, the Department of Commerce, the Department of Transportation, the Department of Natural Resources, the Game and Fresh Water Fish Commission, the Department of Health and Rehabilitative Services, the Department of Business Regulation, the Department of Agriculture and Consumer Services, the Department of State, and the local governmental entities which have jurisdiction.

(2) Within 60 days of the filing of a complete application, the state land planning agency shall prepare and submit to the department a report and its recommendation as to whether the proposed project unreasonably interferes with the achievement of the goals and objectives of any adopted state comprehensive plan and with respect to any other matters within its jurisdiction.

(3) Within 60 days of the filing of the complete application, the water management district shall prepare and submit to the department a report and its recommendation as to the impact of the proposed project on the water resources of the district. The report may include the comments of the water management district with respect to any other matters in its jurisdiction.

(4) It shall be the duty of the department to conduct, or contract for, studies of the proposed project, including, but not limited to, the following:

(a) The environmental impact of the project, including impacts on water quality, air quality, fish and wildlife, and cultural resources.

(b) The impact of the project on the economy of the area, including provisions of employment opportunities and related economic impacts.

(c) The impact of the project on necessary public facilities, including transportation facilities.

(d) The impact of the project on energy demand.

(e) Compliance of the project with agency standards.

(5) The department shall initiate the studies required by subsection (4) no later than 15 days after the complete application is filed. The department

shall keep the applicant informed as to the progress of the studies and any issues raised thereby.

(6) The studies required by subsection (4) shall be completed no later than 2 months after the date the studies are initiated.

History.—s. 1, ch. 79-147; s. 28, ch. 81-169.

288.51 Proceedings; parties; participants.—

(1)(a) A certification hearing shall be held by the hearing officer no later than 4 months after the complete application is filed with the department. At the conclusion of the certification hearing, the hearing officer shall, after consideration of all evidence of record, submit to the board a recommended order no later than 5½ months after receipt of the complete application by the department. The recommended order shall include findings of fact and conclusions of law as to each license required of the applicant.

(b) The certification hearing shall be held in the county of the proposed project and as near as practicable to the project site.

(2)(a) Parties to the proceedings shall include:

1. The applicant.
2. The state land planning agency.
3. The water management district with jurisdiction.
4. The department.
5. The Department of Natural Resources, when the use or purchase of state-owned lands is involved.

(b) Upon the filing with the hearing officer of a notice of intent to be a party at least 30 days before the certification hearing, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a), as to matters within its jurisdiction.
2. Any county or municipality in whose jurisdiction the proposed project is to be located.
3. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote orderly development of the area in which the proposed project is to be located.

(c) Except as provided in paragraph (d), failure of a state agency described in subparagraph (b)1. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that state agency to participate as a party in the proceeding and of its right to assert jurisdiction to regulate, permit, or license such project.

(d) Other parties may include any persons, including those persons enumerated in paragraph (b) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the hearing officer, upon such conditions as he may prescribe, any time prior to 15 days before the commencement of the certification hearing. Parties who are granted permission for untimely intervention pursuant to this paragraph shall be bound by the status of the proceedings as they find them as of the date intervention is granted, unless otherwise ordered by the hearing officer in his discretion.

(e) Any state agency whose properties or works are being affected pursuant to s. 288.511(2) or from whose rules the applicant is seeking a variance pursuant to s. 288.514(2) shall be made a party upon the request of the department or at the agency's own request.

(3) When appropriate, any person may be given an opportunity to present oral or written communications to the hearing officer at the certification hearing. If the hearing officer proposes to consider such communications, then all parties shall be given an opportunity to cross-examine the person or challenge or rebut such communications.

(4) The hearing officer shall have all powers and duties granted to hearing officers by chapters 120 and 403 and by the rules of the department and the Administration Commission, including the authority to resolve disputes over the completeness and sufficiency of an application for certification.

History.—s. 1, ch. 79-147; s. 28, ch. 81-169.

288.511 Final disposition of application.—

(1) Within 45 days of receipt of the hearing officer's recommended order, the board, pursuant to applicable law, shall act upon the application by written order, approving in whole, approving with such conditions as the board shall deem appropriate, or denying the issuance of a certification and stating the reasons for issuance or denial.

(2) In regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use thereof, the connection thereto, or the crossing thereof for the project and to direct such state agency to execute, within 30 days of the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

(3) The issuance or denial of the certification by the board shall be final agency action.

History.—s. 1, ch. 79-147.

288.512 Alteration of time limits.—Any time limitation in this act may be altered by stipulation or by the hearing officer upon good cause shown by any party.

History.—s. 1, ch. 79-147.

288.513 Local powers not preempted; rulemaking power.—

(1) Notwithstanding any other provision of this act, this act does not preempt any ordinance, rule, regulation, or decisionmaking power of any local governmental entity. It is the intent of this act that local decisionmaking shall not be limited hereby, except as expressly provided in s. 288.505(1).

(2) The board shall have the power to adopt reasonable procedural rules to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated permitting process.

History.—s. 1, ch. 79-147.

288.514 Effect of certification.—

(1) Subject to the conditions of certification set

forth therein, any certification signed by the Governor as chairman of the board shall constitute the sole license of the state and any agency as to the approval of the construction and operation of the proposed project.

(2) The certification may include variances, exceptions, and exemptions as otherwise allowed by law from nonprocedural standards or rules of the department or any other standards or rules of any other agency which were expressly considered during the proceedings and which otherwise would be applicable to the construction and operation of the proposed project. However, the board's authority to grant such variances, exceptions, or exemptions shall be subject to the nonprocedural requirements and limitations specified in the applicable statutes or rules.

(3) The certification shall be in lieu of any license, permit, certificate, or similar document required by any agency pursuant to, but not limited to, chapter 161, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 381, chapter 387, chapter 403, the Florida Transportation Code, or 33 U.S.C. s. 1341.

(4)(a) A project certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to such projects. Except when express variances, exceptions, or exemptions have been granted, subsequently adopted applicable rules of the department which prescribe new or stricter criteria or which prescribe more lenient criteria shall operate as automatic modifications to the conditions of certification.

(b) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings.

(5) The certification received pursuant to this act shall be effective for a period of 7 years from the date of issuance by the board. Applicants wishing to renew may seek recertification pursuant to this act or may seek to renew each individual license, permit, certification, or other document which is covered by this act through each agency's applicable procedures. Renewal of variances made a part of the certification, when renewable under the appropriate statute or rule, may be sought as part of recertification proceeding or individually through each agency's applicable procedures.

History.—s. 1, ch. 79-147.

288.515 Revocation or suspension of certification.—Any certification may be revoked or suspended pursuant to chapter 120:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the board's refusal to recommend a certification in the first instance.

(2) For failure to comply with the terms or conditions of the certification.

(3) For violation of the provisions of this act or rules or orders issued hereunder.

History.—s. 1, ch. 79-147.

288.516 Review.—Proceedings under this act shall be subject to judicial review as provided in chapter 120.

History.—s. 1, ch. 79-147.

288.517 Enforcement of compliance.—Violations of this act shall be enforced as provided in ss. 403.121, 403.131, 403.141, and 403.161 and other applicable laws.

History.—s. 1, ch. 79-147.

288.518 Amendment or modification of certification.—A certification may be amended or modified after issuance in any one of the following ways:

(1) The parties to the certification proceeding may amend or modify the terms and conditions of the certification by mutual written agreement. Upon execution of the agreement by the parties, the provisions of s. 120.57 shall apply to proceedings for approval or denial of the agreement by the board.

(2) If the parties to the certification proceeding are unable to reach a mutual written agreement or amendment or modification of the terms and conditions of the certification, a petition for modification setting forth:

(a) The proposed amendment or modification;

(b) The factual reasons asserted for the amendment or modification; and

(c) The anticipated effects of the proposed modification on the applicant, the public, and the environment;

shall be filed with the board with copies being served on all parties to the original proceedings. The provisions of s. 120.57 shall apply to the proceedings for approval or denial of the petition by the board.

(3) As required by s. 288.514(4).

History.—s. 1, ch. 79-147.

CHAPTER 315

PORT FACILITIES FINANCING

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315.01 Short title.—This law shall be known and may be cited as the "1959 Port Facilities Financing Law."

History.—s. 1, ch. 59-411.

315.02 Definitions.—As used in this law, the following words and terms shall have the following meanings:

(1) The term "port district" or the word "district" shall mean any district created by or pursuant to the provisions of any general or special law and authorized to own or operate any port facilities.

(2) The term "port authority" or the word "authority" shall mean any port authority in Florida created by or pursuant to the provisions of any general or special law or any district or board of county commissioners acting as a port authority under or pursuant to the provisions of any general or special law.

(3) The word "county" shall mean any county and the word "municipality" shall mean any municipality in Florida.

(4) The word "unit" shall mean any county, port district, port authority or municipality.

(5) The term "governing body" shall mean the board or body in which the general legislative powers of a unit shall be vested.

(6) The term "port facilities" shall mean and shall include harbor, shipping, and port facilities, and improvements of every kind, nature, and description, including, but without limitation, channels, turning basins, jetties, breakwaters, public landings, wharves, docks, markets, parks, recreational facilities, structures, buildings, piers, storage facilities, public buildings and plazas, anchorages, utilities, bridges, tunnels, roads, causeways, and any and all property and facilities necessary or useful in connection with the foregoing, and any one or more or any combination thereof and any extension, addition, betterment or improvement of any thereof.

(7) The word "cost" as applied to any port facilities shall mean and shall include the cost of acquisition or construction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for 1 year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, all other expenses necessary or incident to determining the feasibility or practicability of such construction, the cost of acquiring or improving, enlarging and extending existing port facilities and preparing the same for sale or lease to provide funds for financing port facilities under the provisions of this law if, in the determination of the governing body, such acquisition, such improvement, enlargement and extension or such preparation for sale or lease are necessary to such financing, administrative expenses and such other expenses as may be necessary or incident to any financing herein authorized. Any obligation or expense heretofore or hereafter incurred by a unit in connection with any of the foregoing items of cost may be regarded as a part of such cost and reimbursed to the unit out of the proceeds of port facilities bonds issued under the provisions of this law.

History.—s. 2, ch. 59-411; s. 1, ch. 67-317.

315.03 Grant of powers.—Each unit is hereby authorized and empowered:

(1) To acquire, construct, lease, operate and maintain any port facilities either within or without or partly within and partly without the corporate limits of the unit, or within or partly within the corporate limits of any other unit on property owned or acquired by it; provided, however, that no unit shall acquire, construct, lease, operate or maintain port facilities other than channels or turning basins in any county of the state other than the county in which such unit is located without securing the prior approval or consent of the unit or units in which such port facilities are proposed to be located, which approval or consent, if given, shall be evidenced by a resolution or ordinance duly adopted.

(2) To acquire by purchase, grant, gift or lease or by the exercise of the right of eminent domain and to hold and dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property, for or in connection with any port facilities, whether or not subject to mortgage, liens, charges or other encumbrances.

(3) To add to or extend, or cause or permit to be added to or extended, any existing lands or islands now or hereafter owned by a unit bordering on or being in any waters by the pumping of sand or earth from any land under water or by any other means of construction, as a part of or for the purpose of providing any port facilities or for the purpose of improving, creating or extending any property of the unit for use of or disposal by the unit.

(4) To construct, or cause or permit to be constructed, an island or islands in any waters by the pumping of sand or earth from any land under water or by any other means of construction, as a part of or for the purpose of providing any port facilities.

(5) To construct any bridge, tunnel, road or causeway, or any combination thereof, to, from or between any port facilities.

(6) To dredge or deepen harbors, channels and turning basins, to cooperate with the United States or any agency thereof in the dredging or deepening of any harbor, channel or turning basin, to enter into contracts with the United States or with any agency thereof concerning any such dredging or deepening project, and to pay such amounts to the United States or any agency thereof or to others as shall be required by the terms of any such contract.

(7) To fill in, extend and enlarge, or cause or permit to be filled in, extended and enlarged, any existing port facilities, to demolish and remove any and all structures thereon or constituting a part thereof, and otherwise to prepare the same for sale or lease to provide funds for financing port facilities under the provisions of this law.

(8) To acquire any existing port facilities and to fill in, extend, enlarge or improve the same, or to cause or permit the same to be extended, enlarged or improved, for any public purpose or for sale or lease for the purpose of providing funds for the acquisition by the unit of any port facilities or for the payment of bonds, notes or other obligations of the unit for or in connection with any port facilities.

(9) To sell at public or private sale or lease for public or private purposes all or any portion of any port facilities now or hereafter owned by the unit, including any such facilities as extended, enlarged or improved, and all or any portion of any property of the unit improved, created, extended or enlarged under the authority of this law, on such terms and subject to such conditions as the governing body shall determine to be in the best interests of the unit.

(10) To contract for the purchase by the unit of any port facilities to be constructed, enlarged, extended or improved by any public body, agency or instrumentality or by any private person, firm or corporation, and to provide for payment of the purchase price thereof in such manner as may be deemed by the governing body to be in the best interests of the unit, including, but without limitation, the sale or exchange of any property of the unit therefor or the issuance of bonds or other obligations of the unit.

(11) To accept loans or grants of money or materials or property at any time from the United States or the State of Florida or any agency, instrumentality or subdivision thereof, upon such terms and conditions as the United States, the State of Florida, or such agency, instrumentality or subdivision may impose.

(12) To exercise jurisdiction, control and supervision over any port facilities now or hereafter acquired, owned or constructed by the unit.

(13) To operate and maintain, and to fix and collect rates, rentals, fees and other charges for any of the services and facilities provided by the port facilities now or hereafter acquired, owned or constructed by the unit excluding state bar pilots.

(14) To lease or rent, or contract with others for the operation of all or any part of any port facilities now or hereafter acquired, owned or constructed by the unit, on such terms and for such period or periods and subject to such conditions as the governing body shall determine to be in the best interests of the units.

(15) To contract debts for the acquisition or construction of any port facilities or for any other purposes of this law, to borrow money, to make advances, and to issue bonds or other obligations to finance all or any part of such acquisition or construction or in the carrying out of any other purposes of this law.

(16) To make advances to the United States or any agency or instrumentality thereof in connection with any port facilities, including the dredging or deepening of any harbor, channel or turning basin to serve any port facilities.

(17) To enter on any lands, waters or premises, within or without the unit or within the corporate limits of any other unit, for the purpose of making surveys, soundings and examinations with relation to any existing or proposed port facilities.

(18) To contract with the United States or the State of Florida or any agency or instrumentality thereof or with any public body or political subdivision or with any private person, firm or corporation with reference to any of the powers hereby granted.

(19) To perform any of the acts hereby authorized through or by means of its own officers, agents or employees or by contract.

(20) To do all acts and things and to enter into all contracts and agreements necessary or convenient to carry out the purposes of this law.

History.—s. 3, ch. 59-411; s. 1, ch. 67-137.

315.031 Promoting and advertising port facilities.—

(1) Each unit is authorized and empowered:

(a) To publicize, advertise and promote the activities and port facilities herein authorized;

(b) To make known the advantages, facilities, resources, products, attractions and attributes of the activities and port facilities herein authorized;

(c) To create a favorable climate of opinion concerning the activities and port facilities herein authorized;

(d) To cooperate with other agencies, public and private, in accomplishing these purposes;

(e) To enter into agreements with the purchaser or purchasers of port facilities bonds issued under the provisions of this law to establish a special fund to be set aside from the proceeds of the revenues collected under the provisions of s. 315.03(13), during any fiscal year, for the promotional activities authorized herein.

Nothing herein shall be construed to authorize any unit to expend funds for meals, hospitality, amusement or any other purpose of an entertainment nature.

(2) All obligations, expenses and costs incurred under the provisions of this section shall be paid from such fund when vouchers thereof, approved by the governing body of the unit, are exhibited to the responsible authority making disbursements for the governing body.

History.—s. 1, ch. 67-229.

315.04 Other consents or approvals; use of state lands.—Except as hereinafter provided in this section, and except as provided in s. 315.03(1), the approval or consent of any other political subdivision or public body, agency or instrumentality of the State of Florida, except the Board of Trustees of the Internal Improvement Trust Fund, shall not be required for the exercise of any of the powers granted by this law. Any municipality located in a county authorized by law to operate port facilities or in which there is a port district or a port authority shall exercise any powers granted by this law only if the governing body of such county, port district or port authority shall by resolution determine that the best interests of the county will be served thereby and consent thereto. The State of Florida hereby consents to the exercise of any and all powers granted by this law without further authorization or approval thereof by any of its agencies or instrumentalities, except as may be required from the Board of Trustees of the Internal Improvement Trust Fund as to the use of any state lands lying under water which are necessary for the accomplishment of the purposes of this law.

History.—s. 4, ch. 59-411; ss. 27, 35, ch. 69-106.

315.05 Port facilities bonds.—

(1) The governing body is authorized to provide by resolution, at one time or from time to time, for the issuance of bonds of a unit for the purpose of paying all or a part of the cost of any one or more port facilities. The bonds of each issue or series shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the governing body, and may be made redeemable before maturity, at the option of the unit, at such price or prices and under such terms and conditions as may be fixed by the governing body prior to the issuance of the bonds.

(2) The governing body shall determine the form of the bonds including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds, and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bond shall be the proper officers to sign such bond although at the date of such bond such persons may not have been such officers.

(3) Notwithstanding any other provisions of this law or any recitals in any bonds issued under the provisions of this law, all such bonds shall be deemed to be negotiable instruments under the laws of Florida. The bonds may be issued in coupon or in registered form, or both, as the governing body may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of coupon and registered bonds. The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law, and any bonds issued by a unit under this law shall not be considered in computing the amount of indebtedness which the unit may incur under any other law.

(4) The governing body may sell such bonds in such manner, either at public or private sale, and for such price as it may determine to be for the best interests of the unit. Prior to the delivery of definitive bonds, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(5) The governing body may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost. Bonds may be issued under the provisions of this law without obtaining the consent of any commission, board, bureau or agency of the state, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this law.

History.—s. 5, ch. 59-411; s. 25, ch. 73-302; s. 1, ch. 79-401.

315.06 Sources of payment and security for bonds.—

(1) The governing body may provide that bonds issued under the provisions of this law shall be payable from and secured by a pledge of any one or more of the following sources:

(a) Revenues of any one or more port facilities now owned or hereafter acquired or constructed by the unit;

(b) Proceeds of the sale or lease of all or any part of any port facilities now or hereafter owned by the unit as such facilities may be extended, enlarged or improved, or of any property of the municipality improved, created, extended or enlarged or prepared for sale or lease under the authority of this law;

(c) Any money received by the unit from the United States or any agency or instrumentality thereof in connection with any port facilities or in repayment of any advances made by the unit for all or any part of the cost of any port facilities.

(2) The governing body may provide that such bonds shall be general obligations of the unit for which the full faith, credit and taxing power of the unit shall be additionally secured by a pledge of revenues, sale or lease proceeds or money received by the unit from the United States or any agency or instrumentality thereof as herein authorized. The governing body of such unit may provide that such bonds shall be payable as to principal and interest in the first instance from such revenues, sale or lease proceeds or money received by the unit from the United States or any agency or instrumentality. The governing body of any unit may additionally secure any such bonds by a mortgage or other encumbrance, subject to such terms and conditions as it shall provide, upon all or any part of any port facilities now or hereafter owned by the unit, as such facilities may be extended, enlarged or improved, or of any property of

the unit improved, created, extended or enlarged or prepared for sale or lease under the authority of this law, and the governing body is hereby authorized to sell at public or private sale or lease any of such port facilities or property, subject to such terms and conditions and for such price, payable at one time or from time to time in installments as the governing body may provide, and to apply the proceeds of any such sale or lease, after paying all costs in connection therewith, to payment of the cost of any port facilities financed under the provisions of this law or to the payment of the principal of or the interest or redemption premiums on any bonds issued hereunder or to the payment of any other obligation or obligations herein authorized.

History.—s. 6, ch. 59-411.

315.07 Contracts for borrowing of money.—The governing body may contract with any person, firm, corporation or public body or with the United States or any agency or instrumentality thereof for the borrowing of money for paying all or any part of the cost of any one or more port facilities, and any such contract may contain such terms, conditions or provisions as the governing body may determine not in conflict with the provisions of this law. The provisions of s. 315.06 applicable to bonds shall be applicable also to contracts entered into under the above provisions of this section. Any such contract may be hypothecated by the unit, and the unit may borrow money under such terms and conditions as it shall determine in anticipation of the receipt of funds under such contract.

History.—s. 7, ch. 59-411.

315.08 Trust agreement or resolution.—In the discretion of the governing body, any bonds issued under the provisions of this law may be secured by a trust agreement by and between the unit and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in relation to the acquisition of property and the acquisition, construction, improvement, maintenance, repair, lease, operation and insurance of any port facilities in connection with which such bonds shall have been authorized, the custody, safeguarding or application of all moneys, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of Florida which may act as depositary of the proceeds of bonds or of revenue or other funds to furnish such indemnifying bonds or to pledge such securities as may be required by the governing body. Any such trust agreement or resolution may set forth the rights and remedies of the bondholders and of the trustee under any such trust agreement, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the governing body may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution shall be treated as a part of the cost of the operation of the port facilities.

History.—s. 8, ch. 59-411.

315.09 Remedies.—Any holder of bonds issued under the provisions of this law or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this law or by such trust agreement or resolution to be performed by the unit or by any officer thereof, including the fixing, charging and collecting of rates, rentals and other charges.

History.—s. 9, ch. 59-411.

315.10 Refunding bonds.—The governing body is hereby authorized to provide by resolution for the issuance of refunding bonds of the unit for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this law or which shall have been issued to provide funds for the payment of the cost of any port facilities under the provisions of any other law, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the governing body, for the additional purpose of acquiring or constructing additional port facilities. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the unit in respect of the same, shall be governed by the provisions of this law insofar as the same may be applicable.

History.—s. 10, ch. 59-411.

315.11 Exemption from taxation.—As adequate port facilities are essential for the welfare of the inhabitants and the industrial and commercial development of the area within or served by the unit, and as the exercise of the powers conferred by this law to effect such purposes constitutes the performance of proper public and governmental functions, and as such port facilities constitute public property and are used for public purposes, the unit shall not be required to pay any state, county, municipal or other taxes or assessments thereon, whether located within or without the territorial boundaries of the unit, or upon the income therefrom, and any bonds issued under the provisions of this law, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

History.—s. 11, ch. 59-411; s. 8, ch. 79-327.

315.12 Bonds, legal investments.—Bonds issued by a unit under the provisions of this law are hereby made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or unit officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the unit is now or may hereafter be authorized by law.

History.—s. 12, ch. 59-411.

315.13 Action by resolution.—All action required or authorized to be taken under the provisions of this law by the governing body may be by resolution, which resolution may be adopted at the meeting of the governing body at which such resolution is introduced and shall take effect immediately upon such adoption. Except as otherwise provided in this law, no resolution under this law need be published or posted, nor shall any such resolution require for its passage more than a majority of all the members of the governing body then in office.

History.—s. 13, ch. 59-411.

315.14 Public purposes.—It is hereby determined and declared that each and all of the powers conferred by this law and the exercise thereof are proper public and municipal purposes.

History.—s. 14, ch. 59-411.

315.15 Additional and alternative method.—This law shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to the powers conferred by any other law, either general, special or local, and shall not be regarded as in derogation of any power now existing. Bonds may be issued and any other action may be taken hereunder notwithstanding that any other law, either general, special or local, may provide for the issuance of bonds for a like purpose or for the taking of like action and without regard to the requirements, restrictions or procedural provisions contained in any other law, either general, special or local.

History.—s. 15, ch. 59-411; s. 1, ch. 67-489.

315.16 Liberal construction.—This law, being necessary for the welfare of the inhabitants of the state, shall be liberally construed to effect the purposes thereof.

History.—s. 16, ch. 59-411.

TITLE XXVI

PUBLIC TRANSPORTATION

CHAPTER 334

TRANSPORTATION ADMINISTRATION

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334.01 Short title.—Chapters 334-339 and 341 may be cited as the "Florida Transportation Code."

History.—s. 1, ch. 29965, 1965; s. 1, ch. 71-59; s. 72, ch. 79-164.

334.02 Declaration of legislative intent.—Recognizing that safe and efficient transportation is a matter of important interest to all the people of the state, the Legislature hereby determines and declares that:

(1) The development of a balanced and efficient transportation system adequate to meet the current and future transportation needs of the state is essential to the commercial life and general welfare of the people of the state and to the national defense;

(2) Present transportation facilities, transportation planning, and transportation development are inadequate to meet the minimum current and future transportation needs of the people of the state;

(3) The preservation and enhancement of the environment, the conservation of natural resources, including scenic, historic, and recreation assets, and the strengthening of long-range land use planning are vital to the health and welfare of the people of Florida, and the planning and development of transportation facilities should be consistent with these goals;

(4) Systematic and coordinated planning and development of balanced transportation facilities within and between all regions of Florida must be encouraged and should be vigorously pursued as provided in this chapter;

(5) To this end, it is the intent of the Legislature to make the Department of Transportation the custodian of the state highway and transportation systems and to provide sufficiently broad authority to enable the department to function adequately and efficiently in all areas of appropriate jurisdiction, subject to the limitations of the Constitution and the legislative mandate hereinafter imposed.

(6) The Legislature intends to declare, in general terms, the powers and duties of the Department of Transportation, leaving specific details to be determined by reasonable rules and regulations which the department may promulgate. The Legislature intends, by a general grant of authority to the Department of Transportation, to delegate sufficient power and authority to enable the department to carry out the broad objectives stated above.

(7) It is the further intent of the Legislature to bestow upon local officials adequate authority with respect to the transportation facilities under their jurisdiction. The efficient management, operation, and control of our county roads, city streets, other public thoroughfares and transportation facilities are likewise a matter of vital public interest.

(8) The problem of establishing and maintaining adequate roads and streets, eliminating congestion, reducing accident frequency, providing parking facilities and taking all necessary steps to ensure safe and convenient transportation on these public ways is no less urgent.

(9) The Legislature, recognizing the necessity of fixing responsibility for the construction, maintenance, and operation of the several systems of highways and other means of public transportation, intends that the state shall have an integrated balanced

system of roads connecting urban streets and other transportation facilities to provide safe and efficient transportation throughout the state. The authority hereinafter granted to the department and to counties and municipalities to assist and cooperate with each other and to coordinate their activities is therefore essential.

(10) The Legislature hereby finds, determines, and declares that this code is necessary for the preservation of the public safety, the promotion of the general welfare, the improvement and development of transportation facilities in the state, including the most effective utilization of parkways, scenic drives, residential streets and roads, elimination of hazards at grade intersections, and other related purposes, and as a contribution to the national defense.

History.—s. 1, ch. 29965, 1965; ss. 23, 35, ch. 69-106; ss. 5, 6, ch. 70-239.

334.021 Integrated balanced state highway system; definitions.—

(1) Every state agency, county, city, public body, authority, special district, expressway authority presently existing under chapter 348 or chapter 349, and any other authority created by special or general law of local application which has authority to expend funds for public transportation or for the maintenance, construction, or development of public roads, streets, bridges, highways, and other ways open to travel by the public is authorized to expend the same for the general purpose of developing an integrated, efficient, and well-balanced transportation system in this state, restrictive provisions of any statutes or other governmental ordinances and regulations to the contrary notwithstanding.

(2) Nothing in the broad authorization set forth in subsection (1) shall be construed to permit the expenditure of public funds in such manner or for such projects as would violate the State Constitution or the trust indenture of any bond issue or which would cause the state to lose any federal aid funds for highway or transportation purposes; and the provisions of this section shall be applied in a manner to avoid such result.

(3) Each expressway authority or transportation, mass transit, or other similar authority existing under law or hereafter created shall submit overall design and construction plans to the Department of Transportation prior to any construction for purposes of correlation with, or incorporation into, the existing state transportation system. The construction of any transportation facility shall be approved by the department prior to the commencement of construction if it:

(a) Requires maintenance through either the utilization of Department of Transportation personnel or the use of primary road funds, or

(b) Entails the substantial use of any gas tax funds other than primary.

However, if no determination is made by the department within 90 days after receiving the plans, they shall become effective.

(4) To assist and aid in the implementation of the Department of Transportation's development of an integrated and balanced transportation system, the following words and phrases shall, for the purposes of attaining this goal, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(a) "Mass transit facility" means all forms of transportation located on land, water, or air for the mass transportation of people.

(b) "Roads" include streets, sidewalks, alleys, highways, and other ways open to travel by the public, including the roadbed, right-of-way, and all culverts, drain sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel, and all ferries used in connection therewith. For purposes of public expenditures the term "road" or "roads" also includes all means for the transportation of people and property from place to place constructed, operated, or maintained in whole or in part from public funds.

(c) "Transportation facility" or "transportation facilities" means the property or property rights, both real and personal, of a type used for the establishment of public transportation systems which have heretofore or may hereafter be established by public bodies for the transportation of people and property from place to place.

History.—ss. 1, 4, ch. 70-239; s. 1, ch. 72-38.
Note.—Former s. 334.022.

334.03 Definitions of words and phrases.—The following words and phrases when used in this code shall, unless the context clearly indicates otherwise, have the following meanings:

(1) "Commissioners."—Board of county commissioners.

(2) "Department."—The Department of Transportation.

(3) "Freeway."—An expressway with full control of access.

(4) "Limited access facility."—A street or highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways, from which trucks, buses, and other commercial vehicles shall be excluded; or they may be freeways open to use by all customary forms of street and highway traffic.

(5) "Municipal connecting links."—City and town streets and roads, or portions thereof, including structures, that constitute routes between, or extensions of, said roads in the state highway system and feeder roads from bypassed areas.

(6) "Person."—Any person, firm, partnership, association, corporation, cooperation, organization, or business trust.

(7) "Road."—The term "road" shall be construed to include streets, sidewalks, alleys, highways, and other ways open to travel by the public, including the roadbed, right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel and all ferries used in connection therewith.

(8) "Right of access."—The right of ingress to a highway from abutting land and egress from a highway to abutting land.

(9) "Right-of-way."—Land in which the state, the department, a county, or a municipality owns the fee or has an easement devoted to or required for the use as a public road.

(10) "State park road system."—Roads embraced in boundaries of state parks and state roads leading to state parks other than roads of the state highway system, county roads, or municipal roads.

(11) "State roads."—All streets, roads, highways, and other public ways open to travel by the public generally and dedicated to the public use, according to law or by prescription, and designated by the department as provided by law as parts of the state highway system, including the roadbed, right-of-way, embankments, slopes, retaining walls, sidewalks, bridges, tunnels, and viaducts necessary for the maintenance of travel thereon and all ferries in connection therewith.

(12) "Structures."—Bridges, viaducts, tunnels, causeways, approaches, ferry slips, culverts, tollhouses, and gates and other similar facilities used in connection with roads.

(13) "Sufficiency rating."—The objective rating of a road or section of a road for the purpose of determining its capability to serve properly the actual or anticipated volume of traffic using the road.

(14) "Functional classification."—The assignment of roads into systems according to the character of service they provide in relation to the total road network. Basic functional categories include arterial, collector, and local roads which may be subdivided into principal, major, or minor levels. Those levels may be additionally divided into rural and urban categories.

(15) "Arterial road."—A route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance. In addition, all United States numbered highways shall be arterial roads.

(16) "Collector road."—A route providing service which is of relatively moderate average traffic volume, moderately average trip length, and moderately average operating speed. These routes also collect and distribute traffic between local roads or arterial roads and serve as a linkage between land access and mobility needs.

(17) "Local road."—A route providing service which is of relatively low average traffic volume, short average trip length or minimal through-traffic movements, and high land access for abutting property.

(18) "Urban area."—A geographical region comprising as a minimum the United States Census defined boundary of an urban place of 5,000 population, expanded to include adjacent areas as provided for by federal highway administration regulations.

(19) "Urbanized area."—An urban area having a central city or twin cities of more than 50,000 population.

(20) "Urban principal arterial roads."—Routes which generally serve the major centers of activity of an urban area, the highest traffic volume corridors, and the longest trip purpose and carry a high proportion of the total urban area travel on a minimum of mileage. The routes are integrated, both internally and between major rural connections.

(21) "Urban minor arterial roads."—Routes which generally interconnect with, and augment, urban principal arterial routes and provide service to trips of shorter length and a lower level of travel mobility. Minor arterial routes include all arterials not classified as principal and contain facilities that place more emphasis on land access than the higher system.

(22) "State highway system."—The state highway system shall consist of the following:

(a) The interstate system;

(b) All rural arterial routes and their extensions into and through urban areas;

(c) All urban principal arterial routes; and

(d) Those urban minor arterial routes on the existing primary road system as of July 1, 1977, with the addition of segments of such routes which lie between and connect those parts of the routes previously included in the primary system and which are necessary to provide continuity to the system; except that no segment in excess of 2 miles shall be so added.

However, not less than 2 percent of the public road mileage of each urbanized area shall be included as minor arterials in the state highway system. Urbanized areas not meeting the above minimum requirement shall have transferred to the state highway system additional minor arterials of the highest significance, in which case the total minor arterials in the state highway system from any urbanized area shall not exceed 2.5 percent of said area's total public urban road mileage. Excluding the interstate system, the state highway system shall be limited to 11,300 miles.

(23) "County road system."—The county road system of each county shall consist of all collector roads in the unincorporated areas and all extensions of such collector roads into and through any incorporated areas, all local roads in the unincorporated areas, and all urban minor arterials not in the state highway system.

(24) "City street system."—The city street system of each municipality shall consist of all local roads within that municipality, and all collector roads inside that municipality, which are not in the county road system.

(25) "Routine maintenance."—Pavement patching, shoulder repair, cleaning and repair of drainage ditches and structures, mowing, bridge inspection and maintenance, pavement striping, litter cleanup, and such other similar activities of a minor scope as are necessary to maintain a safe and efficient transportation system.

(26) "Periodic maintenance."—Activities which are large in scope and require a major work effort to restore deteriorated components of the transportation system to a safe and serviceable condition, including, but not limited to, the repair of large bridge structures, major repairs to bridges and bridge systems, and the mineral sealing of lengthy sections of roadway. Within the meaning of s. 9, Art. XII of the State Constitution, major resurfacing, widening, and

reconstruction of roads shall be considered "construction."

History.—s. 2, ch. 29965, 1955; ss. 1, 2, ch. 57-318; ss. 1, 2, ch. 63-27; s. 1, ch. 67-43; ss. 23, 35, ch. 69-106; s. 108, ch. 71-377; ss. 5, 17, ch. 77-165; s. 1, ch. 79-357; s. 136, ch. 79-400; s. 1, ch. 83-52.
cf.—s. 335.01 State roads designated.

334.05 Headquarters of department; rental of office room, etc.—The headquarters and general office of the department shall be located at the state capital. The department may purchase, build, rent or lease suitable buildings or rooms for its headquarters, general office, branch offices or division offices and for maintenance yards and rooms for equipment and supplies in other cities and towns of this state as the business of the department may necessitate or require, and payment for the purchase, construction, rental or lease of such offices shall be made from any funds provided for the maintenance of the department. The department may condemn property if necessary for the construction of its headquarters in Tallahassee.

History.—s. 4, ch. 29965, 1955; s. 1, ch. 63-330.

334.063 Department of Transportation; statistical studies.—The Department of Transportation shall include in the criteria for the planning, construction, and maintenance of state roads statistical studies of accidents and fatalities as well as traffic count.

History.—s. 1, ch. 69-68; ss. 23, 35, ch. 69-106.

334.11 Coordination of highway program; duties of department.—The Department of Transportation shall have the authority and responsibility for the coordination of the total highway and road program within the state, including the designation of systems and the development of construction standards as hereinafter provided for, and shall review the annual program for each of the major systems to insure coordination of planning and general conformity with the law. Local authorities are hereby authorized to cooperate with it.

History.—s. 10, ch. 29965, 1955; s. 4, ch. 67-461; ss. 23, 35, ch. 69-106.

334.131 Department of Transportation; employees' benefit fund.—The Department of Transportation is authorized to adopt regulations authorizing the creation and operation of an employees' benefit fund for employees of the department. The proceeds of the vending machines located in buildings owned by the department, or such portions thereof as the department by regulation may provide, shall be paid into such fund, to be used for such benefits and purposes as the department by regulation may provide.

History.—s. 1, ch. 69-387; ss. 23, 35, ch. 69-106.

334.14 State highway engineer, deputy and assistants; compensation and duties.—

(1) The department shall employ a State Highway Engineer who shall be a competent highway engineer, certified by the Board of Professional Engineers, with at least 10 years' experience in highway engineering. He shall be required to give bond in the amount of $100,000, payable to the Governor and his successors in office, to be approved by the Department of Banking and Finance, conditioned upon the faithful performance of his duties, the premiums of said bond to be paid from the funds for the maintenance of the department. He shall devote all his time and service to the department and shall exercise such powers and perform such duties as shall be required by law or prescribed by the department and shall be responsible for the efficient operation and administration of the engineering functions of the department.

(2) The department shall employ a Deputy State Highway Engineer who shall be a competent highway engineer, certified by the Board of Professional Engineers, with at least 10 years' experience in highway engineering. He shall be required to give bond in the amount of $50,000, payable to the Governor and his successors in office, to be approved by the Department of Banking and Finance, conditioned upon the faithful performance of his duties, the premiums of said bond to be paid from the funds for the maintenance of the department. He shall devote all his time and service to the department and shall exercise such powers and perform such duties as may be prescribed by law or by regulation of the department or the direction of the State Highway Engineer.

(3) The department shall employ an assistant state highway engineer of planning, an assistant state highway engineer of construction, an assistant state highway engineer of structures and an assistant state highway engineer of maintenance, whose duties shall be determined by the department and who shall be responsible for the efficient operation and administration of their respective divisions.

(4) The department shall employ one district engineer for each of the six respective transportation districts whose duties shall be fixed by the department and who shall be responsible for the efficient operation and administration of their respective districts.

History.—s. 13, ch. 29965, 1955; s. 5, ch. 57-318; s. 5, ch. 67-461; ss. 12, 23, 35, ch. 69-106; s. 2, ch. 72-29; ss. 2, 3, ch. 73-58; s. 2, ch. 78-90; s. 295, ch. 81-259; s. 2, ch. 81-302.
cf.—s. 113.07 Bonds of state officials.

334.17 Engineering consulting services.—The Department of Transportation is authorized to provide consulting engineering services, upon request, to any governmental unit on such terms as may be mutually agreed upon.

History.—s. 16, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

334.171 State to assist counties and municipalities; procedure.—

(1) In all cases where the commissioners request the advice and assistance of the Division of Road Operations of the department in the construction or repair of roads, the division shall, when practicable, send the state highway engineer or any assistant engineer into such county and render all assistance practicable, without expense to the county, except that the actual and necessary expenses that such engineer or assistant may incur in complying with the request shall be paid to the department by the commissioners when properly certified to by the division.

(2) The department is authorized to enter into contracts and to make such regulations as may be necessary for such road construction and mainte-

nance as may by law or by resolution of any board of county commissioners or board of bond trustees of any county, or district or other subdivision of any county, be placed under its supervision and control, together with all powers for the exercise of the right of eminent domain.

(3) The [1]Division of Road Operations may prepare plans and specifications for all such proposed work, other than maintenance work of a regular or routine nature, and advertise for bids on same at least once a week for not less than 2 consecutive weeks in some newspaper having a general circulation in the county where the proposed work is located; and the department may, at its discretion, award the proposed work to the lowest responsible bidder, or it may reject all bids and proceed to perform the work with convict labor or free labor, and may purchase such equipment and supplies as may be necessary for the efficient and economical prosecution of the work.

(4)(a) In all cases where counties or municipalities request legal assistance of the Division of Administration of the department in connection with matters relating to state roads, including acquisition of rights-of-way, agreements, proposed agreements, road bond issues, or proposed road bond issues, such legal assistance shall be furnished by the resident attorney of the department, who shall assign an assistant attorney to render such legal assistance as the county or municipality may require. Said legal assistance shall be without expense to the county or municipality except that the actual and necessary expenses incurred in complying with the request shall be paid to the department.

(b) Where disagreement arises as to the existence, interpretation, or operation of any agreement or alleged agreement between the county or municipality and the department, or as to any bond issue, or as to secondary road funds, or if in the opinion of the resident attorney there is a conflict between the interest of the department and said county or municipality, the Department of Legal Affairs, at the request of the county or municipality, is authorized to furnish the above described legal assistance; and shall be reimbursed only for actual and necessary expenses incurred in complying with the request of the county or municipality.

(c) In cases in which there appears to be a failure of the department, to abide by agreements with the county or municipality, the Department of Legal Affairs, upon request of the county or municipality, shall, at its discretion, take whatever action is necessary to determine the nature of the agreement and the terms thereof and to enforce compliance therewith.

(d) No agreement between a county or a municipality and the department shall be binding unless said agreement be reduced to writing. Suits at law or in equity for the enforcement of an agreement so recorded may be maintained in the manner provided in s. 337.19.

History.—s. 53, ch. 29965, 1955; s. 1, ch. 61-43; s. 5, ch. 67-461; ss. 11, 23, 35, ch. 69-106.

[1]Note.—See s. 1, ch. 91-209 which reorganized, in part, the division structure within the Department of Transportation.

334.18 Department to employ legal counsel.—The department may employ a resident attorney and as many assistant attorneys as it deems necessary to advise and represent the department in all highway matters. The resident attorney and all assistant attorneys shall be employed on a full-time basis and shall be directly responsible to the department. The Department of Legal Affairs shall represent the department in all matters of litigation. The salaries of all such attorneys shall be fixed by the department. The department may utilize the services of the various county attorneys for acquisition of rights-of-way and pay therefor such sums as the department shall determine is reasonable.

History.—s. 17, ch. 29965, 1955; s. 8, ch. 57-316; s. 6, ch. 67-461; ss. 11, 23, 35, ch. 69-106.

334.19 Employment of comptroller and internal auditor; duties; financial records and accounts; and bond for comptroller.—

(1) The department shall employ a comptroller whose special duty it shall be to examine into and supervise the methods of bookkeeping and accounting of the department and all similar matters relating to its management. He shall be required to give bond in the amount of $100,000, payable to the Governor and his successors in office, to be approved by the Department of Banking and Finance, conditioned upon the faithful performance of his duties, the premiums of said bond to be paid from the funds for the maintenance of the department.

(2) The department shall by regulation provide for the maintenance of records and accounts of the department, by the comptroller, relating to financial transactions, as will afford a full and complete check against improper payment of bills, and provide a system for the prompt payment of the just obligations of the department, which records shall at all times disclose:

(a) The several appropriations available for the use of the department;

(b) The specific amounts of each such appropriation budgeted by the department for each improvement or purpose;

(c) The apportionment or division of all such appropriations among the several counties and districts, where such apportionment or division is made;

(d) The amount or portion of each such apportionment against general contractual and other liabilities then created;

(e) The amount expended and still to be expended in connection with each contractual and other obligation of the department;

(f) The expense and operating costs of the various activities of the department;

(g) The receipts accruing to the department, and the distribution thereof;

(h) The assets, investments and liabilities of the department.

(3) The comptroller shall act under the general supervision and control of the department and shall perform such other related duties as may be designated by the department.

(4) The comptroller shall maintain a separate account for each county for each of the gas tax proceeds referred to in s. 339.08(3) and (4). Upon request, the comptroller shall certify to any county the balance

remaining in either or both of its accounts, after all expenditures duly authorized by its board of county commissioners to be made therefrom, have been met.

(5) The department shall employ an internal auditor whose duties shall include, but not be restricted to, reviewing and appraising policies, plans, procedures, accounting, financial and other operations of the department, and recommending changes for the improvement thereof. He shall have access at all times to any records, data, or other information of the department necessary to carry out his duties.

(6) The internal auditor shall act under the general supervision and control of the department, and shall perform such other related duties as may be designated by the department.

History.—s. 19, ch. 29965, 1955; s. 1, ch. 61-229; s. 2, ch. 61-492; s. 1, ch. 63-87; s. 5, ch. 67-461; ss. 12, 23, 35, ch. 69-106.

334.20 Expenditures.—All expenditures by the department shall be made upon vouchers issued and certified by the department in such manner as the department may by regulation provide and paid by warrants issued by the State Comptroller upon the State Treasurer.

History.—s. 19, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

334.21 Budgets; preparation, adoption, execution, and amendment.—

(1) FISCAL YEAR.—The fiscal year of the department shall begin July 1 of each year and end on June 30 of each succeeding year. Such fiscal year shall constitute a budget year for all operating funds of the department.

(2) FILING OF BUDGET.—The department shall file each budget in the manner required by chapter 216, except that the right-of-way, construction, and maintenance plan expenditures and all grants and aids of the department shall be set forth only in total in such budget, together with sufficient annotation indicating the project numbers and amounts to be spent for unfinished projects for which payments will be made during the fiscal year and indicating the total dollar amount for anticipated expenditures during the fiscal year of funds any portion of which is intended to be encumbered on projects currently to be commenced, with the details being set forth in the final annual program budget of the department. Notwithstanding any other provisions of law, the information required under this subsection shall be transmitted to the legislative appropriations committees not less than 30 days prior to the start of each regular legislative session.

(3) PROPOSED ANNUAL PROGRAM BUDGET.—The department shall prepare a proposed annual program budget pursuant to the budgets submitted as provided by chapter 216. Notwithstanding any other provision of law, the information required under this subsection shall be transmitted to the legislative appropriations committees prior to the start of each regular legislative session.

(4) NATURE AND SCOPE OF THE ANNUAL PROGRAM BUDGETS.—

(a) The proposed and final annual program budgets required by subsections (3) and (7) shall present a complete, balanced financial plan for the state road fund and the restricted road funds.

(b) The receipt side of such budgets shall set forth all anticipated fund balances to be brought forward at the beginning of the budget year. The fund balance shall be the difference between the current assets and current liabilities and reserves, as commonly defined in accounting terminology, of each fund enumerated herein. It shall set forth all estimated revenues and receipts by source anticipated to be available during the ensuing year for which the budgets are prepared, except that no anticipated receipts estimated to be received from various federal aid acts of Congress shall be budgeted in excess of the amount which may be earned by the amount of state receipts set aside to match such federal aid; and the state funds thus set aside to match federal aid funds shall be used only for such matching purposes. The department shall, prior to the preparation of the budgets, ascertain the amount of apportionments of federal aid funds which shall be or which are estimated to be available to the department for expenditure in the fiscal year for which the budgets are prepared; and the department shall budget sufficient funds for matching purposes.

(c) The expenditure side of the annual program budgets shall set forth the proposed expenditures of the department as classified by major program and appropriation categories to accomplish the objectives of the department.

(d) The annual program budgets for the state road fund and restricted funds, unless otherwise provided by law, shall be so planned as to exhaust the estimated resources of each fund for the year, with the exceptions of an emergency reserve, in such amount as the department may deem necessary, for the purpose of doing emergency work which may be found to be necessary to be done during the year in order to prevent the stoppage of travel over any road over which the department has jurisdiction and control, and the reserve required in paragraph (8)(b). At any time during the last 2 months of the fiscal year, the emergency work reserve or any portion of it may be appropriated for road purposes provided for herein.

(e) The budgets must include sufficient data to identify the projects currently in progress and the estimated amounts to be spent in the current fiscal year for construction and maintenance work when funds have been encumbered in prior years as such is required to be set forth in total in subsection (2). The budgets must also include the amounts of those funds that will be encumbered and the amounts of such funds encumbered that will be actually spent in the current fiscal year.

(5) FUNDING AND DEVELOPING A ROAD CONSTRUCTION PLAN.—

(a)1. A road construction plan of work to be undertaken during the ensuing budget year shall be prepared for the state road fund and each restricted fund, unless otherwise provided by law or regulation, setting forth all construction projects, hereinafter referred to as "projects," to be undertaken during such budget year. For the budget year beginning July 1, 1970, and each year thereafter, the road construction plan of the annual program budget shall be for the ensuing five years and shall be referred to as the "5-year construction plan." The total amount of the 5-year construction plan in each fiscal year shall not

exceed an amount that would prevent the department from meeting the expenditure requirements for the projects set forth therein.

2. The 5-year construction plan shall include a summary of construction and rights-of-way land acquisition appropriation categories to show the amounts programmed in each appropriation category by district.

3. Projects shall not be undertaken unless they are listed in the annual construction plan. However, in case any road project listed in such plan cannot be undertaken during that year for any justifiable reason, then another project listed in order of priority in the 5-year construction plan may be undertaken. This provision shall not apply to unforeseen emergency projects approved by the department or to projects which are estimated to cost less than $20,000 and approved by the department and must be undertaken to protect a highway investment or to prevent the closing of an important state road.

(b) In addition to the projects included in the 5-year construction plan of the department, beginning with the budget year which starts on or after July 1, 1970, and each year thereafter, each county, municipality, and other governmental unit responsible for the construction and maintenance of roads and streets shall submit to the appropriate district engineer, with a copy to the department, a plan of work for the construction and maintenance of roads and streets within its jurisdiction for the ensuing 5 years, listing the estimated amounts to be expended on each project during each budget year. The local plan of work for roads and streets as herein provided shall be prepared by the county or city engineer or superintendent of roads for the local authority and approved by the governing body of the political subdivision responsible for the construction and maintenance of such roads and streets.

(c) Prior to the annual adoption of the 5-year construction plan, the department shall hold public hearings in each of the transportation districts to give consideration to the necessity of making any changes to projects included or to be included in the 5-year construction plan and to hear requests for new projects to be added to, or existing projects to be deleted from, the 5-year construction plan.

(d) The 5-year construction plan prepared under the provisions of this subsection shall be submitted to the legislative appropriations committees prior to the start of each regular legislative session.

(e) Beginning with the 1983-1985 biennium, the department shall develop and maintain a list of projects that could be made production-ready within the biennium to use additional sources of state revenue. The list shall consist of projects defining programs for the interstate system; noninterstate road and bridge rehabilitation and replacement; traffic operations; public transportation; and major new road and bridge construction. Program amounts shall equal approximately 50 percent of the corresponding funded program in the biennium plan, except that higher limits may be established by the department to accommodate anticipated federal funding actions. Program amounts shall include all project phases. If any of these stated programs is not funded in the biennium plan, the department may determine an appropriate program amount not to exceed $50 million. Projects within each program shall be prioritized based on need. The project list shall be independent of the 5-year construction plan, except that funded projects in later years of such plan may be included in the project list and advanced to an earlier year if justified by priority. The list shall be submitted to the legislative appropriations committees prior to the start of the regular legislative session.

(6) PUBLICATION OF THE PROPOSED ANNUAL PROGRAM BUDGET.—

(a) The department shall appoint a time and place for the public hearing on the proposed annual program budget and 5-year construction plan prepared for the state road fund and restricted funds as required herein, at which time it shall hear all questions, suggestions, or other comments offered by the public in regard to such budget.

(b) At least 5 days prior to the date set for such hearing, there shall be published once in one of the newspapers of general circulation in the state in each of the transportation districts a notice of the time and place of the public meeting for considering such proposed annual program budget, together with a notice that such budget and the 5-year road construction plan of the department are available for inspection by the public at the office of the clerk of the circuit court or chairman of the board of county commissioners.

(c) Five copies of the proposed annual program budget and 5-year construction plan shall be forwarded to the office of the chairman of each board of county commissioners and another copy shall be furnished to each clerk of the circuit court, together with a notice of the public hearing referred to above. The clerk shall post at the front door of the courthouse a copy of the public hearing notice at least 5 days prior to the date of the hearing, along with a notice that the proposed annual program budget and 5-year road construction plan of the department are available for public inspection during his regular office hours.

(7) ADOPTION OF THE FINAL PROGRAM BUDGET OF THE DEPARTMENT.—In accordance with the appropriations act, the department shall, prior to the beginning of the fiscal year, decide upon and make up a final program budget for the ensuing year and 5-year construction plan in accordance with the foregoing requirements, which may include only those projects submitted as part of the 5-year construction plan prepared under the provisions of subsection (5), unless otherwise provided by the appropriations act.

(8) EXECUTION OF THE BUDGET.—

(a) The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection shall be null and void, and no money shall be paid thereon. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for a period exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department in excess of $25,000 and having a term for a period of more than 1 year.

(b) In the operation of its state road fund, the department shall have on hand at the close of business, which closing shall not be later than the 10th calendar day of the month following the end of each quarter of the fiscal year, an available cash balance, which shall include cash on deposit with the treasury, short-term investments of the department, and reimbursements due from the Federal Government equivalent to not less than 5 percent of the unpaid balance of all primary fund obligations at the close of such quarter. In the event this cash position is not maintained, no further state road or restricted fund construction contracts or other fund commitments shall be approved, entered into, awarded, or executed until the cash balance, as defined above, has been regained.

(9) AMENDMENT OF THE FINAL ANNUAL PROGRAM BUDGET.—The department shall have the authority to amend its final annual program budget and 5-year construction plan at any time during the fiscal year as follows. It may:

(a) Transfer within the same fund any unencumbered budget item, or any portion thereof, from one activity to another.

(b) Transfer between the state road fund and the restricted funds or between restricted funds, within the provisions of the restrictions by law or by agreement as to the expenditure of such funds, any unencumbered funds.

(c) Budget in the proper fund and expend any receipts not anticipated in the adoption of the budget or receipts in excess of the total anticipated receipts in the adopted budget.

(d) Substitute a project in the funded 5-year construction plan for any other project in the 5-year construction plan; however, when any such substitution results in the delay of the right-of-way or construction phases of a project estimated to cost in excess of $500,000, the department shall notify the legislative appropriations committees and transportation committees. The transportation committees shall notify each member of the Legislature who represents the district or districts affected by the substitution. Such notification shall include the name, location, and estimated costs of any project that is advanced in the 5-year construction plan as a result of the delay of another project.

(e) Add a project as approved by the department within funds available when the project is less than $150,000 in cost and when the addition would not cause a delay of existing projects or add a project as approved by the department when the project is not funded with State Transportation Trust Fund moneys.

(f) Add to, delete from, or reschedule in the funded 5-year construction plan projects implemented from aid to local governments-public transportation matching grants in order to reflect local government decisions; however, when any such addition, deletion, or rescheduling results in the delay of the right-of-way phase or construction phase of a project estimated to cost in excess of $500,000, the notification process required in paragraph (d) shall be observed.

History.—s. 26, ch. 29965, 1955; s. 9, ch. 57-318; s. 1, ch. 61-80; ss. 2, 3, ch. 67-371; s. 1, ch. [illegible]; ss. [illegible], 35, ch. 69-106; ss. 1, 2, ch. 70-996; s. 1, ch. 72-66; ss. 2, 3, ch. [illegible]; s. 1, ch. 75-3; s. 1, ch. 82-31; s. 1, ch. 83-292.

334.2105 Working Capital Trust Fund created; expenditure of such funds, etc.—

(1) There is hereby created a Working Capital Trust Fund, into which fund shall be deposited an amount deemed necessary by the Department of Transportation and approved by the Executive Office of the Governor for the efficient operation of the department. Such amount may be obtained from any trust fund or funds under the control and custody of the department. The Working Capital Trust Fund may be used to pay any and all bills of the department; provided, however, in the succeeding month, the appropriate trust fund shall reimburse the Working Capital Trust Fund for all expenditures properly attributable to such reimbursing trust fund; and provided the use of such unexpended trust funds shall not delay or impair a county project of any county contributing to the fund.

(2) The department is authorized to use a single cash control for the fund charges for other budget entities on a unit cost basis for services rendered by the Burns Data Center and Centralized Mobile Equipment and Warehouse Operations budget entities. The department shall maintain adequate internal records to record these charges and reflect these as commitments on a quarterly funding matrix report to be submitted to the Executive Office of the Governor no later than [illegible] calendar days after the close of each calendar quarter. In addition, the appropriation categories entitled "Payments for Centralized Support Services" and "Data Processing Services" shall continue to be reflected in the legislative budget system as specific appropriations.

History.—s. 1, ch. [illegible]; s. 117, ch. 79-190; s. 2, ch. [illegible].

334.211 Transportation planning.—

(1) PURPOSES.—For the purposes of this chapter, the following definitions shall be employed:

(a) *Local governmental body.*—The term "local governmental body" means the governing body of the city, town, municipality, county, or other local governing unit in the area in which the transportation facility will be located.

(b) *Major transportation facility.*—The term "major transportation facility" means:

1. Any facility primarily designed to rapidly and efficiently transport goods and passengers between distant points, including, but not limited to, air transport facilities, railroads, bus services, terminals, freeways, expressways, major arterial highways, belt highways, and port facilities; or

2. Any facility utilized in providing a mass transit system for a standard metropolitan statistical area.

(c) *Standard metropolitan statistical area.*—The term "standard metropolitan statistical area" means a county or group of contiguous counties which contain at least one central city of 50,000 in-

habitants or more or "twin cities" with a combined population of at least 50,000 or such other population estimate as may be provided by law.

(d) *Urban area.*—The term "urban area" means an area including and adjacent to a municipality and other urban centers having a population of 5,000 or more as determined by the latest available federal census or such other population estimates as may be provided by law within boundaries to be fixed by the State Department of Transportation.

(e) *Transportation corridor.*—The term "transportation corridor" means a strip of land between two termini within which traffic, topography, environment and other characteristics are evaluated for transportation purposes.

(2) DUTIES OF DEPARTMENT; COMPREHENSIVE PLANS REQUIRED.—Comprehensive plans shall be developed by the department in conjunction with appropriate local governmental bodies and regional planning agencies, if any, for all standard metropolitan statistical areas and those areas which the department determines, based upon population projections, will become a standard metropolitan statistical area by 1980. Comprehensive plans for other urban areas shall be made when deemed necessary by the department. Priority for developing comprehensive plans shall be given to areas in which immediate construction of major transportation facilities is anticipated. In developing comprehensive plans, the department shall take into account:

(a) Future as well as present needs;

(b) All possible alternative modes of transportation;

(c) The joint use of transportation corridors and major transportation facilities for alternate transportation and community uses;

(d) The integration of any proposed system into all other types of transportation facilities in the community;

(e) The coordination with other development plans in the community so as to facilitate and synchronize growth; and

(f) The total environment of the community and region including land use, entrepreneurial decisions, population, travel patterns, traffic control features, ecology, pollution effects, aesthetics, safety, and social and community values.

(3) COORDINATION WITH OTHER GOVERNMENTAL BODIES.—

(a) In order to insure an integrated transportation system, the location of transportation facilities in urban areas shall be coordinated with the planning agency of the affected local governmental bodies.

(b) In order to insure that the plan includes consideration of the convenience, safety, comfort, aesthetics, and ecology of the state and the community in which the facilities are to be located, the department shall cooperate and consult with the U. S. Department of Transportation and with appropriate departments of state government prior to determining the location of any major transportation facility.

(4) REGIONAL OR LOCAL TRANSPORTATION PLANS.—

(a) The department may adopt local or regional transportation plans as part of, or in lieu of, the department's plans.

(b) Upon request by local governmental bodies, the department may in its discretion develop and design arterial and collector streets, vehicular parking areas, and other support facilities which are consistent with the department's plans for major transportation facilities. The department may render to local governmental bodies or their planning agencies such technical assistance and services as are necessary so that local plans and facilities are coordinated with the department's plans and facilities.

(5) SYSTEMATIC TECHNIQUES FOR PLANNING.—The department shall develop systematic techniques for considering those factors to be used in developing comprehensive plans pursuant to subsection (2) so that any major transportation facility is so planned that it will function as an integral part of the overall plan for community and state development as portrayed in the comprehensive plans.

(6) PROCEDURES FOR PUBLIC PARTICIPATION IN TRANSPORTATION PLANNING.—

(a) The department shall, pursuant to its rules and regulations, hold hearings for standard metropolitan statistical areas and areas projected by the department to become standard metropolitan statistical areas by 1980 as follows:

1. A planning hearing, at which time the factors included in subsection (2) shall be presented for discussion and comment. However, a hearing held on a metropolitan urban area transit study or on an equivalent comprehensive planning study shall satisfy the planning hearing requirement if it is so stated in the public notice of the study hearing.

2. A facility and site or corridor hearing, at a time prior to the selection of the type or types of, major transportation facility or facilities to be constructed and prior to the selection of the site or corridor of the proposed facility;

3. A design hearing, at a time after the selection and prior to the department's commitment to a specific design proposal for the facility or facilities.

(b) These public hearings shall be so conducted as to provide an opportunity for effective participation by interested persons in the process of transportation planning and site and route selection and in the specific location and design of transportation facilities. The various factors involved in the decision or decisions and any alternative proposals shall be clearly presented so that the persons attending the hearing may present their views relating to the decision or decisions which will be made.

(c) Opportunity for public hearings:

1. The department, prior to holding a design or planning hearing, shall duly notice all affected property owners of record, as recorded in the property appraiser's office, by mail at least 20 days prior to the date set for said hearing. The affected property owners shall be:

a. Those whose property lies in whole or in part within 300 feet on either side of the center line of the proposed facility.

b. Those who the department determines will be substantially affected environmentally, economically, socially, or safetywise.

2. For all subsequent hearings, the department shall daily publish notices at least 14 days immediately prior to the hearing date in a newspaper of general circulation for the area affected.

3. A copy of the notice of opportunity for public hearing shall be furnished to the U. S. Department of Transportation and to the appropriate departments of the state government at the time of publication.

4. The opportunity for another public hearing shall be afforded in any case when proposed locations or designs are so changed from those presented in the notices specified above or at a public hearing as to have a substantially different social, economic, or environmental effect.

5. The opportunity for a public hearing shall be afforded in each case in which the department is in doubt as to whether a public hearing is required.

(7) RULES AND REGULATIONS.—The Department of Transportation shall promulgate any rules and regulations consistent with its practices that it deems necessary in order to implement the provisions of this section.

History.—s. 3, ch. 70-996; s. 1, ch. 73-355; s. 1, ch. 77-102.
cf.—s. 11.031 Official census.

334.212 Coordination of Central Florida Corridor planning.—All future studies and planning for the Central Florida Corridor shall be coordinated with the legislative transportation committees, local government, and technical advisory committees which shall be recognized as the official policy and technical committees for the Central Florida Corridor project.

History.—s. 4, ch. 75-30.

334.215 Transportation planning organization.—

(1) There shall be a metropolitan planning organization, hereinafter referred to as the "M.P.O.," established within each urbanized area where a planning organization is necessary to meet federal requirements for obtaining and expending federal transportation funds. The M.P.O., a composite local governmental entity, or any successor thereto, shall be so designated by the Governor in any area where an M.P.O. is required by federal law or regulation.

(2) The voting membership of the M.P.O. shall consist of not less than 5 nor more than 15 apportioned members, the exact number to be determined on an equitable geographic-population ratio basis by the Governor, except that in no case shall the county commission members be less than 33⅓ percent of the M.P.O. membership. All voting members shall be elected officials of general purpose government, except local governing bodies having two or more members on the M.P.O. may appoint, as one of their apportioned voting members, a member of a statutorily authorized planning board, transportation or expressway authority, aviation authority, or port authority. In urbanized areas where authorities or other agencies have been, or may be, created by law to perform transportation functions that are not under the jurisdiction of local elected officials, they may be considered by the Governor for one voting membership on the M.P.O. The M.P.O. shall be created under this section and operated under the provisions of s. 163.01, the Florida Interlocal Cooperation Act of 1969. The signatories to the interlocal agreement shall be the governmental entities designated by the Governor for membership in the M.P.O. and the Department of Transportation, hereinafter referred to as the department. In the event there is a conflict between the provisions of this section and s. 163.01, the provisions of this section shall prevail.

(3) The Governor shall apportion the membership among the various governmental entities within the area on the basis of equitable population ratio and geographic factors. The governing body of each governmental entity so designated shall appoint the appropriate number of members to the M.P.O. from eligible officials. Representatives of the department shall serve as nonvoting members of the M.P.O. Nonvoting advisers may be appointed by the M.P.O. as deemed necessary. The Governor shall reapportion the M.P.O. membership at least every 5 years. Metropolitan planning organization members shall serve 4-year terms. Membership shall terminate upon the member leaving his elective or appointive office for any reason, or by a majority vote of the total membership of a county or city governing body represented by the member. Vacancies shall be filled by the original appointing body. Members may be reappointed for one or more additional 4-year terms.

(4) If any municipality or county fails to fill an assigned appointment to the M.P.O. within 60 days after notification by the Governor of its duty to appoint, that appointment shall be made by the Governor from the eligible representatives of that municipality or county.

(5) The authority and responsibility of the M.P.O. is for the management of a continuing, cooperative, and comprehensive transportation planning process that results in the development of plans and programs consistent with the comprehensively planned development of the urbanized area. The M.P.O. shall be the forum for cooperative decision-making by principal elected officials of general purpose local government.

(6) The M.P.O. shall be responsible for initiating federally aided transportation facilities and improvements within its urbanized area in accordance with existing and subsequent federal and state laws and rules and regulations related thereto.

(7) The department shall be responsible for initiating federally aided urban extension and interstate system projects. Subsequent to July 1, 1979, an urban extension or interstate system project, which is part of the approved long-range transportation plan for the urbanized area, shall be initiated by the department and included in the Transportation Improvement Program with the approval of the M.P.O. When such a project has advanced either to the point of acquisition of right-of-way or after completion of all design plans, it can be removed from the Transportation Improvement Program only by joint action of the M.P.O. and the department.

(8) Major federal aid projects in the Transportation Improvement Program, and included in the first 2 years of the department's 5-year construction work program, which must be rescheduled by the department, shall require notification to the M.P.O. at the time such changes are made.

(9) The M.P.O. shall be responsible for transpor-

tation-related air, noise, and water quality planning within the urbanized area as assigned to it by federal or state laws or rules or regulations.

(10) The powers, privileges, and authority of the M.P.O. are those specified in this section and incorporated in the interlocal agreement authorized under s. 163.01. The duties of the M.P.O. are described as those required by federal and state laws and rules and regulations, now and subsequently applicable, necessary to qualify the urbanized areas of the state to receive all federal aid transportation funds for which they are legally eligible as a consequence of the proper exercise of such duties. Such duties shall include, in cooperation with the department, the following functions, and as these functions may subsequently be amended or expanded by federal and state laws and rules and regulations:

(a) Development of:

1. A multiyear planning program.

2. A transportation plan, consisting of a long-range element and a transportation systems management element.

3. An annual unified planning work program.

4. An annually updated Transportation Improvement Program, which shall consist of improvements recommended from the transportation systems management and long-range elements of the transportation plan, and shall:

a. Identify transportation improvements recommended for advancement during the program period.

b. Indicate the area's priorities.

c. Group improvements of similar urgency and anticipated staging into appropriate staging periods.

d. Include realistic estimates of total costs and revenues for the program period.

e. Include a discussion of how improvements recommended from the long-range element and the transportation systems management element were merged into the program.

(b) Recommendation to the department and local county and city governments regarding transportation plans, programs, and projects to better ensure their compatibility with the long-range plans and programs of the M.P.O.

(c) Representation of all the jurisdictional areas within the approved urbanized limits in the formulation of those transportation plans and programs defined herein, and otherwise authorized by state and federal laws and rules and regulations.

(d) Performance of other duties delegated to it by federal and state laws or rules or regulations.

(11) The M.P.O. is to be responsible, in cooperation with the department, for transportation modes under the control of the Federal Highway Administration and the Federal Urban Mass Transportation Administration or any successor agency. Other modes such as, but not limited to, air, intercity rail, water, and pipelines can materially impact on the future land use and transportation accessibility of urbanized areas. It is the intent of this section that an M.P.O. should be involved in planning and programming for such facilities to the extent permitted by federal and state laws, rules, regulations, and available funds.

(12) There shall be a written agreement between the M.P.O. and the department clearly establishing a cooperative relationship essential to accomplish the transportation planning requirements of the applicable federal regulations, this section, and other controlling state statutes, including s. 334.02 and ss. 163.3161-163.3211, the Local Government Comprehensive Planning Act. This agreement shall clearly define the procedures for cooperatively carrying out the continuing, cooperative, and comprehensive transportation planning process for the urbanized area.

(13) The M.P.O. shall execute and maintain an agreement with the metropolitan and regional A-95 agencies serving the urbanized area. Such agreement shall describe the means by which activities will be coordinated and specify how transportation planning and programming will be part of the comprehensive planned development of the urbanized area.

(14) The M.P.O. shall execute and maintain an agreement with publicly owned operators of mass transportation services which specifies interaction essential to an effective consideration of mass transit usage within the urbanized area.

(15) Federal and state laws and rules and regulations presently existing or subsequently enacted requiring other agreements shall be initiated by the M.P.O. if required to enable it to properly accomplish its functions.

(16) The M.P.O. shall appoint a citizens' advisory committee whose members shall serve at its pleasure. The citizens' advisory committee shall be selected to provide a broad cross section of citizens with an interest in the development of an efficient, safe, and cost-effective transportation system. Minorities, the elderly, and the handicapped shall be adequately represented. However, the M.P.O. may, with department and federal concurrence, adopt an alternate program or mechanism which will ensure adequate citizen involvement in the transportation planning process.

(17) The M.P.O., in cooperation with the department, shall appoint a technical advisory committee which shall include the professional and technical planners, engineers, and other appropriate disciplines employed by, or residing in, the signatory agencies of the interlocal agreement.

(18) Each M.P.O. shall receive its proportionate share of federal planning funds for the purpose of carrying out transportation planning and programming.

(19) Each M.P.O. may employ personnel or may enter into contracts with other local and state agencies, as well as private planning and engineering firms, to carry out the urban transportation planning process required by 23 U.S.C. s. 134 and by chapter 334.

(20) Any other provisions of this section to the contrary notwithstanding, any county chartered under s. 6(e), Art. VIII of the State Constitution may elect to have its duly elected officials serve as the M.P.O. if the area represented is wholly contained within such chartered county. Any chartered county electing to exercise the provisions of this section shall notify the Governor in writing. Upon receipt of such notification, the Governor shall forthwith designate the elected officials of such chartered county as the

M.P.O. and shall appoint the nonvoting representatives of the department in accordance with existing agreements between the M.P.O. and the department or as deemed necessary in the absence of such an agreement. This subsection shall supersede the provisions of subsections (2) and (3) which, in whole or in part, are in conflict herewith.

(21) Each existing M.P.O. shall continue to function until an M.P.O. for that urbanized area can be established under this section, but in no case shall the existing entities continue to function after January 1, 1980.

(22) All agreements, contracts, and other commitments which are in force at the time that the existing M.P.O. is replaced by the M.P.O. established under this section shall remain in force. Provisions for amending or canceling existing agreements, contracts, and other commitments, contained within each such document, may be exercised by the M.P.O. after it has been legally designated.

(23) Upon notification by an agency of the Federal Government that any provision herein conflicts with federal laws or regulations, the federal laws or regulations shall take precedence to the extent of the conflict and until it is resolved; and such actions as are necessary to be taken to comply with federal laws and regulations in order to receive federal funds shall be permitted.

(24) Each metropolitan planning organization required under this section shall be fully operative no later than 6 months following designation by the Governor.

History.—s. 1, ch. 79-219; s. 1, ch. 82-9.

334.22 Annual reports.—

(1) The department shall report to the Governor not later than 60 days before the meeting of each session of the Legislature such changes in the laws as the department may determine as being expedient to secure the best results in road construction and repair work.

(2) The department shall also file with the Governor not later than 60 days prior to such meeting of each session of the Legislature a report covering the operation of the department for the preceding fiscal year, which shall include a summary statement of the financial operations of the department and any other fiscal information that the Governor may request.

History.—s. 21, ch. 29965, 1955; ss. 24, 35, ch. 69-106; s. 1, ch. 73-311.

334.23 Annual audit by Auditor General.—The Auditor General shall make an audit of the books and accounts of the department not less than once each year. The department is authorized to reimburse the Auditor General for the expense of the annual audit. A copy of the annual audit shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives for the use and benefit of the members of the Legislature.

History.—s. 22, ch. 29965, 1955; s. 8, ch. 69-92; ss. 23, 35, ch. 69-106.

334.235 Performance audits.—The Auditor General shall conduct periodic performance audits, as defined in s. 11.45, of the following functions and processes of the department, which audits shall include, at a minimum, a review of:

(1) CONSULTANT CONTRACTING.—The audit shall include a review of the need for consultants, the process used to select consultants and award contracts, the administration of contracts by the department, and the internal review process used to develop contract terms and conditions. In evaluating the selection and award process, the Auditor General shall specifically address the relative merits of alternative processes used by other governmental agencies when contracting for similar work. In comparing the contracting methods used by the department with those of other governmental agencies, the Auditor General shall also make a detailed review of the determination of fees.

(2) CONSTRUCTION CONTRACTS.—The audit shall include a review of construction contract award processes and the internal process used to develop contract terms and conditions and a review of the justification for supplemental agreements, time extensions, waivers of liquidated damage provisions, and the adequacy of construction engineering inspections by the department.

(3) QUALITY OF DESIGN PLANS.—The audit shall include an analysis of the quality of design plans used by the department and an analysis of the cost effectiveness of consolidating all or part of the design functions of the department into a single unit. The Auditor General shall compare the relative merits and costs of performing design work in-house as opposed to contracting with private consultants.

(4) RIGHT-OF-WAY ACQUISITION PROCESS.—The audit shall include a review of the entire process used to acquire rights-of-way and, at a minimum, shall specifically address the appraisal and condemnation processes.

(5) ENFORCEMENT OF OVERWEIGHT LAWS.—The audit shall include an analysis of the enforcement of overweight penalties by the department and an analysis of the adequacy of the state's overweight penalties.

(6) INSPECTOR GENERAL'S FUNCTIONS.—The audit shall include a review of the effectiveness of the department's inspector general program and specifically address internal management reviews of consultant contracts and the use of internal audit recommendations by the department in the award of contracts. The Auditor General shall also analyze the frequency with which such internal reviews are conducted and the efforts by the department to implement recommendations made by its inspector general.

(7) MINORITY PROGRAMS.—The audit shall include a review and analysis of the performance of the department for at least the last 5 years in employing minorities and the use of minority business enterprises in implementing the expenditure of both federal and state dollars. The audit should also include a comparison of the programs of the department with those of other states and recommendations for improvements.

The performance audits required by this section shall first be submitted to the Legislature on or before February 1, 1984. Thereafter, the Auditor General shall make performance audits of department functions or programs identified in this section or of other

department functions or programs whenever directed to do so by the Legislature or the Joint Legislative Auditing Committee. The Auditor General shall also report to the Legislature on the efforts made by the department to rectify problems noted in prior audits.

History.—s. 1, ch. 83-2.

334.24 Road appraisal reports; research studies.—

(1) The Division of Road Operations of the Department of Transportation shall:

(a) Collect data and information as to all roads in the state, and where practicable have maps and plats thereof made;

(b) Investigate and collect data and information as to the best methods and materials for road building and repair;

(c) Investigate and gather information as to road building and repairing in the different localities in this state;

(d) Compile all such data and information, and furnish the same free, upon request, to the boards of county commissioners of the several counties;

(e) Keep on file at the division headquarters copies of same as a public record.

(2) The division is hereby authorized to enter into contracts from time to time with the universities of higher learning within the state for the training of engineers, making of engineering research studies and the furnishing of data concerning same in the fields of soil stabilization, properties of concrete and concrete aggregate, bituminous wearing surfaces and pavements, and other highway research fields which are needful and beneficial in the planning, construction and improvement of public highways. The division is authorized to pay for such services out of the State Transportation Trust Fund.

History.—s. 24, ch. 29965, 1955; s. 1, ch. 63-174; ss. 23, 35, ch. 69-106; ss. 2, 3, ch. 73-57.

[1]Note.—See s. 1, ch. 81-209, which reorganized, in part, the division structure within the Department of Transportation.

334.25 Seal of department.—The Department of Transportation shall adopt and use a common seal, and a certificate under seal and signed as provided by regulation of the department, shall constitute sufficient evidence of the action of the department.

History.—s. 24, ch. 29965, 1955; ss. 23, 35, ch. 69-106.

CHAPTER 366

PUBLIC UTILITIES

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[1]366.01 Legislative declaration.—The regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

History.—s. 1, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]366.015 Interagency liaison.—The commission is directed to provide for, and assume primary responsibility for, establishing and maintaining continuous liaison with all other appropriate state and federal agencies whose policy decisions and rulemaking authority affect those utilities over which the commission has primary regulatory jurisdiction. This liaison shall be conducted at the policymaking levels as well as the department, division, or bureau levels. Active participation in other agencies' public hearings is encouraged to transmit the commission's policy positions and information requirements, in order to provide for more efficient regulation.

History.—s. 6, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]366.02 Definitions.—As used in this chapter:

(1) "Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state; but the term "public utility" as used herein does not include either a cooperative now or hereafter organized and existing under the Rural Electrification Cooperative Law of the state; a municipality or any agency thereof; any natural gas pipeline transmission company making only sales of natural gas at wholesale and to direct industrial consumers; or a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, unless such person also supplies electricity or manufactured or natural gas.

(2) "Commission" means the Public Service Commission.

History.—s. 2, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]366.03 General duties of public utility.—Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission. No public utility shall be required to furnish electricity or gas for resale except that a public utility may be required to furnish gas for containerized resale. All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

History.—s. 3, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 80-35; s. 2, ch. 81-318; ss. 1, 15, ch. 82-26.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date. Expires October 1, 1989, pursuant to s. 15, ch. 82-25, and is scheduled for review pursuant to s. 11.61 in advance of that date.

[1]366.04 Jurisdiction.—

(1) In addition to its existing functions, the commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service and the issuance and sale of its securities, except a security which is a note or draft maturing not more than 1 year after the date of such issuance and sale and aggregating (together with all other then-outstanding notes and drafts of a maturity of 1 year or less on which such public utility is liable) not more than 5 percent of the par value of the other securities of the public utility then outstanding. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issue. The commission, upon application by a public utility, may authorize the utility to issue and sell securities of one or more offerings, or of one or more types, over a period of up to 12 months. The commission may take final action to grant an application by a public utility to issue and sell securities after having given notice in the Florida Administrative Weekly published at least 7 days in advance of final agency action. Securities issued by a public utility pursuant to an order of the commission, which order is certified by the clerk of the commission and which order approves or authorizes the issuance and sale of such securities, shall not be invalidated by a modification, repeal, or amendment to that order or by a supplemental order; however, the commission's approval of the issuance of securities shall constitute approval only as to the legality of the issue, and in no way shall it be considered commission approval of the rates, service, accounts, valuation, estimates, or determinations of cost or any other such matter. The jurisdiction conferred upon the commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and, in case of conflict therewith, all lawful acts, orders, rules, and regulations of the commission shall in each instance prevail.

(2) In the exercise of its jurisdiction, the commission shall have power over rural electric cooperatives and municipal electric utilities for the following purposes:

(a) To prescribe uniform systems and classifications of accounts.

(b) To prescribe a rate structure for all electric utilities.

(c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.

(d) To approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. However, nothing in this chapter shall be construed to alter existing territorial agreements as between the parties to such agreements.

(e) To resolve any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

(f) To prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder.

No provision of this chapter shall be construed or applied to impede, prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974; however, existing territorial agreements shall not be altered or abridged hereby.

(3) The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

History.—s. 4, ch. 26545, 1951; s. 1, ch. 63-284; s. 1, ch. 65-279; s. 1, ch. 65-52; s. 1, ch. 74-139; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]366.041 Rate fixing; adequacy of facilities as criterion.—

(1) In fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state by any and all public utilities under its jurisdiction, the commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered; the cost of providing such service and the value of such service to the public; the ability of the utility to improve such service and facilities; and energy conservation and the efficient use of alternative energy resources; provided that no public utility shall be denied a reasonable rate of return upon its rate base in any order entered pursuant to such proceedings. In its consideration thereof, the commission shall have authority, and it shall be the commission's duty, to hear service complaints, if any, that may be presented by subscribers and the public during any proceedings involving such rates, charges, fares, tolls, or rentals; however, no service complaints shall be taken up or considered by the commission at any proceedings involving rates, charges, fares, tolls, or rentals unless the utility has been given at least 30 days' written notice thereof, and any proceeding may be extended, prior to final determination, for such period; further, no order hereunder shall be made effective until a reasonable time has been given the utility involved to correct the cause of service complaints, considering the factor of growth in the community and availability of necessary equipment.

(2) The power and authority herein conferred upon the commission shall not cancel or amend any existing punitive powers of the commission but shall be supplementary thereto and shall be construed liberally to further the legislative intent that adequate service be rendered by public utilities in the state in consideration for the rates, charges, fares, tolls, and rentals fixed by said commission and observed by said utilities under its jurisdiction.

(3) The term "public utility" as used herein means all persons or corporations which the commission has the authority, power, and duty to regulate for the purpose of fixing rates and charges for services rendered and requiring the rendition of adequate service.

History.—ss. 1, 2, 3, 4, ch. 67-328; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95; ss. 4, 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]366.05 Powers.—

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reason-

able rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter.

(2) Every public utility, as defined in s. 366.02, which in addition to the production, transmission, delivery or furnishing of heat, light, or power also sells appliances or other merchandise shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the commission from the sale of such items in arriving at any rate to be charged for service by any public utility.

(3) The commission shall provide for the examination and testing of all meters used for measuring any product or service of a public utility.

(4) Any consumer or user may have any such meter tested upon payment of the fees fixed by the commission.

(5) The commission shall establish reasonable fees to be paid for testing such meters on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the meter is found defective or incorrect to the disadvantage of the consumer or user, in excess of the degree or amount of tolerance customarily allowed for such meters, or as may be provided for in rules and regulations of the commission.

(6) The commission may purchase materials, apparatus, and standard measuring instruments for such examination and tests.

(7) The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the public utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to insure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Electric Power Plant Siting Act, ss. 403.501-403.515.

(9) The commission may establish guidelines relating to the purchase of power or energy by public utilities from cogenerators or small power producers and may set the rates at which a public utility shall purchase power or energy from a cogenerator or small power producer.

History.—s. 5, ch. 26545, 1951; s. 2, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95; ss. 5, 16, ch. 80-35; s. 1, ch. 81-191; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]366.055 Availability of, and payment for, energy reserves.—

(1) Energy reserves of all utilities in the Florida energy grid shall be available at all times to ensure that grid reliability and integrity are maintained. The commission is authorized to take such action as is necessary to assure compliance. However, prior commitments as to energy use:

(a) In interstate commerce, as approved by the Federal Energy Regulatory Commission;

(b) Between one electric utility and another, which have been approved by the Federal Energy Regulatory Commission; or

(c) Between an electric utility which is a part of the energy grid created herein and another energy grid

shall not be abridged or altered except during an energy emergency as declared by the Governor and Cabinet.

(2)(a) When the energy produced by one electric utility is transferred to another or others through the energy grid and under the powers granted by this section, the commission shall direct the appropriate recipient utility or utilities to reimburse the producing utility in accordance with the latest wholesale electric rates approved for the producing utility by the Federal Energy Regulatory Commission for such purposes.

(b) Any utility which provides a portion of those transmission facilities involved in the transfer of energy from a producing utility to a recipient utility or utilities shall be entitled to receive an appropriate reimbursement commensurate with the transmission facilities and services provided. However, no utility shall be required to sell purchased power to a recipient utility or utilities at a rate lower than the rate at which the power is purchased from a producing utility.

(3) To assure efficient and reliable operation of a state energy grid, the commission shall have the power to require any electric utility to transmit electrical energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid, subject to the provisions hereof.

History.—s. 3, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]366.06 Rates; procedure for fixing and changing.—

(1) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the

commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going concern value or franchise value in excess of payment made therefor. In fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

(2) Whenever the commission shall find, upon request made or upon its own motion, that the rates demanded, charged, or collected by any public utility company for public utility service, or that the rules, regulations, or practices of any public utility company affecting such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law; or that such rates are insufficient to yield reasonable compensation for the services rendered; or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing, giving notice to the public and to the utility company, and shall thereafter determine just and reasonable rates to be thereafter charged for such service and promulgate rules and regulations affecting equipment, facilities, and service to be thereafter installed, furnished, and used.

(3) Pending a final order by the commission in any rate proceeding under this section, the commission may withhold consent to the operation of all or any portion of the new rate schedules, delivering to the utility requesting such increase, within 60 days, a reason or written statement of good cause for withholding its consent. Such consent shall not be withheld for a period longer than 8 months from the date of filing the new schedules. The new rates or any portion not consented to shall go into effect under bond or corporate undertaking at the end of such period, but the commission shall, by order, require such utility to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid and, upon completion of hearing and final decision in such proceeding, shall by further order require such utility to refund with interest at a fair rate, to be determined by the commission in such manner as it may direct, such portion of the increased rate or charge as by its decision shall be found not justified. Any portion of such refund not thus refunded to patrons or customers of the utility shall be refunded or disposed of by the utility as the commission may direct; however, no such funds shall accrue to the benefit of the utility. The commission shall take final commission action in the docket and enter its final order within 12 months of the commencement date for final agency action. As used in this subsection, the "commencement date for final agency action" means the date upon which it has been determined by the commission or its designee that the utility has filed with the clerk the minimum filing requirements as established by rule of the commission. Within 30 days after receipt of the application, rate request, or other written document for which the commencement date for final agency action is to be established, the commission or its designee shall either determine the commencement date for final agency action or issue a statement of deficiencies to the applicant, specifically listing why said applicant has failed to meet the minimum filing requirements. Such statement of deficiencies shall be binding upon the commission to the extent that, once the deficiencies in the statement are satisfied, the commencement date for final agency action shall be promptly established as provided herein. Thereafter, within 15 days after the applicant indicates to the commission that it believes that it has met the minimum filing requirements, the commission or its designee shall either determine the commencement date for final agency action or specifically enumerate in writing why the requirements have not been met, in which case this procedure shall be repeated until the commencement date for final agency action is established. When the commission initiates a proceeding, the commencement date for final agency action shall be the date upon which the order initiating the proceeding is issued.

History.—s. 6, ch. 26545, 1951; s. 4, ch. 74-195; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

cf.—s. 361.05 Changing rates, tolls, rentals, etc.

s. 367.081 Rates; procedure for fixing and changing.

[1]366.07 Rates; adjustment.—Whenever the commission, after public hearing either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, or unjustly discriminatory or preferential, or in anywise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

History.—s. 7, ch. 26545, 1951; s. 24, ch. 57-1; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]366.071 Interim rates; procedure.—

(1) The commission may, during any proceeding for a change of rates, upon its own motion, or upon petition from any party, or by a tariff filing of a public utility, authorize the collection of interim rates until the effective date of the final order. Such inter-

im rates may be based upon a test period different *from the test period used in the request for permanent rate relief.* To establish a prima facie entitlement for interim relief, the commission, the petitioning party, or the public utility shall demonstrate that *the public utility is earning* outside the range of reasonableness on rate of return calculated in accordance with subsection (5).

(2)(a) In a proceeding for an interim increase in rates, the commission shall authorize, within 60 days of the filing for such relief, the collection of rates sufficient to earn the minimum of the range of rate of return calculated in accordance with subparagraph (5)(b)2. The difference between the interim rates and the previously authorized rates shall be collected under bond or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(b) In a proceeding for an interim decrease in rates, the commission shall authorize, within 60 days of the filing for such relief, the continued collection of the previously authorized rates; however, revenues collected under those rates sufficient to reduce the achieved rate of return to the maximum of the range of rate of return calculated in accordance with subparagraph (5)(b)2. shall be placed under bond or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(c) The commission shall determine whether a corporate undertaking may be filed in lieu of the bond.

(3) In granting such relief, the commission may, in an expedited hearing but within 60 days of the commencement of the proceeding, upon petition or upon its own motion, preclude the recovery of any extraordinary or imprudently incurred expenditures or, for good cause shown, increase the amount of the bond or corporate undertaking.

(4) Any refund ordered by the commission shall be calculated to reduce *the rate of return of the public* utility during the pendency of the proceeding to the same level within the range of the newly authorized rate of return which is found fair and reasonable *on a prospective basis, but the refund shall not be in* excess of the amount of the revenues collected subject to refund and in accordance with paragraph (2)(b). In addition, the commission may require interest on the refund at a rate established by the commission.

(5)(a) In setting interim rates or setting revenues subject to refund, the commission shall determine the revenue deficiency or *excess by calculating the* difference between the achieved rate of return of a public utility and its required rate of return applied to an average investment rate base or an *end-of-period investment rate base.*

(b) For purposes of this subsection:

1. "Achieved rate of return" means the rate of return earned by the public utility for the most recent *12-month period. The achieved rate of return shall be* calculated by applying appropriate adjustments consistent with those which were used in the most recent rate case of the public utility and annualizing any *rate changes occurring* during such period.

2. "Required rate of return" shall be calculated as the weighted average cost of capital for the most recent 12-month period, using the last authorized rate of return on equity of the public utility, the current embedded cost of fixed-rate capital, the actual cost of short-term debt, the actual cost of variable-cost debt, and the actual cost of other sources of capital which were used in the last rate case of the public utility.

3. In a proceeding for an interim increase, the term "last authorized rate of return on equity" used in subparagraph 2. means the minimum of the range of the last authorized rate of return on equity established in the most recent rate case of the public utility. In a proceeding for an interim decrease, the term "last authorized rate of return on equity" used in subparagraph 2. means the maximum of the range of the last authorized rate of return on equity established in the most recent rate case of the public utility.

History.—s. 8, ch. 80-35; s. 2, ch. 81-318; ss. 3, 15, ch. 82-25.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date. Expires October 1, 1989, pursuant to s. 15, ch. 82-25, and is scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.072 Rate adjustment orders.**—Any order issued by the commission adjusting general increases or reductions of the rates of an electric or gas company shall be reduced to writing including any dissenting or concurring opinions within 20 days of the official vote of the commission. Within said 20 days, the commission shall also mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment, which copy shall be kept on file and made available to the public. The commission shall notify all parties of record in the proceeding of the date of such mailing. Such an order shall not be considered rendered for purposes of appeal, rehearing, or judicial review until the date *the copies are mailed as required* by this section. This provision shall not delay the effective date of the order. Such an order shall be considered rendered on the date of the official vote *for the purposes of ss. 364.05(4) and 366.06(4).*

History.—s. 1, ch. 78-137; s. 10, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.075 Experimental and transitional rates.**—

(1) The commission is authorized to approve rates on an experimental or transitional basis for any public utility to encourage energy conservation or to encourage efficiency. The application of such rates may be for limited geographic areas and for a limited period.

(2) The commission is authorized to approve the geographic area used in testing experimental rates and shall specify in the order setting those rates the area affected. The commission may extend the period designated for the test if it determines that further testing is necessary to fully evaluate the effectiveness of such experimental rates.

History.—s. 9, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—*Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled* for review pursuant to s. 11.61 in advance of that date.

366.076 Limited proceedings; rules on subsequent adjustments.—

(1) Upon petition or its own motion, the commission may conduct a limited proceeding to consider and act upon any matter within its jurisdiction, including any matter the resolution of which requires a public utility to adjust its rates to consist with the provisions of this chapter. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters.

(2) The commission may adopt rules for the determination of rates in full revenue requirement proceedings which rules provide for adjustments of rates based on revenues and costs during the period new rates are to be in effect and for incremental adjustments in rates for subsequent periods.

History.—s. 13, ch. 83-222.

[1]**366.08 Investigations, inspections; power of commission.**—The commission or its duly authorized representatives may during all reasonable hours enter upon any premises occupied by any public utility and may set up and use thereon all necessary ap*paratus and appliances* for the purpose of making investigations, inspections, examinations and tests and exercising any power conferred by this chapter; provided, such public utility shall have the right to be notified of and be represented at the making of such investigations, inspections, examinations and tests.

History.—s. 8, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.09 Incrimination at hearing of commission.**—Any person called upon to testify before the commission or one of its examiners shall not be excused from answering on the ground or claim that his testimony would tend to incriminate himself; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced documentary evidence provided that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History.—s. 9, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.093 Public utility records; confidentiality.**—

(1) The commission shall continue to have reasonable access to all public utility records. Upon request of the public utility, any records received by the commission which are shown to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1).

(2) In any docket or proceeding before the commission, the commission shall issue protective orders protecting a public utility from discovery of proprietary confidential business information, upon a showing by the public utility that such protection is necessary. However, if the commission determines that discovery of proprietary confidential business information is necessary to protect the public interest, the commission shall enter an order limiting such discovery in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure. Such proprietary confidential business information shall be exempt from s. 119.07(1).

(3) Proprietary confidential business information includes, but is not limited to:

(a) Trade secrets.

(b) Internal auditing controls and reports of internal auditors.

(c) Security measures, systems, or procedures.

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility to contract for services on favorable terms.

(e) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

History.—ss. 2, 15, ch. 82-25.

[1]Note.—Repealed effective October 1, 1989, by s. 15, ch. 82-25, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.095 Penalties.**—The commission shall have the power to impose upon any entity subject to its jurisdiction under this chapter that is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than $5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by the commission. Each day that such refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85.

History.—ss. 2, 15, ch. 82-25.

[1]Note.—Repealed effective October 1, 1989, by s. 15, ch. 82-25, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.10 Judicial review.**—As authorized by s. 3(b)(2), Art. V of the State Constitution, the Supreme Court shall review, upon petition, any action of the commission relating to rates or service of utilities providing electric or gas service.

History.—s. 10, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 11, 26, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.11 Certain exemptions.**—

(1) No provision of this chapter shall apply in any manner, other than as specified in ss. 366.04(2) and (3), 366.05(7) and (8), and 366.055, to utilities owned and operated by municipalities, whether within or without any municipality, or by cooperatives organized and existing under the Rural Electrification Cooperative Law of the state, or to the sale of electricity, manufactured gas, or natural gas at wholesale by any public utility to, and the purchase by, any municipality or cooperative under and pursuant to any contracts now in effect or which may be entered into in the future, when such municipality or cooperative is engaged in the sale and distribution of electricity or manufactured or natural gas, or to the rates provided for in such contracts.

(2) Nothing herein shall restrict the *police power* of municipalities over their streets, highways, and public places or the power to maintain or require the maintenance thereof or the right of a municipality to

levy taxes on public services under s. 166.231 or affect the right of any municipality to continue to receive revenue from any public utility as is now provided or as may be hereafter provided in any franchise.

History.—s. 11, ch. 26545, 1951; s. 5, ch. 74-196; s. 3, ch. 76-168; s. 7, ch. 76-253; s. 158, ch. 77-104; s. 1, ch. 77-457; ss. 12, 16, ch. 80-35; s. 217, ch. 81-259; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.125 Natural gas jurisdiction limits.**—Any provision of this chapter to the contrary notwithstanding, the jurisdiction of the commission over the sale of natural gas shall not extend beyond the outlet of the customer's meter set assembly when the means of delivery of natural gas is other than by pipeline.

History.—ss. 4, 15, ch. 82-25.

[1]Note.—Repealed effective October 1, 1989, by s. 15, ch. 82-25, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.13 Taxes, not affected.**—No provision of this chapter shall in any way affect any municipal tax or franchise tax in any manner whatsoever.

History.—s. 13A, ch. 26545, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 16, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.135 Existing rates; pending proceedings.**—

(1) This act shall not be construed to cause to be unlawful any rate which has been previously approved and which is lawfully being charged and collected immediately prior to July 1, 1980. However, no such rate may be changed on or after July 1, 1980, except in accordance with the provisions of this act.

(2) Proceedings including judicial review pending on July 1, 1980, shall be governed by the law as it existed immediately prior to July 1, 1980. Administrative adjudicatory proceedings, however, which have not progressed to the stage of a hearing may, with the consent of all parties and the commission, be conducted in accordance with the provisions of this act.

History.—s. 17, ch. 80-35; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.80 Short title.**—Sections 366.80-366.85 and 403.519 shall be known and may be cited as the "Florida Energy Efficiency and Conservation Act."

History.—s. 5, ch. 80-65; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.81 Legislative findings and intent.**—The Legislature finds and declares that it is critical to utilize the most efficient and cost-effective energy conservation systems in order to protect the health, prosperity, and general welfare of the state and its citizens. Reduction in the growth rates of electric consumption and of weather-sensitive peak demand are of particular importance. The Legislature further finds that the Florida Public Service Commission is the appropriate agency to adopt goals and approve plans related to the conservation of electric energy and natural gas usage. The Legislature directs the commission to develop and adopt overall goals and authorizes the commission to require each utility to develop a plan for increasing energy efficiency and conservation within its service area, subject to the approval of the commission. Since solutions to our energy problems are complex, the Legislature intends that the use of solar energy, renewable energy sources, highly efficient systems, and load-control systems be encouraged. Accordingly, in exercising its jurisdiction, the commission shall not approve any rate or rate structure which discriminates against any class of customers on account of the use of such systems or devices. This expression of legislative intent shall not be construed to preclude experimental rates, rate structures, or programs. The Legislature further finds and declares that ss. 366.80-366.85 and 403.519 are to be liberally construed in order to meet the complex problems of reducing the growth rates of electric consumption and weather-sensitive peak demand; increasing the overall efficiency and cost-effectiveness of electricity and natural gas production and use; and conserving expensive resources, particularly petroleum fuels.

History.—s. 5, ch. 80-65; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.82 Definition; goals; plans; annual reports; energy audits.**—

(1) For the purposes of ss. 366.80-366.85 and 403.519, "utility" means any person or entity of whatever form which provides electricity or natural gas at retail to the public, specifically including municipalities or instrumentalities thereof and cooperatives organized under the Rural Electric Cooperative Law and specifically excluding any person or entity providing natural gas at retail to the public whose annual sales volume is less than 100 million therms.

(2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, and to reduce the growth rates of electric consumption, especially of weather-sensitive peak demand. The Executive Office of the Governor shall be a party in the proceedings to adopt goals. The initial goals shall be adopted no later than September 1, 1980, for the succeeding 5-year period. The commission may change the initial goals for reasonable cause and may reset the time period for accomplishing the goals. After the programs and plans to meet those goals are completed, the commission shall determine whether further goals, programs, or plans are warranted and, if so, shall adopt them.

(3) Following adoption of goals pursuant to subsection (2), the commission shall require each utility to develop a plan to meet the overall goals within its service area. If any plan includes loans, collection of loans, or similar banking functions by a utility and the plan is approved by the commission, the utility shall perform such functions, notwithstanding any other provision of the law. The commission may pledge up to $5,000,000 of the Florida Public Service Regulatory Trust Fund to guarantee such loans. However, no utility shall be required to loan its funds for the purpose of purchasing or otherwise acquiring conservation measures or devices, but nothing herein shall prohibit or impair the administration or implementation of a utility plan as submitted by a utility and approved by the commission under this subsection. Plans to meet the initial goals must be submitted to the commission no later than November 1, 1980. The commission shall approve or disapprove each plan no later than December 1, 1980. If the commission disapproves a plan, it shall specify the reasons for disapproval, and the utility whose plan is disapproved shall resubmit its modified plan within 30 days. Each plan shall commence January 1, 1981. Prior approval by the commission shall be required to modify or discontinue a plan, or part thereof, which has been approved. If any utility has not implemented its plan and is not substantially in compliance with the provisions of its approved plan at any time after January 1, 1982, then the commission shall adopt a program which will be required for that utility to achieve the overall goals, which may include variations in rate design, load control, residential energy conservation subsidy, or any other measure within the jurisdiction of the commission which the commission finds likely to be effective; this provision shall not be construed to preclude these measures in any plan.

(4) The commission shall require periodic reports from each utility and shall provide the Legislature and the Governor with an annual report by March 1 of the goals it has adopted and its progress toward meeting those goals. The commission shall also consider the performance of each utility pursuant to ss. 366.80-366.85 and 403.519 when establishing rates for those utilities over which the commission has ratesetting authority.

(5) By January 1, 1981, the commission shall require each utility to offer, or to contract to offer, energy audits to its residential customers. This requirement need not be uniform, but may be based on such factors as level of usage, geographic location, or any other reasonable criterion, so long as all eligible customers are notified by April 1, 1981. The commission may extend this requirement to some or all commercial customers if such audits are required pursuant to federal law. The commission shall set the charge for audits by rule, not to exceed the actual cost, and may describe by rule the general form and content of an audit. In the event one utility contracts with another utility to perform audits for it, the utility for which the audits are performed shall pay the contracting utility the reasonable cost of performing the audits. Each utility over which the commission has ratesetting authority shall estimate its costs and revenues for audits, conservation programs, and implementation of its plan for the immediately following 6-month period. Reasonable and prudent unreimbursed costs projected to be incurred, or any portion of such costs, may be added to the rates which would otherwise be charged by a utility upon approval by the commission. Following each 6-month period, each utility shall report the actual results for that period to the commission, and the difference, if any, between actual and projected results shall be taken into account in succeeding periods. The state plan as submitted for consideration under the National Energy Conservation Policy Act shall not be in conflict with any state law or regulation.

(6) Notwithstanding the provisions of s. 377.703, the commission shall be the responsible state agency for performing, coordinating, implementing, or administering the functions of the state plan submitted for consideration under the National Energy Conservation Policy Act and any acts amendatory thereof or supplemental thereto and for performing, coordinating, implementing, or administering the functions of any future federal program delegated to the state which relates to consumption, utilization, or conservation of electricity or natural gas; and the commission shall have exclusive responsibility for preparing all reports, information, analyses, recommendations, and materials related to consumption, utilization, or conservation of electrical energy which are required or authorized by s. 377.703.

(7) The commission shall establish all minimum requirements for energy auditors used by each utility. The commission is authorized to contract with any public agency or other person to provide any training, testing, evaluation, or other step necessary to fulfill the provisions of this subsection.

History.—s. 5, ch. 80-65; s. 2, ch. 81-131; s. 2, ch. 81-318; ss. 5, 15, ch. 82-25.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date. Expires October 1, 1989, pursuant to s. 15, ch. 82-25, and is scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.83 Certain laws not applicable; savings clause.**—No utility shall be held liable for the acts or omissions of any person in implementing or attempting to implement those measures found cost-effective by, or recommended as a result of, an energy audit. The findings and recommendations of an energy audit shall not be construed to be a warranty or guarantee of any kind, nor shall such findings or recommendations subject the utility to liability of any kind. Nothing in ss. 366.80-366.85 and 403.519 shall preempt or affect litigation pending on June 5, 1980, nor shall ss. 366.80-366.86 and 403.519 preempt federal law unless such preemption is expressly authorized by federal statute.

History.—s. 5, ch. 80-65; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.84 Trust fund created; uses.**—There is created the Florida Energy Trust Fund. The commission may develop a test program which shall be conducted in the service area of one or more utilities to improve the efficiency of energy usage by retrofitting existing housing, and the commission may subsidize loans for this purpose. The commission may also provide moneys from the fund for educational projects designed to increase public awareness of the need for efficient utilization of electricity and natural gas or to develop and demonstrate appropriate technology for such purposes.

History.—s. 5, ch. 80-65; s. 2, ch. 81-318.

[1]Note.—Repealed effective October 1, 1989, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

[1]**366.85 Responsibilities of Division of Consumer Services.**—The Division of Consumer Services of the Department of Agriculture and Consumer Services shall be the agency responsible for consumer conciliatory conferences, if such conferences are required pursuant to federal law. The division

shall also be the agency responsible for preparing lists of sources for energy conservation products or services and of financial institutions offering energy conservation loans, if such lists are required pursuant to federal law. Notwithstanding any provision of federal law to the contrary, the division shall not require any manufacturer's warranty exceeding 1 year in order for a source of conservation products or services to be included on the appropriate list. The lists shall be prepared for the service area of each utility and shall be furnished to each utility for distribution to its customers. The division shall update the lists on a systematic basis and shall remove from any list any person who has been disciplined by any state agency or who has otherwise exhibited a pattern of unsatisfactory work and any person who requests removal from such lists. The division is authorized to adopt rules to implement the provisions of this section.

History.—s. 5, ch. 80-65; s. 2, ch. 81-318.

[1]*Note.*—Repealed effective October 1, 1980, by s. 2, ch. 81-318, and scheduled for review pursuant to s. 11.61 in advance of that date.

CHAPTER 370

SALTWATER FISHERIES

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370.01 Definitions.—In construing these statutes, where the context does not clearly indicate otherwise, the word, phrase or term:

(1) "Resident" or "resident of Florida" includes citizens of the United States who have continuously resided in this state, next preceding the making of their application for hunting, fishing or other license, for the following period of time, to wit: For 1 year, in the state, and 6 months in the county when applied

to all fish and game laws not related to freshwater fish and game.

(2) "Saltwater fish" shall include all classes of pisces, shellfish, sponges and crustacea indigenous to salt water.

(3) "Open season" shall be that portion of the year wherein the laws of Florida for the preservation of fish and game permit the taking of particular species of game or varieties of fish.

(4) "Closed season" shall be that portion of the year wherein the laws of Florida forbid the taking of particular species of game or varieties of fish.

(5) "Salt water," except where otherwise provided by law, shall be all of the territorial waters of Florida excluding all lakes, rivers, canals, and other waterways of Florida from such point or points where the fresh and salt waters commingle to such an extent as to become unpalatable because of the saline content, or from such point or points as may be fixed for conservation purposes by the Division of Marine Resources and the Game and Fresh Water Fish Commission of the Department of Natural Resources with the consent and advice of the board of county commissioners of the county or counties to be affected.

(6) "Common carrier" shall include any person, firm or corporation, who undertakes for hire, as a regular business, to transport persons or commodities from place to place offering his services to all such as may choose to employ him and pay his charges.

(7) "Transport" shall include shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation or carriage or export.

(8) "Guide" shall include any person engaged in the business of guiding hunters or hunting parties, fishermen or fishing parties, for compensation.

(9) "Shellfish" shall include oysters, clams and whelks.

(10) "Coon oysters" are oysters found growing in bunches along the shore between high-water mark and low-water mark.

(11) "Reef bunch oysters" are oysters found growing on the bars or reefs in the open bay and exposed to the air between high and low tide.

(12) "Food fish" shall include mullet, trout, redfish, sheepshead, pompano, mackerel, bluefish, red snapper, grouper and all other fish generally used for human consumption.

(13) A "natural oyster or clam reef," or "bed," or "bar," shall be considered and defined as an area containing not less than 100 square yards of the bottom where oysters or clams are found in a stratum.

(14) "Department" shall mean the Department of Natural Resources.

(15) "Beaches" and "shores" shall mean the coastal and intracoastal shoreline of this state bordering upon the waters of the Atlantic Ocean, the Gulf of Mexico, the Straits of Florida, and any part thereof, and any other bodies of water under the jurisdiction of the State of Florida, between the mean high-water line and as far seaward as may be necessary to effectively carry out the purposes of this act.

(16) "Erosion control," "beach preservation" and "hurricane protection" shall include any activity, work, program, project or other thing deemed necessary by the Division of Marine Resources of the Department of Natural Resources to effectively preserve, protect, restore, rehabilitate, stabilize and improve the beaches and shores of this state, as defined above.

(17) "Coastal construction" includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore processes.

(18) "Saltwater products" means any species of saltwater fish, marine plant, or echinoderm, except shells, nonliving sponges, and salted, cured, canned, or smoked seafood.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 63-40; s. 1, ch. 65-140; ss. 25, 35, ch. 69-106; s. 127, ch. 71-377; s. 1, ch. 78-56; s. 76, ch. 79-164.

370.013 Department of Natural Resources; general function.—The Department of Natural Resources is charged with the administration, supervision, development and conservation of the natural resources of the state.

History.—ss. 25, 35, ch. 69-106.

370.015 Development of Suwannee River and area.—The Department of Natural Resources, through its Suwannee River Authority, is granted the authority to guide, stimulate, and promote the coordinated, efficient, and beneficial development and improvement of the Suwannee River and its tributaries and surrounding area. Expenditures of funds therefor are hereby declared to be for a proper public purpose.

History.—s. 1, ch. 71-16.

370.017 Executive director, responsibility to Board of Trustees of Internal Improvement Trust Fund.—In addition to his other duties, it is the responsibility of the executive director of the Department of Natural Resources to advise and make recommendations to the Board of Trustees of the Internal Improvement Trust Fund on all matters pertaining to the natural resources of the state.

History.—ss. 25, 35, ch. 69-106.

370.02 Department of Natural Resources.—

(1) DIVISION OF ADMINISTRATION; POWERS AND DUTIES.—The Division of Administration shall have the duty and responsibility of rendering any services required by the department and its several divisions, herein set forth, that can advantageously and effectively be centralized and such other functions and duties of the department not specifically assigned by law to some other division. Necessary promotional expenses incurred in such activities of the department shall include, but not be limited to, conventions, conferences, and meetings within and without this state, and shall be paid from the water resources development account in amounts totaling not more than $2,000 per fiscal year.

(2) DIVISION OF MARINE RESOURCES; POWERS AND DUTIES.—

(a) It shall be the duty of the Division of Marine Resources of the department to preserve, manage, and protect the marine, crustacean, shell and anadromous fishery resources of the state in the waters thereof; to regulate the operations of all fishermen and vessels of this state engaged in the taking of such

fishery resources within or without the boundaries of such state waters, to issue licenses or provide for the issuance of licenses, prescribed by the Legislature, for taking of the products of any or all such fisheries and the processing at sea or on shore within this state; to secure and maintain statistical records of the catch of each such species by various gear, by areas and by other appropriate classifications; to conduct scientific, economic and other studies and research, and to enter into contracts for such studies and research, all of which duties and operations shall be directed to the broad objective of managing such fisheries in the interest of all people of the state, to the end that they shall produce the maximum sustained yield consistent with the preservation and protection of the breeding stock.

(b) The Division of Marine Resources shall administer, coordinate, and enforce the provisions of ss. 370.03, 370.041, 370.06-370.172 and chapter 371.

(3) DIVISION OF RESOURCE MANAGEMENT; POWERS AND DUTIES.—

(a) It shall be the duty of the Division of Resource Management to coordinate the activities of all public bodies, authorities, agencies, and special districts charged with the development of waterways within the state, whether such bodies, authorities, agencies, or special districts now exist or may hereafter be created by general or special act of the Legislature.

(b) The division shall also foster, promote, and guide development of an integrated system of waterways within the state, utilizing, where practical, the natural bodies of water lying therein.

(c) This division may disburse to the canal authority of the state any funds transferred to the department by the Board of Trustees of the Internal Improvement Trust Fund as herein provided to be used as matching funds for the purpose of acquiring rights-of-way for any waterways development project authorized by an appropriate federal or state agency the route of which is to pass through or adjacent to the counties comprising any special taxing district created for the purpose of raising funds for acquiring such rights-of-way. Provided, however, no such matching funds shall be so disbursed except upon approval of the department and upon receipt of satisfactory proof from the canal authority that it has sufficient funds on hand to match the state funds herein referred to on an equal basis. The Board of Trustees of the Internal Improvement Trust Fund shall transfer to the department such of its funds as may be available and as the department may deem necessary to provide the matching fund herein authorized. The use of the funds of the Land Acquisition Trust Fund for the purposes herein shall be deemed a valid use of said funds.

(d) It shall be the duty of the Division of Resource Management to administer, coordinate, and enforce the functions of the division as set forth in ss. 377.075 and 373.012. The division shall also administer, enforce, and coordinate the provisions of chapter 377 relating to conservation of oil and gas resources.

(e) The Division of Resource Management shall perform all powers, duties, and functions of the former Division of Interior Resources not transferred elsewhere by chapter 75-22, Laws of Florida. The division shall also perform functions including, but not limited to, preservation, management, and protection of lands held by the state other than parks and recreational and wilderness areas. The division shall also carry out the responsibilities of boundary determination pursuant to chapter 253.

(4) DIVISION OF LAW ENFORCEMENT; POWERS AND DUTIES.—The Division of Law Enforcement shall perform the duties currently assigned to the Bureau of Law Enforcement of the Division of Marine Resources.

(5) DIVISION OF BEACHES AND SHORES; POWERS AND DUTIES.—

(a) The Department of Natural Resources acting through the Division of Beaches and Shores shall be the state agency for:

1. Administering, coordinating, enforcing, and carrying out the powers, duties, functions, and responsibilities relating to beach and shore erosion, including restoration and protection against hurricane and storm damage.

2. Processing of applications and issuing of permits prior to commencement of work for all coastal construction, physical activity, or structures pertaining thereto, except those authorized to be constructed under chapter 253, below the mean high-water line of any body of tidal water within the limits of the state and the setting of reasonable fees and costs therefor.

(b) Specific duties of the Division of Beaches and Shores shall include the duties:

1. To administer, coordinate, and enforce the provisions of chapter 161.

2. To conduct, direct, encourage, coordinate, and organize a continuing program of research into problems of beach erosion, shoreline deterioration, and hurricane protection.

3. To prepare a comprehensive, long-range statewide plan for erosion control, beach preservation, and hurricane protection.

4. To review all plans and activity pertinent to erosion control, beach [1]preservation, and hurricane protection and to provide coordination in these fields among the various levels of government and areas of the state.

5. To make recommendations to the department concerning the use of funds in the erosion control account.

6. To ensure the proper regulation of shoreline alteration and development by investigating proposed work and making recommendations to the department.

7. To promote sound planning and development of shoreline upland by devising standards and working closely with local planning and zoning bodies.

8. To coordinate erosion control, beach preservation, and hurricane protection activities with waterways, harbors, water control and development projects.

9. To provide a clearing service for erosion control, beach preservation, and hurricane protection matters by collecting, processing, and disseminating pertinent information.

10. To assist and guide localities in the preparation and execution of integrated erosion [2]control, beach preservation, and hurricane protection programs.

11. To provide such other services as the department may direct.

History.—s. 2, ch. 29145, 1963; s. 1, ch. 57-867; s. 1, ch. 57-153; s. 1, ch. 57-283; s. 1, ch. 59-193; s. 1, ch. 61-231; ss. 2, 3, ch. 63-40; s. 2, ch. 65-140; ss. 25, 27, 35, ch. 69-106; s. 30, ch. 69-353; s. 1, ch. 70-254; s. 138, ch. 71-377; s. 14, ch. 75-22; s. 6, ch. 77-306; s. 30, ch. 79-65; s. 77, ch. 79-164; s. 219, ch. 81-259; s. 7, ch. 82-144.

[1]Note.—The word "preservation" was inserted by the editors.

[2]Note.—The word "control" was inserted by the editors.

cf.—s. 370.061 Confiscation of property and products.

370.021 Administration; rules, publications, records; penalty for violation of chapter; injunctions.—

(1) RULES AND REGULATIONS.—The Department of Natural Resources shall make, adopt, promulgate, amend, and repeal all rules and regulations necessary or convenient for the carrying out of the duties, obligations, powers, and responsibilities conferred on the department or any of its divisions. The director of each division shall submit to the department suggested rules and regulations for that division. Any person violating or otherwise failing to comply with any of the rules and regulations adopted as aforesaid is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless otherwise provided by law.

(2) PENALTY FOR VIOLATION.—Any person violating any provisions of this chapter, unless otherwise provided, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) RULES; ADMISSIBILITY AS EVIDENCE.—Rules and regulations shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the executive director of the department certifying that the rule or regulation has been lawfully adopted, promulgated, and published; and such affidavit shall be prima facie evidence of proper adoption, promulgation, and publication of the rule or regulation.

(4) PUBLICATIONS BY DEPARTMENT.—The department through the Division of Administration is given authority, from time to time in its discretion, to cause the statutory laws under its jurisdiction, together with any rules and regulations promulgated by it, to be published in pamphlet form for free distribution in this state. The department is authorized to make charges for technical and educational publications and mimeographed material of use for educational or reference purposes. Such charges shall be made at the discretion of the Division of Administration. Such charges may be sufficient to cover cost of preparation, printing, publishing, and distribution. All moneys received for publications shall be deposited in the General Revenue Fund. The department is further authorized to enter into agreements with persons, firms, corporations, governmental agencies, and other institutions whereby publications may be exchanged reciprocally in lieu of payments for said publications.

(5) POWERS OF OFFICERS.—The department may designate such employees of the several divisions, as it may deem necessary in its discretion, as law enforcement officers, who shall meet the provisions of s. 943.13 and s. 943.12(1) and have the powers and duties conferred in this subsection, except that such employees shall comply with the provisions of chapter 943. Such officers, together with the executive director and the director of the Division of Law Enforcement, are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of this state and the rules and regulations of the department under their jurisdiction and for violations of chapter 253 and the rules and regulations promulgated thereunder. The general laws applicable to arrests by peace officers of this state shall also be applicable to such law enforcement officers. Such law enforcement officers may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment, and such entry shall not constitute a trespass. It shall be lawful for any boat, motor vehicle, or aircraft owned or chartered by the department or its agents or employees to land on and depart from any of the beaches or waters of the state. Such law enforcement officers shall have the authority, without warrant, to board, inspect, and search any boat, fishing appliance, storage or processing plant, fishhouse, spongehouse, oysterhouse, or any other warehouse, building, or vehicle engaged in transporting or storing any fish or fishery products. Such authority to search and inspect without a search warrant is limited to those cases in which such law enforcement officers have reason to believe that fish or any saltwater products are taken or kept for sale, barter, transportation, or other purposes in violation of laws or rules promulgated under this law. Any such law enforcement officer may at any time seize or take possession of any saltwater products or contraband which have been unlawfully caught, taken, or processed or which are unlawfully possessed or transported in violation of any of the laws of this state or any rule or regulation of the department. Such law enforcement officers may arrest any person in the act of violating any of the provisions of this law, rules or regulations of the department, the provisions of chapter 253 and the rules and regulations promulgated thereunder, or any of the laws of this state. It is hereby declared unlawful for any person to resist such arrest or in any manner interfere, either by abetting or assisting such resistance or otherwise interfering, with any such law enforcement officer while engaged in the performance of the duties imposed upon him by law or regulation of the department.

(6) DUTIES OF DEPARTMENT OF LEGAL AFFAIRS.—The Department of Legal Affairs shall attend to the legal business of the Department of Natural Resources and its divisions but if at any time any question of law or any litigation arises, and the Department of Legal Affairs is otherwise occupied and cannot give the time and attention necessary to such question of law or litigation as the occasion demands, the several state attorneys shall attend to any such question of law or litigation arising within their respective circuits, and if such state attorney is otherwise occupied and cannot give the time and attention necessary to such question of law or litigation as the case may demand, the said Department of Natural Resources may employ additional counsel for that particular cause, with the advice and consent of the

Department of Legal Affairs. Such additional counsel's fees shall be paid from the moneys appropriated to the Department of Natural Resources.

(7) RETENTION, DESTRUCTION, AND REPRODUCTION OF RECORDS.—Records and documents of the Department of Natural Resources which are created in compliance with and in the implementation of chapters 370 and 371, shall be retained by the department as specified in record retention schedules established under the general provisions of chapters 119 and 267. Further, the department is authorized to:

(a) Destroy, or otherwise dispose of, those records and documents, in conformity with the approved retention schedules.

(b) Photograph, microphotograph, or reproduce such records and documents on film, as authorized and directed by the approved retention schedules, whereby each page will be exposed in exact conformity with the original records and documents retained in compliance with the provisions of this section. Photographs or microphotographs in the form of film or print of any records, made in compliance with the provisions of this section, shall have the same force and effect as the originals thereof would have and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions of such photographs or microphotographs shall be admitted in evidence equally with the original photographs or microphotographs. The impression of the seal of the Department of Natural Resources on a certificate made pursuant to the provisions hereof, and signed by the Executive Director of the Department of Natural Resources, shall entitle the same to be received in evidence in all courts and in all proceedings in this state and shall be prima facie evidence of all factual matters set forth in the certificate. A certificate may relate to one or more records, as set forth in the certificate, or in a schedule continued on an attachment to the certificate.

(c) Furnish certified copies of such records for a fee of $1 which shall be deposited in the Motorboat Revolving Trust Fund.

(8) COURTS OF EQUITY MAY ENJOIN.—Courts of equity in this state shall have jurisdiction to enforce the conservation laws of this state by injunction.

(9) BOND OF EMPLOYEES.—The department may require, as it determines, that bond be given by any employee of the department or divisions thereof, payable to the Governor of the state, and his successor in office, for the use and benefit of those whom it may concern, in such penal sums with good and sufficient surety or sureties approved by the department conditioned for the faithful performance of the duties of such employee.

History.—s. 2, ch. 61-231; s. 1, ch. 61-22; ss. 11, 25, 35, ch. 69-106; s. 1, ch. 70-378; s. 1, ch. 70-429; s. 277, ch. 71-136; s. 1, ch. 75-190; s. 23, ch. 78-95; s. 31, ch. 79-65; s. 1, ch. 80-356; s. 220, ch. 81-259.

370.023 Administration of department grant programs.—

(1) The Department of Natural Resources is authorized to establish grant programs which are consistent with statutory authority and legislative appropriations. The department is further authorized to receive funds from any legal source for purposes of matching state dollars or for passing through the agency as grants to other entities whether or not matching funds or in-kind matches are required.

(2) For any grant program established by the department, the department shall adopt rules, pursuant to the requirements of chapter 120, for each grant program which shall include, but are not limited to: the method or methods of payment; the supporting documents required before payment will be made; when matching funds or in-kind matches are allowed; what moneys, services, or other sources and amounts of matching funds or in-kind matches will be eligible for use for matching the grant by the department; who is eligible to participate in the program; and other provisions which the department finds necessary to achieve program objectives and an accounting for state funds in accordance with law and generally accepted accounting principles.

(3) The department is authorized to preaudit or postaudit account books and other documentation of a grant recipient to assure that grant funds were used in accordance with the terms of the grant and state rules and statutes. When such audit reveals that moneys were not spent in accordance with grant requirements, the department may withhold moneys or recover moneys previously paid. A grant recipient will be allowed a maximum of 60 days to submit any additional pertinent documentation to offset the amount identified as being due the department.

History.—s. 2, ch. 83-225.

[1]370.025 Marine fisheries; policy and standards.—

(1) The Legislature hereby declares the policy of the state to be management and preservation of its renewable marine fishery resources, based upon the best available information, emphasizing protection and enhancement of the marine and estuarine environment in such a manner as to provide for optimum sustained benefits and use to all the people of this state for present and future generations.

(2) All rules relating to saltwater fisheries adopted by the department pursuant to this chapter or adopted by the Marine Fisheries Commission and approved by the Governor and Cabinet as head of the department shall be consistent with the following standards:

(a) The paramount concern of conservation and management measures shall be the continuing health and abundance of the marine fisheries resources of this state.

(b) Conservation and management measures shall be based upon the best information available, including biological, sociological, economic, and other information deemed relevant by the commission.

(c) Conservation and management measures shall permit reasonable means and quantities of annual harvest, consistent with maximum practicable sustainable stock abundance on a continuing basis.

(d) When possible and practicable, stocks of fish shall be managed as a biological unit.

(e) Conservation and management measures shall assure proper quality control of marine resources that enter commerce.

(f) State marine fishery management plans shall be developed to implement management of important marine fishery resources.

(g) Conservation and management decisions shall be fair and equitable to all the people of this state and carried out in such a manner that no individual, corporation, or entity acquires an excessive share of such privileges.

(h) Federal fishery management plans and fishery management plans of other states or interstate commissions should be considered when developing state marine fishery management plans. Inconsistencies should be avoided unless it is determined that it is in the best interest of the fisheries or residents of this state to be inconsistent.

History.—s. 1, ch. 83-134.

[1]Note.—Expires October 1, 1993, pursuant to s. 5, ch. 83-134, and the Marine Fisheries Commission is scheduled for review pursuant to s. 11.611.

[1]370.026 Marine Fisheries Commission.—

(1) There is created within the Department of Natural Resources a Marine Fisheries Commission which shall be composed of seven members who have resided in the state for at least 5 years. The seven members shall be appointed by the Governor, subject to confirmation by the Senate, and shall be exempt from the Career Service System. The Governor shall consider affected interests when making appointments to the commission. No single interest group shall dominate the membership of the commission. As soon as practicable after this act becomes a law, two members shall be appointed for terms ending August 1, 1985; three members shall be appointed for terms ending August 1, 1986; and the remaining members shall be appointed for terms ending August 1, 1987. Thereafter, all appointments shall be for 4-year terms. If a vacancy occurs, a member shall be appointed by the Governor for the unexpired term. A commission member whose term has expired shall continue sitting on the commission with full rights until he has been replaced.

(2) Immediately upon being appointed, the commission is authorized to employ a director and three additional persons all of whom shall be exempt from the Career Service System. Within a reasonable time after being appointed, the commission shall schedule meetings to carry out the purposes of ss. 1-9 of chapter 83-134, Laws of Florida.

(3) Members of the commission shall be paid $50 per day while engaged in the business of the commission and shall receive expenses and per diem for travel, including attendance at meetings, as are allowed state officers and employees pursuant to s. 112.061.

(4) The commission shall develop a budget pursuant to chapter 216. The budget is not subject to change by the department staff after it has been approved by the commission, but it shall be transmitted to the Governor and Cabinet as head of the department for submission to the Governor in the exercise of his constitutional duties.

(5) Each state agency is directed to cooperate fully with the commission.

History.—ss. 1, 3, 5, ch. 83-134.

[1]Note.—Expires October 1, 1993, pursuant to s. 5, ch. 83-134, and the Marine Fisheries Commission is scheduled for review pursuant to s. 11.611.

[1]370.027 Rulemaking authority with respect to marine life.—

(1) Pursuant to the policy and standards in s. 370.025, the Marine Fisheries Commission is delegated full rulemaking authority over marine life, with the exception of endangered species, subject to final approval by the Governor and Cabinet sitting as the head of the Department of Natural Resources, in the areas of concern herein specified. The commission is instructed to make recommendations annually to the Governor and Cabinet regarding the marine fisheries research priorities and funding of the department. All administrative and enforcement responsibilities which are unaffected by the specific provisions of this act continue to be the responsibility of the department. The authority to regulate fishing gear in residential, manmade saltwater canals is specifically not delegated to the commission and is retained by the Legislature.

(2) Exclusive rulemaking authority in the following areas relating to marine life, with the exception of endangered species, is vested in the commission; any conflicting authority of any division or bureau of the department or any other agency of state government is withdrawn as of the effective date of the rule proposed by the commission and approved by the Governor and Cabinet, and the inconsistent rule, or the inconsistent part thereof, is superseded to the extent of the inconsistency:

(a) Gear specifications;
(b) Prohibited gear;
(c) Bag limits;
(d) Size limits;
(e) Species that may not be sold;
(f) Protected species;
(g) Closed areas;
(h) Quality control codes;
(i) Seasons; and
(j) Special considerations relating to eggbearing females and oyster and clam relaying.

(3)(a) The commission, pursuant to this act, shall adopt rules pursuant to chapter 120. When rules are ready for final adoption, the proposed rules shall be submitted to the executive director of the department for submission on the regular agenda of the department for final action by the Governor and Cabinet as head of the department. In considering a proposed rule recommended by the commission, the Governor and Cabinet may only approve or disapprove the proposed rule. If the rule is disapproved, it shall be withdrawn. The commission shall file a rule for adoption with the Department of State only after the rule is approved by the Governor and Cabinet. The department staff has no authority to change any proposed rule or recommendation submitted by the commission.

(b) The executive director of the department shall appoint a management-level staff member to coordinate with the director of the commission the submission by the commission of proposed rules for final approval by the Governor and Cabinet.

History.—ss. 2, 5, ch. 83-134.

[1]Note.—Expires October 1, 1993, pursuant to s. 5, ch. 83-134, and the Marine Fisheries Commission is scheduled for review pursuant to s. 11.611.

[1]370.028 Enforcement of commission rules;

penalties for violation of rule.—The department *shall enforce any rule adopted by the Marine Fisheries* Commission. Any person who violates or otherwise fails to comply with any rule adopted by the commission is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless otherwise provided by law.

History.—ss. 2, 5, ch. 83-134.

[1]Note.—Expires October 1, 1993, pursuant to s. 5, ch. 83-134, and the Marine Fisheries Commission is scheduled for review pursuant to s. 11.611.

[1]370.029 *Marine Fisheries Commission* Trust Fund.—There is established the Marine Fisheries Commission Trust Fund, to be administered by the Marine Fisheries Commission. All revenues accruing to the trust fund shall be used to carry out the responsibilities of the commission and to provide for the award of funds to marine research institutions in this state for the purposes of enabling such institutions to conduct worthy marine research projects.

History.—ss. 5, 13, ch. 83-134.

[1]Note.—Expires October 1, 1993, pursuant to s. 5, ch. 83-134, and the Marine Fisheries Commission is scheduled for review pursuant to s. 11.611.

370.03 Water bottoms.—

(1) OWNERSHIP.—All beds and bottoms of navigable rivers, bayous, lagoons, lakes, bays, sounds, inlets, oceans, gulfs and other bodies of water within the jurisdiction of Florida shall be the property of the state except such as may be held under some grant or *alienation heretofore made. No grant, sale or conveyance* of any water bottom, except conditional leases and dispositions hereinafter provided for, shall hereafter be made by the state, the Board of Trustees of the Internal Improvement Trust Fund, the Department of Agriculture and Consumer Services, or any other official or political corporation. Persons who *have received, or may hereafter receive permits to do* business in this state, with their factories, shucking plants and shipping depots located in this state, may enjoy the right of fishing for oysters and clams from the natural reefs and bedding oysters and clams on leased bedding grounds, and shall have the right to employ such boats, vessels, or labor and assistants as *they may need. Provided that no oysters shall be* transported unshucked and in the shells, out of the state, except for use in what is commonly known as the "half-shell trade." When the oyster meats have been separated from the shells it shall be permissible to ship the meats out of the state for further processing and for canning or packing. It shall be unlawful to *transport oysters out of the state, unshucked and in* the shells, for processing or packing.

(2) CONTROL.—The Division of Marine Resources of the Department of Natural Resources has exclusive power and control over all water bottoms, not held under some grant or alienation heretofore made, including such as may revert to the state by *cancellation or otherwise, and may lease the same to* any person irrespective of residence or citizenship, upon such terms, conditions and restrictions as said division may elect to impose, without limitation as to area to any one person, for the purpose of granting exclusive right to plant oysters or clams thereon and for the purpose of fishing, taking, catching, bedding and raising oysters, clams and other shellfish. No such lessee shall re-lease, sublease, sell or transfer any such water bottom or property; provided, that *nothing herein contained shall be construed as giving* said division authority to lease sponge beds.

(3) FEES FOR BOTTOM LEASES, ETC.—The division shall charge and receive a fee of $2 for each lease granted, and in all other cases, not specifically provided by this chapter, the same fees as are allowed clerks of the circuit court for like services. All fees shall be paid by the party served.

(4) CONFIRMATION OF FORMER GRANTS; PROVISO.—*All grants prior to June 1, 1913, made in* pursuance of heretofore existing laws, where the person receiving such grant, his heirs or assigns, have bona fide complied with the requirements of said law, are hereby confirmed; provided, that if any material or natural oyster or clam reefs or beds on such granted premises are 100 square yards in area and contained natural oysters and clams (coon oysters not included) in sufficient quantity to have been resorted *to by the general public for the purpose of gathering* oysters or clams to sell for a livelihood, at the time they were planted by such grantee, his heirs or assigns, such reefs or beds are declared to be the property of the state; and when such beds or reefs exist within the territory heretofore granted as above set forth, or that may hereafter be leased, such grantee or lessee shall mark the boundaries of such oyster and clam reefs or beds as may be designated by the *division as natural oyster or clam reefs or beds, clear*ly defining the boundaries of the same, and shall post notice or other device, as shall be required by the division, giving notice to the public that such oyster or clam beds or reefs are the property of the state, which said notice shall be maintained from September 1 to June 1 of each and every year, on each oyster *bed or reef and on each clam bed for such period of* each year as the board may direct, at the expense of the grantee or lessee. The division shall investigate all grants heretofore made, and where, in its opinion, the lessee or grantee has not bona fide complied with the law under which he received his grant or lease, and it shall report the same to the department which is authorized and required to institute legal proceedings to vacate the same, in order to use such lands for *the benefit of the public, subject to the same dispositions* as other bottoms.

History.—ss. 2, 3, ch. 28145, 1953; s. 1, ch. 29941, 1955; ss. 14, 25, 27, 30, ch. 69-106.

370.031 Choctawhatchee Bay, use study.—

(1) The Department of Natural Resources is hereby directed to conduct an economic, ecological, and biological study of Choctawhatchee Bay, and the inlets and tributaries thereof, to determine the best possible use or uses of the bay. The department shall consider, among other things, the potential use of the bay for: Sport and commercial fishing, shell-dredging, mariculture, and other recreational, commercial and industrial uses. The study shall include the development of suggested rules and regulations for the protection of the bay to insure that the best use of the bay will continue.

(2) The department may utilize the services, personnel, or facilities of any state institution, agency, department, or other state body either through con-

tract or agreement in carrying out the provisions of this section.

(3) The department is hereby authorized to use any funds appropriated for research in its trust funds to the extent necessary to carry out the provisions of *this section.*

History.—ss. 1, 2, 4, ch. 69-225; ss. 25, 35, ch. 69-106.

370.032 Definitions; ss. 370.032-370.038.—The following words, terms, and phrases when used in ss. 370.032-370.038 shall have the meanings respectively ascribed to them in this section, except *where the context clearly indicates a different meaning:*

(1) "Person" means an *individual, corporation,* government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, or any other legal or commercial entity.

(2) "Dredge or fill equipment" means any dredge, sand pump, sand sucker, or similar device, having an *intake capacity of 4 inches or more, and any dragline* excavator, crane, power shovel, backhoe, or similar device, having a bucket or *clamshell capacity in ex*cess of 2 yards, and shall include all such devices regardless of how mounted or powered.

(3) "Dredge or fill activities" means any use of dredge or fill equipment for the purpose of removing soil, rock, or other solid material from beneath the surface of any body of water, of creating a body of *water of any size whatsoever, or of placing* or depositing any such material upon submerged bottom lands of any body of water.

(4) "Body of water" means all freshwater lakes and ponds having a surface area in excess of 10 acres and all oceans, gulfs, bays, bayous, lagoons, rivers and streams, and all other submerged lands.

(5) "Department" means the Department of Natural Resources.

History.—s. 2, ch. 70-442.

370.033 Legislative intent.—It is the legislative intent to require all persons who engage in any dredge or fill activities in this state to obtain a certificate of registration from the Department of Natural Resources and also to keep accurate logs and records of all such activities so that the *natural resources* may be protected and conserved.

History.—s. 1, ch. 70-442.

370.034 Certificate required; return; application; *filing fee.*—

(1) Every person owning or controlling any dredge or fill *equipment in this state, or leasing or* renting such equipment to any other person to operate in this state, shall make a return under oath to the Department of Natural Resources on October 1 of each year in such form as provided by the department of the number and kind of pieces of such dredge or fill equipment owned, used or operated, *leased or rented to be used in this state in* dredge or fill activities, and shall, on the same day, obtain a certificate of registration from the department authorizing use of such equipment.

(2) No certificate shall be issued except upon written application. The *department, before issuing a* certificate, shall require the person applying for the certificate to file, under oath, a statement giving full and complete information relative to the number and kind of pieces of dredge or fill equipment owned, used or operated, leased or rented to be used in this state in dredge or fill activities. The applications and *statements required by this section* shall be retained as a part of the records of the Department of Natural Resources.

(3) There shall be a $10 filing fee collected by the department for issuance of the certificate.

History.—ss. 3, 4, ch. 70-442.

370.036 *Dredge or fill* activities, records; penalty.—

(1) Every person who engages *in dredge or fill* activities shall maintain an official log book for each piece of dredge or fill equipment into which the operator thereof shall make daily entries of all dredge or fill activities conducted with such equipment.

(2) Each entry shall be made, dated, and signed by the individual operator of the particular piece of *equipment and shall show the kind of activity per*formed, the precise location of the activity, the kind and quantity of material removed or deposited, the name of the person for whom the activity was performed, the construction or fill permit authorizing such activity, and the certificate number under which the equipment was operated. Entries shall be made on the same day on which the activity is performed.

(3) The log or logs shall reflect all activities conducted with such equipment during the preceding 30 calendar days and shall be kept and remain on the equipment at all times during such period. After such period, the logs shall be kept on file at the principal place of business of the certificateholder for not less than 3 years.

(4) Any person failing to comply with the provi*sions of this section is guilty of a misdemeanor of the* second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) Any person having legal or beneficial ownership of dredging equipment, whether or not properly registered, which is used directly or indirectly in such a manner as to exceed the authority granted by a valid construction permit issued pursuant to s. 253.124, or which is operated without any such permit, when the dredging is done with intent to defraud, confiscate lands, or trespass, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall suffer suspension of the construction permit for a period not exceeding 90 days, revocation of any and all registrations on dredging equipment owned or operated by the person for a period not exceeding 2 years, or by any or all such fine, imprisonment, suspension of permit, and revocation of registrations on equipment, in the discretion of the court. The penalties herein provided shall extend to the person causing, directing, or permitting such activity as well as to the actual violators.

History.—s. 6, ch. 70-442; s. 279, ch. 79-190.

370.037 Denial, suspension, or revocation of certificate.—

(1) The department may refuse to issue or renew or may suspend or revoke any certificate on any of the following grounds:

(a) Material misstatement in the application for the certificate.

(b) Willful disregard or violation of any of the provisions of ss. 370.033-370.036 or of any rule or regulation promulgated thereunder.

(2) Proceedings may be instituted by the Department of Natural Resources or by any other party by filing a sworn written complaint with the department.

(3) The department may suspend or revoke a certificate, subject to the provisions of chapter 120.

History.—ss. 7, 8, 9, ch. 76-442; s. 1, ch. 77-117; s. 23, ch. 78-95.

370.038 Rules and regulations.—The Department of Natural Resources is authorized to make and adopt reasonable rules, regulations, and orders necessary to carry out the provisions of ss. 370.033-370.037.

History.—s. 10, ch. 76-442; s. 25, ch. 78-95.

370.041 Harvesting of sea oats and sea grapes prohibited; possession prima facie evidence of violation.—

(1) The purpose of this section is to protect the beaches and shores of the state from erosion by preserving natural vegetative cover to bind the sand.

(2) It is unlawful for any purpose to cut, harvest, remove, or eradicate any of the grass commonly known as sea oats or *Uniola paniculata* and *Coccolobis uvifera* commonly known as sea grapes from any public land or from any private land without consent of the owner of such land or person having lawful possession thereof. Possession of either *Uniola paniculata* or *Coccolobis uvifera* by other than the owner of such land shall constitute prima facie evidence of violation of this section. However, licensed, certified nurserymen who grow any of the native plants listed in this section from seeds or by vegetative propagation are specifically permitted to sell these commercially grown plants and shall not be in violation of this section of the law if they do so, as it is the intent of the law to preserve and encourage the growth of these native plants which are rapidly disappearing from the state.

(3) A violation of this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-456; s. 1, ch. 67-159; s. 290, ch. 71-136; s. 1, ch. 71-153; s. 1, ch. 73-259.

370.06 Licenses.—

(1) LICENSE ON PURSE SEINES.—There is levied, in addition to any other taxes thereon, an annual license tax of $25 upon each purse seine used in the waters of this state. This license fee shall be collected in the manner provided in this section. Anyone violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) SALTWATER PRODUCTS LICENSE.—

(a) Beginning October 1, 1983, every person, firm, or corporation which sells, offers for sale, barters, or exchanges for merchandise any saltwater products, including saltwater products sold for bait, must have a valid saltwater products license; however, this subsection does not apply to any person, firm, or corporation licensed under s. 370.07(1)(a)1. or s. 370.07(1)(b) for activities pursuant to such license. The cost of the saltwater products license required by this section, beginning October 1, 1983, shall be the full annual rate, and 'each license must be renewed July 1, 1984, and every year thereafter. A saltwater products license may be issued in the name of an individual or a valid boat registration number. Such license is not transferable. A resident shall pay for such license an annual license fee of $25; a nonresident shall pay for such license an annual license fee of $100; and an alien shall pay for such license an annual license fee of $150. Any person selling saltwater products for human consumption pursuant to this license may sell only to a licensed wholesale dealer. A saltwater products license must be presented to the licensed wholesale dealer each time saltwater products are sold. The wholesale dealer shall keep records of each transaction in such detail as may be required by rule of the Department of Natural Resources not in conflict with s. 370.07(6). A person holding a valid license or permit required by this chapter to take any saltwater products shall be given credit for the amount of fee paid for such license or permit toward a saltwater products license. However, such credit is only good when the license or permit for which credit is given is valid for the same year covered by the saltwater products license. It is unlawful for any licensed wholesale dealer to buy saltwater products from any unlicensed person under the provisions of this section, except that a licensed wholesale dealer may buy from another licensed wholesale dealer. The Department of Natural Resources shall be the licensing agency, may contract with private persons or entities to implement aspects of the licensing program, and shall establish by rule a marine fisheries information system in conjunction with the licensing program to gather fisheries data.

(b) Any person who sells, offers for sale, barters, or exchanges for merchandise saltwater products must have a method of catch preservation which meets the requirements and standards of the seafood quality control code promulgated by the Department of Natural Resources.

(3) LICENSE YEAR.—The license year on all licenses relating to saltwater products dealers, seafood dealers, aliens, residents, and nonresidents, unless otherwise provided, shall begin on July 1 of each year and end on June 30 of the next succeeding year. All licenses shall be so dated. This section does not apply to licenses and permits when their use is confined to an open season.

(4) LICENSES SUBJECT TO INSPECTION; NONTRANSFERABLE; EXCEPTION.—Licenses of every kind and nature granted under the provisions of the fish and game laws of this state are at all times subject to inspection by the police officers of this state, the wildlife officers of the Game and Fresh Water Fish Commission, and the officers of the Marine Patrol. Such licenses are not transferable unless otherwise provided by law.

(5) COLLECTION OF LICENSES, FEES.—All

such license tax or fees provided for in this chapter shall be collected by the department or its duly authorized agents or deputies to be deposited by the Comptroller in the Motorboat Revolving Trust Fund as created by s. 327.28.

(6) GENERAL PENALTY PROVISION.—Any person or persons, corporate or otherwise, violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless otherwise provided in this section.

History.—s. 2, ch. 28145, 1953; ss. 3, 4, ch. 59-399; s. 1, ch. 59-490; s. 1, ch. 61-520; s. 2, ch. 61-119; ss. 25, 35, ch. 69-106; s. 1, ch. 69-399; s. 2, ch. 70-116; s. 281, ch. 71-136; s. 104, ch. 71-355; s. 2, ch. 78-56; s. 10, ch. 83-314.

*Note.—The words "each license" were inserted by the editors.

cf. s. 370.17 Alien sponge fishermen licenses.

370.061 Confiscation of property and products.—

(1) CONFISCATION; PROCEDURE.—In all cases of arrest and conviction for the illegal taking, or attempted taking, sale, possession, or transportation of saltwater fish or other saltwater products, such saltwater products and seines, nets, boats, motors, other fishing devices or equipment, and vehicles or other means of transportation used in connection with such illegal taking or attempted taking are hereby declared to be nuisances and may be seized and carried before the court having jurisdiction of such offense, and said court may order such nuisances forfeited to the Division of Marine Resources of the department immediately after trial and conviction of the person or persons in whose possession they were found, except that, if a motor vehicle is seized under the provisions of this act and is subject to any existing liens recorded under the provisions of s. 319.27, all further proceedings shall be governed by the expressed intent of the Legislature not to divest any innocent person, firm, or corporation holding such a recorded lien of any of its reversionary rights in such motor vehicle or of any of its rights as prescribed in s. 319.27, and that, upon any default by the violator purchaser, the said lienholder may foreclose its lien and take possession of the motor vehicle involved. When any illegal or illegally used seine, net, trap, or other fishing device or equipment or illegally taken, possessed, or transported saltwater products are found and taken into custody, and the owner thereof shall not be known to the officer finding the same, such officer shall immediately procure from the county court judge of the county wherein they were found an order forfeiting said saltwater products, seines, nets, traps, boats, motors, or other fishing devices to the division. All things forfeited under the provisions of this law may be destroyed, used by the division, disposed of by gift to charitable or state institutions, or sold and the proceeds derived from said sale deposited in the State Treasury to the credit of the General Revenue Fund. However, forfeited boats, motors, and legal fishing devices only, may be purchased from the division for $1 by the person or persons holding title thereto at the time of the illegal act causing the forfeiture, if such person shall prove that he in no way participated in, gave consent to, or had knowledge of such act.

(2) CONFISCATION AND SALE OF PERISHABLE PRODUCTS; PROCEDURE.—When an arrest is made pursuant to the provisions of chapter 370, and illegal, perishable products or perishable products illegally taken or landed are apprehended, the defendant may post bond or cash deposit in an amount determined by the judge to be the fair value of such products, and said defendant shall have 24 hours to transport said products outside the limits of Florida for sale or other disposition. Should no bond or cash deposit be given within the time fixed by the judge, the judge shall order the sale of such products at the highest price obtainable and when feasible at least three bids shall be requested. In either event, the amounts received by the judge shall be remitted to the division to be deposited into a special escrow account in the State Treasury and held in trust pending the outcome of the trial of the accused. If a bond is posted by the defendant it shall also be remitted to the division to be held in escrow pending the outcome of the trial of the accused. In the event of acquittal, the bond or cash deposit shall be returned to the defendant, or, the proceeds of the sale shall be paid over to the defendant. In the event of conviction the proceeds of the sale, or proceeds of the bond or cash deposit, shall be deposited by said division into the General Revenue Fund of the state. Such deposit into the General Revenue Fund shall constitute confiscation.

History.—s. 3, ch. 61-241; s. 2, ch. 61-119; ss. 25, 35, ch. 69-106; s. 24, ch. 73-334; s. 1, ch. 77-181.

370.07 Seafood dealers; regulation.—

(1) DEFINITIONS; LICENSES AUTHORIZED.—License or privilege taxes, as hereinafter set forth to be paid annually, are hereby levied and imposed upon dealers in the state in seafood and saltwater products as defined hereafter; and it is unlawful for any person, firm, or corporation to deal in any such products without first paying for and procuring the license required by this section. Application for all licenses shall be made to the Department of Natural Resources on blanks to be furnished by it, and all licenses shall be issued by the department upon payment to it of the license tax therefor. The licenses are defined as:

(a)1. "Wholesale seafood dealer" is any person, firm, or corporation which sells saltwater fish or other saltwater products, excluding novelty shells and sponges, to any person, firm, or corporation except to the consumer; however, those persons so excluded shall make those reports required of such wholesale dealers.

2. Whenever a person, firm, or corporation, already in possession of a wholesale seafood dealer license, finds it useful and expedient to have more than one establishment, and the function of such additional establishments is the loading and preparation of products for later transshipment to the central place of business, it is not necessary for that person, firm, or corporation to obtain an additional wholesale dealer license.

3. In order for such a subordinate establishment or structure to be exempt from the requirement of having a wholesale dealer license, all products passing through must have the establishment of the li-

censed wholesale dealer under whose license the branch functions as their immediate destination.

4. If any products leave the branch or subordinate station for shipment or delivery to any destination other than the wholesale dealer under whose license the branch functions, the loading or subordinate location will also require a wholesale dealer license.

5. All provisions of this act apply to establishments and feeder stations when both categories are located within a single county. Whenever intercounty transportation becomes involved, the point of origin and point of destination must both be licensed.

(b) A "retail seafood dealer" is any person, firm, or corporation which sells saltwater fish or other saltwater products directly to the consumer as seafood, but no license is required of a dealer in merchandise who deals in or sells only salted, cured, canned, or smoked seafood.

Any person, firm, or corporation which is, under the foregoing definitions, both a wholesale seafood dealer and a retail seafood dealer shall obtain both a wholesale seafood dealer's license and a retail seafood dealer's license.

(2) LICENSES; AMOUNT, TRUST FUND.—

(a) A resident wholesale seafood dealer is required to pay an annual license tax of $300.

(b) A nonresident wholesale seafood dealer is required to pay an annual license tax of $500.

(c) An alien wholesale seafood dealer is required to pay an annual license tax of $750.

(d) A resident retail seafood dealer is required to pay an annual license tax of $25; however, if such a dealer has more than one place of business, he shall designate one place of business as a central place of business, shall pay an annual license tax of $25 for such place of business, and shall pay an annual license tax of $10 for each of his other places of business.

(e) A nonresident retail seafood dealer is required to pay a license tax of $200; however, if such a dealer has more than one place of business, he shall designate one place of business as a central place of business, shall pay an annual license tax of $200 for such place of business, and shall pay an annual license tax of $25 for each of his other places of business.

(f) An alien retail seafood dealer is required to pay a license tax of $250; however, if such a dealer has more than one place of business, he shall designate one place of business as a central place of business, shall pay an annual license tax of $250 for such place of business, and shall pay an annual license tax of $50 for each of his other places of business.

(g) All the foregoing funds hereafter collected by the department, together with any other funds derived from the Federal Government or otherwise, shall be deposited in a Florida Saltwater Products Promotion Trust Fund to be administered by the department for the promotion of all saltwater products produced in this state.

(h) All deposits heretofore made by the department into the Florida Saltwater Products Promotion Trust Fund are hereby ratified and confirmed.

(3) WHOLESALE PERMIT; PENALTY.—

(a)1. Saltwater products produced outside this state, and transported to this state for processing, freezing, and storage are not required to display a wholesale permit number on the individual packages, boxes, or containers when they leave the freezer for shipment out of state. Truckdrivers, in such instances, shall, however, have in their possession invoices, bills of lading, and other similar instruments, printed or stamped with a special permit stamp giving the name of the freezer and the location of the freezer and stating that items on manifest are produced outside this state. Invoices, bills of lading, and other similar instruments shall show the number of packages, boxes, or containers and the number of pounds of each species to cover and identify all saltwater products in the shipment.

2. The above stamp shall be requested by the freezer owner and shall be furnished, at cost, by the division, or the freezer owner may exercise the option, at his own expense, of having the information required in subparagraph 1. printed on his invoices, bills of lading, and other similar instruments.

(b)1. Saltwater products produced in this state and processed, frozen, and stored by Florida wholesale dealers are not required to display the wholesale permit number of the individual owner on individual packages, boxes, or containers when they are removed from freezer for shipment or delivery in or out of this state. Truckdrivers, in the above instances, shall, however, have in their possession invoices, bills of lading, and other similar instruments printed or stamped with a special permit stamp giving the name of the freezer and its location and the number of the licensed wholesale dealer written in a blank space provided in the stamp. Invoices, bills of lading, and other similar instruments shall show the number of packages, boxes, or containers and the number of pounds of each species to cover and identify all saltwater products in the shipment.

2. The above stamp shall be requested by the freezer owner and shall be furnished, at cost, by the division, or the wholesale dealer may, at his option and at his own expense, have printed on his invoices, bills of lading, and other similar instruments the information required in subparagraph 1. The freezer owner shall be furnished free of charge a complete list of Florida wholesale seafood dealers and their permit numbers.

(c)1. Saltwater products produced in this state may be transported within or without the state without each individual box or container displaying the wholesale permit stamp or permit number.

2. However, the truckdrivers shall have in their possession invoices, bills of lading, and other similar instruments showing the number of boxes or containers and pounds of each species, displayed with the permit stamp or permit number of the wholesaler, distributor, or producer from whom the shipment was received.

3. Further, in the event that the seafood products in transit came from more than one dealer, distributor, or producer, each lot from each dealer shall be covered by invoices, bills of lading, and other similar instruments showing the number of boxes or containers and the number of pounds of each species, and such instruments shall be stamped or printed with

that dealer's, distributor's, or producer's wholesale permit stamp or permit number.

4. It is unlawful to sell, deliver, ship, or transport, or to possess for the purpose of selling, delivering, shipping, or transporting, any fish, seafood, or other products of the salt waters of this state, without all invoices and containers of such products having thereon the wholesaler's permit number in such form as may be prescribed under the provisions of this section and the rules and regulations of the department, and any such products found in the possession of any person whosoever is in violation of this provision may be seized by the division and disposed of in the manner provided by law.

(d) Nothing contained in this section may be construed to apply to the sale and delivery to a consumer of such products in an ordinary retail transaction by a licensed retail dealer who has purchased such products from a licensed wholesale dealer, or to the sale and delivery of his own catch or products, to a Florida-licensed wholesale dealer, by any person catching or gathering the same. Wholesale seafood dealers' permits and licenses shall be issued only to applicants who furnish to the division satisfactory evidence of law-abiding reputation and who pledge themselves to the faithful observance of all of the laws and lawful regulations of this state regulating the conservation, dealing in, taking, selling, transporting, or possession of fish, seafood, and other saltwater products, and cooperation in the enforcement of all such laws, to every reasonable extent, which pledge may be included in the application for permit and license. Any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

[1](4) LABELING.—

(a) No seafood dealer, as defined herein, shall sell any oysters produced outside this state unless they are labeled as such, or unless it is otherwise reasonably made known to the purchaser that the oysters were not produced in this state.

(b) The Department of Natural Resources shall promulgate rules whereby oysters produced in Florida waters can be traced to the location from which they were harvested. No seafood dealer, as defined herein, shall sell any oysters produced in this state unless they are labeled so that they may be traced to the point of harvesting.

(5) LICENSE REVOCATION; PENALTY.—

(a) A permit or license issued to a seafood dealer under the provisions of this chapter is good only to the person to whom issued, and named therein, and is not transferable. Such permit or license may be revoked:

1. By the division upon the conviction of the person, to whom issued, of any violation of the laws or regulations designed for the conservation of fish, seafood, or other products of the fresh or salt waters of this state;

2. Upon conviction of the person, to whom issued, of knowingly dealing in, buying, selling, transporting, possessing, or taking any fish, seafood, or saltwater product, at any time and from any waters, in violation of the laws of this state; or

3. By the division upon satisfactory evidence of any violation of the laws or any regulations of this state designed for the conservation of fish, seafood, or other products of the fresh or salt waters of this state or of any of the laws of this state relating to dealing in, buying, selling, transporting, possession, or taking of fish, seafood, or saltwater products.

(b) Upon revocation of such permit or license, no other or further permit or license may be issued to the holder of the one revoked within 3 years from the date of revocation, except upon special order of the division. After revocation as aforesaid it is unlawful for such seafood dealer to exercise any of the privileges of a licensed seafood dealer.

(c) Any person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) RECORDS TO BE KEPT; PENALTY.—Seafood dealers shall be required by the division to make and preserve a record of the names and addresses of persons from whom or to whom fish, seafood, or other products of the salt waters of the state are purchased or sold; the quantity so purchased or sold from or to each vendor or purchaser; and the date of each such transaction, and such record shall be open to inspection at all times by the division. A monthly report shall be made to the division covering the sale or sales of products of salt waters of the state. The permit or license of any dealer shall be revoked for failure or refusal to make and keep such records and make such reports, for failure or refusal to permit the examination thereof as required, or for falsifying any such record; however, this section does not apply to sales by retail dealers in retail quantities to consumers. Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 2, ch. 28143, 1953; s. 1, ch. 29990, 1955; s. 1, ch. 57-387; ss. 1, 2, ch. 57-535; s. 2, ch. 61-122; s. 1, ch. 61-178; s. 1, ch. 63-337; s. 1, ch. 67-212; s. 1, ch. 67-262; ss. 25, 35, ch. 69-106; s. 292, ch. 71-136; s. 1, ch. 75-95; s. 23, ch. 78-95; s. 1, ch. 80-115; ss. 6, 12, ch. 83-134.

[1]Note.—Repealed effective July 1, 1984, by s. 6, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, this subsection shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 6, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

[1]370.071 Adoption of rules, regulations and sanitary codes.—The Department of Natural Resources is authorized to establish regulations, specifications, and codes of sanitary practices relating to the catching, handling, processing, packaging, preserving, canning, smoking, and storing of saltwater products for sale for consumption as human food.

History.—s. 1, ch. 65-110; ss. 25, 35, ch. 69-106; s. 6, ch. 83-134.

[1]Note.—Repealed effective July 1, 1984, by s. 6, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 6, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

370.08 Fisherman and equipment; regulation.—

'(1) ILLEGAL POSSESSION OF SEINES AND NETS.—No person may have in his custody or possession in any county of this state any fishing seine or net, the use of which for fishing purposes in such county is prohibited by law. Such possession shall be evidence of a violation of this subsection by both the owner thereof and the person using or possessing said net. The provisions of this subsection shall not apply to shrimp nets, to pound nets or purse nets when used in taking menhaden fish, to seines used exclusively for taking herring, or to legal beach seines used in the open gulf or Atlantic Ocean if the possession of such nets is not prohibited in the county where found. Violation of this subsection is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

'(2) STOP NETTING DEFINED; PROHIBITION; PENALTY.—

(a) It is unlawful for any person to obstruct any river, creek, canal, pass, bayou or other waterway in this state by placing or setting therein any screen, net, seine, rack, wire or other device, or to use, set, or place any net or seine or similar device of any kind, either singularly or in rotation or one behind another in any manner whatsoever so as to prevent the free passage of fish. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) It is unlawful for any person, while fishing or attempting to fish for shrimp or saltwater fish, to attach or otherwise secure a frame net, trawl net, trap net, or similar device to any state road bridge or associated structure situated over any saltwater body or to use more than one such net or device while fishing from such bridge or structure. For the purposes of this paragraph, a "frame net" is any net similar to a hoop net, the mouth of which is held open by a frame, with a trailing mesh net, of any size. Cast nets, dip nets, and similar devices are specifically excluded from the operation of this paragraph.

'(3) USE OF PURSE SEINES, GILL NETS, AND POUND NETS, ETC.; PENALTY.—No person may take food fish within or without the waters of this state with a purse seine, purse gill net, or other net using rings or other devices on the lead line thereof, through which a purse line is drawn, or pound net, or have any food fish so taken in his possession for sale or shipment. The provisions of this section shall not apply to shrimp nets or to pound nets or purse seines when used for the taking of tuna or menhaden fish only. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) RETURN OF FISH TO WATER; PENALTY.—All persons, taking food fish from any of the waters of this state, by use of seines, nets, or other fishing devices and not using any of such fish because of size or other reasons, shall immediately release and return such fish alive to the water from which taken and no such fish may be placed or deposited on any bank, shore, beach or other place out of the water. Any person violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

'(5) THROWING EXPLOSIVES OR USE OF FIREARMS IN WATER FOR PURPOSE OF KILLING FOOD FISH PROHIBITED; PENALTY.—No person may throw or cause to be thrown, into any of the waters of this state, any dynamite, lime, other explosives or discharge any firearms whatsoever for the purpose of killing food fish therein. The landing ashore or possession on the water by any person of any food fish that has been damaged by explosives or the landing of headless jewfish or grouper, if the grouper is taken for commercial use, is prima facie evidence of violation of this section. Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

'(6) SEINES, POCKET BUNTS.—In any counties where seines are not prohibited on the open gulf or Atlantic Ocean, such seines may have a pocket bunt on the middle of the seine of a mesh size less than that provided by law.

'(7) GILL NETS.—In any county in which gill nets or gill netting is not prohibited, such nets when being fished may be gathered or taken in or taken up in any manner when such nets are gathered in, taken in or taken up by hand; however, no net may be pulled up on shore where seining is prohibited. Such nets may be gathered or taken in or taken up by power on the open waters of the Gulf of Mexico or the Atlantic Ocean.

'(8) USE OF GEAR AND OTHER EQUIPMENT.—Whenever it shall appear in the best interests of conservation and will result in a more efficient use of offshore fisheries resources, the Division of Marine Resources of the department may issue a permit for the use of gear and equipment essential to such exploitation. The provisions of this section do not apply to shrimping and sponging operations and all local and general laws pertaining to shrimps and sponges remain in effect.

'(9) SNATCH HOOKS, USE OF PROHIBITED TO TAKE SNOOK.—The taking of the game fish snook in state waters is prohibited except by use of the standard bait, lure, plug or spoon. It is unlawful to take snook by use of gig or grain, gang hook, multiple hooks, snatch hooks, or any other device designed to impale or hook the fish. What is commonly called snook snatching is prohibited in the waters of this state.

'(10) ILLEGAL USE OF POISONS, DRUGS, OR CHEMICALS.—

(a) It is unlawful for any person to place poisons, drugs, or other chemicals in the marine waters of this state unless that person has first obtained a permit for such use from the Division of Marine Resources of the Department of Natural Resources.

(b) Upon application on forms furnished by the division, the division may issue a permit to use poisons, drugs, or other chemicals in the marine waters of this state for the purpose of capturing live marine species. The application and permit shall specify the area in which collecting will be done, the drugs, chemicals, or poisons to be used, and the maximum amounts and concentrations at each sampling.

(c) Violation of this subsection shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The Department of Natural Resources may revoke the permit for violation of the conditions placed on its issuance.

'(11) USE OF GILL NETS FOR TAKING KING MACKEREL.—No person may take king mackerel from the waters within or without this state in any county bordering on the Atlantic Ocean, except Monroe County, or land any king mackerel so taken with a gill net having a hanging depth of more than 200 meshes of 4¾-inch stretched mesh, measured from the cork line to the lead line or its equivalent. Possession of such a net is prima facie evidence of a violation of this subsection. Any person who violates this subsection is guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

'(12) SIZE OF MESH IN KING MACKEREL NETS.—No person may set a school of king mackerel within or without the waters of this state with a net having a mesh size of less than 4¾ inches. Any person who violates this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 29145, 1953; s. 1, ch. 57-765; s. 1, ch. 57-766; s. 1, ch. 59-477; s. 1, ch. 65-182; ss. 25, 35, ch. 69-106; s. 1, ch. 69-231; s. 293, ch. 71-136; s. 1, ch. 73-65; s. 1, ch. 76-101; s. 1, ch. 78-80; s. 1, ch. 78-159; s. 2, ch. 78-404; s. 2, ch. 79-263; s. 7, ch. 83-134.

'Note.—Repealed effective July 1, 1985, by s. 7, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1985, this subsection shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

370.081 Illegal importation or possession of nonindigenous marine plants and animals; rules and regulations.—

(1) It is unlawful to import or possess any marine plant or marine animal, not indigenous to the state, which, due to the stimulating effect of the waters of the state on procreation, may endanger or infect the marine resources of the state or pose a human health hazard.

(2) Marine animals not to be imported shall include, but are not limited to, all species of the following:

(a) Sea snakes (Family Hydrophiidae);
(b) Rabbitfishes (Family Siganidae);
(c) Weeverfishes (Family Trachinidae); and
(d) Stonefishes (Genus *Synanceja*).

(3) The department is authorized to adopt, pursuant to chapter 120, rules and regulations to include any additional marine plant or marine animal which may endanger or infect the marine resources of the state or pose a human health hazard.

(4) It is unlawful to release into the waters of the state any nonindigenous marine plant or marine animal not included in subsection (2) or prohibited by rules and regulations adopted pursuant to subsection (3).

History.—s. 1, ch. 71-68; s. 1, ch. 77-65.

'370.082 Use of gill nets, wing nets, and similar devices regulated; penalties; confiscation of equipment.—

(1) It is unlawful for any person, firm, or corporation to set, lay out, or fish, or cause to be set, laid out, or fished, any gill net, wing net, or similar device, unattended, in any of the inland salt waters of the Counties of Walton, Santa Rosa, Okaloosa, Franklin, Escambia, Volusia, Brevard, Indian River, Pinellas, or Duval. However, the Department of Natural Resources may issue permits for the use of such nets or similar devices used for research contrary to the provisions of this section, with respect to Franklin County and Volusia County only, and the department may limit the use of such permits to such times and places in Franklin County and Volusia County as the department deems advisable. Any such net or device, while being fished between sunset and sunrise, shall, in addition to being attended, be marked by a light or lights in a manner causing the net or device to be visible to any approaching vessel.

(2) Gill nets, wing nets, or similar devices shall be clearly marked in such a manner that the identity of the fisherman's boat registration number may be readily determined.

(3) Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any gill net, wing net, or similar device found unattended or unlighted in or on the waters of the Counties of Walton, Santa Rosa, Okaloosa, Franklin, Escambia, Volusia, Brevard, Indian River, Pinellas, and Duval, in violation of the provisions of this act, may be summarily seized and destroyed by the Division of Marine Resources of the Department of Natural Resources.

History.—s. 1, ch. 75-272; s. 1, ch. 77-398; s. 1, ch. 78-404; s. 1, ch. 79-162; s. 1, ch. 80-372; s. 7, ch. 83-134.

'Note.—Repealed effective July 1, 1985, by s. 7, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1985, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

'370.0821 St. Johns County; use of nets.—

(1) In addition to all other restrictions imposed by this section, the use of any type of net or seine, other than a common cast net or a recreational net as hereafter defined, is prohibited in the salt waters of St. Johns County, and within ¼ mile seaward of the beaches and coast thereof, between May 1 and September 15 each year. During the remainder of the year, the use of nets or seines, other than common cast nets or recreational nets as hereafter defined, is prohibited on Saturdays, Sundays, and all legal holidays designated as such by the Department of Administration.

(2) In addition to all other restrictions imposed by this section, the use of any net or seine, including a recreational net as hereafter defined, other than a common cast net, is prohibited in the following areas of St. Johns County and adjacent salt waters:

(a) Within a 1-mile, 360-degree radius of a point situated in the center of the A1A bridge across Matanzas Inlet.

(b) In the waters of Salt Run, St. Augustine Inlet,

the Matanzas River, North River, or the Intercoastal Waterway, or water adjacent to any of the aforementioned waters, lying north of the Mickler-O'Connell Bridge, south of the Vilano Beach Bridge across the Intercoastal Waterway (North River), and inland of a line drawn from headland to headland across the mouth of St. Augustine Inlet.

(c) On the Atlantic Ocean beaches, and beach areas, within 1 mile north and 1 mile south of the center of St. Augustine Inlet, and within 1 mile seaward of such beaches, and a line drawn from headland to headland across the mouth of St. Augustine Inlet.

(d) On the Atlantic Ocean beaches, and beach areas, within 2 miles north and 2 miles south of the center of the St. Augustine Beach Pier, and within 1 mile seaward of such beaches and beach areas.

(3) In no event shall any manner of seine net used in the salt waters of St. Johns County, or within 1 mile seaward of the beaches and coast thereof, exceed 1,300 feet in length or have mesh of less than 2½ inches.

(4) No person, firm, or corporation shall use, or cause to be used, any manner of seine net, other than a recreational net as hereafter defined, in the salt waters of St. Johns County, or within 1 mile seaward of the Atlantic Ocean beaches and coast thereof, without a permit issued by the Division of Marine Resources of the Department of Natural Resources. Applications for such permits shall be made on forms to be supplied by the division, which shall require the applicant to furnish such information as may be deemed pertinent to the best interests of saltwater conservation. The fee for such permits shall be $250 per year. Each permit shall entitle the holder thereof to use no more than one seine net at any one time, subject to the provisions of subsections (1), (2), and (3). The division may refuse to grant any permit when it is apparent that the best interests of saltwater conservation will be served by such denial. All permits granted shall be in the holder's possession whenever the holder is engaged in using a seine net. Each permit is subject to immediate revocation upon conviction of a violation of any provision of this section or when it is apparent that the best interests of saltwater conservation will be served by such revocation.

(5)(a) The term "recreational net" means a seine or similar net not exceeding 100 feet in length, with mesh no smaller than 2½ inches, set and hauled solely by hand and without use of any motor-driven boat or vehicle.

(b)1. No recreational net may be set or hauled within 100 feet of any other recreational or commercial net.

2. No recreational net shall be used after the hours of sunset and before sunrise between May 1 and September 15 of each year.

3. Unless the user of a recreational net is also a holder of a permit specified in subsection (4), no user of a recreational net shall retain on the beach, in a vehicle on the beach, or in a boat, during the time that such net is in use, more than one bushel container of fish per net in use. All fish in excess of one bushel container per net and all unwanted species taken shall be returned alive to the waters when caught.

(6) Violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, any nets, boats, vehicles, or paraphernalia used in violation of the provisions of this section may be seized and, upon conviction of the offender, may be confiscated or destroyed by order of the court as provided by s. 370.061.

History.—s. 1, ch. 77-310; s. 3, ch. 78-404; s. 1, ch. 79-328; s. 7, ch. 83-134.

[1]Note.—Repealed effective July 1, 1985, by s. 7, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1985, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

370.083 Special acts prohibited.—Pursuant to s. 11(a)(21) of Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application affecting the sale or purchase of speckled sea trout or weakfish in the state.

History.—s. 2, ch. 75-272.

Note.—Chapter 75-272 was passed by the requisite three-fifths vote in each house. See s. 11(a)(21), Art. III, State Constitution.

370.09 Industrial hazards; oil deposits discharge prohibited.—It is unlawful for any person to discharge, flow, drain or deposit oil or to suffer or permit oil to be discharged, flowed, drained or deposited upon or into any of the salt waters of the state, either from or out of any vessel, barge, or other floating craft, or from any wharf, mill, mine, factory or other establishment or place whatever.

History.—s. 2, ch. 28145, 1953.

370.10 Crustacea, marine animals, fish; regulations; general provisions.—

(1) OWNERSHIP OF FISH, SPONGES, ETC.—All fish, shellfish, sponges, oysters, clams, and crustacea found within the rivers, creeks, canals, lakes, bayous, lagoons, bays, sounds, inlets, and other bodies of water within the jurisdiction of the state, and within the Gulf of Mexico and the Atlantic Ocean within the jurisdiction of the state, excluding all privately owned enclosed fishponds not exceeding 150 acres, are the property of the state and may be taken and used by its citizens and persons not citizens, subject to the reservations and restrictions imposed by these statutes. No water bottoms owned by the state shall ever be sold, transferred, dedicated, or otherwise conveyed without reserving in the people the absolute right to fish thereon, except as otherwise provided in these statutes.

(2) TAKING SALTWATER ANIMALS FOR EXPERIMENTAL, SCIENTIFIC, AND EXHIBITIONAL PURPOSES.—Notwithstanding any other provisions of general or special law to the contrary, the department may issue permits, upon such terms, conditions, and restrictions as it may prescribe by rule, to any properly accredited person permitting him to collect and possess saltwater animals for experimental, scientific, and exhibitional purposes. Such permits may allow collection of specimens without regard to, and not limited to, size, seasonal closure, collection method, reproductive state, or bag limit. Permits issued under the provisions of this section may be suspended or revoked by the department if it finds that the permitholder has violated this section, department rules or orders, or terms or conditions of the permit or has submitted false or inaccurate information in his application; and the holder shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 28145, 1953; ss. 25, 35, ch. 69-106; s. 284, ch. 71-136; s. 1, ch. 78-70; s. 1, ch. 80-90; s. 221, ch. 81-259.

370.101 Saltwater fish; regulations.—

(1) The Division of Marine Resources is authorized to establish weight equivalencies when minimum lengths of saltwater fish are established by law, in those cases where the fish are artificially cultivated.

(2) Permits may be issued by the division for catching and possession of fish protected by law after it has first established that such protected specimens are to be used as stock for artificial cultivation.

(3) No permit may be issued pursuant to subsection (2) until the division determines that the artificial cultivation activity complies with the provisions of ss. 253.67-253.75 and any other specific provisions contained within this chapter regarding leases, licenses, or permits for maricultural activities of each saltwater fish, so that the public interest in such fish stocks is fully protected.

History.—s. 1, ch. 67-546; ss. 25, 35, ch. 69-106; s. 1, ch. 78-78; s. 78, ch. 79-164.

370.102 State preemption of power to regulate.—The power to regulate the taking or possession of saltwater fish, as defined in s. 370.01, is expressly reserved to the state.

History.—s. 1, ch. 73-208.

370.103 Agreements with Federal Government for the preservation of saltwater fisheries; authority of department.—The Department of Natural Resources is authorized and empowered to enter into cooperative agreements with the Federal Government or agencies thereof for the purpose of preserving saltwater fisheries within and without state waters and for the purpose of protecting against overfishing, waste, depletion, or any abuse whatsoever. Such authority includes the authority to enter into cooperative agreements whereby the Division of Law Enforcement of the department is empowered to enforce federal statutes and rules pertaining to fisheries management. When differences between state and federal laws occur, state laws shall take precedence.

History.—s. 1, ch. 83-225.

[1]370.11 Fish; regulation.—

(1) CATCHING FOOD FISH FOR PURPOSES OF MAKING OIL PROHIBITED; PENALTY.—No person shall take any food fish from the waters under the jurisdiction of the state, for the purpose of making oil, fertilizer or compost therefrom. Purse seines may be used, for the taking of nonfood fish for the purpose of making oil, fertilizer or compost. Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) LENGTH OF SALTWATER FISH REGULATED.—

(a) No person shall take, have in his possession, buy, offer for sale, sell, or unnecessarily destroy, at any time, any of the following saltwater fish, of less length than that set forth as follows:

1. Bluefish of less length than 10 inches from tip of nose to rear center edge of tail.
2. Pompano of less length than 9½ inches from tip of nose to rear center edge of tail.
3. Fluke or flounder of less than 11 inches from tip of nose to rear center edge of tail.
4. Mackerel, redfish, and saltwater speckled trout or spotted weakfish of less than 12 inches from tip of nose to rear center edge of tail.
5. Snook of less length than 18 inches from tip of nose to rear center edge of tail.
6. Striped bass and bonefish of less length than 15 inches from tip of nose to rear center edge of tail, except that this length limitation shall not apply to cultured striped bass grown pursuant to regulations of the Department of Natural Resources.
7. Black mullet of less length than 11 inches from tip of nose to rear center edge of tail, except:

a. In waters located west of the Aucilla River to the Alabama line, 9 inches from tip of nose to rear center edge of tail, and

b. In waters northwesterly of the Citrus-Hernando County line to the Aucilla River, 10 inches from tip of nose to rear center edge of tail.

8. Grouper of the following species of less length than 12 inches from tip of nose to rear center edge of tail:

a. Red grouper (*Epinephelus morio*);
b. Jewfish (*E. itajara*);
c. Nassau grouper (*E. striatus*);
d. Black grouper (*Mycteroperca bonaci*);
e. Gag (*M. microlepis*).

No more than 10 percent of the individuals of any particular species may be undersized according to legal lengths established for that species.

(b) It shall not be unlawful for any person, firm or corporation to receive, possess, buy, offer for sale, sell, or transport fluke or flounder of a size smaller than indicated in paragraph (a) if proof satisfactory to the Department of Natural Resources can be furnished showing these fish were received in legitimate interstate commerce transactions, were caught in waters other than the territorial waters of Florida, or were caught in a depth of water so great that they could not be returned to the water alive. The Department of Natural Resources shall enact such rules as are necessary relating to the method of providing the proof required for the above exceptions.

(3) REGULATION; FISH; SHAD, PROTECTION DURING SPAWNING SEASON; PENALTY.—No person may use any purse or drag seine, or build or maintain any dike or pound in any stream, river or waters of this state, whereby shad may be prevented from running or passing up or through during their spawning season, between December 31 and March 1 of every year. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(a) *Fishing for shad between Saturday afternoon and Monday morning; penalty.*—Whoever fishes for shad between sundown on Saturday afternoon and sunrise on Monday morning shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083 and by confiscation of the boat and fishing tackle used in such unlawful acts.

(b) *Shad; closed season.*—It is unlawful for any person to take, have in his possession, buy, sell, offer for sale, or ship or for any common carrier to transport any fresh or freshly salted shad, or any fresh or freshly salted shad roe between March 15 and November 15 of each year.

(c) *Use of certain gill net for capture of shad; penalty.*—No person may place in the rivers of this state any gill net, for the capture of shad, of a less size than 2½ inches bar from knot to knot, or 5 inches stretched mesh from knot to knot. Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) *Fishing for shad with hook and line.*—

1. Nothing in this section shall prevent the taking of shad at any time by means of pole and line, rod and reel, plug, bob, spinner, spoon, fly, troll or other natural or artificial bait used with hook and line. However, no person is permitted to take, in 1 day, more than 10 shad by the above methods.

2. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(e) *Shad; limitation on taking.*—

1. As used in this paragraph, "anadromous shad" includes American shad (*Alosa sapidissima*), Hickory shad (*Alosa mediocris*), and Alabama shad (*Alosa Alabamae*).

2. Commercial fishing for anadromous shad shall be for the period from sunup on December 31 until sundown on March 1. Nets or seines shall be clearly marked in such a manner that the identity of the commercial fisherman's boat registration number may be readily determined. The commercial fishing period established herein shall be closed in the streams and rivers of the state for 48 consecutive hours each week, and nets shall be removed from the water during this period. The Department of Natural Resources shall have the authority to set the closed hours each year.

3. It is unlawful for any person other than those listed in subparagraph 2. to use any nets and seines, including haul seines, drift gill nets, and stake or set gill nets, except for handheld landing nets, for the taking of shad. However, no boat shall contain in excess of 1,000 yards of gill nets of any kind for the taking of shad, and it shall be unlawful for anyone to use stop nets, as defined in s. 370.08(2), for any purpose.

4. It is unlawful for any person other than those listed in subparagraph 2. to take in 1 day and have in his possession more than 10 anadromous shad.

5. Any person violating the provisions of this paragraph shall be guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083.

(4) REGULATION; FISH; TARPON, ETC.; PENALTY.—No person may sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase or purchase any species of fish known as tarpon (*Tarpon atlanticus*) provided, however, any one person may carry out of the state as personal baggage or transport within or out of the state not more than two tarpon if they are not being transported for sale. The possession of more than two tarpon by any one person is unlawful; provided, however, any person may catch an unlimited number of tarpon if they are immediately returned uninjured to the water and released where the same are caught. No common carrier in the state shall knowingly receive for transportation or transport, within or without the state, from any one person for shipment more than two tarpon, except as hereinafter provided. It is expressly provided that any lawful established taxidermist, in the conduct of taxidermy, may be permitted to move or transport any reasonable number of tarpon at any time and in any manner he may desire, as specimens for mounting; provided, however, satisfactory individual ownership of the fish so moved or transported can be established by such taxidermist at any time upon demand. Common carriers shall accept for shipment tarpon from a taxidermist when statement of individual ownership involved accompanies bill of lading or other papers controlling the shipment. The Division of Marine Resources may, in its discretion, upon application issue permits for the taking and transporting of tarpon for scientific purposes. Any person violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) REGULATION; FISH; SAILFISH; PENALTY.—No person may sell, offer for sale, barter, exchange for merchandise, transport for sale, either within or without the state, offer to purchase or purchase any species of fish known as sailfish; provided, however, any one person may carry out of the state as personal baggage or transport within or out of the state not more than two sailfish if they are not being transported for sale. The possession of more than two sailfish by any one person is unlawful; provided, however, any person may catch an unlimited number of sailfish if they are immediately returned uninjured to the water and released where the same are caught. No common carrier in the state shall knowingly receive for transportation or transport, within or without the state, from any one person for shipment more than two sailfish except as hereinafter provided. It is expressly provided that any lawful established taxidermist in the conduct of taxidermy, may be permitted to move or transport any reasonable number of sailfish at any time and in any manner he may desire, as specimens for mounting; provided, however, satisfactory individual ownership of the fish so moved or transported can be established by such taxidermist at any time upon demand. Common carriers shall accept for shipment sailfish from a taxidermist when statement of individual ownership involved accompanies bill of lading or other papers controlling the shipment.

(6) SAILFISH, TRANSPORTING.—Sailfish being transported shall be kept intact and flesh shall not be removed from the skeleton; provided, however, sailfish after having been delivered to a bona fide taxidermist or smoking establishment, may be dismembered.

History.—s. 2, ch. 28145, 1953; ss. 1, chs. 29969, 29970; ss. 1, 2, ch. 29045; s. 24, ch. 29615, 1955; s. 1, ch. 57-372; s. 1, ch. 57-127; s. 1, ch. 59-303; s. 1, ch. 59-473; s. 1, ch. 63-169; ss. 35, 36, ch. 69-106; s. 1, ch. 70-96; s. 285, ch. 71-136; s. 1, ch. 71-354; ss. 1, 14, 2, ch. 71-166; s. 1, ch. 73-38; s. 1, ch. 74-320; s. 1, ch. 77-95; s. 7, ch. 83-134.

[1]*Note.*—*Repealed effective July 1, 1985, by s. 7, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1985, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.*

'370.1105 Saltwater finfish; fishing traps regulated.—

(1) It is unlawful for any person, firm, or corporation to set, lay, place, or otherwise attempt to fish for saltwater finfish with any trap other than:

(a) A crab, crawfish, or shrimp trap specifically permitted under s. 370.13, s. 370.135, s. 370.14, or s. 370.15;

(b) A pinfish trap not exceeding 2 feet in any dimension, with a throat or entrance not exceeding 3 inches in height by three-quarters of an inch in width; or

(c) A black sea bass trap which has a biodegradable panel and a throat or entrance, the narrowest point of which is not more than 5 inches in height by 2 inches in width and the outer dimensions of which do not exceed 2 feet in height, 2 feet in width, and 2 feet in depth. However, such traps may be used only north of latitude 27° N.

(2) It is unlawful for any person, firm, or corporation to possess any fish trap other than a trap specified in paragraph (a), paragraph (b), or paragraph (c) of subsection (1) or to land, take, sell, or offer to sell any saltwater finfish caught by any trap other than a trap specified in paragraph (a), paragraph (b), or paragraph (c) of subsection (1).

(3) Any person who violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any vessel, vehicle, or equipment used in violation of this section, and any fish caught with a trap in violation of this section, shall be seized and may be forfeited.

History.—s. 1, ch. 80-65; s. 7, ch. 83-134.

[1]*Note.*—*Repealed effective July 1, 1985, by s. 7, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1985, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.*

'370.111 Snook, regulation.—

(1) It is unlawful to take or attempt to take any snook from any of the salt, fresh, or tidal waters of the state by means of any device except pole and line, bob, spinner lure, or troll manually.

(2) It is unlawful for any person, firm, or corporation while fishing any net, seine, or any other device prohibited by this section to have in his possession any snook; any snook taken by any trap, seine, net, or any other device prohibited by this section shall be immediately returned to the water alive.

(3)(a) It is unlawful for any person to have in his possession more than two snook, neither of which may measure less than 18 inches in length.

[2](b) No person, firm, or corporation shall take or have in its possession, regardless of where taken, any snook during the months of January, February, June, or July of the years 1983 through 1986, except by special permit issued by the department pursuant to s. 370.10(2) for experimental, scientific, or exhibitional purposes.

(4) It is unlawful for any wholesale or retail fish dealer to possess, buy, sell, or store any snook or permit any snook to be possessed, bought, sold, or stored on, in, or about the premises where such wholesale or retail fish business is carried on or conducted. It is unlawful for any person, firm, or corporation to buy and sell snook in any form.

(5) Any person, firm, or corporation found guilty of violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, 3, 4, 5, ch. 67-275; s. 296, ch. 71-136; s. 1, ch. 71-165; ss. 2, 3, ch. 82-298; s. 1, ch. 83-37; s. 7, ch. 83-134.

[1]*Note.*—*Repealed effective July 1, 1985, by s. 7, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1985, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.*

[2]*Note.*—*Expires August 1, 1986, pursuant to s. 3, ch. 81-298.*

'370.112 Striped bass, regulation.—

(1) Except as provided in subsection (2):

(a) It is unlawful for any person, firm, or corporation to take or attempt to take any striped bass from any of the salt, fresh, or tidal waters of Florida by means of any device except pole and line, bob, spinner lure, or manual troll.

(b) It is unlawful for any person, firm or corporation to have in its possession more than six striped bass taken from any of the salt, fresh, or tidal waters of Florida, by means of any of the devices permitted in paragraph (a).

(c) It is unlawful for any person, firm, or corporation, while fishing with any trap, net, seine or any other device prohibited by this section, to have in his possession any striped bass. Any striped bass taken or attempted to be taken by trap, net, seine, or any other device prohibited by this section shall be immediately returned to the water alive.

(d) It is unlawful for any wholesale or retail fish dealer to have in his possession, to offer to purchase, purchase, offer to sell, sell, barter, or transport for sale any striped bass, or permit any striped bass to be stored, possessed, offered for purchase, purchased, offered for sale or sold in or about the premises where such wholesale or retail fish business is carried on or conducted.

(e) It is unlawful for any person, firm, or corporation to offer to purchase, purchase, offer to sell, or sell striped bass in any form.

(2) The Division of Marine Resources of the De-

partment of Natural Resources may issue a permit to import and to culture live striped bass and to sell striped bass to those persons, firms, or corporations who apply for permission to culture in this state live striped bass, either for sale for human consumption or for sale as sport fishing stock, if the division is satisfied that:

(a) The striped bass will be cultured from imported stock or stock from other sources approved by the division and,

(b) After processing, the striped bass being sold for human consumption will be gill-tagged prior to shipment. The tagging and shipping required herein shall be conducted under the supervision of the division.

(c) The striped bass being sold for sport fishing stock in state waters is authorized pursuant to a permit issued by the state.

(3) Any person, firm, or corporation violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 63-84; s. 287, ch. 71-136; s. 1, ch. 73-10; s. 7, ch. 83-134.

'Note.—Repealed effective July 1, 1985, by s. 7, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1985, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

'370.1121 Bonefish: regulation.—

(1) It is unlawful to take or attempt to take any bonefish *(Albula vulpes)* from any of the waters of the state for the purpose of sale or exchange while fishing with any net, seine, or similar device.

(2) It is unlawful for any wholesale or retail fish dealer to possess, buy, sell, or store any bonefish or permit any bonefish to be possessed, sold, or stored on, in, or about the premises where such wholesale or retail fish business is carried on or conducted. It shall be unlawful for any person, firm, or corporation to buy or sell bonefish in any form.

(3) It is unlawful for any person, firm, or corporation to possess more than two bonefish *(Albula vulpes)* at any time or to have in his possession any bonefish which measures less than 15 inches in length from tip of nose to fork of tail.

(4) Any person, firm, or corporation found guilty of violating the provisions of this section shall be punished by a fine of no more than $500 or by imprisonment of not more than 6 months.

(5) This section shall not apply to taxidermists who have more than two bonefish in their place of business.

History.—ss. 1, 2, 3, 4, 5, ch. 72-312; s. 7, ch. 83-134.

'Note.—Repealed effective July 1, 1985, by s. 7, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1985, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

'370.1125 Permits (Trachinotus falcatus); regulation; penalty.—

(1) It is unlawful to take or attempt to take any permit *(Trachinotus falcatus)* 20 inches or larger, measured from tip of nose to center edge of tail, from any waters of the state for the purpose of sale or exchange. Permit 20 inches or larger taken by any trap, seine, or net shall be immediately returned to the water.

(2) It is unlawful for any person, firm, or corporation to possess more than two permits 20 inches or larger.

(3) It is unlawful for any wholesale or retail fish dealer to possess, buy, sell, or store permit 20 inches or larger or to allow permit 20 inches or larger to be possessed, sold, or stored on, in, or about the premises where such wholesale or retail fish business is carried on or conducted.

(4) Any person, firm, or corporation violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) This section shall not apply to taxidermists who have more than two permits in their place of business.

History.—s. 1, ch. 73-149; s. 7, ch. 83-134.

'Note.—Repealed effective July 1, 1985, by s. 7, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1985, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 7, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

'370.113 Queen conchs of the species Strombus gigas; regulation.—

(1) It is unlawful for any person to take from any salt, fresh, or tidal waters of this state more than 10 queen conchs of the species *Strombus gigas* in any calendar day, or to have in his possession at any time more than 20 such conchs.

(2) It is unlawful for any wholesale or retail fish dealer to have in his possession, to offer to purchase, purchase, to offer to sell, sell, barter or transport for sale any queen conchs of the species *Strombus gigas* for purposes other than for use as food.

(3) The provisions of subsections (1) and (2) shall not be applicable to any species of queen conchs imported from another country.

(4) Any person, firm, or corporation violating the provisions of this act shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-468; s. 1, ch. 69-223; s. 288, ch. 71-136; s. 6, ch. 83-134.

'Note.—Repealed effective July 1, 1984, by s. 6, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 6, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

'370.114 Taking of marine corals and sea fans regulated; penalties.—

(1) It is unlawful for any person, as defined in s. 1.01:

(a) To take, attempt to take, or otherwise destroy, or to sell or attempt to sell, any sea fan of the species *Gorgonia flabellum* or of the species *Gorgonia ventalina* or any hard or stony coral (*Scleractinia*) or any fire coral (*Millepora*); or

(b) To possess any fresh, uncleaned, or uncured sea fan of the species *Gorgonia flabellum* or of the species *Gorgonia ventalina* or any fresh, uncleaned, or uncured hard or stony coral (*Scleractinia*) or any fresh, uncleaned, or uncured fire coral (*Millepora*);

unless it can be proven by certified invoice that the sea fan or coral was imported from a foreign country or unless it can be proven that the sea fan or coral was lawfully taken before July 1, 1976.

(2) This section shall not apply to any sea fan or coral taken for scientific or educational purposes when the taking is approved and permitted by the department.

(3) It is unlawful to take coral from, or possess it in, the John Pennekamp Coral Reef State Park. The provisions of s. 258.083 shall be in addition to the provisions of this subsection.

(4) A person who violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, 3, ch. 73-145; s. 1, ch. 74-214; s. 1, ch. 75-38; s. 1, ch. 78-30; s. 6, ch. 83-134.

'Note.—Repealed effective July 1, 1984, by s. 6, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 6, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

370.12 Marine animals; regulation.—

(1) PROTECTION OF MARINE TURTLES, NESTS AND EGGS; PENALTY.—

(a) No person may take, possess, disturb, mutilate, destroy, cause to be destroyed, sell, offer for sale, transfer, molest, or harass any marine turtle nest or eggs at any time. Any person violating this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) No person, firm, or corporation may take, kill, disturb, mutilate, molest, harass, or destroy any marine turtle, unless by accident in the course of normal fishing activities. Any turtle accidentally caught will be returned alive to the water immediately. A violation of this paragraph is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) No person, firm, or corporation may possess any marine turtle or parts thereof unless it is in possession of an invoice evidencing the fact that the marine turtle or parts thereof has been imported from a foreign country or outside the territorial waters of the state, or are possessed under special permit from the Division of Marine Resources for scientific, educational, or exhibitional purposes. Violation of this paragraph is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) PROTECTION OF MANATEES OR SEA COWS; PENALTY.—

(a) This subsection shall be known and may be cited as the "Florida Manatee Sanctuary Act."

(b) The State of Florida is hereby declared to be a refuge and sanctuary for the manatee, the "Florida state marine mammal."

(c) Whenever the department is satisfied that the interest of science will be subserved, and that the application for a permit to possess a manatee or sea cow (*Trichechus manatus*) is for a scientific or propagational purpose and should be granted, and after concurrence by the United States Department of the Interior, the Division of Marine Resources may grant to any person making such application a special permit to possess a manatee or sea cow, which permit shall specify the exact number which shall be maintained in captivity.

(d) Except as may be authorized by terms of a valid state permit issued pursuant to paragraph (c) or by terms of a valid federal permit, it is unlawful for any person at any time, by any means, or in any manner intentionally or negligently to annoy, molest, harass, or disturb or attempt to molest, harass, or disturb any manatee; injure or harm or attempt to injure or harm any manatee, capture or collect or attempt to capture or collect any manatee; pursue, hunt, wound, or kill or attempt to pursue, hunt, wound, or kill any manatee; or possess, literally or constructively, any manatee or any part of any manatee. Any person violating the provisions of this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) Any gun, net, trap, spear, harpoon, boat of any kind, aircraft, automobile of any kind, other motorized vehicle, chemical, explosive, electrical equipment, scuba or other subaquatic gear, or other instrument, device, or apparatus of any kind or description used in violation of any provision of paragraph (d) may be forfeited upon conviction. The foregoing provisions relating to seizure and forfeiture of vehicles, vessels, equipment, or supplies do not apply when such vehicles, vessels, equipment, or supplies are owned by, or titled in the name of, innocent parties; and such provisions shall not vitiate any valid lien, retain title contract, or chattel mortgage on such vehicles, vessels, equipment, or supplies if such lien, retain title contract, or chattel mortgage is property of public record at the time of the seizure.

(f) In order to protect manatees or sea cows from harmful collisions with motorboats, the Department of Natural Resources shall adopt rules under chapter 120 regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and it can be generally assumed that they inhabit these areas on a regular or continuous basis:

1. In Lee County: the entire Orange River, including the Tice Florida Power and Light Corporation discharge canal and adjoining waters of the Caloosahatchee River within 1 mile of the confluence of the Orange and Caloosahatchee Rivers.

2. In Brevard County: those portions of the Indian River within three-fourths of a mile of the Orlando Utilities Commission Delespine power plant effluent and the Florida Power and Light Frontenac power plant effluents.

3. In Indian River County: the discharge canals of the Vero Beach Municipal Power Plant and connecting waters within 1½ miles thereof.

4. In St. Lucie County: the discharge of the Henry D. King Municipal Electric Station and connecting waters within 1 mile thereof.

5. In Palm Beach County: the discharges of the Florida Power and Light Riviera Beach power plant and connecting waters within 1½ miles thereof.

6. In Broward County: the discharge canal of the Florida Power and Light Port Everglades power plant and connecting waters within 1½ miles thereof and the discharge canal of the Florida Power and Light Fort Lauderdale power plant and connecting waters within 2 miles thereof. For purposes of ensuring the physical safety of boaters in a sometimes turbulent area, the area from the easternmost edge of the authorized navigation project of the intracoastal waterway east through the Port Everglades Inlet is excluded from this regulatory zone.

7. In Citrus County: headwaters of the Crystal River, commonly referred to as King's Bay, and the Homosassa River.

8. In Volusia County: Blue Springs Run and connecting waters of the St. Johns River within 1 mile of the confluence of Blue Springs and the St. Johns River.

9. In Hillsborough County: that portion of the Alafia River from the main shipping channel in Tampa Bay to U.S. Highway 41.

10. In Sarasota County: the Venice Inlet and connecting waters within 1 mile thereof, including Lyons Bay, Donna Bay, Roberts Bay, and Hatchett Creek, excluding the waters of the intracoastal waterway and the right-of-way bordering the centerline of the intracoastal waterway.

11. In Collier County: within the Port of Islands, within section 9, township 52 south, range 28 east, and certain unsurveyed lands, all east-west canals and the north-south canals to the southerly extent of the intersecting east-west canals which lie southerly of the centerline of U.S. Highway 41.

12. In Manatee County: that portion of the Manatee River east of the west line of section 17, range 19 east, township 34 south; the Braden River south of the north line and east of the west line of section 29, range 18 east, township 34 south; Terra Ceia Bay and River, east of the west line of sections 26 and 35 of range 17 east, township 33 south, and east of the west line of section 2, range 17 east, township 34 south; and Bishop Harbor east of the west line of section 13, range 17 east, township 33 south.

13. In Dade County: those portions of Black Creek lying south and east of the water control dam, including all boat basins and connecting canals within 1 mile of the dam.

(g) The Department of Natural Resources shall adopt rules regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and it can be generally assumed that they inhabit these areas on a regular or continuous basis within that portion of the Indian River between the St. Lucie Inlet in Martin County and the Jupiter Inlet in Palm Beach County. The main channel of the Atlantic Intracoastal Waterway within this area is exempted from speed restrictions. In addition, the department shall adopt rules regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and it can be generally assumed that they inhabit these areas on a regular or continuous basis within the Loxahatchee River in Palm Beach and Martin Counties, including the north and southwest forks thereof. A limited lane or corridor providing for reasonable motorboat speeds may be identified and designated within this area.

(h) The department shall adopt rules regulating the operation and speed of motorboat traffic only where manatee sightings are frequent and it can be generally assumed that they inhabit these areas on a regular or continuous basis within the Withlacoochee River and its tributaries in Citrus and Levy Counties. The specific areas to be regulated include the Withlacoochee River and the U.S. 19 bridge westward to a line between U.S. Coast Guard markers number 33 and number 34 at the mouth of the river, including all side channels and coves along that portion of the river; Bennets' Creek from its beginning to its confluence with the Withlacoochee River; Bird's Creek from its beginning to its confluence with the Withlacoochee River; and the two dredged canal systems on the north side of the Withlacoochee River southwest of Yankeetown. A limited lane or corridor providing for reasonable motorboat speeds may be identified and designated within this area.

(i) In the event any new power plant is constructed or other source of warm water discharge is discovered within the state which attracts a concentration of manatees or sea cows during the period between November 15 of each year and March 31 of the succeeding year, the Department of Natural Resources is directed to adopt rules regulating the operation and speed of motorboat traffic within the area of such discharge, incorporating a zone sufficient in size to protect the concentration of manatees or sea cows which occurs thereby.

(j) It is the intent of the Legislature through adoption of this paragraph to allow the Department of Natural Resources to post and regulate boat speeds only where manatee sightings are frequent and it can be generally assumed that they inhabit these areas on a regular or continuous basis. It is not the intent of the Legislature to permit the department to post and regulate boat speeds generally in the above-described inlets, bays, rivers, creeks, thereby unduly interfering with the rights of fishermen, boaters, and water skiers using the areas for recreational and commercial purposes. Limited lanes or corridors providing for reasonable motorboat speeds may be identified and designated within these areas.

(k) The department shall adopt rules regulating the operation and speed of motorboat traffic all year around within Turkey Creek and its tributaries and within Manatee Cove in Brevard County. The specific areas to be regulated consist of:

1. A body of water which starts at Melbourne-Tillman Drainage District structure MS-1, section 35, township 28 south, range 37 east, running east to include all natural waters and tributaries of Turkey Creek, section 26, township 28 south, range 37 east, to the confluence of Turkey Creek and the Indian River, section 24, township 28 south, range 37 east, including all lagoon waters of the Indian River bordered on the west by Palm Bay Point, the north by Castaway Point, the east by the four immediate spoil islands, and the south by Cape Malabar, thence

northward along the shoreline of the Indian River to Palm Bay Point.

2. A triangle-shaped body of water forming a cove (commonly referred to as Manatee Cove) on the east side of the Banana River, with northern boundaries beginning and running parallel to the east-west cement bulkhead located 870 feet south of SR 520 Relief Bridge in Cocoa Beach and with western boundaries running in line with the City of Cocoa Beach channel markers 121 and 127 and all waters east of these boundaries in section 34, township 24 south, range 37 east; the center coordinates of this cove are 28°20'14" north, 80°35'17" west.

(l) The Legislature recognizes that, while the manatee or sea cow is designated a marine mammal by federal law, many of the warm water wintering areas are in freshwater springs and rivers which are under the primary state law enforcement jurisdiction of the Florida Game and Fresh Water Fish Commission. The law enforcement provisions of this section shall be carried out jointly by the department and the commission, with the department serving as the lead agency. The specific areas of jurisdictional responsibility are to be established between the department and the commission by interagency agreement.

(m) The department shall promulgate regulations relating to the operation and speed of motor boat traffic in port waters with due regard to the safety requirements of such traffic and the navigational hazards related to the movement of commercial vessels.

(n) The department may designate by rule other portions of state waters where manatees are frequently sighted and it can be assumed that manatees inhabit such waters periodically or continuously. Upon designation of such waters, the department shall adopt rules to regulate motorboat speed and operation which are necessary to protect manatees from harmful collisions with motorboats.

(3) PROTECTION OF MAMMALIAN DOLPHINS (PORPOISES); PENALTY.—

(a) It is unlawful to catch, attempt to catch, molest, injure, kill, or annoy, or otherwise interfere with the normal activity and well-being of, mammalian dolphins (porpoises), except as hereinafter provided.

(b) Any person, firm, or corporation desiring to take one or more mammalian dolphins from the waters of this state for scientific, educational, or exhibitional purposes shall apply for a permit to the Division of Marine Resources. Upon determining that the interests of science or education will be served thereby, the division may issue a permit specifying the number of mammalian dolphins to be taken.

(c) Any person, firm, or corporation desiring to hold one or more mammalian dolphins in captivity shall provide and maintain facilities which meet the requirements of the division.

(d) No mammalian dolphin shall be shipped within or outside the state without a special permit from the division, which may require such information as it deems necessary relative to the adequacy of holding facilities of the recipients; and a permit for such shipment may be granted only when the division determines the facilities are adequate.

(e) Notwithstanding the other provisions of this section, it is unlawful to capture at any time any nursing female mammalian dolphin or her calf, or both.

(f) Any person, firm, or corporation which violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) PROTECTION OF MANTA RAYS.—

(a) It is unlawful for any person, firm, or corporation intentionally to destroy a manta ray.

(b) Any person who violates this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 29145; 1953; ss. 1, 2, ch. 57-771; s. 1, ch. 59-483; s. 1, ch. 67-2098; ss. 35, 36, ch. 69-106; s. 1, ch. 70-48; s. 1, ch. 70-357; s. 1, ch. 71-129; s. 289, ch. 71-136; ss. 1, 1A, ch. 71-145; s. 1, ch. 74-20; s. 1, ch. 77-174; s. 1, ch. 78-252; s. 79, ch. 79-164; s. 6, ch. 81-228; ss. 1, 2, ch. 82-170; s. 1, ch. 83-81.

370.13 Stone crabs; regulation.—

(1) SEASON AND SIZE.—

(a) It is unlawful for any person, firm, or corporation to catch or have in his possession, regardless of where taken, for his own use or to sell or offer for sale, any stone crab, or parts thereof, of any size between May 15 and October 15 of each year, except as provided by s. 370.141 for storage and distribution of inventory stocks.

(b) It is unlawful to possess, sell, or offer for sale any stone crab claw at any time which has a forearm *(propodus)* of less than 2¾ inches in length, measured by a straight line from the elbow to the tip of the lower immovable finger. The forearm shall be deemed to be the largest section of the claw assembly that has both a movable and immovable finger and is located farthest from the body of the crab.

(c) It is unlawful for any person, firm, or corporation to possess or transport by boat, land vehicle, airplane, or other conveyance any intact stone crab or stone crab body, whether dead or alive. Only the claws of stone crabs shall be removed, and the live animals shall be returned to the water in the same area where taken. Whole stone crabs, dead or alive, may be possessed or transported solely for educational, exhibitional, or scientific purposes and only when a permit for such possession has been issued by the Division of Marine Resources of the department.

(2) GEAR, TRAPS, BUOYS, PERMIT NUMBERS, SUSPENSION OR REVOCATION OF PERMITS.—

(a) No person, firm, or corporation shall transport on the water, fish with, or cause to be fished with, set, or placed, in taking stone crabs, any trap with a throat or entrance to the trap exceeding 4 inches in width and 6½ inches in length or any trap which does not have a biodegradable section.

(b) It shall be unlawful to transport on the water, fish with, set, place, or cause to be fished with, set, or placed, any trap or part thereof during the closed stone crab season, except that traps may be placed in the water and baited 10 days prior to the opening of the stone crab season and shall be removed within 5 days after the close of the stone crab season. However, nothing herein shall authorize the landing or sale of any stone crab or stone crab claw during the closed season. Any traps in the water more than 10 days prior to the opening of the stone crab season or more than 5 days after the close of the stone crab season

shall be conclusively presumed to be used in the attempted taking of stone crabs out of season and shall be seized and destroyed by the duly appointed officers of the Department of Natural Resources. This provision shall be in addition to any penalty imposed by law.

(c) It is unlawful to use grains, spears, grabs, hooks, or similar devices in the taking of stone crabs.

(d) A buoy or time release buoy shall be attached to each trap or at each end of a trap trotline and must be of sufficient strength and buoyancy to float and of such color, hue, and brilliancy as to be easily distinguished, seen, and located. The color and permit number shall also be permanently and conspicuously displayed on the boat used for setting and collecting said traps and buoys, in a manner prescribed by the Division of Marine Resources, so as to be readily identifiable from the air and the water.

(e) Each trap used must have a number permanently attached. No numbers shall be permitted other than the current permitholder's numbers except numbers designating federal permits. This permit number may be issued by the Division of Marine Resources of the Department of Natural Resources upon receipt of the application by the owner of the traps. The design of the application and permit shall be determined by the division. The trap permit number shall be affixed in legible figures at least 3 inches high on each buoy used. The stone crab permit must be on board the boat and the permit and stone crab claws shall be subject to inspection at all times. Only one permit shall be issued for each boat.

(f) It is unlawful for any person to place traps in the navigation channels of the intracoastal waterways or navigation channels maintained by the Corps of Engineers or any county or municipal government. Traps may be worked during daylight hours only, and the pulling of traps from 1 hour after official sunset until 1 hour before official sunrise is prohibited.

(g) Any traps or devices other than the ones described in this subsection used in the taking or attempted taking of stone crabs shall be seized and destroyed by the duly appointed officers of the Department of Natural Resources.

(h) Upon the arrest and conviction for violation of any of the stone crab regulations or laws other than the provisions of paragraph (1)(a), the permitholder must show just cause why his permit should not be suspended or revoked.

(i) Any law, general or special, in conflict with provisions of this section is hereby expressly repealed to the extent of such conflict.

(j) A person acquiring ownership of stone crab traps must notify the Division of Marine Resources within 5 days of acquiring ownership and request a transfer of the stone crab permit.

(k) It is unlawful for any person to willfully molest any trap, line, or buoy, as referred to in this section, which is the property of any permitholder, without the permission of that permitholder.

(3) PENALTY.—Any person violating any provision of this section other than paragraph (2)(k) is guilty of a misdemeanor of the second degree upon the first conviction and of a misdemeanor of the first degree upon the second or subsequent conviction, punishable as provided in s. 775.082 or s. 775.083. Any person violating paragraph (2)(k) is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Further, any gear, equipment, boats, vehicles, or item used in the violation of any provision of this section shall be subject to confiscation. In addition, the Department of Natural Resources shall revoke the permit of any permitholder convicted of a violation of paragraph (1)(a) for a period of 1 year from the date of the conviction, and he shall be prohibited during that period from catching or having in his possession any stone crab for his own use or to sell or offer to sell, whether or not he is accompanied by the holder of a valid permit and regardless of where taken.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 61-482; s. 1, ch. 67-3; s. 290, ch. 71-136; s. 1, ch. 71-535; s. 1, ch. 73-28; ss. 1, 2, ch. 74-143; s. 1, ch. 76-26; s. 1, ch. 77-142; s. 1, ch. 77-297; s. 1, ch. 80-299; s. 8, ch. 83-134.

*Note.—Repealed effective July 1, 1984, by s. 8, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 8, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

'370.135 Blue crab; regulation.—

(1) No person, firm, or corporation shall transport on the water, fish with or cause to be fished with, set, or place any trap designed for taking blue crabs unless the trap has a current state permit number permanently attached to the buoy. The permit number shall be affixed in legible figures at least 1 inch high on each buoy used. The blue crab permit shall be on board the boat, and both the permit and the crabs shall be subject to inspection at all times. Only one permit shall be issued for each boat by the department upon receipt of an application on forms prescribed by it. This subsection shall not apply to an individual fishing with no more than five traps. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully to molest any traps, lines, or buoys, as defined herein, belonging to another without permission of the permitholder.

(2) A buoy or a time release buoy shall be attached to each trap or at each end of a weighted trot line and shall be of sufficient strength and buoyancy to float and of such color, hue, and brilliancy to be easily distinguished, seen, and located. Such color and permit number shall also be permanently and conspicuously displayed on the boat used for setting and collecting said traps and buoys, in the manner prescribed by the Division of Marine Resources, so as to be readily identifiable from the air and water. This subsection shall not apply to an individual fishing with no more than five traps.

(3) It is unlawful for any person to sell or offer for sale any eggbearing blue crabs. Except when authorized by special permit issued by the department for the soft-shelled crab or bait trade, it is unlawful for any person to possess for sale blue crabs measuring less than 5 inches from point to point across the carapace in an amount greater than 10 percent of the total number of blue crabs in that person's possession. Traps may be worked during daylight hours only, and the pulling of traps from 1 hour after official

sunset until 1 hour before official sunrise is prohibited.

(4) Upon the arrest and conviction for violation of any of the blue crab regulations or laws, the permitholder shall show just cause why his permit should not be suspended or revoked. This subsection shall not apply to an individual fishing with no more than five traps.

(5) Any person violating the provisions of this section, unless otherwise provided, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 73-26; s. 1, ch. 76-105; s. 2, ch. 77-142; ss. 1, 2, ch. 78-143; s. 2, ch. 80-299; s. 8, ch. 83-134.

*Note.—Repealed effective July 1, 1984, by s. 6, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 6, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

'370.14 Crawfish; regulation.—

(1) INTENT.—It is the intent of the Legislature to maintain the crawfish industry for the economy of the state and to conserve the stocks supplying this industry. The provisions of this act regulating the taking of saltwater crawfish are for the purposes of insuring and maintaining the highest possible production of saltwater crawfish.

(2) TAKING OF CERTAIN CRAWFISH PROHIBITED.—

(a)1. No person, firm or corporation shall take or have in his possession at any time, regardless of where taken, any saltwater crawfish (spiny lobster or crayfish) of the species *Panulirus argus* unless such saltwater crawfish (spiny lobster or crayfish) of the species *Panulirus argus* shall have a carapace measurement of more than 3 inches or shall have a tail measurement not less than 5½ inches, not including any protruding muscle tissue.

2. The carapace (head, body, or front section) measurement shall be determined by beginning at the anteriormost edge (front) of the groove between the horns directly above the eyes, then proceeding along the middorsal line (middle of the back) to the rear edge of the top part of the carapace. The tail (segmented portion) shall be measured lengthwise along the center of the entire tail until the rearmost extremity is reached; provided, the tail measurement shall be conducted with the tail in a flat straight position with the tip of the tail closed.

(b) Crawfish must remain in a whole condition at all times while on or below the waters of the state, and the practice of wringing or separating the tail (segmented portion) from the body (carapace or head) section shall be prohibited on the waters of this state except by special permit issued by the Division of Law Enforcement. Any tail so separated under the provisions of a special permit shall measure no less than 5½ inches measured lengthwise from the point of separation along the center of the entire tail until the rearmost extremity is reached. The tail measurement shall be conducted with the tail in a flat straight position with the tip of the tail closed. Said measurement shall be applicable on board any vessel used for the taking of crawfish or at the dock where such crawfish are unloaded. It shall also be applicable where crawfish are in possession of seafood dealers.

(c) Eggbearing female crawfish shall not be taken or possessed at any time. Eggbearing female crawfish found in traps shall be immediately returned to the water free, alive and unharmed.

(d) The practice of stripping or otherwise molesting eggbearing crawfish in order to remove the eggs is prohibited, and the possession of crawfish or crawfish tails from which eggs, swimmerettes, or pleopods have been removed is prohibited, and the possession on the water or the landing of crawfish or crawfish tails from which eggs, swimmerettes, or pleopods have been removed is prohibited unless such products are imported from a foreign country, cleared through U.S. Customs, and accompanied by a valid invoice.

(3) TRAPS; BUOYS; LICENSE NUMBERS; SUSPENSION OR REVOCATION OF LICENSES.—

(a) No person, firm, or corporation shall have in possession at any time, or fish with, set, place, or cause to be fished with, set, or placed, any trap other than those described below:

1. Wood slat traps and traps having biodegradable tops or throats;

2. Ice cans, drums, and similar devices; however, no trapping device shall at any time include grains, spears, grabs, hooks, or similar devices.

The traps and methods of taking crawfish described in subparagraphs 1. and 2. may be used only during those periods of time when such activities are permitted under law and may not be used during those periods when crawfish trapping and taking are prohibited. Traps may be placed in the water and baited 5 calendar days prior to the opening of the crawfish season and shall be removed within 5 days after the close of the crawfish season; however, nothing herein shall authorize the landing or sale of any crawfish during the closed season. Traps may be worked during daylight hours only, and the pulling of traps from 1 hour after official sunset until 1 hour before official sunrise is prohibited. The traps described in subparagraphs 1. and 2. may be reinforced with 16-gauge, 1-inch poultry wire as a protection against the ravages of turtles. Such reinforcement shall be limited to the sides of the trap. The tops and bottoms shall not be so protected.

(b) A buoy shall be attached to each trap with a timed release mechanism if desired and must be of sufficient strength and buoyancy to float, except when intentionally submerged by a timed float release device, and must be of such color, hue, and brilliancy as to be easily distinguished, seen, and located. Such color shall also be permanently and conspicuously displayed on the boat used for setting and collecting said traps and buoys in such a manner as to be readily identifiable from the air and water. Each trap, can, drum, and similar device used for taking or attempting to take crawfish must have a license number permanently attached to the device and the buoy. No numbers shall be permitted other than the current licenseholder numbers. The licenseholder may, at his option and in lieu of individual trap buoys, attach the individual traps to a trotline; however, such

a trotline must have attached at each end a permanently floating or timed release buoy. This license number may be issued by the Division of Law Enforcement upon the receipt of application by the owner of the traps, cans, drums, buoys, or similar devices and accompanied by the payment of a fee of $50. The design of the applications and of the license number shall be determined by the division. The trap license number shall be painted or affixed in legible figures at least 3 inches high on each buoy, drum, can, trap, or similar device. Any trap, drum, can, buoy, or similar device used in the taking or in attempting to take crawfish, other than the devices listed and described in subparagraphs 1. and 2. of paragraph (a) with license number attached as prescribed in this paragraph, shall be seized and destroyed by the division. The proceeds of the fee imposed by this paragraph shall be used by the Department of Natural Resources for the purposes of enforcing the provisions of this section through aerial and other surveillance. It shall be unlawful to sell crawfish without possession of a valid crawfish license or for a licensed wholesale dealer to buy crawfish from anyone other than the holder of a valid crawfish license. However, a licensed dealer may buy crawfish from a licensed wholesale dealer. The above shall not prohibit retail sales of crawfish by a licensed retail dealer. The Department of Natural Resources is authorized to promulgate rules and regulations to carry out the intent of this section.

(c) The crawfish license must be on board the boat, and both the license and the harvested crawfish shall be subject to inspection at all times. Only one license shall be issued for each boat. The crawfish license number must be prominently displayed above the topmost portion of the boat so as to be easily and readily identified. It is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully to molest any traps, lines, or buoys, as defined herein, belonging to another without permission of the licenseholder.

(d) Any crawfish licenseholder, upon selling licensed crawfish traps, shall furnish the division notice of such sale of all or part of his interest within 15 days thereof. Any holder of said license shall also notify the division within 15 days if his address no longer conforms to the address appearing on the license and shall, as a part of such notification, furnish the division with his new address.

(e) Possession of crawfish traps or parts thereof or other devices for the taking of crawfish, above or below the surface of the water, or the placing or setting of traps or similar devices during the closed season shall be unlawful, except as authorized herein.

(f) Upon the arrest and conviction for violation of any of the crawfish regulations or laws, the licenseholder must show just cause why his license should not be suspended or permanently revoked.

(g) It is unlawful for any person who is not a licenseholder or any boat without a current license prominently displayed as required by this section, in or on the waters of this state, to possess, have on board, or remove from the waters of the state, within any 24-hour period, more than 24 crawfish.

(h) No person, firm, or corporation shall take crawfish by means of grains, spears, grabs, hooks, or similar devices. The possession of speared, pierced, or punctured crawfish or crawfish tails shall be prima facie evidence of violation of this section.

(i) Upon posting a $250 bond, payable to the Florida Saltwater Products Promotion Trust Fund and approved by the Division of Law Enforcement, a licenseholder may possess, while on the water, undersized crawfish not exceeding 200 per license or 3 per trap aboard each boat, whichever is greater, if used exclusively for luring or decoying noncaptive crawfish into traps. Such undersized crawfish must be kept alive, wet, and shaded while in possession and shall be returned and released to the water alive and unharmed immediately upon leaving the trap lines and prior to 1 hour after official sunset. Any boat or undersized crawfish shall be subject to inspection and search without a search warrant for violation of this section by any authorized agent or employee of the division or by any other law enforcement officer, provided such inspection or search is conducted when the owner or operator is on board such boat. Upon conviction of the illegal possession of undersized crawfish tails, the licenseholder shall forfeit said bond to the fund.

(4) CLOSED SEASON.—No person, firm, or corporation shall take or have in his possession, regardless of where taken, any saltwater crawfish (spiny lobster or crayfish) of the species *Panulirus argus*, during the closed season of April 1 through July 25 of each year, except by special permit and as provided by s. 370.141, for storage and distribution of inventory stocks.

(a) *Special permit to import saltwater crawfish during closed season.*—

1. By a special permit granted by the Division of Law Enforcement, a Florida licensed seafood dealer may lawfully import, process, and package saltwater crawfish or uncooked tails of the species *Panulirus argus* during the closed season. However, crawfish landed under special permit shall not be sold in the state.

2. The licensed seafood dealer importing any such crawfish under the permit shall, 12 hours prior to the time the seagoing vessel or airplane delivering such imported crawfish enters the state, notify the Division of Law Enforcement as to the seagoing vessel's name or the airplane's registration number and its captain, location, and point of destination.

3. At the time the crawfish cargo is delivered to the permitholder's place of business, the crawfish cargo shall be weighed in the presence of the marine patrol officer, and a signed receipt of such quantity in pounds shall be furnished to said officer, which receipt shall be filed by the marine patrol officer with the Division of Law Enforcement.

4. Within 48 hours from the time the receipt is given to the marine patrol officer, the permitholder shall submit to the Division of Law Enforcement, on forms provided by the division, a sworn report of the quantity, in pounds, of the saltwater crawfish received, which report shall include the location of said crawfish and a sworn statement that said crawfish were taken at least 50 miles from Florida's shoreline. The landing of crawfish or crawfish tails from which the eggs or swimmerettes, pleopods, have been removed; the falsification of information as to area from which crawfish were obtained; or the failure to file the report called for in this section shall be grounds to revoke the permit.

5. Each permitholder shall keep throughout the period of the closed season copies of the bill of sale or invoices covering each transaction involving crawfish imported under this permit. Such invoices and bills shall be kept available at all times for inspection by the division.

(b) *Special permit license fees.*—

1. A Florida licensed seafood dealer may obtain a special permit to import, process, and package uncooked tails of saltwater crawfish upon the payment of the sum of $100 to the Division of Law Enforcement.

2. A special permit must be obtained by any airplane or seagoing vessel other than a common carrier used to transport saltwater crawfish or crawfish tails for purchase by licensed seafood dealers for purposes as provided herein upon the payment of $50.

3. All special permits issued under subparagraphs 1. and 2. are nontransferable.

(5) CARRIERS.—No common carrier or employee of said carrier may carry, knowingly receive for carriage, or permit the carriage of, any crawfish of the species *Panulirus argus*, regardless of where taken, during the closed season of April 1 through July 25 of each year, except of the species *Panulirus argus* lawfully imported from a foreign country for reshipment outside of the territorial limits of the state under U.S. Customs bond or in accordance with subparagraph (4)(a)1.

(6) SPORTS FISHERMEN'S CRAWFISH SEASON.—

(a) Notwithstanding the provisions of this chapter, there is created a sports fishermen's crawfish season to be on July 20 and 21 of each year.

(b) No person may have in his possession more than 6 crawfish on July 20, nor more than 12 crawfish cumulatively for July 20 and 21.

(c) Any vehicle, boat, or other transportation device may, with probable cause, be searched during the sports fishermen's crawfish season.

(7) PENALTY.—

(a) Any person violating the provisions of this section, unless otherwise provided, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person convicted of a violation of this section for a second or more time, unless otherwise provided, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 29898, 1955; s. 1, ch. 65-53; s. 1, ch. 65-251; ss. 25, 35, ch. 69-106; s. 1, ch. 69-228; s. 1, ch. 70-140; s. 1, ch. 70-162; s. 1, ch. 70-369; ss. 292, 293, ch. 71-136; s. 1, ch. 72-76; s. 1, ch. 72-250; s. 1, ch. 73-45; s. 1, ch. 73-211; s. 2, ch. 74-226; s. 1, ch. 76-107; s. 110, ch. 77-104; ss. 3, 4, 5, 6, 7, ch. 77-145; s. 1, ch. 77-154; s. 8, ch. 83-134.

[1]Note.—Repealed effective July 1, 1986, by s. 8, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1986, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, repealing, or repealing these provisions set forth in s. 8, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

370.141 Crawfish and stone crab; reports by dealers during closed season required.—

(1) Within 3 days after the commencement of the closed season for the taking of saltwater crawfish and stone crabs, each and every seafood dealer, either retail or wholesale, of the state shall submit to the Division of Marine Resources, on forms provided by the division, a sworn report of the quantity, in pounds, of frozen saltwater crawfish and stone crabs, frozen crawfish tails, and frozen crawfish and stone crabmeat in his (its) name or possession at the beginning of the aforementioned closed season. This report shall state the location of and describe each as to the number of pounds of frozen crawfish and stone crabs, frozen crawfish tails, and frozen crawfish and stone crabmeat. Any reports postmarked later than midnight of the 3rd day after the commencement of the closed season may not be accepted by the division, and the frozen stocks or crawfish and stone crabs reported therein may be seized by the division.

(2) Whenever any dealer fails to submit a report as described above or should any dealer report a greater or lesser amount of frozen crawfish or stone crabs, frozen crawfish tails or frozen crawfish or stone crabmeat than is actually in his (its) possession or name, said dealer is and shall be considered in violation of the provisions of ss. 370.13 and 370.14, and the division may seize the entire supply of unreported or falsely reported frozen crawfish and stone crabs, tails or meat and shall carry same before the court for disposal as provided for under s. 370.061.

(3) Each and every dealer having reported stocks of frozen crawfish and stone crabs as aforesaid may sell or offer for sale such stocks of frozen crawfish or frozen stone crabs; however, such dealer shall submit an additional report on the 1st and 15th day of each month during the duration of the closed season on forms supplied by the division. Each dealer shall state on this report the number of pounds sold during the report period and the pounds remaining on hand. In every case the amount of frozen crawfish and stone crabs sold and the amount remaining on hand shall total to equal the amount reported on hand in the last submitted report. Reports postmarked later than midnight of the 2nd and 16th of each month during the duration of the closed season may not be accepted by the division. Whenever any dealer fails to submit the semimonthly supplementary report as described above the division may impound said dealer's entire stock of frozen crawfish and stone crabs for the remainder of the closed season.

(4) Each and every seafood dealer shall at all times during the closed season make his stocks of frozen crawfish and stone crabs, frozen crawfish tails or frozen crawfish and stone crabmeat available for inspection by the division.

(5) Each dealer in frozen crawfish or stone crabs, frozen crawfish tails or frozen crawfish and stone crabmeat shall keep throughout the period of the closed season copies of the bill of sale or invoice covering each transaction involving frozen crawfish and stone crabs, tails or meats excepting only retail sale directly to the consumer. Such invoices and bills shall be kept available at all times for inspection by the division.

(6) Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 57-396; ss. 25, 35, ch. 69-106; s. 294, ch. 71-136; s. 1, ch. 76-77.

[1]370.15 Shrimp; regulation.—

(1) GENERAL AUTHORITY; CONSERVATION.—The department is authorized and directed to adopt, promulgate, and enforce rules and regulations consistent with the provisions of this section and the general policy of encouraging the production of the maximum sustained yield consistent with the preservation and protection of breeding stock, taking into consideration the recommendations of the various marine laboratories, as well as those of interested and experienced groups of private citizens. Such rules and regulations are to control the method, manner, and equipment used in the taking of shrimp or prawn, as well as limiting and defining the areas where taken.

(2) SHRIMP CATCH REGULATION; PENALTY.—

(a) It is unlawful for any person, firm, or corporation to catch, kill, or destroy shrimp or prawn within the waters of this state, or have in his possession any small shrimp or prawn taken in such waters, provided such small shrimp or prawn constitute at least 5 percent of all such shrimp or prawn in such possession. "Small shrimp" or "prawn" are defined as those that require more than 47 with the heads, or 70 without the heads, to make a pound by shrimp count. The words "shrimp count" shall refer to the number of shrimp, heads off, 70 to make a pound or 47 with the heads on to make a pound. This count shall be determined by random sampling in five different locations in the catch, at as widely separated distances and depths as practicable. Each sample shall consist of at least 1 pound of shrimp. The average counts of these five samples shall be the established count for the cargo. In the event shrimp, which when caught, landed, and prior to grading were of legal size under the terms of this subsection, are thereafter graded for size for the purpose of packaging, processing, or other lawful purpose; the smaller shrimp making up the average count of such entire lot as herein provided are graded out into separate lot or lots; and such shrimp so segregated from such entire lot are above the average count as herein provided, the possession, purchase, sale, unloading, transporting, or handling of such particular smaller graded shrimp is not unlawful. This provision excludes any product which has been processed and imported into the state. "Processed" is defined as frozen, canned, or packaged in up to 10-pound packages. This section does not apply to shrimp caught legally under a live bait license or to fishing camps which sell bait shrimp to persons for recreational purposes. Shrimp caught under a live bait license may only be sold as bait shrimp, and sales tax shall be collected thereon.

(b) Any person, firm, or corporation convicted of violating the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. In the event of a second or subsequent conviction of a violation of this subsection within 24 months, the division shall suspend the license of the violator for a period not to exceed 1 year.

(3) REGULATION OF BREEDING AREAS.—Any areas or places as defined in subsection (2) shall be designated sanctuary areas for shrimp and prawn to be opened or closed to the taking of shrimp or prawn according to the provisions of this section or the rules and regulations of the division.

(4) CATCHING SHRIMP AT NIGHT.—It is unlawful to catch or attempt to catch shrimp or prawn in the territorial waters of the state in any county whose coastal boundary borders solely on the Atlantic Ocean, by use of trawl nets during night hours except during the months of June, July, and August.

(5) SHRIMP TRAPS.—

(a) It is unlawful for any person, firm, or corporation to take or attempt to take shrimp by the use of any trap which:

1. Exceeds the following dimensions: 36 inches long (from rear of the heart to the leading edge of the trap), by 24 inches wide (between the leading edges of the trap, or heart opening), by 12 inches high; or

2. Has external or unattached wings, weirs, or other devices intended to funnel shrimp to the trap heart.

(b) This subsection shall not be construed to restrict the allowable shape or configuration of any shrimp trap so long as the trap, together with all of its parts, conforms to the specifications of paragraph (a).

(c) Any shrimp trap which conforms to the specifications of paragraph (a) shall not be considered a pound net.

(d) The user of any trap shall affix his name and address securely to each trap. Any such trap not having proper identification is subject to confiscation by the department. No person, firm, or corporation shall have more than four traps in use at any time. The department shall have the authority to inspect such traps when being used in or on the waters of the state.

(e) The presence of unattended shrimp traps on or attached to beaches, causeways, seawalls, bridges, or any other structures open for use by the public is hereby declared to be a nuisance. Any such trap which is not attended by the person whose name is affixed to the trap is subject to confiscation by the department.

(f) Any person, firm, or corporation which violates the provisions of this subsection is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) SHRIMP FISHING; PERMITS; PENALTY.—

(a) All persons, firms, and corporations desiring to fish for commercial or bait shrimp within areas in which trawling is permitted shall first apply to the Division of Marine Resources for a permit. Such applications shall be made on forms to be supplied by the division and which shall require the applicants to furnish such information as may be deemed pertinent to the best interests of saltwater conservation. However, the division may refuse to grant a permit when it is apparent that the best interests of saltwater conservation will be served by such denial. A permit so granted shall remain on board at all times and is subject to immediate revocation upon conviction for violation of this section or when it becomes apparent that the best interests of saltwater conservation will be served by such action. Due to the varied habitats and types of bottoms and hydrographic conditions embraced by the open fishing area, the division shall have the authority to specify and regulate the types of gear that may be used in the different sections of the open areas.

(b) Any person, firm, or corporation convicted of violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. In the event of a second or subsequent conviction of a violation of this subsection within 24 months, the division shall suspend the license of the violator for a period not to exceed 1 year.

(7) CLOSED AREA IN SANTA ROSA SOUND.—

(a)1. It is unlawful to take or catch shrimp, other than bait shrimp with any type net or other method, in the following area: That portion of Santa Rosa Sound lying in Escambia, Santa Rosa, and Okaloosa Counties and between Brooks Bridge as the east boundary and Bascule Bridge in Santa Rosa County as the west boundary.

2. Live bait shrimp may be caught at any time but only under permit issued by the division. Permittees must fish with gear and under those conditions specified by the division. Application for such permits shall be on forms supplied by the division, and no charges may be made for issuing said permits. A permit shall be revocable when the holder does not comply with the laws and regulations applicable to saltwater conservation. All vessels fishing for live bait shrimp must be equipped with live bait shrimp tanks, and no more than 5 pounds of dead shrimp will be allowed on board such vessel per day.

(b) Any person convicted of violating the provisions of this subsection is, for the first or second conviction, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A third or any subsequent violation by any person of this subsection within a 3-year period is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(8) CLOSED AREA FOR SHRIMPING.—

(a) No shrimping except for live bait shrimp shall be permitted in all waters within the following described area: Begin at a point of latitude 24°41'54" North and longitude 81°40'30" West near Snipe Point in Monroe County; thence go North 35°53'16" West approximately 9 nautical miles to a point of approximate latitude 24°41'55" North and longitude 81°46'15" West, 3 marine leagues seaward of Snipe Point; thence easterly and northerly following a line which is 3 marine leagues seaward of the mean low-water line of the seawardmost points in Florida Bay and the Gulf of Mexico to a point at latitude 26°00'00" North and approximate longitude 81°56'30" West; thence east to a point on the mean high-water line at latitude 26°00'00" North and approximate longitude 81°44'06" West; thence southerly and easterly along the mean high-water line of the Florida mainland to its intersection with the westerly right-of-way of the U.S. Highway 1 bridge in Long Sound; thence follow the westerly and northern right-of-way of U.S. Highway 1 to a point on Saddlebunch Key latitude 24°37'06" North and approximate longitude 81°36'42" West; thence on a straight line to the point of beginning.

(b) All persons, firms, and corporations desiring to fish for live bait shrimp within the above described area shall first apply to the Division of Law Enforcement for a permit. Such application shall be made on forms to be supplied by the division which shall require the applicant to furnish such information as may be required by the department.

(c) The division may refuse to grant a permit when it is apparent that the best interests of saltwater conservation will be served by such denial.

(d) A permit so granted is subject to immediate revocation upon conviction for violation of this subsection or when it becomes apparent that the best interests of saltwater conservation will be served by such revocation.

(e) Any person convicted of violating the provisions of this subsection is, for the first conviction, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A second or any subsequent violation by any person of this subsection is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 29145, 1953; s. 1, ch. 59-343; s. 1, ch. 61-525; s. 1, ch. 63-338; ss. 1, 2, 3, ch. 65-343; ss. 25, 35, ch. 69-106; s. 1, ch. 70-344; s. 295, ch. 71-136; s. 1, ch. 72-54; ss. 1, 2, ch. 74-58; s. 9, ch. 77-142; ss. 1, 3, ch. 79-265; s. 1, ch. 81-291; s. 8, ch. 83-134.

[1]Note.—Repealed effective July 1, 1986, by s. 9, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1986, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 8, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

[1]370.151 Tortugas shrimp beds; closed areas; permits; penalties.—

(1) It is the intention of the Legislature that action should be taken to conserve the supply of shrimp in the large shrimp beds which lie in and around the coast of the Lower Keys of Florida and in the vicinity of the islands of Dry Tortugas in the Florida Keys, hereinafter referred to as the "Tortugas Shrimp Bed," and which furnish more than 50 percent of the shrimp in waters adjacent to the coast of Florida. It is further the sense of this Legislature that the shrimp industry is a valuable industry to the economy of this state and deserves adequate protection.

(2) Tortugas Shrimp Bed is described as follows:

(a) Begin at Coon Key Light in Collier County; thence proceed on a straight line to a point which is located at 24°54'30" north latitude and 81°50'30" west longitude; thence proceed on a straight line to a point located at 24°48'00" north latitude and 82°00'00" west longitude; thence proceed on a straight line to a point located at 24°45'00" north latitude and 82°22'30" west longitude; thence proceed on a straight line to Rebecca Shoals Light; thence proceed on a straight line to R. B. Bell Buoy; thence proceed on a straight line to Cosgrove Shoal Light; thence proceed on a straight line to Sand Key Light; thence proceed northerly to the abandoned lighthouse located in the southwest portion of Key West; thence along the south and east

meandered shoreline of the Florida Keys and the connecting viaducts between said Keys to 80°30'00" west longitude; thence north until a point on the mainland is reached; thence proceed west and north along the coast of the mainland of Florida until a point is reached which is located due north of the aforementioned Coon Key Light located in Collier County; thence due south to Coon Key Light, the point of beginning.

(b) No shrimping shall be permitted at any time except live bait production as provided in this chapter in the above-described area.

(3)(a) The Division of Law Enforcement is authorized to take title in the name of the state to any vessel or vessels suitable for use in carrying out the inspection and patrol of the Tortugas Bed which may be offered as a gift to the state by any person, firm, corporation, or association in the shrimp industry for the purpose of carrying out the provisions of this section. In the event such title is taken to such vessel or vessels, the division is authorized to operate and keep said vessel or vessels in proper repair.

(b) The division is further authorized to accept the temporary loan of any vessel or vessels, suitable for use in carrying out the provisions of this section, for periods not exceeding 1 year. However, the state shall not assume any liability to the owner or owners of said vessels for any damage done by said vessels to other vessels, persons, or property. In the operation of said loaned vessels, upkeep and repair shall consist only of minor repairs and routine maintenance. The owner or owners shall carry full marine insurance coverage on said loaned vessel or vessels for the duration of the period during which said vessels are operated by the state.

(4) It is unlawful to land or attempt to land any shrimp in the territorial waters of the state without a permit issued by the Division of Law Enforcement. Such permit shall be issued without charge. The division may revoke such landing permit upon a violation of any portion of this section. Such revocation of permit by the division may be reviewed by the Department of Natural Resources.

(5) It is unlawful for any person, firm, or corporation to receive any shrimp from any vessel not in possession of a valid permit issued by the Division of Law Enforcement. Any person violating this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

(6) The owner or master of any vessel not equipped with live shrimp bait tanks dragging shrimp nets in the above-defined area without a live bait permit for this area is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the nets and shrimping door shall be confiscated. A second violation by any person under this subsection shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A third or any subsequent violation by any person under this subsection within a 3-year period shall be a felony of the third degree, punishable as provided in s. 775.082 and s. 775.083.

(7) Each offense under all subsections, except subsections (5) and (6), shall be a misdemeanor and punishable as follows:

(a) For the first offense the owner or the master shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the nets and shrimping door shall be confiscated as provided in s. 370.061.

(b) For the second offense the owner or master shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the vessel shall be confiscated as provided in s. 370.061.

(c) For the third offense within a 3-year period the owner or master shall be guilty of a felony of the third degree, punishable as provided in s. 775.083, and said equipment and instruments shall be confiscated as provided in s. 370.061.

(d) In addition to the fines enumerated above, the court may punish the master as provided in s. 775.082.

(8)(a) Nothing in this section shall apply to the taking of live shrimp for bait. All persons, firms, and corporations desiring to fish for live bait shrimp within any area shall first apply to the Division of Law Enforcement for a permit. Such application shall be made on forms to be supplied by the division which shall require the applicant to furnish such information as may be deemed pertinent to the best interests of saltwater conservation.

(b) The division may refuse to grant permits when it is apparent that the best interests of saltwater conservation will be served by such denial.

(c) Permits so granted will be subject to immediate revocation upon conviction for violation of this subsection or when it shall be apparent that the best interests of saltwater conservation will be served by such revocation.

(d) Due to the varied habitats and types of bottoms and hydrographic conditions, the division shall have the authority to specify and regulate the types of gear that may be used in the area. Such specifications and regulations shall be consonant with sound saltwater conservation.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, ch. 57-358; s. 1, ch. 61-470; ss. 29, 35, ch. 69-106; s. 62, ch. 69-353; s. 1, ch. 70-183; s. 296, ch. 71-136; s. 2, ch. 72-54; s. 1, ch. 74-1; s. 23, ch. 78-95; s. 72, ch. 79-65; s. 8, ch. 83-134.

[1]Note.—Repealed effective July 1, 1986, by s. 8, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1986, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 8, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

[1]370.153 Regulation of shrimp fishing; Clay, Duval, Nassau, Putnam, Flagler, and St. Johns Counties.—

(1) DEFINITIONS.—When used in this section, unless the context clearly requires otherwise:

(a) "Inland waters" means all creeks, rivers, bayous, bays, inlets, and canals.

(b) "Sample" means one or more shrimp taken from an accurately defined part of the area defined.

(c) "Series" means 10 or more samples taken within a period of not more than 1 week, each sample being taken at a different station within the pattern.

(d) "Pattern" means 10 or more stations.

(e) "Station" means a single location on the water of the areas defined.

(f) "Licensed live bait shrimp producer" means any individual licensed by the Department of Natural Resources to employ the use of any trawl for the taking of live bait shrimp within the inland waters of Nassau, Duval, St. Johns, Putnam, Flagler, or Clay Counties.

(g) "Licensed dead shrimp producer" means any individual licensed by the Department of Natural Resources to employ the use of any trawl for the taking of shrimp within the inland waters of Nassau, Duval, St. Johns, Putnam, Flagler, or Clay Counties.

(2) SHRIMPING PROHIBITED.—It is unlawful to employ the use of any trawl or other net, except a common cast net, designed for or capable of taking shrimp, within the inland waters of Nassau, Duval, St. Johns, Putnam, Flagler, or Clay Counties, except as hereinafter provided.

(3) LIVE BAIT SHRIMP PRODUCTION.—

(a) Any licensed live bait shrimp producer shall be permitted to use a roller-frame trawl or an otter trawl not to exceed 20 feet in width for the production of live bait shrimp. No other type or size of trawl shall be permitted.

(b) A live bait shrimp production license shall be issued by the Department of Natural Resources upon the receipt of an application by a person intending to use a boat, not to exceed 35 feet in length in Duval, St. Johns, Putnam, Flagler, and Clay Counties and not to exceed 45 feet in length in Nassau County, for live shrimp production within the inland waters of Nassau, Duval, St. Johns, Putnam, Flagler, or Clay Counties and the payment of a fee of $50. The design of the application and permit shall be determined by the department. The proceeds of the fee imposed by this paragraph shall be used by the Department of Natural Resources for the purposes of enforcement of marine resource laws.

(c) The executive director of the Department of Natural Resources, or his designated representative, may by order close certain areas to live bait shrimp production when sampling procedures justify the closing, based upon sound conservation practices. The revocation of any order to close has the effect of opening the area.

(d) Every live bait shrimp producer shall produce evidence satisfactory to the department that he has the necessary equipment to maintain the shrimp alive while aboard the shrimp fishing vessel. All vessels fishing for live bait shrimp must be equipped with live bait shrimp tanks of a type and capacity satisfactory to the department, and no more than 5 pounds of dead shrimp will be allowed on board such vessel per day.

(e)1. Each licensed live bait shrimp producer who stores his catch for sale or sells his catch shall either:

a. Maintain onshore facilities which have been annually checked and approved by the local Marine Patrol office to assure the facilities' ability to maintain the catch alive when the live bait shrimp producer produces for his own facility; or

b. Sell his catch only to persons who have onshore facilities which have been annually checked and approved by the local Marine Patrol office to assure the facilities' ability to maintain the catch alive, when the producer sells his catch to an onshore facility. The producer shall provide the Department of Natural Resources with the wholesale number of the facility to which the shrimp have been sold and shall submit this number on a form designed and approved by the department.

2. All persons who maintain onshore facilities as described in this paragraph, whether the facilities are maintained by the licensed live bait shrimp producer or by another party who purchases shrimp from live bait shrimp producers, shall keep records of their transactions in conformance with the provisions of s. 370.07(5).

(f) All commercial trawling in Clay, Duval, and St. Johns Counties shall be restricted to the inland waters of the St. Johns River proper in the area north of the Acosta Bridge in Jacksonville and at least 100 yards from the nearest shoreline.

(4) DEAD SHRIMP PRODUCTION.—Any person may operate as a commercial dead shrimp producer on the St. Johns River provided that:

(a) A dead shrimp production permit is procured from the Department of Natural Resources upon the receipt by the department of a properly filled out and approved application by a person intending to use a boat, not to exceed 35 feet in length in Duval, St. Johns, Putnam, and Clay Counties, and not to exceed 45 feet in length in Nassau County, for dead shrimp production within the inland waters of Nassau County and the inland waters of the St. Johns River of Duval, Putnam, St. Johns, Flagler, or Clay Counties, which permit shall cost $250 and shall be required for each vessel used for dead shrimp production. The design of the application and permit shall be determined by the Department of Natural Resources. The proceeds of the fees imposed by this paragraph shall be deposited into the account of the Motorboat Revolving Trust Fund to be used by the Department of Natural Resources for the purpose of enforcement of marine resource laws.

(b) All commercial trawling shall be restricted to the St. Johns River proper in the area north of the Acosta Bridge in Jacksonville and at least 100 yards from the nearest shoreline.

(c) No person may use any trawl exceeding 35 feet in length or less than a 1½-inch stretch mesh with a 10-pound pull. Length measurement shall be made from the point where the webbing is hung on the corkline at one end of the net to the point where the webbing is hung on the corkline at the opposite end of the net.

(d) No person may use any tickler chain.

(e) The Department of Natural Resources may, by rule, place additional restrictions upon the types of equipment to be used by dead shrimp producers.

(f) All commercial shrimping activities shall be allowed during daylight hours from Tuesday through Friday each week.

(g) No person holding a dead shrimp production permit issued pursuant to this subsection shall simultaneously hold a permit for noncommercial trawling under the provisions of subsection (5). The number of permits issued by the department for commercial trawling or dead shrimp production in any one year shall be the number issued in the base year, 1976. All permits shall be nontransferable and annually renewable only by the original holder thereof. All permits

not renewed shall expire and shall not be renewed under any circumstances.

(h) It is illegal for any person to sell dead shrimp caught in the St. Johns River, unless the seller is in possession of a dead shrimp production license issued pursuant to this subsection.

(i) It is illegal for any person to purchase shrimp for consumption from any seller (with respect to shrimp caught in the St. Johns River) who does not produce his dead shrimp production license prior to the sale of the shrimp.

(j) In addition to any other penalties provided for in this section, any person who violates the provisions of this subsection shall have his license revoked by the department.

(5) NONCOMMERCIAL TRAWLING.—Any person may harvest shrimp in the St. Johns River for his own use as food and may trawl for such shrimp under the following conditions:

(a) Each person who desires to trawl for shrimp for use as food shall obtain a noncommercial trawling permit from the local Marine Patrol office of the Department of Natural Resources upon filling out an application on a form prescribed by the department and upon paying a fee for the permit, which shall cost $50.

(b) Each trawl used for noncommercial trawling shall measure not more than 15 feet from the point where the webbing is hung on the corkline at one end of the net to the point where the webbing is hung on the corkline at the opposite end of the net, and the nets shall be no less than 1½ inches stretch mesh. Only one trawl shall be pulled at a time.

(c) All trawling shall be restricted to the confines of the St. Johns River proper in the area north of the Acosta Bridge in Jacksonville and at least 100 yards from the nearest shoreline.

(d) Trawling shall be allowed only during daylight hours on Saturdays and Sundays, and at no time shall any person or boat possess more than 50 pounds of shrimp while on the water.

(e) No shrimp caught by a person licensed under the provisions of this subsection may be sold or offered for sale.

(6) SAMPLING PROCEDURE.—

(a) The executive director of the Department of Natural Resources shall have samples taken at established stations within patterns at frequent intervals.

(b) No area may be closed to live bait shrimp production unless a series of samples has been taken and it has been determined that the shrimp are undersized or that continued shrimping in this area would have an adverse effect on conservation. Standards for size may be established by rule of the department.

(c) No area may be opened to dead shrimp production unless a series of samples has been taken and it has been determined that the shrimp are of legal size. Legal-sized shrimp shall be defined as not more than 47 shrimp with heads on, or 70 shrimp with heads off, per pound.

(7) LICENSE POSSESSION.—The operator of a boat employing the use of any trawl for shrimp production must be in possession of a current shrimp production license issued to him pursuant to the provisions of this section.

(8) USE OF TRAWL; LIMITATION.—

(a) The use of a trawl by either a live bait shrimp producer or dead shrimp producer shall be limited to the daylight hours, and the taking of dead shrimp shall not take place on Saturdays, Sundays, or legal state holidays.

(b) The use of a trawl by either a live bait shrimp producer or dead shrimp producer within 100 yards of any shoreline is prohibited. The Department of Natural Resources, by rule or order, may define the area or areas where this subsection shall apply.

(c)1. It is unlawful to employ the use of any trawl designed for, or capable of, taking shrimp within ¼ mile of any natural or manmade inlet in Duval County or St. Johns County.

2. It is unlawful for anyone to trawl in the Trout River west of the bridge on U.S. 17 in Duval County.

(9) PENALTY.—

(a) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction, shall be punished as provided by law.

(b) The license of any shrimp producer convicted of violating any provision of this section shall be suspended for a period of 1 year.

(10) ST. JOHNS RIVER; RULEMAKING PROHIBITED.—The Department of Natural Resources may not adopt any rule which regulates shrimping in the St. Johns River.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, ch. 71-460; ss. 1, 2, ch. 72-116; s. 1, ch. 73-150; ss. 1, 2, ch. 74-349; s. 1, ch. 77-174; s. 1, ch. 77-186; s. 99, ch. 79-164; s. 1, ch. 83-285; s. 8, ch. 83-134.

[1]Note.—Repealed effective July 1, 1986, by s. 8, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1986, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 8, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

370.154 Shrimp regulations; closed areas; suspension of license, etc.—Any person convicted of taking shrimp in a closed area who is punishable under s. 370.15(6) or s. 370.151(5) shall, in addition to the penalties set forth therein, have his permit and the permit of the boat involved in the violation, issued pursuant to s. 370.15(5), revoked, if he holds such a permit, and he shall be ineligible to make application for such a permit for a period of 2 years from the date of such conviction. If a person not having a permit is convicted hereunder, that person and the boat involved in the violation shall not be eligible for such a permit for 5 years.

History.—s. 3, ch. 72-84.

[1]370.155 Regulation of shrimp fishing in a designated area.—

(1) It shall be unlawful to catch or take, or attempt to catch or take, with nets in excess of 18 feet on the cork line, in excess of 24 feet on the lead line, and in excess of 3 feet on the leg line with trawl doors or otter boards which exceed 36 inches in length by 18 inches in width, shrimp from April 1 to June 15 of each year in the following area, to wit: Beginning at a central point on Cape San Blas, proceeding thence 180 degrees to a point 3 miles seaward, thence southeasterly along a meandering line 3 miles from the shoreline to a point 3 miles due south of Cape St.

George, proceeding thence zero degrees to Cape St. George, thence follow the shoreline bordering the Gulf of Mexico to the point of beginning. It is unlawful for any person to have in his boat at one time more than one net of the permissible size to take shrimp in the area herein defined. However, the Department of Natural Resources shall issue such permits as are necessary for harvesting roe shrimp in pursuance of mariculture programs.

(2) Any person violating this section shall, upon conviction, be adjudged guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 73-362; s. 1, ch. 75-262; s. 1, ch. 77-174; s. 8, ch. 83-134.

[1]Note.—Repealed effective July 1, 1986, by s. 8, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1986, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 8, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

[1]370.156 Florida East Coast Shrimp Bed; closed areas; permits; penalties.—

(1) It is the intention of the Legislature that action should be taken to conserve the supply of shrimp in the large shrimp beds that exist from the Florida-Georgia boundary to the southern boundary of St. Lucie County, in both the inland and the coastal territorial waters. This area shall hereinafter be referred to as the "Florida East Coast Shrimp Bed." It is further the sense of this Legislature that the shrimp industry is a valuable component of the state's economy and deserves adequate protection.

(2) The Florida East Coast Shrimp Bed is defined as: All of the inside and outside waters within the territorial limits of the State of Florida, lying and being within Nassau, Duval, Clay, Putnam, St. Johns, Flagler, Volusia, Seminole, Brevard, Indian River, and St. Lucie Counties as defined in chapter 7.

(3) No power trawling for dead shrimp shall be permitted in the Florida East Coast Shrimp Bed between April 1 and June 1 of each year. Only trawling for live bait is allowed in the Florida East Coast Shrimp Bed between April 1 and June 1 of each year, and each vessel shall comply with subsection (5).

(4) It is unlawful for any person, firm, or corporation to receive any shrimp from any vessel not in possession of a valid permit issued by the division.

(5) Any vessel trawling in the Florida East Coast Shrimp Bed for live bait shrimp shall have a live bait shrimping permit for this area, shall be equipped with live bait shrimp tanks, and shall not have in excess of 5 pounds of dead shrimp in its possession.

(6) Violation of any of the provisions of this section shall be a misdemeanor, punishable as follows:

(a) For the first offense, the owner or master, or both, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the nets and shrimping doors shall be confiscated.

(b) For the second offense, the owner or master, or both, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, and the vessel shall be confiscated as provided in s. 370.061.

(c) In addition to the fines, the court may punish the master of the vessel as provided in s. 775.082.

(7)(a) All persons, firms, and corporations desiring to trawl for either live bait shrimp or dead shrimp within the Florida East Coast Shrimp Bed shall first apply to the division for a permit. The application shall be made on forms supplied by the division which shall require the applicant to furnish information as may be deemed pertinent to the best interests of saltwater conservation.

(b) The division may refuse to grant permits when it is apparent that the best interests of saltwater conservation will be served by such denial.

(c) Due to the varied habitats, types of bottoms, and hydrographic conditions, the division shall have the authority to specify and regulate the types of gear that may be used in the Florida East Coast Shrimp Bed. Such specifications and regulations shall be consonant with sound saltwater conservation.

(d) It is unlawful to land or attempt to land any shrimp in the territorial waters of the state without a permit issued by the division. The division shall revoke a permit upon conviction of a violation of any portion of this section. Revocation of a permit by the division may be reviewed by the Department of Natural Resources, and the decision of the department may be reviewed according to the procedure prescribed in the Florida Appellate Rules.

History.—s. 3, ch. 74-149; s. 1, ch. 83-134.

[1]Note.—Repealed effective July 1, 1986, by s. 8, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1986, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 8, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

[1]370.157 Cedar Key closed area for shrimping.—

(1) It is unlawful to catch or take, or attempt to take, except with a single rig boat 35 feet or less in length or with a net not to exceed 35 feet on the cork line, 45 feet on the lead line, and 5 feet on the leg line with trawl doors or other boards which exceed 48 inches in length by 24 inches in width, shrimp from the following area: Beginning at a point on the shoreline of the Gulf of Mexico on the south side of the channel entering the Cross Florida Barge Canal near Port Inglis; thence southwesterly along the line of navigational buoy marking the south side of said channel to flashing light number "2" marking the outer extent of said channel; thence westerly to the flashing light on Seahorse Reef at latitude 28°58.5' North and longitude 83°9.25' West; thence northerly to flashing light number "12" at latitude 29°10' North and longitude 83°14.4' West; thence northerly to sea buoy number "2" at the outer limit of the navigational channel entering Horseshoe Beach; thence northeasterly along the south side of the navigational channel to the shoreline of the Gulf of Mexico; thence southerly along the shoreline along the Gulf of Mexico to the point of beginning. This section does not apply to persons holding live bait shrimp permits issued by the Department of Natural Resources or to boats towing roller type trawls.

(2) Any person who violates this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-73; s. 1, ch. 79-168; s. 8, ch. 83-134; s. 1, ch. 83-179.

[1]Note.—Repealed effective July 1, 1986, by s. 8, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1986, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, repealing, or repealing those provisions set forth in s. 8, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, repeal, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

370.16 Oysters and shellfish; regulation.—

(1) LEASE, APPLICATION FORM; NOTICE TO RIPARIAN OWNER; LANDS LEASED TO BE COMPACT.—When any qualified person desires to lease a part of the bottom or bed of any of the water of this state, for the purpose of growing oysters or clams, as provided for in this section, he shall present to the Division of Marine Resources a written application setting forth the name and address of the applicant, a reasonably definite description of the location and amount of land covered by water desired, and shall pray that the application be filed; that the water bottoms be surveyed and a plat or map of the survey thereof be made if no plat or map of such bottoms should have been so made thereto; and that the water bottoms described be leased to the applicant under the provisions of this section. Such applicant shall accompany with his written application a sufficient sum to defray the estimated expenses of the survey; thereupon the division shall file such application and shall direct the same surveyed and platted forthwith at the expense of the applicant. When applications are made by two or more persons for the same lands, they shall be leased to the applicant who first filed application for same; but to all applications for leases of any of the bottoms of said waters owned under the riparian acts of the laws of Florida, heretofore enacted, notice of such application shall be given the riparian owner, when known, and, when not known, notice of such application shall be given by publication for 4 weeks in some newspaper published in the county in which the water bottoms lie; and when there is no newspaper published in such county, then by posting the notice for 4 weeks at the courthouse door of the county, and preference shall be given to the riparian owners under the terms and conditions herein created, when the riparian owner makes application for such water bottoms for the purpose of planting oysters or clams before the same are leased to another. The lands leased shall be as compact as possible, taking into consideration the shape of the body of water and the condition of the bottom as to hardness, or soft mud or sand, or other conditions which would render the bottoms desirable or undesirable for the purpose of oyster or clam cultivation.

(2) SURVEYS, PLATS, AND MAPS OF REEFS.—The Division of Marine Resources shall accept, adopt, and use official reports, surveys, and maps of oyster, clam, or other shellfish grounds made under the direction of any authority of the United States as prima facie evidence of the natural oyster and clam reefs, for the purpose and intent of this chapter. The said division may also make surveys of any natural oyster or clam reefs when it deems such surveys necessary and where such surveys are made pursuant to an application for a lease, the cost thereof may be charged to the applicant as a part of the cost of his application.

(3) EXECUTION OF LEASES; LESSEE TO STAKE OFF BOUNDARIES; PENALTY FOR FAILURE TO COMPLY WITH REGULATIONS.—As soon as the survey has been made and the plat or map thereof filed with the Division of Marine Resources and the cost thereof paid by the applicant, the division may execute in duplicate a lease of the water bottoms to the applicant. One duplicate, with a plat or map of the water bottoms so leased, shall be delivered to the applicant, and the other, with a plat or map of the bottom so leased, shall be retained by the division and registered in a lease book which shall be kept exclusively for that purpose by the division; thereafter the lessees shall enjoy the exclusive use of the lands and all oysters and clams, shell, and cultch grown or placed thereon shall be the exclusive property of such lessee as long as he shall comply with the provisions of this chapter. The division shall require the lessee to stake off and mark the water bottoms leased, by such ranges, monuments, stakes, buoys, etc., so placed and made as not to interfere with the navigation, as it may deem necessary to locate the same to the end that the location and limits of the lands embraced in such lease be easily and accurately found and fixed, and such lessee shall keep the same in good condition during the open and closed oyster or clam season. All leases shall be marked according to the standards derived from the uniform waterway markers for safety and navigation as described in s. 327.40. The division may stipulate in each individual lease contract the types, shape, depth, size, and height of marker or corner posts. Failure on the part of the lessee to comply with the orders of the division to this effect within the time fixed by it, and to keep the markers, etc., in good condition during the open and closed oyster or clam season, shall subject such lessee to a fine not exceeding $100 for each and every such offense. All lessees shall cause the area of the leased water bottoms and the names of the lessees to be shown by signs as may be determined by the division, if so required.

(4) LEASES IN PERPETUITY; RENT; STIPULATIONS; TAXES; CULTIVATION, ETC.—

(a) All leases made under the provisions of this chapter shall begin on the day executed and continue in perpetuity under such restrictions as shall herein be stated. The rent for the first 10 years shall be $5 per acre, or any fraction of an acre, per year. However, the rent for any lease currently in effect shall not be increased during the first 10 years of said lease. This rent shall be paid in advance at the time of signing the lease up to January 1 following, and annually thereafter in advance on or before January 1, whether the lease be held by the original lessee or by an heir, assignee, or transferee. No taxes, assessments, or other licenses other than those imposed in this chapter shall be levied or imposed on the leases or leased lands, but the annual rental exacted and paid shall be held and considered all that can or shall be exacted by the state or county, subordinate political corporations, or municipalities.

(b) Effective cultivation shall consist of the growing of the oysters or clams in a density suitable for commercial harvesting over the amount of bottom prescribed by law. This commercial density shall be accomplished by the planting of seed oysters, shell, and cultch of various descriptions. The Division of Marine Resources may stipulate in each individual lease contract the types, shape, depth, size, and height of cultch materials on lease bottoms according to the individual shape, depth, location, and type of bottom of the proposed lease. Each tenant leasing from the state water bottoms under the provisions of this section shall have begun, within 1 year from the date of such lease, bona fide cultivation of the same, and shall, by the end of the second year from the commencement of his lease, have placed under cultivation at least one-fourth of the water bottom leased and shall each year thereafter place in cultivation at least one-fourth of the water bottom leased until the whole, suitable for bedding of oysters or clams, shall have been put in cultivation by the planting thereon of not less than 200 barrels of oysters, shell, or its equivalent in cultch to the acre. When leases are granted, or when grants have heretofore been made under existing laws for the planting of oysters or clams, such lessee or grantee is authorized to plant the leased or granted bottoms both in oysters and clams.

(c) These stipulations will apply to all leases granted after the passing of this section. All leases existing prior to the passing of this section will operate under the law which was in effect when the leases were granted.

(d) When evidence is gathered by the division and such evidence conclusively shows a lack of effective cultivation, the division may revoke leases and return the bottoms in question to the public domain.

(e) When evidence obtained by qualified marine biologists is available to the division which indicates that relatively temporary or transient hydrographic or biological conditions preclude the successful cultivation of oysters, lessees may apply to the division for a permit to suspend planting operations. Such permits shall be revocable upon 30 days' notice from the division that growing conditions are again suitable and, upon the revocation of such permits, cultivation will again be mandatory as required by law.

(f) The department has the authority to adopt rules and regulations pertaining to the water column over shellfish leases. All cultch materials in place 6 months after the formal adoption and publication of rules and regulations establishing standards for cultch materials on shellfish leases which do not comply with such rules and regulations may be declared a nuisance by the division. The division shall have the authority to direct the lessee to remove such cultch in violation of this section. The division may cancel a lease upon the refusal by the lessee violating such rules and regulations to remove unlawful cultch materials, and all improvements, cultch, marketable oysters, and shell shall become the property of the state. The division shall have the authority to retain, dispose of, or remove such materials in the best interest of the state.

(5) INCREASE OF RENTALS AFTER 10 YEARS.—After 10 years from the execution of the lease, the rentals shall be increased to a minimum of $1 per acre per annum. The Division of Marine Resources shall assess rental value on the leased water bottoms, taking into consideration their value as oyster-growing or clam-growing water bottoms, their nearness to factories, transportation, and other conditions adding value thereto and placing such valuation upon them in shape of annual rental to be paid thereunder as said condition shall warrant.

(6) LEASES TRANSFERABLE, ETC.—The leases shall be inheritable and transferable, in whole or in part, and shall also be subject to mortgage, pledge, or hypothecation and shall be subject to seizure and sale for debts as any other property, rights, and credits in this state, and this provision shall also apply to all buildings, betterments, and improvements thereon. Leases granted under this section cannot be transferred, by sale or barter, in whole or in part, without the written, express acquiescence of the Division of Marine Resources, and such a transferee shall pay a $50 transfer fee before division acquiescence may be given. No lease or part of a lease may be transferred by sale or barter until the lease has been in existence at least 2 years and has been cultivated according to the statutory standards found in paragraph (4)(b), except as otherwise provided by regulation adopted by the Division of Marine Resources. No such inheritance or transfer shall be valid or of any force or effect whatever unless evidenced by an authentic act, judgment, or proper judicial deed, registered in the office of the division in a book to be provided for said purpose. The division shall keep proper indexes so that all original leases and all subsequent changes and transfers can be easily and accurately ascertained.

(7) PAYMENT OF RENT; FORFEITURE FOR NONPAYMENT; NOTICE, ETC.—All leases shall stipulate for the payment of the annual rent in advance on or before January 1 of each year, and the further stipulation that the failure of the tenant to pay the rent punctually on or before that day, or within 30 days thereafter shall ipso facto, and upon demand, terminate and cancel said lease and forfeit to the state all the works, improvements, betterments, oysters, and clams on the leased water bottoms, and authorize the Division of Marine Resources to at once enter on said water bottom and take possession thereof, and such water bottom shall then be open for lease as herein provided; and the division shall within 10 days thereafter enter such termination, cancellation, and forfeiture on its books and shall give such public notice thereof, and of the fact that the water bottoms are open to lease, as it shall deem proper; provided, that the division may, in its discretion, waive such termination, cancellation, and forfeiture when the rent due, with 10 percent additional, and all costs and expenses growing out of such failure to pay, be tendered to it within 60 days after the same became due; provided, that in all cases of cancellation of lease, the division shall, after 60 days' notice by publication in some newspaper published in the state, having a general statewide circulation, which notice shall contain a full description of the leased waters and beds and any parts thereof, sell such lease to the highest and best bidder; and all

moneys received over and above the rents due to the state, under the terms of the lease and provisions herein, and costs and expenses growing out of such failure to pay, shall be paid to the lessee forfeiting his rights therein. No leased water bottoms shall be forfeited for nonpayment of rent under the provisions of this section, unless there shall previously have been mailed by the said division to the last known address of such tenant according to the books of said division, 30 days' notice of the maturity of such lease. Whenever any leased water bottoms are forfeited for nonpayment of rent, and there is a plat or survey thereof in the archives of the division, when such bedding grounds are re-leased, no new survey thereof shall be made, but the original stakes, monuments, and bounds shall be preserved, and the new lease shall be based upon the original survey. This subsection shall also apply to all costs and expenses taxed against a lessee by the division under this section.

(8) CANCELLATION OF LEASES TO NATURAL REEFS.—Any person, within 6 months from and after the execution of any lease to water bottoms, may file a petition with the Division of Marine Resources for the purpose of determining whether a natural oyster or clam reef having an area of not less than 100 square yards existed within the leased area on the date of the lease, with sufficient natural or maternal oysters or clams thereon (not including coon oysters) to have constituted a stratum sufficient to have been resorted to by the public generally for the purpose of gathering the same to sell for a livelihood. The petition shall be in writing addressed to the Division of Marine Resources of the Department of Natural Resources, verified under oath, stating the location and approximate area of the natural reef and the claim or interest of the petitioner therein and requesting the cancellation of the lease to the said natural reef. No petition may be considered unless it is accompanied by a deposit of $10 to defray the expense of examining into the matter. The petition may include several contemporaneous natural reefs of oysters or clams. Upon receipt of such petition, the division shall cause an investigation to be made into the truth of the allegations of the petition, and, if found untrue, the $10 deposit shall be retained by the division to defray the expense of the investigation, but should the allegations of the petition be found true and the leased premises to contain a natural oyster or clam reef, as above described, the said $10 shall be returned to the petitioner and the costs and expenses of the investigation taxed against the lessee and the lease canceled to the extent of the natural reef and the same shall be marked with buoys and stakes and notices placed thereon showing the same to be a public reef, the cost of the markers and notices to be taxed against the lessee.

(9) WHEN NATURAL REEFS MAY BE INCLUDED IN LEASE.—When an application for oyster or clam bedding grounds is filed and upon survey of such bedding ground, it should develop that the area applied for contains natural oyster or clam reefs or beds less in size than 100 square yards, or oyster or clam reefs or bars of greater size, but not of sufficient quantity to constitute a stratum, and it should further be made to appear to the Division of Marine Resources by the affidavit of the applicant, together with such other proof as the division may require, that the natural reef, bed, or bar could not be excluded, and the territory applied for properly protected or policed, the division may, if it deems it for the best interest of the state and the oyster industry so to do, permit the including of such natural reefs, beds, or bars; and it shall fix a reasonable value on the same, to be paid by the applicant for such bedding ground; provided, that no such natural reefs shall be included in any lease hereafter granted to the bottom or bed of waters of this state contiguous to Franklin County. There shall be no future oyster leases issued in Franklin County.

(10) SETTLEMENT OF BOUNDARY DISPUTES; REVIEW.—The Division of Marine Resources shall determine and settle all disputes as to boundaries between lessees of bedding grounds. The division shall, in all cases, be the judge as to whether any particular bottom is or is not a natural reef or whether it is suitable for bedding oysters or clams.

(11) TRESPASS ON LEASED BEDS; GATHERING OYSTERS AND CLAMS BETWEEN SUNSET AND SUNRISE FROM NATURAL REEFS, ETC.—Any person who willfully takes oysters, shells, cultch, or clams bedded or planted by a licensee under this chapter, or grantee under the provisions of heretofore existing laws, or riparian owner who may have heretofore planted the same on his riparian bottoms, or any oysters or clams deposited by anyone making up a cargo for market, or who willfully carries or attempts to carry away the same without permission of the owner thereof, or who willfully or knowingly removes, breaks off, destroys, or otherwise injures or alters any stakes, bounds, monuments, buoys, notices, or other designations of any natural oyster or clam reefs or beds or private bedding or propagating grounds, or who willfully injures, destroys, or removes any other protection around any oyster or clam beds, or who willfully moves any bedding ground stakes, buoys, marks, or designations, placed by the division, or who gathers oysters or clams between sunset and sunrise from the natural reefs or from private bedding grounds, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(12) PROTECTION OF OYSTER AND CLAM REEFS.—The Division of Marine Resources shall improve, enlarge, and protect the natural oyster and clam reefs of this state to the extent it may deem advisable and the means at its disposal will permit. The division shall also, to the same extent, assist in protecting the leased or granted reefs in the hands of lessees or grantees from the state. The division shall also make a detailed report, to the Legislature at each session, of its efforts in relation to the oyster and clam business, together with recommendations for their development and the proper protection of the rights of the state and private holders therein.

(13) STAKING OFF WATER BOTTOMS OR BEDDING OYSTERS WITHOUT OBTAINING LEASE; PENALTY.—Any person staking off the water bottoms of this state, or bedding oysters on the bottoms of the waters of this state, without previously leasing same as required by law shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and shall acquire

no rights by reason of such staking off. This provision does not apply to grants heretofore made under the provisions of any heretofore existing laws or to artificial beds made heretofore by a riparian owner or his grantees on his riparian bottoms.

'(14) CLOSED SEASON FOR OYSTERS; RULES OF EVIDENCE; SPECIAL PROVISIONS RELATING TO FRANKLIN COUNTY.—No person may take, gather, or catch oysters on the natural reefs of this state, or have such oysters in his possession, between June 1 and September 1 of each year, except from private leased or granted grounds, or artificial beds of riparian owners and except as otherwise provided in this section. The possession of oysters during such closed season shall be prima facie a violation of this section, and the burden shall be on the possessor of such oysters to prove that they were fished or gathered beyond the jurisdiction of the state or from private oyster beds. The Division of Marine Resources shall, however, have authority to permit the fishing of unculled oysters from the natural oyster reefs as herein provided, from April 1 until October 1, but only for bedding purposes, and then only under such rules as the division may adopt to carry out the provisions of law. The provision prohibiting the harvesting of oysters shall not apply between June 1 and October 1 of each year in three areas of Franklin County, described as follows: in that area of East Bay, Franklin County, and located north of the John Gorrie Bridge classified as conditionally approved for the harvesting of shellfish by the Division of Marine Resources; in that area of Apalachicola Bay, Franklin County, and located south of the John Gorrie Bridge, east and north of the Gulf Intracoastal Waterway, and west of the Bryant Patton Bridge classified as conditionally approved for the harvesting of shellfish by the Division of Marine Resources; and in that area of St. George Sound, Franklin County, and located west of a line from the east end of St. George Island due north to the mainland, and located east of a line described as follows: begin at the tip of Shell Point on St. George Island, thence run northwest to Channel Marker No. 31, thence westerly along the intracoastal waterway to Channel Marker No. 41, thence north through Marker No. 5 to the mainland, which area is classified as approved for the harvesting of shellfish by the Division of Marine Resources. Further, no person may take, gather, or catch oysters from these three designated areas between October 2 and May 31 of each year. The provisions of this subsection regarding possession of oysters shall not apply to oysters harvested from Franklin County except that possession of unculled oysters between June 1 and September 1 outside of the three areas of Franklin County designated herein or possession of unculled oysters between October 2 and May 31 inside of these three designated areas shall be prima facie a violation of this section, and the burden of proof shall be upon the possessor of such oysters to prove that they were fished or gathered within a lawful area. All oysters shipped out of Franklin County between June 1 and October 1 shall be accompanied by invoices, bills of lading, or other similar instruments showing the oysters were produced in Franklin County, and the burden of proof shall be on the possessor of the oysters, except that this summer oyster season and its respective provisions shall be postponed in 1980 until 10 days after such time as the approved shellfish harvesting areas of Apalachicola Bay shall be reopened following satisfactory bacterial sampling results. This 10-day period shall be considered an extension of the regular harvesting season. Any other provision of this section to the contrary notwithstanding, any person who violates any of the special provisions of this subsection with respect to Franklin County is guilty of a misdemeanor and, for the first offense, shall be subject to a fine of not less than $200 and, for the second or subsequent offense, a fine of not less than $500 and a term of imprisonment of not less than 7 days in jail. Furthermore, notwithstanding the provisions of s. 948.01, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld with respect to any violation of the special provisions of this subsection relating to Franklin County.

'(15) REMOVING OYSTERS FROM NATURAL REEFS; LICENSES, ETC., PENALTY.—

(a) It is unlawful to use a dredge or any means or implement other than hand tongs in removing oysters from the natural or artificial state reefs, except in bodies of water over a general depth of 12 feet, or where in the opinion of the Division of Marine Resources, the body of water regardless of its depth, is too open and exposed to be ordinarily fished with hand tongs, in which event the division shall be authorized to issue a license for the use of scrapers or dredges; provided, the applicant shall pay an annual police license fee of $25 for each sailing or power vessel using scrapers or dredges, in addition to its other license, and shall give bond in favor of the Governor of the State of Florida, with good security, to be approved by the division in the sum of $3,000, conditioned that said implements shall not be used on the state reefs contrary to law. Upon the payment of $25 annually, for each vessel or boat using a dredge or machinery in the gathering of clams, a license may be issued by the division for such use to such person.

(b) Lessees of bedding grounds shall have the right to use in such bedding grounds any implements or appliances that they may desire. The division shall require that such lessees procure a permit from it to use such implements and shall require of the lessees that they furnish a bond payable to the Governor of the State of Florida, to be approved by the division, in the sum of $3,000, that such implements or appliances shall not be used on the natural oyster reefs contrary to law. When such implements or appliances are used exclusively on private propagating or bedding grounds, no charge shall be made for the permit. Anyone violating the provisions of this section shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Oysters may be harvested from natural or public grounds by common hand tongs or by hand without a harvesting method license being required. Oysters may be harvested by hand, by scuba diving, free diving, leaning from vessels, or wading.

'(16) CULLING OYSTERS; POSSESSION OF UNDERSIZED OYSTERS REGARDLESS OF SOURCE; SPECIAL PROVISIONS RELATING TO FRANKLIN COUNTY.—

(a) All oysters taken from the waters of this state shall be culled, unless otherwise provided in this section.

(b) In the case of oysters emanating from natural, publicly owned beds, all oysters which measure less than 3 inches in greatest dimensions and all bedding shells shall be immediately replaced and scattered broadcast upon the natural reefs from which they were taken.

(c) In the case of oysters emanating from privately owned or privately controlled beds, all oysters which measure less than 3 inches in greatest dimensions, and all bedding shells may be returned to lease or privately managed area or may be spread broadcast over natural, publicly owned reefs.

(d) No person shall be in possession while on the waters of this state of oysters which are less than the prescribed legal size, regardless of their source, except that oysters which are less than the prescribed legal size may be placed upon the culling board of a vessel while on the bar for the purpose of culling out illegal-sized oysters.

(e) In determining what oysters shall be removed from marketable oysters, no oysters under 3 inches in greatest dimension shall be included in the percentage of oysters undersized when they adhere to the marketable oysters so closely that to remove the same would destroy either the undersized oysters or the marketable oysters. No person in any vessel shall have in his possession oysters not culled according to law, unless permitted by the Division of Marine Resources for the purpose of planting or relaying as provided by law. An excess of over 15 percent of small oysters, estimated as above provided for, in any cargo or lot of oysters shall be considered a violation of this section. Any oysters under 3 inches in greatest dimension in any cargo or lot of oysters shall be a violation of this section during the special oyster harvesting season, June 1 to October 1, in Franklin County. The Division of Law Enforcement, any marine patrol officer, or any police officer of the state shall cause to be measured, to determine the percentage of undersized oysters, 1 sample bushel to be taken at random from the cargo of oysters, while such oysters are in the county from which they were harvested and before the oysters are deposited in an oyster house certified under the rules of the Department of Natural Resources. If a total of undersized oysters from the 1 bushel shall be more than 15 percent of the amount of oysters contained in the 1 bushel, it shall constitute a violation of this section, any other law to the contrary notwithstanding.

'(17) FISHING FOR BEDDING PURPOSES.—

(a) Designation of areas for the taking of oysters and clams to be planted on leases, grants, and public areas is to be made by qualified personnel of the Division of Marine Resources. Oysters and clams may be taken for relaying at any time during the year so long as, in the opinion of the division, the public health will not be endangered. The amount of oysters and clams to be obtained for relaying, the area relayed to, and relaying time periods will be established in each case by the division.

(b) Application for a permit for obtaining oysters and clams must be made to the division. In return, the division may assign an area and a period of time for the oysters and clams to be relayed to be taken. All planting and relaying operations shall take place under the surveillance of the division.

(c) Relayed oysters or clams shall not be subsequently harvested for any reason without written permission or public notice from the division, if oysters or clams were relayed from areas not approved by the division as shellfish harvesting areas.

(18) SEVERANCE TAX ON OYSTERS AND CLAMS; DISPOSITION.—No severance or privilege taxes on oysters and clams shall be collected after June 17, 1959, provided, all moneys in the "oyster severance tax fund" shall be transferred to the Oyster and Clam Rehabilitation Trust Fund.

(19) LICENSES; OYSTER AND CLAM CANNERIES.—Every person, as a condition precedent to the operation of any oyster or clam canning factory in this state, shall obtain a license therefor and pay a license fee of $50. The license shall be issued by the Division of Marine Resources upon proper written application on forms to be furnished by it. The moneys paid for licenses under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(20) FALSE RETURNS AS TO OYSTERS OR CLAMS HANDLED.—Each packer, canner, corporation, firm, commission man, or dealer in fish shall, on the first day of each month, make a return under oath to the Division of Marine Resources, as to the number of oysters, clams, and shellfish purchased, caught, or handled during the preceding month. All severance tax as provided for in subsection (18) shall be paid to the division with this report. Whoever is found guilty of making any false affidavit to any such report shall be guilty of perjury and punished as provided by law, and any person who fails to make such report shall be punished by a fine not exceeding $500 or by imprisonment in the county jail not exceeding 6 months.

(21) COLLECTION OF LICENSES AND TAXES.—All taxes and licenses shall be collected by the Division of Marine Resources under such rules and regulations as may be adopted by the division, and by it deposited in the State Treasury to the credit of the General Revenue Fund. The division shall keep a detailed account of all funds passing through its hands.

(22) WATER PATROL FOR COLLECTION OF TAX.—

(a) The Division of Law Enforcement may establish and maintain necessary patrols of the salt waters of Florida, with authority to use such force as may be necessary to capture any vessel or person violating the provisions of the laws relating to oysters and clams, and may establish ports of entry at convenient locations where the severance or privilege tax levied on oysters and clams may be collected or paid and may make such rules and regulations as it may deem necessary for the enforcement of such tax.

(b) Each person in any way dealing in shellfish shall keep a record, on blanks or forms prescribed by the Division of Marine Resources, of all oysters, clams, and shellfish taken, purchased, used, or handled by him, with the name of the persons from whom purchased, if purchased, together with the quantity and the date taken or purchased, and shall exhibit this account at all times when requested so to

do by the division or any conservation agent; and he shall, on the first day of each month, make a return under oath to the division as to the number of oysters, clams, and shellfish purchased, caught, or handled during the preceding month. The division may require detailed returns whenever it deems them necessary.

(23) SEIZURE OF VESSELS AND CARGOES VIOLATING OYSTER AND CLAM LAWS, ETC.—Vessels, with their cargoes, violating the provisions of the laws relating to oysters and clams may be seized by anyone duly and lawfully authorized to make arrests under this section or by any sheriff or his deputies, and taken into custody, and when not arrested by the sheriff or his deputies, delivered to the sheriff of the county in which the seizure is made, and shall be liable to forfeiture, on appropriate proceedings being instituted by the Division of Marine Resources, before the courts of that county. In such case the cargo shall at once be disposed of by the sheriff, for account of whom it may concern. Should the master or any of the crew of said vessel be found guilty of using dredges or other instruments in fishing oysters on natural reefs contrary to law, or fishing on the natural oyster or clam reefs out of season, or unlawfully taking oysters or clams belonging to a lessee, such vessel shall be declared forfeited by the court, and ordered sold and the proceeds of the sale shall be deposited with the Treasurer to the credit of the General Revenue Fund; any person guilty of such violations shall not be permitted to have any license provided for in this chapter within a period of 1 year from the date of conviction. Pending proceedings such vessel may be released upon the owner furnishing bond, with good and solvent security in double the value of the vessel, conditioned upon its being returned in good condition to the sheriff to abide the judgment of the court.

'(24) OYSTER REHABILITATION COMMISSION.—The Governor of this state may appoint in any county, where natural oyster reefs exist, an oyster rehabilitation commission for such county, the same to be composed of three good and lawful citizens of that county. The commission shall serve without compensation.

'(25) COMMISSION ADVISORY ONLY.—The oyster rehabilitation commission in any county shall constitute an advisory commission to the Division of Marine Resources with reference to all matters pertaining to the replanting and rehabilitation of natural oyster bars in such county and shall have no other power than to advise the division concerning the administration of the shellfish laws in the county in which its members are appointed; and to recommend to the division the manner and method of the expenditure of funds provided for the rehabilitation of natural oyster beds in the county so that the fullest benefit of such oyster beds may be received from the expenditure. The recommendation of the commission shall not be binding upon the division but is advisory only.

'(26) DUTIES OF COMMISSION.—The members of the oyster rehabilitation commission shall acquaint themselves with all conditions affecting the natural beds in the county for which appointed and shall locate, select, and recommend to the Division of Marine Resources the natural oyster beds in their respective counties in greatest need of rehabilitation; they shall recommend to the division the ways and means of replanting and rehabilitating the beds, having regard to local conditions, and make such other recommendations concerning the opening and closing of the natural reefs and beds and propagation and care of oysters thereon as may appear to them to be advisable.

'(27) CONFERENCE WITH DIVISION OF MARINE RESOURCES.—The Division of Marine Resources shall confer with, receive, and consider the recommendations of the several county oyster rehabilitation commissions concerning the shellfish industry of their respective counties and shall be governed thereby only to the extent that the same may be to the best interest of the shellfish industry of the state.

'(28) REMOVAL OF COMMISSIONERS.—The Governor may remove any commissioner appointed to any county oyster rehabilitation commission, who shall fail or neglect to diligently perform the duties of such office, and shall fill the vacancy so created by the removal so that there shall be a complete commission of three members in each county, having natural oyster reefs or beds, at all times.

(29) OYSTER AND CLAM REHABILITATION.—The board of county commissioners of the several counties may appropriate and expend such sums as it may deem proper for the purpose of planting or transplanting oysters, clams, oyster shell, clam shell, or cultch or to perform such other acts for the enhancement of the oyster and clam industries of the state, out of any sum in the county treasury not otherwise appropriated.

(30) OYSTER CONSERVATION DISTRICTS.—An oyster conservation district may be created whenever it appears to the Division of Marine Resources that there is a need for special protection, development, or encouragement of oyster planting or propagation within any area in the state, except private leased or granted oyster grounds. The area shall be readily identifiable by reference to geographical location or recognized landmarks, or by survey made by the division. Notice of the designation of the area or areas as oyster conservation district or districts shall be published once each week for 2 consecutive weeks, and such additional publicity of the creation of such district may be circulated as the division may deem necessary.

(31) REVENUE FROM SALE OF DEAD SHELLS AND LEASE BOTTOMS.—Any and all moneys hereafter received or collected by the Board of Trustees of the Internal Improvement Trust Fund under the provisions of s. 253.45, or any amendments thereof for or on the account of the sale of dead shell or for the right or privilege to take shell or shell deposits from the sovereign lands of the state shall be deposited in the State Treasury in the General Revenue Fund. These moneys shall be appropriated for use in financing biological, marketing, transportation, processing, and promotional research for fisheries, oyster, clams, and shrimp within the jurisdiction of this state. The Department of Natural Resources is authorized and directed to spend up to 20 percent of the moneys collected from the sale of dead

oyster shell dredged from that county's waters for the sole purpose of oyster and clam rehabilitation.

(32) DREDGING OF DEAD SHELLS FROM LIVE GROUND PROHIBITED.—The dredging of dead shell deposits from living oyster grounds is prohibited in the state. The Division of Marine Resources is empowered to prohibit all dredging of dead oyster shell deposits when in its judgment and discretion the same will adversely affect the oyster industry. The division, however, may authorize the dredging of dead oyster shell deposits by permit when in its judgment and discretion the same will not adversely affect the oyster industry of the state.

(33) OYSTER CONSERVATION COMMISSION WITHIN CONSERVATION DISTRICTS.—The Governor of this state shall appoint in any oyster conservation district which may be created under the provisions of subsection (30) an oyster conservation commission for the district, the same to be composed of seven outstanding citizens of the district, two of whom shall be experienced oyster gatherers, two of whom shall be experienced oyster dealers, and two of whom shall be experienced businessmen, not directly connected with the industry, and one of whom shall be the chief conservation agent in the oyster conservation district. The members of the commission shall serve without compensation and shall be vested with the duties, and subject to the limitations, prescribed by subsections (24) through (28) authorizing the creation of oyster rehabilitation commissions.

(34) COOPERATION WITH U.S. FISH AND WILDLIFE SERVICE.—The Division of Marine Resources shall cooperate with the United States Fish and Wildlife Service, under existing federal laws, rules, and regulations, and is authorized to accept donations, grants, and matching funds from the Federal Government under such conditions as are reasonable and proper for the purpose of carrying out subsections (29) through (34); and the division is further authorized to accept any and all donations including funds, oysters, or oyster shells.

(35) OYSTER AND CLAM SHELLS PROPERTY OF DIVISION.—

(a) Except for oysters used directly in the half-shell trade, all shells from oysters and clams shucked commercially in the state shall be and remain the property of the Division of Marine Resources when such shells are needed and required for rehabilitation projects and planting operations, when sufficient resources and facilities exist for handling and planting said shell, and when the collection and handling of such shell is practical and useful, except that bona fide holders of leases and grants who desire to retain such shell as they produce for planting purposes may do so by obtaining a permit from the division. Such storage, transportation, and planting of shells so retained by lessees and grantees shall be carried out under the surveillance of agents of the division and be subject to such reasonable time limits as the division may fix. In the event of an accumulation of an excess of shells, the division is authorized to sell shells only to private growers for use in oyster or clam cultivation on bona fide leases and grants. No profit shall accrue to the division in these transactions, and shells are to be sold for the estimated moneys spent by the division to gather and stockpile the shells. Planting of shells obtained from the division by purchase shall be subject to the surveillance of the division if the division chooses to exercise its right of supervision. Any shells not claimed and used by private oyster cultivators 10 years after shells are gathered and stockpiled, may be sold at auction to the highest bidder for any private use.

(b) Whenever the division determines that it is unfeasible to collect oyster or clam shells, the shells become the property of the producer.

(c) Whenever oyster or clam shells are owned by the division and it is not useful or feasible to use them in the rehabilitation projects, and when no leaseholder has exercised his option to acquire them, the division may sell such shells for the highest price obtainable. The shells thus sold may be used in any manner and for any purpose at the discretion of the purchaser.

(d) Moneys derived from the sale of shell shall be deposited in the State Treasury into the General Revenue Fund.

(e) The division shall annually publish notice, in a newspaper serving the county, of its intention to collect the oyster and clam shells and shall notify, by certified mail, each shucking establishment from which shells are to be collected. The notice shall contain the period of time the division intends to collect the shells in that county and the collection purpose.

*(36) OYSTER CULTURE.—The Division of Marine Resources shall protect all oyster beds, oyster grounds, and oyster reefs from damage or destruction resulting from improper cultivation, propagation, planting, or harvesting and control the pollution of the waters over or surrounding oyster grounds, beds, or reefs, and to this end the Department of Health and Rehabilitative Services is authorized and directed to lend its cooperation to the division, to make available to it its laboratory testing facilities and apparatus. The division may also do and perform all acts and things within its power and authority necessary to the performance of its duties.

(37) HEALTH PERMITS.—

(a) Any person engaged in harvesting, handling, or processing oysters for commercial use shall be required to obtain a health permit from the county health department or from a private physician.

(b) No person shall be employed or remain employed in a certified oyster house without the possession of the required health permit.

(c) For the purpose of this subsection, "commercial use" shall be a quantity of more than 4 bushels, or more than 2 gallons, of shucked oysters, per person or per boat, or any number or quantity of oysters if the oysters are to be sold.

*(38) REQUIREMENTS FOR OYSTER VESSELS.—

(a) All vessels used for the harvesting, gathering, or transporting of oysters for commercial use shall be constructed and maintained to prevent contamination or deterioration of oysters. To this end, all such vessels shall be provided with false bottoms and bulkheads fore and aft to prevent oysters from coming in contact with any bilge water. No dogs or other animals shall be allowed at any time on vessels used to harvest or transport oysters. A violation of any

provision of this subsection shall result in at least the revocation of the violator's license.

(b) For the purpose of this subsection, "commercial use" shall be a quantity of more than 4 bushels, or more than 2 gallons, of shucked oysters, per person or per boat, or any number or quantity of oysters if the oysters are to be sold.

History.—s. 2, ch. 28145, 1953; s. 1, ch. 57-256; s. 1, ch. 57-163; s. 1, ch. 59-346; s. 1, ch. 59-490; s. 1, ch. 61-89; s. 2, ch. 61-58; s. 3, ch. 61-22; s. 2, ch. 61-119; s. 1, ch. 61-100; s. 18, ch. 63-512; ss. 1, 2, ch. 63-120; s. 1, ch. 63-196; s. 3, ch. 65-140; s. 1, ch. 65-436; s. 1, ch. 67-234; ss. 19, 25-35, ch. 69-106; s. 298, ch. 71-136; s. 1, ch. 71-214; s. 1, ch. 71-245; s. 1, ch. 71-246; s. 129, ch. 71-377; s. 1, ch. 72-204; s. 1, ch. 72-236; s. 102, ch. 73-333; s. 1, ch. 75-120; s. 1, ch. 76-106; s. 1, ch. 77-92; s. 111, ch. 77-104; s. 52, ch. 77-147; s. 1, ch. 77-197; s. 1, ch. 77-206; s. 23, ch. 78-85; s. 1, ch. 79-96; s. 33, ch. 79-68; s. 1, ch. 79-111; ss. 1, 2, ch. 80-52; s. 1, ch. 82-46; s. 1, ch. 82-498; s. 6, ch. 83-134; s. 27, ch. 83-216; s. 2, ch. 83-265.

*Note.—Repealed effective July 1, 1984, by s. 6, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, subsections (14)-(12), (36), and (38) shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 6, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

*Note.—Repealed effective October 1, 1989, by s. 1, ch. 82-46, as amended by s. 2, ch. 83-265, and scheduled for review pursuant to s. 11.611 in advance of that date.

cf. s. 837.012 Perjury not in an official proceeding.

s. 837.02 Perjury in official proceedings.

370.161 Oyster bottom land grants made pursuant to chapter 3293, Laws of Florida, 1881.—

(1) All grants previously issued by the several boards of county commissioners under the authority of chapter 3293, Laws of Florida, 1881, shall be subject to provisions of s. 370.16, relating to the marking of such lands, the payment of rents, the cultivation of such lands and the forfeiture provisions.

(2) Any grantee of lands referred to in subsection (1) shall mark such lands and begin cultivation thereof as set forth in s. 370.16, within 90 days after the effective date of this act. The rentals prescribed by s. 370.16, shall be payable immediately upon the effective date of this act and in accordance with the provisions of said section.

(3) If any grantee shall fail to comply with the provisions of this act his grant shall become null and void and the lands shall return to the ownership and jurisdiction of the state.

History.—ss. 1, 2, 3, ch. 61-502.

370.1611 Oyster depuration plant.—

(1) The Division of Marine Resources is hereby authorized to establish and operate an oyster depuration plant in Brevard County or Indian River County.

(2) The division is authorized to commence the planning of an oyster depuration plant to be located in Brevard County or Indian River County upon the receipt of sufficient funds which may accrue for that purpose or which may otherwise become available. The division is authorized to accept grants, donations, gifts and moneys from any source whatsoever, including the Federal Government, for the purpose of planning, constructing and operating such a depuration plant.

History.—ss. 1, 2, ch. 67-951; s. 31, ch. 69-353; ss. 25, 35, ch. 69-106.

370.162 Purchase of sponges; state, county or municipality.—All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards and commissions charged with the letting of contracts or the making of purchases shall, in the purchase of sponges, always specify sponges grown, cultivated or otherwise produced in Florida, whenever such sponges are available and price, fitness and quality are equal.

History.—s. 1, ch. 67-12.

***370.17 Sponges; regulation.—**

(1) NONRESIDENT LICENSE; SPONGE FISHING; PENALTY.—Any nonresident of the state, who desires to engage in the business or occupation of sponge fishing, either for himself or any other person, shall, before entering into said business or occupation, procure a license therefor and pay an annual license tax of $50. Any person violating the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. One-half of any fine collected in any case shall be paid to the party furnishing the necessary proof of the violation of this section.

(2) USE OF DIVING SUITS, ETC., PROHIBITED; PENALTY.—No person may use diving suits, helmets, or other apparatus used by deep sea divers, in taking commercial sponges from any of the waters within the territorial limits of this state. Any person violating the provisions of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) USE AND SIZE OF HOOKS; PENALTY.—Any person engaged in gathering sponges by use of a hook shall use a hook 5 inches wide for the purpose of removing sponges from the bottom and no hook of other dimensions may be used. Any person violating this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) TAKING, POSSESSING COMMERCIAL; SIZE; PENALTIES.—

(a) No person may take, by any means or method, from the waters of the Gulf of Mexico, the straits of this state or the other waters within the territorial limits of this state, any commercial sponges, measuring, when wet, less than 5 inches in their maximum diameter.

(b) To make effective the foregoing subsection it is further provided that no person may land, cure, deliver, offer for sale, sell or have in his possession, within the territorial limits of this state, or upon any boat, vessel or vehicle, other than those operated interstate by common carriers, within the territorial limits of this state, any commercial sponges measuring, when wet, less than 5 inches in their maximum diameter.

(c) The presence of commercial sponges within the territorial limits of this state, or upon any boat, vessel, or vehicle, other than those operated interstate by common carriers, within the territorial limits of this state, measuring, when wet, less than 5 inches in their maximum diameter, shall be evidence that the person having such sponges in his possession has violated this section.

(d) Any person violating any of the provisions of

this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) SPONGE CONSERVATION DISTRICTS; CREATION.—Whenever it shall appear to the Division of Marine Resources that any area in the state is in need of special protection, development or encouragement in the planting or propagation of sponges within such area, except private leased or granted sponge grounds, the division may designate such area as a sponge conservation district. The said area shall be readily identifiable by reference to geographical location or recognized landmarks, or by survey made by the division. Notice of the designation of said area or areas as sponge conservation district or districts shall be published once each week for 2 consecutive weeks, and such additional publicity of the creation of such district may be circulated as the division may deem necessary. Provided that these provisions shall not apply to privately leased or granted grounds.

(6) POWERS OF THE DEPARTMENT.—The said department is authorized and empowered to make, promulgate, and put into effect all rules and regulations which the department may consider and decide to be necessary to accomplish the purpose of this chapter for the taking and cultivation of sponges, including the power and authority to determine and fix, in its discretion, the seasons and period of time within which public state grounds may be closed to the taking, possessing, buying, selling, or transporting of sponges from the sponge cultivation districts herein provided for and to regulate and prescribe the means and methods to be employed in the harvesting thereof; however, notice of all rules, regulations, and orders, and all revisions and amendments thereto, prescribing closed seasons or prescribing the means and methods of harvesting sponges adopted by the department shall be published in a newspaper of general circulation in the conservation district affected within 10 days from the adoption thereof, in addition to any notice required by chapter 120.

(7) SPONGE CONSERVATION COMMISSION; CREATION; DUTIES.—The Governor of this state shall appoint in any sponge conservation district, which may be created under the provisions of this act, a sponge conservation commission for the said district, the same to be composed of seven outstanding citizens of the said district, two of whom shall be experienced sponge fishermen, two of whom shall be experienced sponge dealers, and two of whom shall be experienced businessmen not directly connected with the industry, and one of whom shall be the chief conservation agent in the sponge conservation district. The members of such commission shall serve without compensation and shall be vested with the duties in regard to sponges and subject to the limitations prescribed by s. 370.16(25) and (26) prescribing the duties of the oyster rehabilitation commission.

(8) COOPERATION WITH U. S. FISH AND WILDLIFE SERVICE.—The department shall cooperate with the United States Fish and Wildlife Service, under existing federal laws, rules and regulations, and is authorized to accept donations, grants and matching funds from said federal government under such conditions as are reasonable and proper, for the purposes of carrying out this chapter, and said department is further authorized to accept any and all donations including funds and loan of vessels.

(9) RESTRICTIONS.—All sponges grown or cultivated by the state in pursuance of this law shall be the property of the state, the state shall neither lease nor sell any natural sponge areas or beds or any sponge areas or beds cultivated under the provisions of this chapter, and no person may use diving boats, diving suits, helmets or other apparatus used by deep sea divers in taking commercial sponges from any waters within the territorial limits of the state.

(10) PENALTY.—Any person violating any of the foregoing provisions shall, for the first offense, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the second offense, he shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and by the confiscation of all boats, tackle and equipment used in the commission of such violation.

History.—s. 2, ch. 29145, 1953; ss. 10, 25, 35, ch. 69-106; s. 299, ch. 71-136; s. 23, ch. 78-95; s. 6, ch. 83-134.

*Note.—Repealed effective July 1, 1984, by s. 6, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 6, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

370.171 Sponge diving; restricted waters.—

(1) Diving for sponges is hereby regulated in the following territorial waters of Florida, as follows:

Diving for sponges is prohibited in the territorial waters of Florida north of a parallel of latitude running through Piney Point (29°45'30" N.); that diving for sponges be prohibited in waters of less than three and a half fathoms between the parallel of latitude that runs through Piney Point, and the parallel of latitude that runs through Beacon No. 5 (29°18'36" N.) at the mouth of the Suwannee River; that diving for sponges be prohibited in waters of less than three fathoms, between the parallel of latitude that runs through Beacon No. 5 at the mouth of the Suwannee River and the parallel of latitude that runs through the southern tip of Anclote Key (28°09'54"); that diving for sponges be prohibited at distances of less than three miles from shore in the waters between the parallel of latitude that runs through the southern tip of Anclote Key and the parallel of latitude that passes through the northernmost boundary of Monroe County (25°48'06").

(2) Any person violating the provisions of this section shall for the first offense, be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the second offense, he shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and by the confiscation of all boats, tackle, and equipment used in the commission of such violation.

History.—ss. 1, 2, ch. 29997, 1955; s. 300, ch. 71-136; s. 6, ch. 83-134.

*Note.—Repealed effective July 1, 1984, by s. 6, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 6, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

370.172 Spearfishing; definition; limitations; penalty.—

(1) For the purposes of this section, "spearfishing" means the taking of any saltwater fish through the instrumentality of a spear, gig, or lance operated by a person swimming at or below the surface of the water.

(2) After October 1, 1973, it shall be lawful to spearfish in all salt waters and saltwater tributaries located in this state except as herein provided.

(3) Spearfishing is hereby prohibited:

(a) In the immediate area of all public bathing beaches.

(b) In the immediate area of all commercial or public fishing piers.

(c) In the immediate area beneath any bridge catwalk specifically designated for public fishing usage and all jetties.

(d)1. Within the boundaries of the John Pennekamp Coral Reef State Park, the waters of Collier County, and the area in Monroe County known as Upper Keys, which includes all salt waters under the jurisdiction of the Department of Natural Resources beginning at the county line between Dade and Monroe Counties and running south, including all of the keys down to and including Long Key.

2. For the purposes of this paragraph, the possession in the water of a spear, gig, or lance by a person swimming at or below the surface of the water in a prohibited area shall be prima facie evidence of a violation of the provisions of this paragraph regarding spearfishing.

(4) The taking of fish by spearfishing shall be limited to present and future bag limits as set forth by the Department of Natural Resources, which limits shall be identical to those applicable to other sports fishermen in this state.

(5) The sale of fish taken by spearfishing shall be subject to the same regulations and limitations applicable to other sports fishermen in this state.

(6) The Department of Natural Resources shall have the power to establish restricted areas when it is determined that safety hazards exist or when needs are determined by biological findings. Restricted areas shall be established only after an investigation has been conducted and upon application by the governing body of the county or municipality in which the restricted areas are to be located and one publication in a local newspaper of general circulation in said county or municipality in addition to any other notice required by law. Prior to promulgation of regulations, the local governing body of the area affected shall agree to post and maintain notices in the area affected.

(7) Any person violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Pursuant to s. 11(a)(21) of Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application in conflict with this act, but only such parts thereof as are in conflict with this act, affecting spearfishing in salt waters and saltwater tributaries.

History.—s. 1, ch. 67-103; ss. 25, 35, ch. 69-106; s. 300, ch. 71-136; ss. 1, 2, ch. 73-141; s. 1, ch. 77-154; s. 1, ch. 77-381; s. 23, ch. 78-95; s. 6, ch. 83-134.

*Note.—Repealed effective July 1, 1984, by s. 6, ch. 83-134, which further provides that if the Governor and Cabinet have not adopted appropriate rules by July 1, 1984, this section shall remain in force until such rules are effective. Section 9, ch. 83-134, provides that, prior to the adoption of rules amending, readopting, or repealing those provisions set forth in s. 6, the Marine Fisheries Commission shall hold a public hearing thereon, and no such amendment, readoption, or repeal shall be acted upon until it has been determined, based upon appropriate findings of fact, that such action will not adversely affect the resource.

†Note.—Chapter 73-141, which enacted subsection (8), was passed by the requisite three-fifths vote in each house. See s. 11(a)(21), Art. III, State Constitution.

370.18 Compacts and agreements; generally.—The Department of Natural Resources may enter into agreements of reciprocity with the fish commissioners or other departments or other proper officials of other states, whereby the citizens of the state may be permitted to take or catch shrimp or prawn from the waters under the jurisdiction of such other states, upon similar agreements to allow such nonresidents or aliens to fish for or catch seafood products within the jurisdiction of the state regardless of residence.

History.—s. 2, ch. 29145, 1953; ss. 25, 35, ch. 69-106.

370.19 Atlantic States Marine Fisheries Compact; implementing legislation.—

(1) FORM.—The Governor of this state is hereby authorized and directed to execute a compact on behalf of the State of Florida with any one or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell, and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating a monopoly.

ARTICLE II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may

become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. One shall be the executive officer of the administrative agency of such state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by the house committee on commerce and reciprocal trade of such state. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries problem to be appointed by the governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto and when two or more of the states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission.

An advisory committee to be representative of the commercial fishermen and the saltwater anglers and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the commission shall be limited to such species of anadromous fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions to conserve its fisheries.

ARTICLE X

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the governor thereof.

ARTICLE XI

The states party hereto agree to make annual appropriations to the support of the commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than $200 per annum and the annual contribution of each state above the minimum shall be figured to the nearest $100.

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

Schedule of Initial Annual
State Contributions

Maine	$ 700
New Hampshire	200
Massachusetts	2,300
Rhode Island	300
Connecticut	400
New York	1,300
New Jersey	800
Delaware	200
Maryland	700
Virginia	1,300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1,500

ARTICLE XII

This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending 6 months' notice in writing of intention to withdraw from the compact to the other states party hereto.

(2) COMMISSIONERS; APPOINTMENT AND REMOVAL.—In pursuance of Article III of said compact there shall be three members (hereinafter called commissioners) of the Atlantic State Marine Fisheries Commission (hereinafter called commission) from this state. The first commissioner from this state shall be the Executive Director of the Department of Natural Resources, ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office of Executive Director of the Department of Natural Resources, and his successor as commissioner shall be his successor as executive director. The second commissioner from this state shall be a legislator and member of the house committee on commerce and reciprocal trade (of the State of Florida, ex officio, designated by said house committee on commerce and reciprocal trade), and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office as commissioner on interstate cooperation, and his successor as commissioner shall be named in like manner. The Governor (subject to confirmation by the Senate), shall appoint a citizen as a third commissioner who shall have a knowledge of, and interest in, the marine fisheries problem. The term of said commissioner shall be 3 years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled by appointment by the Governor (subject to confirmation by the Senate), for the unexpired term. The Executive Director of the Department of Natural Resources as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said compact shall then have gone into effect in accordance with Article II of the compact; otherwise, they shall begin upon the date upon which said compact shall become effective in accordance with said Article II. Any commissioner may be removed from office by the Governor upon charges and after a hearing.

(3) POWERS OF COMMISSION AND COMMISSIONERS.—There is hereby granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of Florida are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the State of Florida to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the State of Florida are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively.

(4) POWERS OF COMMISSION SUPPLEMENTAL.—Any powers herein granted to the commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the State of Florida or by the laws of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida or by the Congress or the terms of said compact.

(5) ACCOUNTS TO BE KEPT BY COMMISSION; EXAMINATION.—

(a) The commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the Legislature of the State of Florida on or before the 10th day of December in each year, setting forth in detail the transactions conducted by it during the 12 months preceding December 1 of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of Florida which may be necessary to carry out the intent and purposes of the compact between the signatory states.

(b) The Department of Banking and Finance is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such department may deem proper and to report the results of such examination to the governor of such state.

(6) APPROPRIATION FOR EXPENSES OF COMMISSION.—The sum of $600, annually, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, for the expenses of the commission created by the compact authorized by this law. The moneys hereby appropriated shall be paid out of the State Treasury on the audit and warrant of the Comptroller upon vouchers certified by the chairman of the commission in the manner prescribed by law.

History.—s. 2, ch. 28145, 1953; ss. 12, 15, ch. 69-106; s. 130, ch. 71-377; s. 9, ch. 77-86.

370.29 Gulf States Marine Fisheries Compact; implementing legislation.—

(1) FORM.—The Governor of this state is hereby authorized and directed to execute the compact on behalf of the State of Florida with any one or more of the States of Alabama, Mississippi, Louisiana and Texas, and with such other state as may enter into a compact, legal joining therein in the form substantially as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

Whereas the gulf coast states have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent subject to article I, s. 10 of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned states and which are frequented by anadromous fish or marine species may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One shall be the head of the administrative agency of such state charged with the conservation of the fishery resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by such legislature or in the absence of such designation, such legislator shall be designated by the governor thereof, provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the gulf coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdiction to promote the preservation of these fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fishery resources of the aforementioned states.

To that end the commission shall draft and recommend to the governors and the legislatures of the various signatory states, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the gulf seaboard. The commission shall from time to time present to the governor of each compacting state its recommendations relating to enactments to be presented to the legislature of the state in furthering the interest and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the

fisheries and recommend the adoption of such regulations as it deems advisable.

The commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto and when two or more states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and vice chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The commission shall define which shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said fish and wildlife service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen and the salt water anglers and such other interests of each state as the commissioners deem advisable may be established by the commissioners from each state for the purpose of advising those commissioners upon such recommendations as it may desire to make.

ARTICLE VIII

When any state other than those named specifically in article II of this compact shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of article II, the participation of such state in the action of the commission shall be limited to such species of fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers or the proprietary interest of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

It is agreed that any two or more states party hereto may further amend this compact by acts of their respective legislatures subject to approval of Congress as provided in article I, s. 10, of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such states as shall be compact, and at their joint expense. The representatives of such states shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted but the creation of such section shall not be deemed to deprive the states so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other articles of this compact.

ARTICLE XI

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the governor thereof.

ARTICLE XII

The operating expenses of the Gulf States Marine Fisheries Commission shall be borne by the states party hereto. Such initial appropriations as are set forth below shall be made available yearly until modified as hereinafter provided:

Florida	$3,500
Alabama	1,000
Mississippi	1,000
Louisiana	5,000
Texas	2,500
Total	$13,000

The proration and total cost per annum of $13,000, above-mentioned, is estimated only, for initial operations, and may be changed when found necessary by the commission and approved by the legislatures of the respective states. Each state party hereto agrees to provide in the manner most acceptable to it, the travel costs and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

ARTICLE XIII

This compact shall continue in force and remain binding upon each compacting state until renounced by act of the legislature of such state, in such form as it may choose; provided that such renunciation shall

not become effective until 6 months after the effective date of the action taken by the legislature. Notice of such renunciation shall be given to the other states party hereto by the secretary of state of the compacting state so renouncing upon passage of the act.

(2) MEMBERS OF COMMISSION; TERM OF OFFICE.—In pursuance of article III of said compact, there shall be three members (hereinafter called commissioners) of the Gulf States Marine Fisheries Commission (hereafter called commission) from the State of Florida. The first commissioner from the State of Florida shall be the Executive Director of the Department of Natural Resources, ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office of Executive Director of the Department of Natural Resources, and his successor as commissioner shall be his successor as executive director. The second commissioner from the State of Florida shall be a legislator and a member of the house committee on commerce and reciprocal trade (of the State of Florida ex officio, designated by said house committee on commerce and reciprocal trade), and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office as commissioner on interstate cooperation, and his successor as commissioner shall be named in like manner. The Governor (subject to confirmation by the Senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said commissioner shall be 3 years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled by appointment by the Governor (subject to confirmation by the Senate) for the unexpired term. The Executive Director of the Department of Natural Resources, as ex officio commissioner, may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said compact shall then have gone into effect in accordance with article II of the compact; otherwise they shall begin upon the date upon which said compact shall become effective in accordance with said article II.

Any commissioner may be removed from office by the Governor upon charges and after a hearing.

(3) COMMISSION; POWERS.—There is hereby granted to the commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of Florida are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the State of Florida to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the State of Florida are hereby authorized and directed at convenient times and upon request of the said commission to furnish the said commission with information and data possessed by them or any of them and to aid said commission by loan of personnel or other means lying within their legal rights respectively.

(4) POWERS OF COMMISSION SUPPLEMENTAL.—Any powers herein granted to the commissioner shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said commission by other laws of the State of Florida or by the laws of the States of Alabama, Mississippi, Louisiana, Texas and Florida or by the Congress or the terms of said compact.

(5) ACCOUNTS TO BE KEPT BY COMMISSION; EXAMINATION.—The commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the Legislature of the State of Florida on or before the 10th day of December in each year, setting forth in detail the transactions conducted by it during the 12 months preceding December 1 of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of Florida which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The Department of Banking and Finance is hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements and such other items referring to its financial standing as such department may deem proper and to report the results of such examination to the governor of such state.

History.—s. 2, ch. 29165, 1953; ss. 12, 35, ch. 69-106; s. 131, ch. 71-377; s. 10, ch. 77-85.

370.21 Florida Territorial Waters Act; alien-owned commercial fishing vessels; prohibited acts; enforcement.—

(1) This act may be known and cited as the "Florida Territorial Waters Act."

(2) It is the purpose of this act to exercise and exert full sovereignty and control of the territorial waters of the state.

(3) No license shall be issued by the Division of Marine Resources of the Department of Natural Resources under s. 370.06, to any vessel owned in whole or in part by any alien power, which subscribes to the doctrine of international communism, or any subject or national thereof, who subscribes to the doctrine of international communism, or any individual who subscribes to the doctrine of international communism, or who shall have signed a treaty of trade, friendship and alliance or a nonaggression pact with any communist power. The division shall grant or withhold said licenses where other alien vessels are involved on the basis of reciprocity and retorsion, unless the nation concerned shall be designated as a friendly ally or neutral by a formal suggestion transmitted to the Governor of Florida by the Secretary of State of the United States. Upon the receipt of such suggestion licenses shall be granted under s. 370.06,

without regard to reciprocity and retorsion, to vessels of such nations.

(4) It is unlawful for any unlicensed alien vessel to take by any means whatsoever, attempt to take, or having so taken to possess, any natural resource of the state's territorial waters, as such waters are described by Art. II of the State Constitution.

(5) It is the duty of all harbormasters of the state to prevent the use of any port facility in a manner which they reasonably suspect may assist in the violation of this act. Harbormasters shall endeavor by all reasonable means, which may include the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types other than warships of the United States, the presence of alien commercial fishing vessels within the territorial waters of the state, and shall transmit such information promptly to the Department of Natural Resources and such law enforcement agencies of the state as the situation may indicate. Harbormasters shall request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from any port facility.

(6) All licensed harbor pilots are required to promptly transmit any knowledge coming to their attention regarding possible violations of this act to the harbormaster of the port or the appropriate law enforcement officials.

(7) All law enforcement agencies of the state, including but not limited to sheriffs and agents of the Department of Natural Resources are empowered and directed to arrest the masters and crews of vessels who are reasonably believed to be in violation of this law, and to seize and detain such vessels, their equipment and catch. Such arresting officers shall take the offending crews or property before the court having jurisdiction of such offenses. All such agencies are directed to request assistance from the United States Coast Guard in the enforcement of this act when having knowledge of vessels operating in violation or probable violation of this act within their jurisdictions when such agencies are without means to effectuate arrest and restraint of vessels and their crews.

(8) The fine or imprisonment of persons and confiscation proceedings against vessels, gear and catch prescribed for violations of this chapter, shall be imposed for violation of this act; provided that nothing herein shall authorize the repurchase of property for a nominal sum by the owner upon proof of lack of complicity in the violation or undertaking.

(9) No crew member or master seeking bona fide political asylum shall be fined or imprisoned hereunder.

(10) Harbormasters and law enforcement agencies are authorized to request assistance from the Civil Air Patrol in the surveillance of suspect vessels. Aircraft of the Division of Forestry of the Department of Agriculture and Consumer Services or other state or county agencies which are conveniently located and not otherwise occupied may be similarly utilized.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, ch. 67-292; ss. 14, 25, 35, ch. 69-106.

370.22 Venue for proceedings against citizens and residents charged with violations outside state boundaries.—

(1) In any proceeding against a resident or citizen of the state to enforce the provisions of this chapter with respect to alleged violations occurring beyond the territorial waters of the state, the proper venue shall be the county within the state which is nearest the site of the violation.

(2) For the purpose of this section, any person having embarked from, or having docked his vessel in, a port within this state who violates any provision of this chapter with respect to the unlawful landing of saltwater life, whether or not outside the territorial waters of the state, shall be considered a citizen of the state for the purpose of subjecting him to the police powers of the state.

History.—s. 1, ch. 75-91.

370.23 Sale of unlawfully landed product; jurisdiction.—It is unlawful for any person to bring to port, sell, or offer to sell any saltwater life landed in violation of the provisions of this chapter. Any person committing such a violation and docking his vessel at any port in the state, whether or not such product was landed in the territorial waters of the state, shall be deemed to have submitted himself to the jurisdiction of the courts of this state for the purpose of the enforcement of the provisions of this chapter.

History.—s. 2, ch. 75-91.

370.25 Artificial fishing reefs; construction grants to local governments.—

(1) The Department of Natural Resources shall establish a program to provide grants to coastal local governments for constructing artificial fishing reefs in the salt waters of the state to enhance saltwater fishing. The program shall be funded from state, federal, and private contributions.

(2) The department shall adopt by rule procedures for submitting a grant application and criteria for allocating available funds. Such criteria shall include, but not be limited to, the following:

(a) The number of artificial fishing reefs currently located in the general vicinity;

(b) The demand and public support for the proposed reef;

(c) The number of public and private access points to the proposed reef;

(d) The commitment of the local government to provide funds to construct and maintain the proposed reef; and

(e) The estimated cost of constructing the proposed reef.

History.—s. 1, ch. 81-267.

CHAPTER 372

WILDLIFE

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372.60 Issuing of duplicate license.
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372.65 Freshwater fish or frog dealer's license and other licenses for fish or frog dealers, farmers, or takers.
372.651 Haul seine and trawl permits; freshwater lakes in excess of 500 square miles; fees.
372.653 Required tagging of fish; lakes in excess of 500 square miles; tag fee; game fish taken in lakes of 500 square miles or less.
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372.661 Private hunting preserve, license; exception.
372.662 Unlawful sale, possession, or transporting of alligators or alligator skins.
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372.665 Word "alligator" or "gator" not to be used in certain sales.
372.667 Feeding or enticement of alligators or crocodiles unlawful; penalty.
372.671 Florida panther; killing prohibited; penalty.
372.672 Florida Panther Research and Management Trust Fund.
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372.68 Freshwater fish dealers to report.
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372.70 Prosecutions.
372.701 Arrest by officers of the Game and Fresh Water Fish Commission; recognizance; cash bond; citation.
372.71 Fines and penalties; forfeiture of license.
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372.75 Use of explosives and other substances prohibited.
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372.761 Issuance of warrant for search of private dwelling.
372.77 Assent to provisions of Act of Congress of September 2, 1937.
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372.84 Forfeiture or denial of licenses and permits.
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372.86 Possessing, exhibiting poisonous or venomous reptile; license required.
372.87 License fee; renewal, revocation.
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372.911 Penalty.
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372.92 Rules and regulations.
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372.97 Jim Woodruff Dam; reciprocity agreements.
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372.98 Possession of nutria; license; inspection; penalty for violation.
372.981 Regulation of importation of caiman.
372.99 Illegal taking and possession of deer and wild turkey; evidence; penalty.
372.9901 Seizure of illegal devices; disposition; appraisal; forfeiture.
372.9902 Inapplicability of ss. 372.99 and 372.9901.
372.9903 Illegal possession or transportation of freshwater game fish in commercial quantities; penalty.
372.9904 Seizure of illegal devices; disposition; appraisal; forfeiture.
372.9905 Applicability of ss. 372.9903 and 372.9904.
372.991 Nongame Wildlife Trust Fund.
372.992 Nongame Wildlife Advisory Council.

372.001 Definitions.—In construing these statutes, when applied to salt and freshwater fish, shellfish, crustacea, sponges, wild birds, and wild animals, where the context permits, the word, phrase, or term:

(1) "Residents of Florida" includes citizens of the United States who have continuously resided in the state for 1 year and in the county for 6 months; provided, however, members of the armed services stationed in Florida are deemed residents of this state.

(2) "Fish and game" includes all fresh and saltwater fish, shellfish, crustacea, sponges, wild birds, and wild animals.

(3) "Game animals" includes deer and squirrels.

(4) "Fur-bearing animals" includes muskrat, mink, raccoon, otter, civet cat, skunk, red and gray fox, bear, panther, and opossum.

(5) "Game birds" includes the anatidae, commonly known as swans, geese, brant, and river and sea ducks; rallidae, commonly known as rails or marsh hens, coots, and gallinules; limcolae, commonly known as shore birds, plovers, surf birds, snipe, woodcocks, sandpipers, tattlers, and curlews; galliae, commonly known as wild turkeys, grouse, pheasants, and quail; and the species of columbae, known as mourning doves (commonly called turtle doves).

(6) "Nongame birds" includes all wild birds other than game birds.

(7) "Freshwater fish" includes all classes of pisces that are indigenous to freshwater.

(8) "Open season" is that portion of the year wherein the laws of Florida for the preservation of fish and game permit the taking of particular species of game or varieties of fish.

(9) "Closed season" is that portion of the year wherein the laws of Florida forbid the taking of particular species of game or varieties of fish.

(10) "Freshwater," except where otherwise provided by law, includes all lakes, rivers, canals, and other waterways of Florida, to such point or points where the fresh and salt waters commingle to such an extent as to become unpalatable and unfit for human consumption, because of the saline content, or to such point or points as may be fixed by the Game and Fresh Water Fish Commission, by and with the consent of the board of county commissioners of the county or counties to be affected by such order. The Steinhatchee River shall be considered freshwater from its source to mouth.

(11) Wherever it is made "lawful to take" game, nongame birds, freshwater fish, or fur-bearing animals or parts thereof or birds' nests or eggs, it shall mean the pursuit, hunting, capturing, or killing thereof in the manner and at the time and by means specifically permitted.

(12) Wherever it is made "unlawful to take" game, nongame birds, freshwater fish or fur-bearing animals or parts thereof or birds' nests or eggs, the phrase shall include pursuing, shooting, hunting, killing, trapping, capturing, snaring, netting, gigging, and collecting and all lesser acts such as worrying the same or placing or using any net or other device for the purpose of taking same, whether or not they result in the intended taking.

(13) "Common carrier" includes any person, firm, or corporation, which undertakes for hire, as a regular business, to transport persons or commodities from place to place offering its services to all such as may choose to employ it and pay its charges.

(14) "Transport" includes shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation, or carriage or export.

(15) "Guide" includes any person engaged in the business of guiding hunters or hunting parties, or fishermen or fishing parties, for compensation.

(16) "Private hunting preserve" includes any area set aside by a private individual or concern on which artificially propagated game or birds are taken.

(17) "Fish management area" is a pond, lake, or other water within a county or within several counties designated to improve fishing for public use and established and specifically circumscribed for authorized management by the Game and Fresh Water Fish Commission and the board of county commissioners of the county in which such waters lie under agreement between the commission and an owner with approval by the board of county commissioners or under agreement with the board of county commissioners for use of public waters in the county in which such waters lie.

History.—s. 7, ch. 3147, 1879; ss. 1, 2, 3, ch. 3292, 1881; RS 2761, 2762; ss. 1, 18, 21, ch. 6532, 1913; ss. 11, 17, ch. 6877, 1915; RGS 1230, 1247, 1249, 1272, 5830; s. 1, ch. 9588, 1921; s. 1, ch. 11938, 1927; CGL 1788, 1805, 1807, 1840, 1902, 8063; s. 1, ch. 11044, 1929; CGL 1940 Supp. 1977(1); s. 1, ch. 19226, 1939; CGL 1940 Supp. 1977(1a); s. 1, ch. 59-70; s. 1, ch. 61-39; s. 1, ch. 69-166; s. 222, ch. 81-259; s. 29, ch. 83-216.

Note.—Former s. 371.01.

372.01 Game and Fresh Water Fish Commission.—

(1) The Game and Fresh Water Fish Commission shall consist of five members who shall be appointed by the Governor, subject to confirmation by the Senate, for staggered terms of 5 years.

(2) Members so appointed shall annually select one of their members as chairman. Such chairman may be removed at any time for sufficient cause, by the affirmative vote of the majority of the members of the commission. In case the said office of chairman becomes vacant by removal or otherwise, the same may be filled for the unexpired term at any time by the commission from its members.

(3) Commission members shall receive no compensation for their services as such, but shall be reimbursed for traveling expenses as provided in s. 112.061.

History.—ss. 2, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); s. 1, ch. 26766, 1951; s. 19, ch. 83-49; s. 108, ch. 71-355; s. 1, ch. 78-125.
cf.—s. 9, Art. IV, State Const.

372.021 Powers, duties, and authority of commission; rules, regulations, and orders.—The Game and Fresh Water Fish Commission may exercise the powers, duties, and authority granted by s. 9, Art. IV of the Constitution of Florida by the adoption of rules, regulations, and orders in accordance with chapter 120.

History.—ss. 4, 5, ch. 21945, 1943; s. 7, ch. 69-216; ss. 10, 35, ch. 69-106; s. 103, ch. 73-333; s. 16, ch. 78-95.
Note.—Former s. 372.82.

372.0225 Freshwater organisms.—

(1) The Division of Fisheries of the Game and Fresh Water Fish Commission, in order to manage the promotion, marketing, and quality control of all freshwater organisms produced in Florida and utilized commercially so that such organisms shall be used to produce the optimum sustained yield consistent with the protection of the breeding stock, is directed and charged with the responsibility of:

(a) Providing for the regulation of the promotion, marketing, and quality control of freshwater organisms produced in Florida and utilized commercially.

(b) Regulating the processing of commercial freshwater organisms on the water or on the shore.

(c) Providing documentation standards and statistical record requirements with respect to commercial freshwater organism catches.

(d) Regulating aquacultural facilities.

(e) Conducting scientific, economic, and other studies and research on all freshwater organisms produced in the state and used commercially.

(2) The responsibility with which the Division of Fisheries is charged under subsection (1) shall in no way supersede or duplicate the responsibilities of the Department of Agriculture and Consumer Services under chapter 500, the Florida Food Act, and the rules promulgated thereunder.

History.—ss. 1, 2, ch. 78-310; s. 29, ch. 83-216.

372.023 J. W. Corbett and Cecil M. Webb Wildlife Management Areas.—

(1) The Game and Fresh Water Fish Commission of this state is neither authorized nor empowered to do the following as to the J. W. Corbett Wildlife Management Area in Palm Beach County or the Cecil M. Webb Wildlife Management Area without the approval of the Board of Trustees of the Internal Improvement Trust Fund that such action is in the best interest of orderly and economical development of said area, viz.:

(a) To trade, barter, lease, or exchange lands therein for lands of greater acreage contiguous to said wildlife management areas.

(b) To grant easements for construction and maintenance of roads, railroads, canals, ditches, dikes and utilities, including but not limited to telephone, telegraph, oil, gas, electric power, water and sewers.

(c) To convey or release all rights in and to the phosphate, minerals, metals and petroleum that is or may be in, on or under any lands traded, bartered, leased or exchanged pursuant to paragraph (a).

(2) The Board of Trustees of the Internal Improvement Trust Fund and the State Board of Education and all and every board, state department or state agency of the state having any title, right and interest in or to the land including oil and mineral rights in the lands to be traded, bartered, leased or exchanged within the J. W. Corbett Wildlife Management Area in Palm Beach County, is authorized and empowered to convey this interest of whatsoever nature to the record owner.

(3) Moneys received from the sale of lands within either wildlife management area, less reasonable expenses incident to the sale, shall be used by the Game and Fresh Water Fish Commission to acquire acreage contiguous to the wildlife management area or lands of equal wildlife value. The sale shall be made directly to the state, notwithstanding the procedures of ss. 270.08 and 270.09 to the contrary.

History.—ss. 1, 2, ch. 30410, 1956; ss. 27, 35, ch. 69-106; s. 1, ch. 70-60; s. 1, ch. 75-301.
cf.—s. 253.03 Title to state lands.

372.025 Everglades recreational sites; definitions.—

(1) PURPOSE.—It is the intent of the Legislature to provide for the development and management of recreational sites in the water conservation areas of the Florida Everglades when such development:

(a) Can be accomplished without endangering the water quality and quantity of supply and where environmental impact will be minimal.

(b) Is located on the exterior fringes of the Everglades to discourage extensive uncontrolled use of the interior regions.

(c) Is located where convenient access is possible for the millions of Floridians living in urban areas.

(d) Offers recreational potential for nature trails, bird study, picnic areas, boating, fishing, hunting, and target shooting.

(e) Is located where proper management and law enforcement can be provided.

(2) DEFINITIONS.—As used in this section:

(a) "Commission" means the Game and Fresh Water Fish Commission.

(b) "Flood control district" means the Central and Southern Florida Flood Control District Board.

(c) "Indian reservations" means lands as designated by chapter 285.

(d) "Buffer zone" means an area located between developed and wilderness areas where some restrictions on the type of future development shall be imposed.

(e) "Preliminary plan" means those suggested guidelines as herein provided to be considered by the Everglades Recreational Planning Board in arriving at its final plan for implementation.

(f) "Development of recreational sites" means any improvements to existing facilities or sites and also such new selection and improvements as are needed for the various recreational activities as herein provided.

(3) RECREATIONAL SITES.—The Game and Fresh Water Fish Commission is directed to develop, manage, and enforce laws on certain recreational sites in the water conservation areas of the Everglades from funds to be appropriated by the Legislature.

(4) No recreational site will be developed on any Indian reservations as created by chapter 285 without first obtaining written approval for such development from the Indians of the particular reservation lands affected.

History.—ss. 1, 2, 3, 4, 5, ch. 73-249; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 26, ch. 83-85; s. 27, ch. 83-218.
Note.—The Everglades Recreational Planning Board was abolished by s. 4, ch. 78-323.

372.03 Headquarters of commission.—The Game and Fresh Water Fish Commission is located at the state capital, and, when suitable adequate office space cannot be provided in the State Capitol Building, or other buildings owned by the state, the commission may rent or lease suitable office space in Tallahassee. Said commission may also rent or lease suitable and adequate space in other cities and towns of the state for branch or division offices and headquarters and storerooms for equipment and supplies, as the business of the commission may require or necessitate, payment for said rented or leased premises to be made from the State Game Trust Fund.

History.—s. 2, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); s. 2, ch. 81-119.

372.04 Director of commission.—The commission shall appoint, fix the salary of, and at pleasure remove, a suitable person, not a member of the commission, as director. Said director shall be reimbursed for traveling and other expenses incurred in the discharge of his official duties. The director shall give bond in the sum of $10,000, conditioned upon the faithful performance of his official duties, payable to the Governor and his successors in office, with some reputable bonding corporation authorized to do business in this state as surety, said bond to be approved by the Department of Banking and Finance. Said director shall maintain his headquarters and reside in Tallahassee.

History.—s. 2, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); s. 2, ch. 26766, 1951; ss. 12, 35, ch. 69-106.

372.05 Duties of director.—The director shall:

(1) Keep full and correct minutes of the proceedings of said commission at its meetings, which minutes shall be open for public inspection.

(2) Purchase such supplies and employ such help and assistants as may be reasonably necessary in the performance of his duties.

(3) Have full authority to represent the commission in its dealings with other state departments, county commissioners, and the federal government.

(4) Submit to the commission at each of its meetings a report of all his actions and doings as official representative of the commission.

(5) Visit each county in the state at least once each year and oftener if it appears to him to be necessary.

(6) Appoint, fix salaries of, and at pleasure remove, subject to the approval of the commission, assistants and other employees who shall have such powers and duties as may be assigned to them by the commission or director.

(7) Have such other powers and duties as may be prescribed by the commission in pursuance of its duties under s. 9, Art. IV, of the State Constitution.

History.—ss. 2, 3, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2); 1977(3); s. 3, ch. 26766, 1951; s. 7, ch. 69-216.

372.051 Seal of commission; certificate as evidence.—The Game and Fresh Water Fish Commission shall adopt and use a common seal, and a certificate under the seal of the commission, signed by its chairman and attested by its director shall constitute sufficient evidence of the action of the commission; and copies of the minutes of the commission, or any part thereof, or of any record or paper of said commission, or any part thereof, or of any rule, regulation, or order of the commission, or any part thereof, or of any code of rules, regulations or orders of the commission, or any part thereof, certified by the director of the commission under its seal, shall be admissible in evidence in all cases and proceedings in all courts, boards and commissions of this state without further authentication.

History.—s. 3, ch. 21945, 1943; s. 4, ch. 26766, 1951.
Note.—Former s. 372.01.

372.06 Meetings of the commission.—At least four meetings of the Game and Fresh Water Fish Commission shall be held at the state capital no less frequently than once every 3 months, which meetings shall be known as the quarterly meetings of the commission; other meetings may be held at such times and places as may be decided upon or as provided by rules of the commission, such meetings to be called by the executive secretary on not less than 1 week's notice to all members of the commission; or meetings may be held upon the request in writing of three members of the commission, at a time and place to be designated in the request, and notice of such meetings shall be given at least 1 week in advance thereof to all members of the commission by the executive secretary. Three members shall constitute a quorum at any meeting of the commission. No action shall be binding when taken up by the commission, except at a regular or call meeting and duly recorded in the minutes of said meeting.

History.—s. 2, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(2).

372.061 Meetings; authority to hold at any

point in state.—From and after June 15, 1953, the Game and Fresh Water Fish Commission of the state is hereby authorized and empowered to hold its meetings at any point in the state.

History.—ss. 1, 2, ch. 28319, 1953; s. 16, ch. 74-98.

372.07 Police powers of commission and its agents.—

(1) The Game and Fresh Water Fish Commission, the director and his assistants designated by him, and each wildlife officer are constituted peace officers with the power to make arrests for violations of the laws of this state when committed in the presence of the officer or when committed on lands under the supervision and management of the commission. The general laws applicable to arrests by peace officers of this state shall also be applicable to said director, assistants, and wildlife officers. Such persons may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment, and such entry shall not constitute a trespass.

(2) Said officers shall have power and authority to enforce throughout the state all laws relating to game, nongame birds, freshwater fish, and fur-bearing animals and all rules and regulations of the Game and Fresh Water Fish Commission relating to wild animal life and freshwater aquatic life, and in connection with said laws, rules, and regulations, in the enforcement thereof and in the performance of their duties thereunder, to:

(a) Go upon all premises, posted or otherwise;

(b) Execute warrants and search warrants for the violation of said laws;

(c) Serve subpoenas issued for the examination, investigation, and trial of all offenses against said laws;

(d) Carry firearms or other weapons, concealed or otherwise, in the performance of their duties;

(e) Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of said laws or, in pursuit immediately following such violations, to examine any person, boat, conveyance, vehicle, game bag, game coat, or other receptacle for wild animal life or freshwater aquatic life, or any camp, tent, cabin, or roster, in the presence of any person stopping at or belonging to such camp, tent, cabin, or roster, when said officer has reason to believe, and has exhibited his authority and stated to the suspected person in charge his reason for believing, that any of the aforesaid laws have been violated at such camp;

(f) Secure and execute search warrants and in pursuance thereof to enter any building, enclosure, or car and to break open, when found necessary, any apartment, chest, locker, box, trunk, crate, basket, bag, package, or container and examine the contents thereof;

(g) Seize and take possession of all wild animal life or freshwater aquatic life taken or in possession or under control of, or shipped or about to be shipped by, any person at any time in any manner contrary to said laws.

(3) It is unlawful for any person to resist an arrest authorized by this section or in any manner to interfere, either by abetting, assisting such resistance, or otherwise interfering with said director, assistants, or wildlife officers while engaged in the performance of the duties imposed upon them by law or regulation of the Game and Fresh Water Fish Commission.

History.—s. 3, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(10); s. 7, ch. 22858, 1945; s. 1, ch. 70-404.

372.071 Powers of arrest by agents of Department of Natural Resources or Game and Fresh Water Fish Commission.—Any certified law enforcement officer of the Department of Natural Resources or the Game and Fresh Water Fish Commission, upon receiving information, relayed to him from any law enforcement officer stationed on the ground, on the water, or in the air, that a driver, operator, or occupant of any vehicle, boat, or airboat has violated any section of chapter 327, chapter 328, chapter 370, or chapter 372, may arrest the driver, operator, or occupant for violation of said laws when reasonable and proper identification of the vehicle, boat, or airboat and reasonable and probable grounds to believe that the driver, operator, or occupant has committed or is committing any such offense have been communicated to the arresting officer by the other officer stationed on the ground, on the water, or in the air.

History.—s. 1, ch. 79-396; s. 1, ch. 79-217.

372.072 Endangered and Threatened Species Act.—

(1) SHORT TITLE.—This section may be cited as the "Florida Endangered and Threatened Species Act of 1977."

(2) DECLARATION OF POLICY.—The Legislature recognizes that the State of Florida harbors a wide diversity of fish and wildlife and that it is the policy of this state to conserve and wisely manage these resources, with particular attention to those species defined by the Game and Fresh Water Fish Commission, the Department of Natural Resources, or the U.S. Department of Interior, or successor agencies, as being endangered or threatened. As Florida has more endangered and threatened species than any other continental state, it is the intent of the Legislature to provide for research and management to conserve and protect these species as a natural resource.

(3) DEFINITIONS.—As used in this section:

(a) "Fish and wildlife" means any member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate.

(b) "Endangered species" means any species of fish and wildlife naturally occurring in Florida, whose prospects of survival are in jeopardy due to modification or loss of habitat; over-utilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence.

(c) "Threatened species" means any species of fish and wildlife naturally occurring in Florida which may not be in immediate danger of extinction, but which exists in such small populations as to become endangered if it is subjected to increased stress as a result of further modification of its environment.

(4) INTERAGENCY COORDINATION.—

(a)1. The Game and Fresh Water Fish Commission shall be responsible for research and management of freshwater and upland species.

2. The Department of Natural Resources shall be responsible for research and management of marine species.

(b) Recognizing that citizen awareness is a key element in the success of this plan, the Game and Fresh Water Fish Commission, the Department of Natural Resources, and the Office of Environmental Education of the Department of Education are encouraged to work together to develop a public education program with emphasis on, but not limited to, both public and private schools.

(5) ANNUAL REPORT.—The Director of the Game and Fresh Water Fish Commission, in consultation with the Executive Director of the Department of Natural Resources, shall, at least 30 days prior to each annual session of the Legislature, transmit to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the appropriate Senate and House committees, a revised and updated plan for management and conservation of endangered and threatened species, including criteria for research and management priorities; a description of the educational program; statewide policies pertaining to protection of endangered and threatened species; additional legislation which may be required; and the recommended level of funding for the following year, along with a progress report and budget request.

History.—ss. 1, 2, 3, 4, 5, 8, ch. 77-375; s. 4, ch. 78-323; s. 92, ch. 79-164; s. 26, ch. 83-85; s. 29, ch. 83-218.

372.073 Endangered and Threatened Species Reward Trust Fund.—

(1) There is established within the Game and Fresh Water Fish Commission the Endangered and Threatened Species Reward Trust Fund to be used exclusively for the purposes of this section. The fund shall be for the primary purpose of posting rewards to persons responsible for providing information leading to the arrest and conviction of persons illegally killing or wounding or wrongfully possessing any of the endangered and threatened species listed on the official Florida list of such species maintained by the commission or the arrest and conviction of persons who violate s. 372.667 or s. 372.671. The fund shall be credited with money collected pursuant to s. 372.72(2). Additional funds may be provided by donations from interested individuals and organizations and from legislative appropriations. The reward program is to be administered by the commission. The commission shall establish a schedule of rewards.

(2) Proceeds from the fund shall be expended only for the following purposes:

(a) The payment of rewards to persons, other than law enforcement officers, commission personnel, and members of their immediate families, for information as specified in subsection (1); or

(b) The promotion of public recognition and awareness of the endangered and threatened species reward program.

History.—s. 2, ch. 79-217; s. 29, ch. 83-218.

372.09 State Game Trust Fund.—The funds resulting from the operation of the commission and from the administration of the laws and regulations pertaining to birds, game, fur-bearing animals, freshwater fish, reptiles, and amphibians, together with any other funds specifically provided for such purposes shall constitute the State Game Trust Fund and shall be used by the commission as it shall deem fit in carrying out the provisions hereof and for no other purposes. The commission may not obligate itself beyond the current resources of the State Game Trust Fund unless specifically so authorized by the Legislature.

History.—s. 13, ch. 13644, 1929; s. 1, ch. 17016, 1935; CGL 1936 Supp. 1977(10); s. 7, ch. 22858, 1945.

372.12 Acquisition of state game lands.—The Game and Fresh Water Fish Commission, with the approval of the Governor, may acquire, in the name of the state, lands and waters suitable for the protection and propagation of game, fish, nongame birds or fur-bearing animals, or for hunting purposes, game farms, by purchase, lease, gift or otherwise to be known as state game lands. The said commission may erect such buildings and fences as may be deemed necessary to properly maintain and protect such lands, or for propagation of game, nongame birds, freshwater fish or fur-bearing animals. The title of land acquired by purchase, lease, gift or otherwise, shall be approved by the Department of Legal Affairs. The deed to such lands shall be deposited as are deeds to other state lands. No such lands shall be purchased at a price to exceed $10 per acre. No property acquired under this section shall be exempt from state, county or district taxation.

History.—ss. 6, 67, ch. 13644, 1929; CGL 1936 Supp. 1977(60), 1977(62); s. 7, ch. 22858, 1945; s. 24, ch. 29615, 1959; ss. 11, 35, ch. 69-106.

cf. s. 253.03 Title to state lands.

s. 372.139 Preserves, refuges, etc.; real tax exempt.

372.121 Control and management of state game lands.—

(1) The Game and Fresh Water Fish Commission is authorized to make, adopt, promulgate, amend, repeal, and enforce all reasonable rules and regulations necessary for the protection, control, operation, management, or development of lands or waters owned by, leased by, or otherwise assigned to, the commission for fish or wildlife management purposes, including but not being limited to the right of ingress and egress. Before any such rule or regulation is adopted, other than one relating to wild animal life or freshwater aquatic life, the commission shall obtain the consent and agreement, in writing, of the owner, in the case of privately owned lands or waters, or the owner or primary custodian, in the case of public lands or waters, and the formal approval of the board of county commissioners of the county or counties in which such areas are situated.

(2) Any person violating or otherwise failing to comply with any rule or regulation so adopted is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 70-40; s. 396, ch. 71-136.

372.16 Private game preserves and farms; penalty.—

(1) Any person owning land in this state may, after having secured a license therefor from the Game and Fresh Water Fish Commission, establish, maintain, and operate within the boundaries thereof, a private preserve and farm, not exceeding an area of 640 acres, for the protection, preservation, propagation, rearing, and production of game birds and animals for private and commercial purposes, provided that no two game preserves shall join each other or be connected.

(2) All private game preserves or farms established under the provisions of this section shall be fenced in such manner that domestic game thereon may not escape and wild game on surrounding lands may not enter and shall be subject at any time to inspection by the Game and Fresh Water Fish Commission, or its conservation officers. Such private preserve or farm shall be equipped and operated in such manner as to provide sufficient food and humane treatment for the game kept thereon. Game reared or produced on private game preserves and farms shall be considered domestic game and private property and may be sold or disposed of as such and shall be the subject of larceny. Live game may be purchased, sold, shipped, and transported for propagation and restocking purposes only at any time. Such game may be sold for food purposes only during the open season provided by law for such game. All game killed must be killed on the premises of such private game preserve or farm and must be killed by means other than shooting, except during the open season. All domestic game sold for food purposes must be marked or tagged in a manner prescribed by the Game and Fresh Water Fish Commission; and the owner or operator of such private game preserve or farm shall report to the said commission, on blanks to be furnished by it, each sale or shipment of domestic game, such reports showing the quantity and kind of game shipped or sold and to whom sold. Such report shall be made not later than 5 days following such sale or shipment. Game reared or produced as aforesaid may be served as such by hotels, restaurants, or other public eating places during the open season provided by law on such particular species of game, under such regulations as the commission may prescribe.

(3) It is unlawful for any common carrier to knowingly transport or receive for transportation any domestic game unless the package or container containing such shipment has attached thereto a permit for such shipment and such package or container shall be marked on the outside showing quantity and kind of game enclosed.

(4) Any person violating the provisions of this section shall for the first offense be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and for a second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person convicted of violating the provisions of this section shall forfeit, to the Game and Fresh Water Fish Commission, any license or permit issued under the provisions hereof; and no further license or permit shall be issued to such person for a period of 1 year following such conviction. Before any private game preserve or farm is established, the owner or operator shall secure a license from the Game and Fresh Water Fish Commission, the fee for which shall be $5 per year.

History.—s. 70-A, ch. 13644, 1929; ss. 1, 9, ch. 14515, 1929; CGL 1936 Supp. [illegible]; s. 407, ch. 71-136; s. 223, ch. 81-259.

372.19 Preserves, refuges, etc., not tax exempt.—No property acquired by purchase, lease, gift, contract to purchase or lease, or otherwise, under the provisions of this chapter, as state game lands, or any private lands used as game refuges, shooting grounds, privileges, hatcheries or breeding grounds for fish, game, birds or fur-bearing animals, except state-owned lands being used for the protection of game, fish or fur-bearing animals under the provisions of this chapter, shall be exempt from state, county or district taxation. Any contract, lease, gift or purchase of land for such purposes which attempts to exempt or partially exempt such property from taxation shall be null and void and of no effect.

History.—s. 67, ch. 13644, 1929; CGL 1936 Supp. 1977(67).
cf.—s. 372.12 Acquisition of state game lands.

372.26 Imported fish.—

(1) No person shall import into the state or place in any of the fresh waters of the state any freshwater fish of any species without having first obtained a permit from the Game and Fresh Water Fish Commission. The commission is authorized to issue or deny such a permit upon the completion of studies of the species made by it to determine any detrimental effect the species might have on the ecology of the state.

(2) Persons in violation of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—[illegible], ch. 13644, 1929; CGL 1936 Supp. [illegible]; s. 1, ch. 71-294; s. 1, ch. 80-129.

372.265 Regulation of foreign animals.—

(1) It is unlawful to import for sale or use, or to release within this state, any species of the animal kingdom not indigenous to Florida without having obtained a permit to do so from the Game and Fresh Water Fish Commission.

(2) The Game and Fresh Water Fish Commission is authorized to issue or deny such a permit upon the completion of studies of the species made by it to determine any detrimental effect the species might have on the ecology of the state.

(3) Persons in violation of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 70-145; s. 306, ch. 71-136; s. 2, ch. 71-294; s. 2, ch. 80-129.

372.27 Silver Springs and Rainbow Springs, etc., closed to all fishing.—It is unlawful for any person to take any fish within Marion County, from the waters of Rainbow Springs and Rainbow River (formerly known as Blue Springs and Blue Springs River) within a radius of 1 mile from the head of said spring or from the waters of Silver Springs or Silver Springs Run from the head of said spring to its junction with the Oklawaha River; provided, that the Commission of Game and Fresh Water Fish may remove or cause to be removed any gar, mud fish or

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other predatory fish when in its judgment their removal is desirable.

History.—ss. 34, 34-A, ch. 13644, 1929; s. 1, ch. 17002, 1935; CGL 1936 Supp. 1977(34), (34-a); s. 8, ch. 26766, 1951; s. 1, ch. 28059, 1953.

372.31 Disposition of illegal fishing devices.—

(1) In all cases of arrest and conviction for use of illegal nets or traps or fishing devices, as provided in this chapter, such illegal net, trap, or fishing device is declared to be a nuisance and shall be seized and carried before the court having jurisdiction of such offense and said court shall order such illegal trap, net or fishing device forfeited to the Game and Fresh Water Fish Commission immediately after trial and conviction of the person in whose possession they were found. When any illegal net, trap or fishing device is found in the fresh waters of the state, and the owner of same shall not be known to the officer finding the same, such officer shall immediately procure from the county court judge an order forfeiting said illegal net, trap or fishing device to the Game and Fresh Water Fish Commission. The Game and Fresh Water Fish Commission may destroy such illegal net, trap or fishing device, if in its judgment said net, trap or fishing device is not of value in the work of the department.

(2) When any nets, traps, or fishing devices are found being used illegally as provided in this chapter, the same shall be seized and forfeited to the Game and Fresh Water Fish Commission as provided in this chapter.

History.—s. 25, ch. 13644, 1929; CGL 1936 Supp. 1977(25); s. 1, ch. 59-81; s. 103, ch. 73-333.

372.311 Disposition and appraisal of property seized under this chapter.—

(1) Every officer seizing illegally used property pursuant to the provisions of this law shall forthwith make return of the seizure thereof and deliver the said property to the board of county commissioners of the county wherein the said property was seized. The said return to the board of county commissioners shall describe the property seized and give in detail the facts and circumstances under which the same was seized and state in full the reason why the seizing officer knew, or was led to believe, said property was being used for and in connection with a violation of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices. The said return shall contain the names of all persons, firms and corporations known to the seizing officer to be interested in the seized property.

(2) When any illegally used property is seized by any officer pursuant to this law and delivered to the board of county commissioners as aforesaid, the board shall forthwith fix the approximate value thereof and make return thereof to the clerk of the circuit court as hereinafter provided.

(3) The return of the board of county commissioners shall contain a schedule of the property seized, describing the same in reasonable detail and giving in detail the facts and circumstances under which it was seized and state in full the reason why the seizing officer knew or was led to believe that the property was being used for or in connection with a violation of the statutes and laws of this state prohibiting the illegal use of nets, traps, or fishing devices; and a statement of the names of all persons, firms and corporations known to be interested in the seized property and shall attach to their said return as exhibit thereto, the return of the seizing officer to the board.

(4) The board of county commissioners shall hold the said seized property pending its disposal by the court as hereinafter provided.

History.—s. 2, ch. 59-[illegible].

372.312 Forfeiture proceedings.—

(1) The return of the board aforesaid to the clerk of the circuit court shall be taken and considered as the state's petition or libel in rem for the forfeiture of the property therein described, of which the circuit court of the county shall have jurisdiction, without regard to value. The said return shall be sufficient as said petition or libel notwithstanding the fact that it may contain no formal prayer or demand for forfeiture, it being the intention of the Legislature that forfeiture may be decreed without a formal prayer or demand therefor. The said return shall be subject to amendment at any time before final hearing, provided that copies thereof shall be served upon all persons, firms or corporations who may have filed a claim prior to such amendment.

(2) Upon the filing of said return the clerk of the circuit court shall issue a citation, directed to all persons, firms and corporations owning, having or claiming an interest in or lien upon the seized property, giving notice of the seizure and directing that all persons, firms or corporations owning, having or claiming an interest therein or lien thereon to file their claim to, on, or in said property within the time fixed in said citation, as to persons, firms and corporations not personally served, and within 20 days from personal service of said citation, when personal service is had.

(3) The said citation may be in, or substantially in, the following form:

IN THE CIRCUIT COURT OF THE ___ JUDICIAL CIRCUIT, IN AND FOR ___ COUNTY, FLORIDA.

IN RE FORFEITURE OF THE FOLLOWING DESCRIBED PROPERTY:

(here describe property)

THE STATE OF FLORIDA TO:

ALL PERSONS, FIRMS AND CORPORATIONS OWNING, HAVING OR CLAIMING AN INTEREST IN OR LIEN ON THE ABOVE DESCRIBED PROPERTY

YOU AND EACH OF YOU are hereby notified that the above described property has been seized, under and by virtue of chapter 372, as amended, and is now in the possession of the board of county commissioners of this county, and you, and each of you, are hereby further notified that a petition, under said chapter, has been filed in the circuit court of the ___ Judicial Circuit, in and for ___ County, Florida, seeking the forfeiture of the said property, and you are hereby directed and required to file your claim, if any you have, and show cause, on or before ___, 19

____, if not personally served with process herein, and within twenty days from personal service if personally served with process herein, why the said property should not be forfeited pursuant to said chapter. Should you fail to file claim as herein directed judgment will be entered herein against you in due course. Persons not personally served with process may obtain a copy of the petition for forfeiture filed herein from the undersigned clerk of court.

WITNESS my hand and the seal of the above mentioned court, at ___, Florida, this ___ 19___.

(COURT SEAL) (Clerk of the above mentioned court)

By (Deputy Clerk)

(4) Such citation shall be returnable, as to persons served constructively, as therein directed, not less than 21 nor more than 30 days, from the posting or publication thereof, and as to those personally served with process within 20 days from service thereof. A copy of the petition shall be served with the process when personally served. Personal service of process may be made in the same manner as a summons in chancery.

(5) If the value of the property seized is shown by the board's return to have an appraised value of $400 or less, the above citation shall be served by posting at three public places in the county, one of which shall be the front door of the courthouse; if the value of the property is shown by the board's return to have an approximate value of more than $400, the citation shall be published once a week for 3 consecutive weeks in some newspaper of general publication published in the county, if there be such a newspaper published in the county, and if not, then said notice of such publication shall be made by certificate of the clerk if publication is made by posting and by affidavit as provided in chapter 49, if made by publication in a newspaper, which affidavit or certificate shall be filed and become a part of the record in the cause. Failure of the record to show proof of such publication shall not affect any judgment made in the cause unless it shall affirmatively appear that no such publication was made.

History.—s. 3, ch. 59-81; s. 6, ch. 73-299.

372.313 Delivery of property to claimant.—Any person, firm or corporation filing a claim in the cause, which claim shall state fully his right, title, claim or interest, in and to the seized property, may, at any time after said claim is filed with the clerk of the court, obtain possession of the seized property by filing a petition therefor with the board of county commissioners and posting with said board, to be approved by it, a surety bond, payable to the Governor of the state, in twice the amount of the value of the said property as fixed in the board's return to the clerk of the circuit court, with a corporate surety duly authorized to transact business in this state as surety, conditioned upon his paying to the board of county commissioners the value of the property together with costs of the proceeding, if judgment of forfeiture be entered by the court. Upon the posting of such bond with the board and the release of the property to the applicant the cause shall proceed to final judgment in the same manner, as it would have, had no such bond been filed, except that any exception to be issued in the cause pursuant to judgment may run against and be enforced against the person posting said bond and his surety.

History.—s. 4, ch. 59-81.

372.314 Proceeding when no claim filed.—When no claim is filed in the cause within the time required the clerk shall enter a default against all persons, firms and corporations owning, claiming or having an interest in and to the property seized and the cause may then proceed in the same manner as a common law cause after default, and final judgment shall be entered therein ex parte, except as may be herein otherwise provided.

History.—s. 4, ch. 59-81.

372.315 Proceeding when claim filed.—When one or more claims are filed in the cause the cause shall be tried upon the issues made thereby with the petition for forfeiture with any affirmative defenses being deemed denied without further pleading. Judgment by default shall be entered against all other persons, firms and corporations owning, claiming or having an interest in and to the property seized, after which the cause shall proceed as in other common law cases; except any claimant shall prove to the satisfaction of the court that he did not know or have any reason to believe, at the time his right, title, interest, or lien arose, that the property was being used for or in connection with the violation of any of the statutes or laws of this state prohibiting the illegal use of nets, traps or fishing devices, and further that at said time there was no reasonable reason to believe that the said property might be used for such purpose. Where the owner or user of the property has been convicted of a violation of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices, such conviction shall be prima facie evidence that each claimant had reason to believe that the property might be used for or in connection with a violation of such statutes and laws, and the burden of proof shall be upon each claimant to satisfy the court that he was without knowledge of such conviction, providing, however, the prima facie presumption of knowledge of a previous conviction of a violation of this law shall only apply to a subsequent proceeding involving the forfeiture of nets, traps or fishing devices, when owned by such previous offender and upon which a lien is held by the same lienee involved in the first claim proceedings. Trial of all such causes shall be without a jury, except in such cases as a trial by jury may be guaranteed by the State Constitution and in such cases trial by jury shall be deemed waived unless demanded in the claim filed.

History.—s. 5, ch. 59-81.

372.316 State attorney to represent state.—Upon the filing of the board's return with the clerk of the circuit court the said clerk shall furnish the state attorney with a copy thereof and the said state attorney shall represent the state in the forfeiture proceeding. The Department of Legal Affairs shall represent the state in all appeals from judgments of forfeiture to the Supreme Court. The state may appeal any judgment denying forfeiture in whole or in part or that may be otherwise adverse to the state.

History.—s. 6, ch. 59-81; ss. 11, 35, ch. 69-106.

372.317 Judgment of forfeiture.—On final hearing the return of the board to the clerk of the circuit court shall be taken as prima facie evidence that the property seized was or had been used in, or in connection with, the violation of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices in this state and shall be sufficient predicate for a judgment of forfeiture in the absence of other proofs and evidence. The burden shall be upon the claimant to show that the property was not so used, if so used, that they had no knowledge of such violation and no reason to believe that the seized property was or would be used for the violation of such statutes and laws. Where such property is encumbered by a lien or retained title agreement under circumstances wherein the lienholder had no knowledge that the property was or would be used in violating such statutes and laws, and no reasonable reason to believe that it might be so used, then the court may declare a forfeiture of all other rights, titles and interests, subject, however, to the lien of such innocent lienholder, or may direct the payment of such lien from the proceeds of any sale of the said property. The proceedings and the judgment of forfeiture shall be in rem and shall be primarily against the property itself. Upon the entry of a judgment of forfeiture the court shall determine the disposition to be made of the property, which may include the destruction thereof, the sale thereof, the allocation thereof to some governmental function or use, or otherwise as the court may determine. Sales of such property shall be at public sale to the highest and best bidder therefor for cash after 2 weeks' public notice as the court may direct. Where the property has been delivered to a claimant upon the posting of a bond the court shall determine the value of the property or portion thereof subject to forfeiture and shall enter judgment against the principal and surety of the bond in such amount for which execution shall issue in the usual manner. Upon the application of any claimant the court may fix the value of the forfeitable interest or interests in the seized property and permit such claimant to redeem the said property upon the payment of a sum equal to said value which sum shall be disposed of as would the proceeds of a sale of the said property under a judgment of forfeiture.

History.—s. 7, ch. 59-81.

372.318 Service charges.—Service charges required hereunder shall be the same as provided for sheriffs and clerks under law for similar services in other cases and matters.

History.—s. 8, ch. 59-81; s. 22, ch. 70-131.

372.319 Disposition of proceeds of forfeiture.—All sums received from sale or other disposition of the seized property shall be paid into the county fine and forfeiture fund and shall become a part thereof.

History.—s. 9, ch. 59-81.

372.321 Exercise of police power.—It is deemed by the Legislature that this law (ss. 372.31 to 372.319, both inclusive) is necessary for the more efficient and proper enforcement of the statutes and laws of this state prohibiting the illegal use of nets, traps or fishing devices and a lawful exercise of the police power of the state for the protection of the public welfare, health, and safety of the people of the state. All the provisions of this law shall be liberally construed for the accomplishment of these purposes.

History.—s. 10, ch. 59-81.

372.561 Issuance of hunting and fishing licenses.—The county tax collector shall issue all hunting and fishing licenses of the county as provided by this chapter.

History.—s. 18, ch. 72-404.

372.57 Fishing, hunting, and trapping licenses.—No persons, except residents more than 65 years of age and children under 15 years of age, shall take or attempt to take game, freshwater fish, or fur-bearing animals within the state without having first obtained a license and paid the license fee hereinafter set out. Such license shall be dated when issued; when issued in the closed season, shall authorize the person named therein to take game, freshwater fish, or fur-bearing animals only during the open season next following; and, when issued during the open season, shall authorize the person named therein to take game, freshwater fish, or fur-bearing animals only during the remainder of such open season. The license issued shall be in the personal possession of the person to whom issued while taking or attempting to take game, freshwater fish, or fur-bearing animals; and his failure to exhibit such license to the Game and Fresh Water Fish Commission or any of its conservation officers, when found taking or attempting to take game, freshwater fish, or fur-bearing animals, shall be considered a violation of this chapter. The license fees for fishing in the fresh waters of the state and for hunting and trapping in the state for residents and nonresidents, which shall not include aliens who are required to obtain a special license hereinafter mentioned, are as follows:

(1) A fishing license for a nonresident of the state to take freshwater fish for noncommercial purposes in the waters of the state at large by any lawful method prescribed by rules and regulations of the Game and Fresh Water Fish Commission shall be $10 per annum.

(2) A fishing license for a nonresident of the state, for 14 consecutive days only, to take freshwater fish for noncommercial purposes from the waters of the state at large by any lawful method prescribed by rules and regulations of the Game and Fresh Water Fish Commission shall be $7. A fishing license for a nonresident for 5 consecutive days shall be $5.

(3) A fishing license for a resident of the state to take freshwater fish with pole and line, rod and reel, plug, bob, spinner, spoon, fly, troll, trotline, or other artificial bait or lure in the fresh waters of the state shall be $6. A special license may be issued for a 12-month period at a cost of $1 more than the cost of a regular license.

(4)(a) No license shall be required for any resi-

dent of the state when fishing with not more than three poles or lines for noncommercial purposes in the county of his residence, except on legally established fish management areas. This paragraph, as amended by chapter 76-156, Laws of Florida, may be cited as the "Dempsey J. Barron, W. D. Childers, and Joe Kershaw Cane Pole Tax Repeal Act of 1976."

(b) No license shall be required for any person fishing in a manmade fishpond not to exceed 20 acres and located entirely within private property of the pond owner unless fish management services or fish stocking have been furnished for such pond by any public agency after the effective date of this act.

(c) No license shall be required for any person fishing in a manmade fishpond of more than 20 acres but less than 150 acres and located entirely within private property of the pond owner, even though fish-management services or fish stocking have been furnished for the pond if the pond owner has paid an annual private fishpond license fee of $3 per surface acre of pond, not to exceed $300 maximum for total acreage.

(d) No license shall be required for military service personnel who are Florida residents while they are home on leave for a period of 30 days or less, provided such military service personnel exhibit a copy of their leave orders upon request of authorities.

(e) A permanent state hunting and fishing license shall be issued, upon request, to any person who is a resident of the state and who is totally and permanently disabled, upon production of proof of disability. Each such person, while hunting or fishing, shall have such license in his possession at all times. For purposes of this paragraph, the term "totally and permanently disabled person" means a person who is totally and permanently disabled and is currently certified by a licensed physician of this state or the Veterans Administration or who holds a valid identification card issued by the Division of Veterans' Affairs of the Department of Administration, in accordance with the provisions of s. 295.17.

(f) No fishing license shall be required for any person who has been accepted as a client by the Department of Health and Rehabilitative Services for retardation services and who is a resident of a major state retardation facility, a resident of a residential habilitation center, or a client of a service facility that has contracted with the department to provide services for retarded clients of the department. The superintendent of the center at which the retarded person resides, or the administrator of the service facility of which the retarded person is a client, shall provide such person with a standard certificate as approved by the Department of Health and Rehabilitative Services attesting that the client meets the requirements of this paragraph.

(g) No fishing license shall be required for any Georgia resident who is more than 65 years of age, to the extent that a reciprocal provision exists under Georgia law for any Florida resident who is more than 65 years of age.

(5) A hunting license for a nonresident, for the state at large, $50.

(6) A hunting license for a nonresident, for 10 consecutive days only, for the state at large, $15.

(7) A hunting license for a resident for the state at large, $11.

(8) A hunting license for a resident for county of legal residence, $4.

(9) No license shall be required of a resident to take game in the county of his residence, on his homestead or the homestead of his spouse or minor child, or minor children, to take game on the homestead of their parents.

(10) No hunting license shall be required for any Georgia resident who is more than 65 years of age, to the extent that a reciprocal provision exists under Georgia law for any Florida resident who is more than 65 years of age.

(11) A license for a nonresident to take fur-bearing animals in the state at large, $100.

(12) A license for a nonresident to take fur-bearing animals in one or more counties, $25 for each county in which taken.

(13) A license for a resident to take fur-bearing animals in the state at large, $25. However, residents or nonresidents taking fur-bearing animals by guns or by dogs only, and not by the use of traps or other devices, and not for commercial purposes, who have paid the license fees provided for hunting and taking game, shall not be required to pay the license fees provided for taking fur-bearing animals.

(14) A license for a resident to take fur-bearing animals in one or more counties, other than the county of his residence, $10 for each county in which taken.

(15) A license for a resident to take fur-bearing animals in the county of his legal residence, $3.

(16) A special hunting license for hunting in private hunting preserves for a resident or nonresident, $5, provided that any person may hunt on a private hunting preserve with any valid resident or nonresident license.

(17)(a) The aforesaid licenses for the state may be issued by any county tax collector in the state; all other licenses must be issued by the county tax collector of the county wherein the license is to be effective or used. The official seal of the county tax collector issuing the license shall be affixed thereto. To cover the cost of issuing the license, the county tax collector issuing the same shall collect and retain as his costs, in addition to the license fee above mentioned, the sum of 25 cents for each license costing $3 or less and 50 cents for each license costing more than $3.

(b) Aliens, or persons not citizens of the United States, must obtain special licenses before hunting or fishing in this state as follows:

1. To take fish in the state at large, the fee and license for which shall be the same as that charged nonresidents for fishing licenses. These licenses shall be issued by the county tax collectors.

2. To take wild game or birds in the state at large, the fee for which shall be $50. These licenses shall be issued by the Game and Fresh Water Fish Commission.

(c) Paragraph (b) does not apply to aliens who are bona fide residents of the state and who hold valid alien registration receipt cards as provided by the United States immigration laws. Such resident aliens may obtain licenses under this section as though they

were citizen residents, provided such resident aliens meet the residence requirements for citizen residents.

(18) Any person fishing in a fish management area, as defined in s. 372.001(17), shall be required to purchase only a regular fishing license as provided in subsection (3).

(19) The Game and Fresh Water Fish Commission is authorized to reduce the hunting and fishing license fees for nonresidents prescribed in this section for residents of those states which have entered into reciprocal agreements with this state with respect to such fees.

History.—ss. 15, 19-21, ch. 13644, 1929; s. 1, ch. 17015, 1935; s. 1, ch. 17018, 1935; CGL 1936 Supp. 1937(150); s. 1, ch. 19509, 1939; s. 1, ch. 20696, 1941; s. 1, ch. 23097, 1945; s. 1, ch. 26943, 1951; s. 1, ch. 26944, 1951; s. 1, ch. 29672, 1955; s. 1, ch. 57-185; s. 2, ch. 59-270; s. 1, ch. 61-366; s. 1, ch. 61-392; s. 2, ch. 63-30; s. 1, ch. 65-373; s. 1, ch. 69-10; s. 1, ch. 70-25; s. 1, ch. 71-142; s. 103, ch. 73-333; s. 1, ch. 74-67; ss. 1, 2, ch. 76-156; ss. 1, 2, ch. 77-406; s. 1, ch. 78-6; s. 1, ch. 78-163; ss. 1, 2, ch. 79-107; s. 83, ch. 79-164; s. 113, ch. 79-400; s. 1, ch. 80-189; s. 1, ch. 81-230; s. 1, ch. 82-198; s. 2, ch. 83-71; s. 30, ch. 83-219.

372.571 Expiration of licenses.—Each license issued under this chapter shall be dated when issued and shall expire on June 30 following; except that each license having a validity of less than 1 year shall expire at the end of the period specified for the license; and except that nothing therein or in such license shall be construed as entitling the holder thereof to take wildlife or fish contrary to the rules and regulations of the Game and Fresh Water Fish Commission. In addition to the above, special 12-month freshwater fishing licenses shall be dated when issued and shall expire 12 months after date of issuance.

History.—s. 1, ch. 23148, 1945; s. 26, ch. 29615, 1955; s. 1, ch. 65-546; s. 2, ch. 78-163.

cf.—s. 372.57 Fishing, hunting, and trapping licenses.

372.5712 Waterfowl stamp required for taking wild ducks or geese.—

(1) Any person, except a resident more than 65 years of age or a child under 15 years of age, taking or attempting to take wild ducks or geese within this state or its coastal waters shall, in addition to the appropriate hunting license for taking game as described in s. 372.57, possess a Florida waterfowl stamp. Said stamp shall not be transferable, shall be signed across the face by the bearer and fixed adhesively to the back of the regular hunting license of the bearer, and shall be carried at all times upon the person while hunting wild ducks or geese.

(2) Such stamp may be obtained for the sum of $3 and shall be valid for the period specified in s. 372.571. The stamp may be issued by any county tax collector in the state. To cover the cost of issuing the stamp, the county tax collector shall collect and retain as his costs, in addition to the stamp fee provided by this subsection, the sum of 25 cents.

(3) The Game and Fresh Water Fish Commission shall determine the form of the stamp and shall administer all revenues generated by the sale of the stamp. Said revenue shall be expended as follows: A maximum of 5 percent of the gross revenues shall be expended for administrative costs; a maximum of 25 percent of the gross revenues shall be expended for waterfowl research approved by the commission; and a maximum of 70 percent of the gross revenues shall be expended for projects approved by the commission, in consultation with the Waterfowl Advisory Committee, for the purpose of protecting and propagating migratory waterfowl and for the development, restoration, maintenance, and preservation of wetlands within the state.

(4) The intent of this section is to expand waterfowl research and management and increase waterfowl populations in the state without detracting from other programs. The commission shall prepare an annual report documenting the use of funds generated under the provisions of this section, to be submitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before September 1 of each year.

History.—s. 1, ch. 79-295; s. 224, ch. 81-259.

[1]372.5714 Waterfowl Advisory Committee.—

(1) There is created a Waterfowl Advisory Committee consisting of three members, one appointed by the Governor, one appointed by the Speaker of the House of Representatives, and one appointed by the President of the Senate. Members may be representative of appropriate state agencies, private conservation groups, or private citizens and shall possess knowledge and experience in the area of waterfowl management and protection. Members shall be appointed for terms of 2 years and shall be eligible for reappointment.

(2) As soon as possible after appointment of its members, the committee shall meet to organize and elect a chairman to preside over its meetings and perform any other duties directed by the committee. The Game and Fresh Water Fish Commission shall provide such staff support as is necessary to the committee to carry out its duties. Members of the committee shall serve without compensation, but shall be reimbursed for per diem and traveling expenses as provided in s. 112.061 when carrying out the official business of the committee.

(3) It shall be the duty of the committee to advise the commission regarding the administration of revenues generated by the sale of the Florida waterfowl stamp provided for by s. 372.5712. In particular, the committee shall consult with and advise the commission with respect to the establishment and operation of projects for the protection and propagation of migratory waterfowl and the development, restoration, maintenance, and preservation of wetlands within the state, to be financed by such revenues as specified in said section.

History.—ss. 2, 3, ch. 79-295; ss. 2, 4, ch. 82-46.

[1]Note.—Repealed effective October 1, 1989, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of repeal date.

372.573 Permits to use commission lands for outdoor recreational purposes; fee.—

(1) The director of the Game and Fresh Water Fish Commission is authorized to issue permits to persons to hunt, fish, camp, or otherwise use for outdoor recreational purposes lands owned, managed, or leased by the Game and Fresh Water Fish Commission or by the state for the use and benefit of the commission. Before any such permit, other than one for hunting and fishing, is issued, the commission shall obtain, in writing, the consent of the owner, in the case of privately owned lands, or the owner or primary custodian, in the case of public lands.

(2) The director shall charge a fee for such permit which shall be set by the Game and Fresh Water Fish Commission but shall not exceed $10, and the same shall be over and above the license fee for hunting required by law. To cover the *cost of taking the application* and issuing the permit, the county tax collector shall retain 50 cents of each permit fee. The revenue resulting from the increase in the hunting fee *and the addition of other fees* as provided by this section shall be expended as follows: 60 *percent for the* purchase of lands for public hunting, fishing, and other outdoor recreation and 40 percent for the lease, management, and protection of lands for public hunting, fishing, and *other outdoor recreation*. Any person 65 years of *age* or older shall be exempt *from* the payment of such fee for such permit, provided he shall obtain a permit before hunting in such areas from the tax collector of the county of his residence by *attesting to the fact that he is* 65 years of age or older. Any person who is a resident of the state and who is totally and permanently disabled, *as defined* in s. 372.57(4)(e), shall be exempt from the payment of a permit fee with regard to a permit issued for the purpose of hunting and fishing on recreational lands. However, before *hunting or fishing in such areas*, such person shall obtain a permit from the tax collector of the county of his residence by attesting to the fact that he is totally and permanently disabled.

History.—ss. 1, 2, ch. 25453, 1949; s. 1, ch. 59-290; s. 1, ch. 72-337; s. 103, ch. 73-333; s. 2, ch. 76-67; s. 1, ch. 79-212; s. 2, ch. 80-185; s. 2, ch. 82-188.

372.574 Appointment of subagents for issuance and sale of hunting, fishing, and trapping licenses and permits.—

(1) The county tax collector is authorized to appoint any person, firm, partnership, or corporation as a subagent *for the sale and issuance* of fishing, hunting, and *trapping licenses and permits* which the tax collector is allowed to sell and issue, giving due consideration to its moral character, business ability, financial responsibility, and proper facilities for the *proper issuance* of such licenses and permits; and such subagent shall serve at the *pleasure of the county* tax collector. Neither the employees of the county tax collector nor their relatives or next of kin, by *blood* or otherwise, shall be appointed as subagents.

(2) A subagent shall issue and sell fishing, hunting, *and trapping* licenses and permits upon the posting of an adequate bond payable to the county tax collector in an amount to be fixed and approved by the tax collector under such rules and regulations as *may be prescribed* by the county tax collector and required by existing law or any subsequently enacted legislation.

(3) Subagents are authorized to sell and issue fishing, hunting, and trapping licenses and permits at such specific locations within the county in which the appointing county *tax collector shall exercise jurisdiction* as, in the judgment of the county tax collector, will best serve the public interest and convenience in obtaining fishing, hunting, and trapping *licenses and permits*.

(4) It is unlawful for any individual, firm, partnership, or corporation to act as a subagent for the sale and issuance of fishing, hunting, and trapping licenses and permits or to handle, in any manner, fishing, hunting, and trapping licenses and permits for a fee or compensation of any kind unless it has *been* appointed as a subagent by the county tax collector as prescribed in this section.

(5) Any individual, firm, partnership, or corporation which willfully violates *any of the provisions of* this law is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Every individual, *firm, partnership, or corporation* acting as a subagent for the sale and issuance of fishing, hunting, and trapping licenses and permits under the provisions of this section may charge and receive as its *compensation a service charge of 50* cents for the issuance of each fishing, hunting, or trapping license or permit. This service charge shall be an additional sum over and above the sum required by law *to be collected for the issuance of each* license or permit.

(7) Each subagent is required to report on the first of each month the sale and issuance of fishing, hunting, and trapping licenses and permits during *the preceding month*. Such report shall be accompanied with the proper remittance covering the sale of licenses and permits on such report.

(8) Nothing contained herein shall be construed *to relieve any county* tax collector of any county of the state of the duty of issuing fishing, hunting, and trapping licenses and permits to the public without the payment of any service charge as required by law.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 59-494; s. 1, ch. 65-509; s. 310, ch. 71-136; s. 106, ch. 71-355; s. 103, ch. 73-333; s. 1, ch. 80-369; s. 3, ch. 82-188; s. 31, ch. 83-218.

372.576 Archery or muzzle-loading gun permit for hunting; fee.—The director of the Game and Fresh Water Fish Commission of the state is au*thorized to issue permits* to persons to hunt with bow and *arrow* or muzzle-loading gun during special seasons set by the commission, provided that such persons have a license to hunt as provided by s. 372.57. The cost of such permit shall not exceed $5.

History.—s. 1, ch. 67-200; s. 1, ch. 78-142.

372.58 False statement in application for license.—Any person who shall swear or affirm to any *false statement* in any application for license provided by this chapter, shall be guilty of violation of this chapter, and *upon conviction thereof, shall* be subject to the penalty provided in s. 372.71, and any false statement contained in any application for such license shall render the license null and void.

History.—s. 16, ch. 13644, 1929; CGL 1936 Supp. 1977(18).

372.581 Entering false information on licenses.—Whoever knowingly and willfully enters *false information on*, or allows or causes false information to be entered on or shown upon any license issued under the provisions of this chapter in order to avoid prosecution or to assist another to avoid prosecution, or *for* any other wrongful purpose shall be punished as provided by this chapter.

History.—s. 1, ch. 65-159.

372.59 *License* not transferable.—No person shall alter or change in any manner, or loan or transfer to another, any license issued *pursuant to the provisions* of this chapter, nor shall any other person, other than the person to whom it is issued, use the same.

History.—s. 17, ch. 13644, 1929; CGL 1936 Supp. 1977(17).

372.60 Issuing of duplicate license.—The Game and Fresh Water Fish *Commission shall* furnish to each county tax collector a form for issuing of duplicate license. Application for such duplicate license shall be made under oath, stating that the *licensee has lost or destroyed* his original license. Such application shall be made to the county tax collector from whom original license was purchased and *a fee* of 25 cents shall be collected by county tax collector *issuing* such *duplicate license*. This fee shall cover both the *taking of* application and the issuing of license.

History.—s. 18, ch. 13644, 1929; CGL 1936 Supp. 1977(18); s. 103, ch. 73-333.

372.61 Reports and remittances of county tax collectors.—The license fees and other fees provided *to be paid under this chapter* shall be remitted by the several county tax collectors by the 15th of each month to the Game and Fresh Water Fish Commission, and each county tax collector shall retain his *fee for issuing such licenses* and permits. The Game and Fresh Water Fish *Commission shall keep an* accurate and up-to-date record of all licenses and permits consigned to the various county tax collectors, giving credit to each account upon receipt of the monthly report of licenses and permits sold or voided, and at the proper time *close and balance the seasonal* accounts. The tax collector's report shall be a schedule setting forth the total number of licenses and permits sold, the total number of licenses and *permits voided, and the net* amount of the report. Forms for making these reports *are to be furnished* by the Game and Fresh Water Fish Commission. The various county tax collectors will retain a file of cop*ies of* licenses and permits sold, to aid in issuing duplicates.

History.—s. 14, ch. 13644, 1929; CGL 1936 Supp. 1977(14); s. 1, ch. 26920, 1951; s. 103, ch. 73-333; s. 4, ch. 82-188.

372.62 Guide license and regulations.—No person shall engage *in the business of* guiding hunters or hunting parties until he has secured a license to do so from the Game and Fresh Water Fish Commission. Application for guide license shall be made to *the said commission* upon blanks furnished by it. The cost of guide *license shall* be $10 per open season, which license shall permit the holder to *guide or act* as guide for hunters or for hunting parties in the state. An applicant for guide license on making appli*cation* must state his name, age, address, physical description, and *qualifications to act as guide*. No guide while acting as guide to hunters or hunting parties shall take any game or carry shotgun or rifle. When a guide is found guilty of violating any provisions of the *laws of this state relative* to game, birds, freshwater fish or fur-bearing animals, his license shall be revoked.

History.—s. 65, ch. 13644, 1929; CGL 1936 Supp. 1977(65).

372.65 Freshwater fish or frog dealer's license and other *licenses for fish or frog dealers*, farmers, or takers.—

(1) No person shall engage in the business of *taking for sale or* selling any frogs or freshwater fish of any species or size, *or importing any exotic* or nonindigenous fish, until such person has obtained a license and paid the fee therefor as set forth herein. The license issued shall be in the possession of the *person to whom issued while* such person is engaging in the business of *taking for sale* or selling freshwater fish or frogs and shall be displayed to officers of the Game and Fresh Water Fish Commission upon request. The license fees and activities permitted under *particular licenses are as follows*:

(a) The fee for a resident *commercial fishing license*, which permits a resident to take freshwater fish or frogs by any lawful method prescribed by the *Game and* Fresh Water Fish Commission for the purpose of sale, shall be $8 *per annum*.

(b) The fee for a fish or frog farm license, which permits a licensee to produce freshwater fish or frogs in a farm or in artificial ponds for sale to wholesale fish or frog dealers for food, bait, or other use, shall be $5 *per annum*.

(c) The fee for a resident retail fish or *frog* dealer's license, which permits a resident to sell freshwater fish or frogs to a consumer, shall be $5 per annum.

(d) The fee for a resident wholesale fish or frog dealer's license, which permits a resident to sell freshwater fish or frogs to a retail fish *or frog dealer*, shall be $50 per annum.

(e) The fee for an exotic fish dealer's license, which permits a licensee to import, export, or sell exotic, indigenous *or nonindigenous fish*, shall be $50 per annum.

(f) The fee for a nonresident commercial fishing license, which permits a nonresident to take freshwater *fish or frogs as provided* in paragraph (a), shall be $50 per annum.

(g) The fee for a nonresident *retail fish or frog* dealer's license, which permits a nonresident to sell freshwater fish or frogs as provided in paragraph (c), shall be $50 per annum.

(h) The fee *for a nonresident wholesale fish* or frog dealer's license, which permits a nonresident to sell or buy freshwater fish or *frogs as provided in* paragraph (d), shall be $500 per annum.

(i) There is levied, in addition to any other li*cense fee thereon*, an annual gear license fee of $50 upon each person *fishing with trawl seines* used in the fresh waters of the state.

(j) There is levied, in addition to any other license fee thereon, an annual gear license fee of $100 upon each *person fishing with haul seines* used in the fresh waters of the state.

(2)(a) A resident or nonresident wholesale fish or frog dealer's license shall also serve in lieu of a resident or nonresident commercial fishing license with*out payment of additional fees*.

(b) An exotic fish dealer's license shall *also serve* in lieu of a fish or frog farm license.

(3) All licenses as provided in paragraphs *(1)(a)-(e) shall* be issued by the tax collectors of the several counties of the *state, who shall retain a fee of* 50 cents per license to cover the costs of issuance. Licenses as provided in paragraphs (1)(f)-(j) shall be issued by the Game and Fresh Water Fish Commission. *Reports of sales* and moneys collected shall be

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remitted to the Game and Fresh Water Fish Commission as provided by s. 372.61, and all moneys derived from this source shall be deposited by the Game and Fresh Water Fish Commission in the State Treasury to the credit of the State Game Trust Fund.

(4) All boats engaged in commercial fishing shall have at least one licensed commercial fisherman on board.

(5) It shall be unlawful for any wholesale or retail dealer to buy freshwater fish or frogs from any unlicensed person.

(6) Any person licensed pursuant to this act must *have a method of catch preservation which meets the* requirements and standards set forth by rule by the Game and Fresh Water Fish Commission.

History.—s. 31, ch. 13644, 1929; CGL 1936 Supp. 1977(31); s. 2, ch. 61-119; s. 1, 2, ch. 78-189.

372.651 Haul seine and trawl permits; freshwater lakes in excess of 500 square miles; fees.—

(1) The Game and Fresh Water Fish Commission is authorized to issue permits for each haul seine or trawl used in freshwater lakes in the state having an area in excess of 500 square miles.

(2) The commission may charge an annual fee for the issuance of such permits which shall not exceed:

(a) For a resident trawl permit, $50.

(b) *For a resident haul seine permit,* $100.

(c) For a nonresident or alien trawl or haul seine permit, $500.

History.—s. 1, ch. 78-192.

372.653 Required tagging of fish; lakes in excess of 500 square miles; tag fee; game fish taken in lakes of 500 square miles or less.—

(1)(a) *No game fish taken from, or caught in,* a lake in this state the area of which is in excess of 500 square miles shall be sold for consumption in this state unless it is tagged in the manner required by the Game and Fresh Water Fish Commission. Bass or pickerel taken by any method other than hook and line shall be returned immediately to the water. Trawls and haul seines shall not be operated within 1 *mile of rooted aquatic vegetation.*

(b) In order that such program of tagging be self-sufficient, the Game and Fresh Water Fish Commission is authorized to assess a fee of not more than 5 cents per tag, payable at the time of delivery of the tag.

(2) No freshwater game fish shall be taken from a lake in this state the area of which is 500 square miles or less other than with pole and line; rod and reel; or plug, bob, spinner, spoon, or other artificial bait or lure.

(3) No freshwater game fish taken from a lake in this state the area of which is 500 square miles or less shall be offered for sale or sold.

History.—s. 1, ch. 76-216.

372.66 License required for fur and hide dealers.—

(1) It is unlawful for any person to engage in the business of a dealer or buyer in alligator skins or green or dried furs in the state or purchase such skins within the state until such person has been licensed as herein provided.

(2) Any resident dealer or buyer who solicits business through the mails, or by advertising, or who travels to buy or employs or has other agents or buyers, shall be deemed a resident state dealer and shall be required to pay a license fee of $100 per annum and shall pay an agent's license fee of $5 per annum for each agent or traveling buyer employed by or buying for such licensed state dealer.

(3) Any resident dealer or buyer who does not solicit by mail, advertise, travel to buy or employ or have agents or traveling buyers shall be deemed a resident local dealer and shall be required to pay a license fee of $10 per annum.

(4) A nonresident dealer or buyer shall be required to pay a license fee of $500 per annum and shall pay a license fee of $100 per annum for each agent, resident buyer or traveling buyer employed by or buying for or acting as agent for such nonresident buyer.

(5) All agents' licenses shall be applied for by, and issued to, a resident state dealer or nonresident dealer and shall show name and residence of such agent and shall be in possession of such agent at all times when engaged in buying furs or hides. Application for such licenses shall be made to the Game and Fresh Water Fish Commission on blanks furnished by it.

(6) All dealers and buyers *shall forward to the* Game and Fresh Water Fish Commission each 2 weeks during open season a report showing number and kind of hides bought and name of trapper from whom *bought and his license number, or if trapper is* exempt from license under any of the provisions of this chapter, such report shall show the nature of such exemption. No common carrier shall knowingly *ship or transport or receive for transportation any* hides or furs unless such shipments have marked thereon name of shipper and the number of his fur-animal license or fur dealer's license.

History.—s. 61, ch. 13644, 1929; CGL 1936 Supp. 1977(61).

372.661 Private hunting preserve, license; exception.—Any person who operates a private *hunting preserve commercially or otherwise shall be* required to pay a license fee of $25 for each such preserve; provided, however, that during the open season established for wild game of any species a private in*dividual may take artificially propagated game of* such species up to the bag limit prescribed for the particular species without being required to pay the license fee required by this section; provided further *that if any* such individual shall charge a fee for taking such game he shall be required to pay the license fee required by this section and to comply with the rules and regulations of the Game and Fresh Water Fish Commission relative to the operation of private hunting preserves.

History.—s. 3, ch. 59-73.

372.662 Unlawful sale, possession, or transporting of alligators or alligator skins.—Whenever the sale, possession, or transporting of alligators or alligator skins is prohibited by any law of this state, or by the rules, regulations, or orders of the

Game and Fresh Water Fish Commission adopted pursuant to s. 9, Art. IV of the State Constitution, the sale, possession, or *transporting of alligators or* alligator skins is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 1, ch. 65-169; s. 7, ch. 69-216; s. 311, ch. 71-136; s. 30, ch. 83-216.

372.663 Alligator poachers; punishment; confiscation of equipment.—

(1) Any person who is convicted of poaching alli*gators or any crocodilia by killing or capturing,* or attempting to kill or capture, such animals shall be guilty of a felony of the third degree, punishable as *provided* in s. 775.082, s. 775.083, or s. 775.084, in ad*dition to such other punishment as may be provided* by law. Any equipment, including but not limited to weapons, vehicles, boats, and lines, used by a person in the commission of a violation of any law, rule, reg*ulation, or order relating to alligators or any* crocodilia shall, upon conviction of such person, be confiscated by the Game and Fresh Water Fish Commis*sion and disposed of according to rules and regula*tions of the commission. The arresting officer shall promptly make a return of the seizure, describing in detail the property seized and the facts and circumstances under which it was seized, including the names of all persons known to the officer who have an interest in the property.

(2) The commission shall promptly fix the value of the property and make return to the clerk of the circuit court of the county wherein same was seized. Upon proper showing that any such property is owned by, or titled in the name of, any innocent party, such property shall be promptly returned to such owner.

(3) The provisions of this section shall not vitiate any valid lien, retain title contract, or chattel mortgage on such property in effect as of the time of such seizure.

History.—s. 1, ch. 70-1; s. 1, ch. 70-439; s. 312, ch. 71-136.

372.664 Prima facie evidence of intent to vio*late laws protecting alligators.*—The display or use of a light in a place where alligators might be known to inhabit in a manner capable of disclosing the presence of alligators, together with the possession of firearms, spear guns, gigs, and harpoons customarily used for the taking of alligators, during the period between 1 hour after sunset and 1 hour before sunrise shall be prima facie evidence of an intent to violate the provisions of law regarding the protection of alligators.

History.—s. 1, ch. 70-2.

372.6645 *Permit for sale of alligator products; fee; penalty.*—

(1) The Legislature declares that it is in the public interest, and is the legislative intent, to curb the *activities of the increasing number of poachers* who illegally kill and skin alligators for profit and to protect the alligator from ultimate extinction.

(2) The following are definitions of terms as used *in this section:*

(a) "Alligator" means a reptile of the species *Alligator mississippiensis.*

(b) "Alligator products" mean and include, but are not limited to, such refined products made from any part of an alligator hide as handbags, wallets, shoes, suitcases, and wearing apparel, and any other product which is wholly or partly composed of alligator hide.

(c) "Person" means any individual, partnership, corporation, association, or other group, however organized.

(d) "Retail sales" means the sale of alligator products by any person or entity who sells, in any manner, directly to the consumer.

(3) Alligator products shall not be sold or offered *for sale in this state, except as provided by rule of the* Game and Fresh Water Fish Commission pursuant to authority hereby granted for such purpose.

(4)(a) No person shall engage in retail sales of alligator products in this state without a permit there*for as provided in this section.*

(b) The permit fee for each calendar year or part thereof shall be $100 for the principal place of business of each person engaging in retail sales of alligator products. A *separate permit fee of $100 shall be* paid for each branch establishment of such person. Fees collected under this section shall be deposited in the State Game Trust Fund.

(5) *No person shall engage in retail sales of any* alligator product manufactured in the form of a stuffed baby alligator or other similar species.

(6) No person shall engage in retail sales of any *product manufactured from the hide of any croco*dile, alligator, or other reptilian species which has been declared to be endangered by the United States Fish and Wildlife Service or the Game and Fresh *Water Fish Commission.*

(7) Any person who willfully and intentionally violates any provision of this section, or engages in retail sales of alligator products without a permit there*for as provided in this section, is guilty of a misde*meanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 70-2; s. 313, ch. 71-136; s. 1, ch. 71-299; s. 195, ch. 71-358; s. 1, ch. 81-191.

372.665 Word "alligator" or "gator" not to be used in certain sales.—It is unlawful for any person to use the word "gator" or "alligator" in connection with the sale of any product derived or made from the skins of other crocodilia or in connection with the sale of other crocodilia. Any person violating this section shall, upon conviction, be guilty of a misdemeanor.

History.—s. 1, ch. 70-512.

372.667 Feeding or enticement of alligators or crocodiles unlawful; penalty.—

(1) No person shall intentionally feed, or entice with feed, any wild American alligator (*Alligator mississippiensis*) or American crocodile (*Crocodylus acutus*). However, the provisions of this section shall not apply to:

(a) Those persons feeding alligators or crocodiles maintained in protected captivity for educational, scientific, commercial, or recreational purposes.

(b) Game and Fresh Water Fish Commission per-

sonnel, persons licensed or otherwise authorized by the commission, or county or municipal animal control personnel when relocating alligators or crocodiles by baiting or enticement.

(2) For the purposes of this section, the term "maintained in protected captivity" means held in captivity under a permit issued by the Game and Fresh Water Fish Commission pursuant to s. 372.921 or s. 372.922.

(3) Any person who violates this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-101.

372.671 Florida panther; killing prohibited; penalty.—

(1) It is unlawful for any person to kill that member of Florida's "endangered species," as defined in s. 372.072(3), known as the Florida panther.

(2) Any person convicted of unlawfully killing a Florida panther is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 78-173.

372.672 Florida Panther Research and Management Trust Fund.—

(1) There is established within the Game and Fresh Water Fish Commission the Florida Panther Research and Management Trust Fund to be used exclusively for the purposes of this section.

(2) Money from the fund shall be spent only for the following purposes:

(a) To manage and protect existing Florida panther populations by increasing panther food sources where food is a limiting factor, determining conflicts between public use and panther survival, and maintaining sufficient genetic variability in existing populations.

(b) To educate the public concerning the value of the panther and the necessity for panther management.

(c) To reestablish Florida panthers into areas of suitable habitat, where feasible, by assessing the necessity of a captive breeding program for purposes of reintroduction of the panthers into the suitable habitat; selecting potential sites for reintroduction and investigating associated human sociological aspects; and assessing the potential for panther habitat acquisition.

(3) The Game and Fresh Water Fish Commission is authorized to receive donations for deposit into the Florida Panther Research and Management Trust Fund.

History.—ss. 2, 4, ch. 83-173.

372.673 Florida Panther Technical Advisory Council.—

[1](1) The Florida Panther Technical Advisory Council is established within the Game and Fresh Water Fish Commission. The council shall be appointed by the Governor and shall consist of five members with technical knowledge and expertise in the research and management of large mammals.

(a) Two members shall represent state or federal agencies responsible for management of endangered species; two members, who must have specific experience in the research and management of large felines or large mammals, shall be appointed from universities, colleges, or associated institutions; and one member, with similar expertise, shall be appointed from the public at large.

(b) As soon as practicable after July 1, 1983, one member representing a state or federal agency and one member appointed from a university, college, or associated institution shall be appointed for terms ending August 1, 1985, and the remaining members shall be appointed for terms ending August 1, 1987. Thereafter, all appointments shall be for 4-year terms. If a vacancy occurs, a member shall be appointed for the remainder of the unexpired term. A member whose term has expired shall continue sitting on the council with full rights until a replacement has been appointed.

(c) Council members shall be reimbursed pursuant to s. 112.061 but shall receive no additional compensation or honorarium.

(2) The purposes of the council are:

(a) To serve in an advisory capacity to the Florida Game and Fresh Water Fish Commission on technical matters of relevance to the Florida panther recovery program, and to recommend specific actions that should be taken to accomplish the purposes of this act.

(b) To review and comment on research and management programs and practices to identify potential harm to the Florida panther population.

(c) To provide a forum for technical review and discussion of the status and development of the Florida panther recovery program.

History.—ss. 3, 5, ch. 83-173.

[1]Note.—Expires October 1, 1993, pursuant to s. 5, ch. 83-173, and is scheduled for review pursuant to s. 11.611 in advance of that date.

372.68 Freshwater fish dealers to report.—All dealers in freshwater fish shall, at the end of each month, report to the Game and Fresh Water Fish Commission the amount of the different kinds of freshwater fish that they have sold during the past month. Failure to make such report shall cause such dealer to be denied license for ensuing year.

History.—s. 63, ch. 13644, 1929; CGL 1936 Supp. 1977(63).

372.69 Game and Fresh Water Fish Commission to furnish forms.—The blank forms and other printed matter necessary to carry out the provisions of this chapter shall be furnished by the Game and Fresh Water Fish Commission, which is required to make up forms of licenses or other blanks necessary, the same to be uniform throughout the state, and to furnish the same to the county tax collectors of the several counties and authorized agents. The said license shall contain on the back thereof a synopsis of the game trapping or freshwater fishing laws of the state. All licenses shall be consecutively numbered.

History.—s. 22, ch. 13644, 1929; CGL 1936 Supp. 1977(22); s. 181, ch. 73-333.

372.70 Prosecutions.—The prosecuting officers of the several courts of criminal jurisdiction of this state shall investigate and prosecute all violations of the laws relating to game, freshwater fish, nongame birds and fur-bearing animals which may be brought to their attention by the Game and Fresh Water Fish Commission or its conservation officers, or which may otherwise come to their knowledge.

History.—s. 11, ch. 13644, 1929; CGL 1936 Supp. 1977(11).

372.701 Arrest by officers of the Game and Fresh Water Fish Commission; recognizance; cash bond; citation.—

(1) In all cases of arrest by officers of the Game and Fresh Water Fish Commission and the Department of Natural Resources the person arrested shall be delivered forthwith by said officer to the sheriff of the county, or shall obtain from such person arrested a recognizance or, if deemed necessary, a cash bond or other sufficient security conditioned for his appearance before the proper tribunal of such county to answer the charge for which he has been arrested.

(2) All officers of the commission and the department are hereby directed to deliver all bonds accepted and approved by them to the sheriff of the county in which the offense is alleged to have been committed.

(3) Any person so arrested and released on his own recognizance by an officer and who shall fail to appear or respond to the proper citation to appear, shall, in addition to the charge relating to wildlife or freshwater fish, be charged with that offense of failing to respond to such citation and, upon conviction, be punished as for a misdemeanor. A written warning to this effect shall be given at the time of arrest of such person.

History.—s. 1, ch. 65-229; ss. 25, 35, ch. 69-106.

372.71 Fines and penalties; forfeiture of license.—Any person violating the provisions of this chapter, shall, unless otherwise provided, for the first offense be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and for a second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person convicted as aforesaid shall forfeit any license or permit that may have been issued to him under the provisions of this chapter and shall forthwith surrender the same to the court. If such violation occurs in the open season no license or permit shall be issued under the provisions of this chapter to such person at any time during the remainder of such open season, or if such violation occurs during the closed season no license shall be issued to such person for the open season next following.

History.—s. 70, ch. 13644, 1929; CGL 1936 Supp. 1977(70); s. 20(11), s. 314, ch. 71-136.

372.72 Disposition of fines, penalties, and forfeitures.—

(1) All moneys collected from fines, penalties, or forfeitures of bail of persons convicted under this chapter shall be deposited in the fine and forfeiture fund of the county where such convictions are had, except for the disposition of moneys as provided in subsection (2).

(2) All moneys collected from fines, penalties, or forfeitures of bail of persons convicted of violations of rules, regulations, or orders of the Game and Fresh Water Fish Commission concerning endangered or threatened species or of violation of s. 372.662, s. 372.663, s. 372.667, or s. 372.671 shall be deposited in the Endangered and Threatened Species Reward Trust Fund.

History.—s. 12, ch. 13644, 1929; CGL 1936 Supp. 1977(12); s. 2, ch. 61-119; s. 1, ch. 70-370; s. 3, ch. 79-217; s. 2, ch. 81-191.
cf.—ch. 939 Costs.

372.73 Confiscation and disposition of illegally taken game.—All game and freshwater fish seized under the authority of this chapter shall, upon conviction of the offender or sooner if the court so orders, be forfeited and given to some hospital or charitable institution and receipt therefor sent to the Game and Fresh Water Fish Commission. All furs or hides or fur-bearing animals seized under the authority of this chapter shall, upon conviction of the offender, be forfeited and sent to the commission, which shall sell the same and deposit the proceeds of such sale to the credit of the State Game Trust Fund. If any such hides or furs are seized and the offender is unknown, the court shall order such hides or furs sent to the Game and Fresh Water Fish Commission, which shall sell such hides and furs and deposit the proceeds of such sale to the credit of the State Game Trust Fund.

History.—s. 66, ch. 13644, 1929; CGL 1936 Supp. 1977(66); s. 2, ch. 61-119; s. 275, ch. 81-259.

372.74 Cooperative agreements with U. S. Forest Service; penalty.—The Game and Fresh Water Fish Commission is authorized and empowered:

(1) To enter into cooperative agreements with the United States Forest Service for the development of game, bird, fish, reptile or fur-bearing animal management and demonstration projects on and in the Osceola National Forest in Columbia and Baker Counties, and in the Ocala National Forest in Marion, Lake and Putnam Counties and in the Apalachicola National Forest in Liberty County. Provided, however, that no such cooperative agreements shall become effective in any county concerned until confirmed by the board of county commissioners of such county expressed through appropriate resolution.

(2) In cooperation with the United States Forest Service, to make, adopt, promulgate, amend and repeal rules and regulations, consistent with law, for the further or better control of hunting, fishing, and control of wildlife in the above National Forests or parts thereof; to shorten seasons and reduce bag limits, or shorten or close seasons on any species of game, bird, fish, reptile, or fur-bearing animal within the limits prescribed by the Florida law, in the above enumerated National Forests or parts thereof, when it shall find after investigation that such action is necessary to assure the maintenance of an adequate supply of wildlife.

(3) To fix a charge not to exceed $5, for persons 18 years of age and over, and not to exceed $2 for persons under the age of 18 years, over and above the license fee for hunting now required by law. This additional fee is to apply only on areas covered by above cooperative agreements. The proceeds from this additional license fee shall be used in the development, propagation of wildlife and protection of the areas

covered by the cooperative agreements as the commission and the United States Forest Service may deem proper. Nothing in this section shall be construed as authorizing the commission to change any penalty prescribed by law or to change the amount of general license fees or the general authority conferred by licenses prescribed by law.

(4) In addition to the requirements of chapter 120, notice of the making, adoption, and promulgation of the above rules and regulations shall be given by posting said notices, or copies of the rules and regulations, in the offices of the county judges and in the post offices within the area to be affected and within 10 miles thereof. In addition to the posting of said notices, as aforesaid, copies of said notices or of said rules and regulations shall also be published in newspapers published at the county seats of Baker, Columbia, Marion, Lake, Putnam, and Liberty Counties, or so many thereof as have newspapers, once not more than 35 nor less than 28 days and once not more than 21 nor less than 14 days prior to the opening of the state hunting season in said areas. Any person violating any rules or regulations promulgated by the commission to cover these areas under cooperative agreements between the State Commission of Game and Fresh Water Fish and the United States Forest Service, none of which shall be in conflict with the laws of Florida, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1-4, 7, 8, ch. 17939, 1937; CGL 1940 Supp. 1977(117), 8135(9) a); s. 1, ch. 29890, 1945; s. 315, ch. 71-136; s. 16, ch. 73-95.

372.75 Use of explosives and other substances prohibited.—No person may throw or place, or cause to be thrown or placed, any dynamite, lyddite, gunpowder, cannon cracker, acids, filtration discharge, debris from mines, Indian berries, sawdust, green walnuts, walnut leaves, creosote, oil, or other explosives or deleterious substance or force into the fresh waters of this state whereby fish therein are or may be injured. Nothing in this section may be construed as preventing the release of water slightly discolored by mining operations or water escaping from such operations as the result of providential causes.

History.—s. 29, ch. 13644, 1929; CGL 1936 Supp. 1977(29).

372.76 Search and seizure authorized and limited.—The Game and Fresh Water Fish Commission and its conservation officers shall have authority when they have reasonable and probable cause to believe that the provisions of this chapter have been violated, to board any vessel, boat or vehicle or to enter any fishhouse or warehouse or other building, exclusive of residence, in which game, hides, fur-bearing animals, fish or fish nets are kept and to search for and seize any such game, hides, fur-bearing animals, fish or fish nets had or held therein in violation of law. Provided, however, that no search without warrant shall be made under any of the provisions of this chapter, unless the officer making such search has such information from a reliable source as would lead a prudent and cautious man to believe that some provision of this chapter is being violated.

History.—s. 30, ch. 13644, 1929; CGL 1936 Supp. 1977(30).

372.761 Issuance of warrant for search of private dwelling.—

(1) A search warrant may be issued on application by a commissioned officer of the Game and Fresh Water Fish Commission to search any private dwelling occupied as such when it is being used for the unlawful sale or purchase of wildlife or freshwater fish being unlawfully kept therein. The term "private dwelling" shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boardinghouse, or lodging house. No warrant for the search of any private dwelling shall be issued except upon probable cause supported by sworn affidavit of some creditable witness that he has reason to believe that the said conditions exist, which affidavit shall set forth the facts on which such reason for belief is based.

(2) This section shall not be construed as being in conflict with, but is supplemental to, chapter 933.

History.—s. 1, ch. 70-381.
cf.—ch. 933 Search warrants.

372.77 Assent to provisions of Act of Congress of September 2, 1937.—

(1) The state hereby assents to the provisions of the Act of Congress entitled "An Act to provide that the United States shall aid the States in Wildlife Restoration Projects, and for other purposes," approved September 2, 1937 (Pub. L. No. 415, 75th Congress), and the Game and Fresh Water Fish Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said Act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of Agriculture thereunder.

(2) From and after the passage of this section it shall be unlawful to divert any funds accruing to the state from license fees paid by hunters for any purpose other than the administration of the Game and Fresh Water Fish Commission of the state.

History.—ss. 1, 2, ch. 20223, 1941.

372.771 Federal conservation of fish and wildlife; limited jurisdiction.—

(1) Consent of the State of Florida is hereby given, to the United States for acquisition of lands, waters, or lands and waters or interests therein, for the purpose of managing, protecting and propagating fish and wildlife and for other conservation uses in the state, providing prior notice has been given by the Federal Government to the Board of Trustees of the Internal Improvement Trust Fund, the board of county commissioners of the county where the lands proposed for purchase are located, of such proposed action stating the specific use to be made of and the specific location and description of such lands desired by the Federal Government for any such conservation use, and that such plans for acquisition and use of said lands be approved by the Board of Trustees of the Internal Improvement Trust Fund, the board of county commissioners of the county where the lands proposed for purchase are located; provided further that nothing herein contained shall be construed to give the consent of the State of Florida to the acquisition by the United States of lands, waters, or lands and waters, or interests therein, through exercise of the power of eminent domain; provided further that the provisions of this act shall not apply to lands owned by the several counties or by public corporations.

(2) The United States may exercise concurrent jurisdiction over lands so acquired and carry out the intent and purpose of the authority except that the existing laws of Florida relating to the Department of Natural Resources or the Game and Fresh Water Fish Commission shall prevail relating to any area under their supervision.

History.—ss. 1, 2, ch. 61-242; s. 2, ch. 61-119; ss. 25, 27, 35, ch. 69-106.

372.83 Penalties for violation of rules, regulations and orders relating to game and freshwater fish.—Any person violating any rule, regulation or order of the Game and Fresh Water Fish Commission adopted pursuant to s. 9, Art. IV of the State Constitution and this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 6, ch. 21945, 1943; s. 1, ch. 23750, 1947; s. 11, ch. 25035, 1949; s. 9, ch. 26766, 1951; s. 7, ch. 69-216; s. 316, ch. 71-136.

372.84 Forfeiture or denial of licenses and permits.—Any person convicted as aforesaid shall forfeit to the state any license or permit that may have been issued to him under the provisions of this law, or other law of this state relating to game shall forthwith surrender the same to the court. If such violation occurs in the open season, relating to game, no license or permit shall be issued under the provisions of this law to such person at any time during the remainder of such open season, or if such violation occurs during the closed season no license shall be issued to such person for the open season on game next following.

History.—s. 7, ch. 21945, 1943.

372.85 Contaminating fresh waters.—

(1) It shall be unlawful for any person or persons, firm or corporation to cause any dyestuff, coal tar, oil, sawdust, poison or deleterious substances to be thrown, run or drained into any of the fresh running waters of this state in quantities sufficient to injure, stupefy, or kill fish which may inhabit the same at or below the point where any such substances are discharged, or caused to flow or be thrown into such waters; provided, that it shall not be a violation of this section for any person, firm or corporation engaged in any mining industry to cause any water handled or used in any branch of such industry to be discharged on the surface of land where such industry or branch thereof is being carried on under such precautionary measures as shall be approved by the Game and Fresh Water Fish Commission.

(2) Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 for the first offense, and for the second or subsequent offense shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 22909, 1945; s. 317, ch. 71-136.
cf.—ss. 533.01-533.06 Waste from mines escaping into waters of the state.

372.86 Possessing, exhibiting poisonous or venomous reptile; license required.—No person, firm, or corporation shall keep, possess or exhibit any poisonous or venomous reptile without first having obtained a special permit or license therefor from the Florida Game and Fresh Water Fish Commission as herein provided.

History.—s. 1, ch. 28263, 1953.

372.87 License fee; renewal, revocation.—The Florida Game and Fresh Water Fish Commission is hereby authorized and empowered to issue a license or permit for the keeping, possessing or exhibiting of poisonous or venomous reptiles, upon payment of an annual fee of $5 and upon assurance that all of the provisions of ss. 372.86-372.91 and such other reasonable rules and regulations as said commission may prescribe will be fully complied with in all respects. Such permit may be revoked by the Florida Game and Fresh Water Fish Commission upon violation of any of the provisions of ss. 372.86-372.91 or upon violation of any of the rules and regulations prescribed by said commission relating to the keeping, possessing and exhibiting of any poisonous and venomous reptiles. Such permits or licenses shall be for an annual period to be prescribed by the said commission and shall be renewable from year to year upon the payment of said $5 fee and shall be subject to the same conditions, limitations and restrictions as herein set forth.

History.—s. 2, ch. 28263, 1953.

372.88 Bond required, amount.—No person, party, firm or corporation shall exhibit to the public either with or without charge, or admission fee any poisonous or venomous reptile without having first posted a good and sufficient bond in writing in the penal sum of $1,000 payable to the Governor of the state, and his successors in office, conditioned that such exhibitor will indemnify and save harmless all persons from injury or damage from such poisonous or venomous reptiles so exhibited and shall fully comply with all laws of the state and all rules and regulations of the Florida Game and Fresh Water Fish Commission governing the keeping, possessing or exhibiting of poisonous or venomous reptiles; provided, however, that the aggregate liability of the surety for all such injuries or damages shall, in no event, exceed the penal sum of said bond. The surety for said bond must be a surety company authorized to do business under the laws of the state or in lieu of such a surety, cash in the sum of $1,000 may be posted with the said commission to ensure compliance with the conditions of said bond.

History.—s. 3, ch. 28263, 1953.

372.89 Safe housing required.—All persons, firms, or corporations licensed under this law to keep, possess or exhibit poisonous or venomous reptiles shall provide safe, secure and proper housing for said reptiles in cases, cages, pits or enclosures. It shall be unlawful for any person, firm or corporation, whether licensed hereunder or not, to keep, possess or exhibit any poisonous or venomous reptiles in any manner not approved as safe, secure and proper by the Florida Game and Fresh Water Fish Commission.

History.—s. 4, ch. 28263, 1953; s. 1, ch. [illegible]

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372.90 Transportation.—Poisonous or venomous reptiles may be transported only in the following fashion: The reptile, or reptiles shall be placed in a stout closely woven cloth sack, tied or otherwise secured. This sack shall then be placed in a box. The box shall be of strong material in solid sheets, except for small air holes, which holes shall be screened. Boxes containing poisonous or venomous snakes or other reptiles shall be prominently labeled "Danger—Poisonous Snakes" or "Danger—Poisonous Reptiles."

History.—s. 5, ch. 29263, 1953; s. 1, ch. 57-415.

372.901 Inspection.—Poisonous or venomous reptiles, held in captivity, shall be subject to inspection by an inspecting officer from the Florida Game and Fresh Water Fish Commission. The inspecting officer shall determine whether the said reptiles are securely, properly and safely penned. In the event that the reptiles are not safely penned, the inspecting officer shall report the situation in writing to the person or firm owning the said reptiles. Failure of the owner or exhibitor to correct the situation within 30 days after such written notice shall be grounds for revocation of the license or permit of said owner or exhibitor.

History.—s. 2, ch. 57-415.

372.91 Who may open cages, pits, or other containers housing poisonous or venomous reptiles.—No person except the licensee or his authorized employee shall open any cage, pit, or other container which contains poisonous or venomous reptiles.

History.—s. 7, ch. 29263, 1953.

372.911 Penalty.—Any person violating any provision of this chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. The Game and Fresh Water Fish Commission is authorized to offer rewards of up to $500 to any person furnishing information leading to the arrest and conviction of any person who has inflicted or attempted to inflict bodily injury upon any wildlife officer engaged in the enforcement of the provisions of this chapter or the rules and regulations of the Game and Fresh Water Fish Commission.

History.—s. 2, ch. 57-415; s. 1, ch. 59-352; s. 215, ch. 71-136.

372.912 Organized poisonous reptile hunts.—

(1) All persons, firms, and corporations sponsoring and conducting any organized poisonous reptile hunt for whatever purpose shall comply with the provisions of ss. 372.86-372.91.

(2) All persons participating in any organized poisonous reptile hunt in the state which is sponsored and conducted by a nonprofit organization registered with the Department of State under the provisions of chapter 617 shall be exempt from the licensing provisions contained in ss. 372.86, 372.87, and 372.88, only for the duration of said organized hunt.

(3) All organized poisonous reptile hunts in the state shall be registered with the Game and Fresh Water Fish Commission and be subject to reasonable rules and regulations promulgated by said commission.

History.—s. 1, ch. 74-144.

372.92 Rules and regulations.—The Florida Game and Fresh Water Fish Commission may prescribe such other rules and regulations as it may deem necessary to prevent the escape of poisonous and venomous reptiles, either in connection of construction of such cages or otherwise to carry out the intent of ss. 372.86-372.91.

History.—s. 6, ch. 29263, 1953.

372.921 Exhibition of wildlife.—

(1) In order to provide humane treatment and sanitary surroundings for wild animals kept in captivity, no person, firm, corporation, or association shall have, or be in possession of, in captivity for the purpose of public display with or without charge or for public sale any wildlife, specifically birds, mammals, and reptiles, whether indigenous to Florida or not, without having first secured a permit from the Game and Fresh Water Fish Commission authorizing such person, firm, or corporation to have in its possession in captivity the species and number of wildlife specified within such permit; however, this section does not apply to any wildlife not protected by law and the regulations of the Game and Fresh Water Fish Commission.

(2) The fees to be paid for the issuance of permits required by subsection (1) shall be as follows:

(a) For not more than 10 individual specimens in the aggregate of all species, the sum of $5 per annum.

(b) For over 10 individual specimens in the aggregate of all species, the sum of $25 per annum.

The fees prescribed by this section shall be submitted to the Game and Fresh Water Fish Commission with the application for permit required by subsection (1) and shall be deposited in the State Game Fund.

(3) An applicant for a permit shall be required to include in his application a statement showing the place, number, and species of wildlife to be held in captivity by him and shall be required upon request by the Game and Fresh Water Fish Commission to show when, where, and in what manner he came into possession of any wildlife acquired subsequent to the effective date of this act. The source of acquisition of such wildlife shall not be divulged by the commission except in connection with a violation of this section or a regulation of the commission in which information as to source of wildlife is required as evidence in the prosecution of such violation.

(4) Permits issued pursuant to this section and places where wildlife is kept or held in captivity shall be subject to inspection by officers of the Game and Fresh Water Fish Commission at all times. The commission shall have the power to release or confiscate any specimens of any wildlife, specifically birds, mammals, or reptiles, whether indigenous to the state or not, when it is found that conditions under which they are being confined are unsanitary, or unsafe to the public in any manner, or that the species of wildlife are being maltreated, mistreated, or neglected or kept in any manner contrary to the provisions of chapter 828, any such permit to the contrary notwithstanding. Before any such wildlife is confiscated or released under the authority of this section, the owner thereof shall have been advised in writing of the existence of such unsatisfactory conditions; the owner shall have been given 30 days in which to correct such conditions; the owner shall have failed to correct such conditions; the owner shall have had an opportunity for a proceeding pursuant to chapter 120; and the commission shall have ordered such confiscation or release after careful consideration of all evidence in the particular case in question. The final order of the commission shall constitute final agency action.

(5) Any animal on exhibit of a type capable of contracting or transmitting rabies shall be immunized against rabies.

(6) The provisions of this section relative to licensing do not apply to any municipal, county, state, or other publicly owned wildlife exhibit. The provisions of this section do not apply to any traveling zoo, circus, or exhibit licensed as provided by chapter 205.

(7) A violation of this section is punishable as provided by s. 372.71.

History.—s. 1, ch. 67-290; ss. 19, 35, ch. 69-106; s. 16, ch. 78-95; s. 4, ch. 79-329; s. 84, ch. 79-164; s. 27, ch. 83-85; s. 32, ch. 83-218.

372.922 Personal possession of wildlife.—

(1) It is unlawful for any person or persons to possess any wildlife as defined in this act, whether indigenous to Florida or not, until he has obtained a permit as provided by this section from the Game and Fresh Water Fish Commission.

(2) The classifications of types of wildlife and fees to be paid for the issuance of permits shall be as follows:

(a) *Class I*—Wildlife which, because of its nature, habits, or status, shall not be possessed as a personal pet.

(b) *Class II*—Wildlife considered to present a real or potential threat to human safety, the sum of $100 per annum.

(3) The commission shall promulgate regulations defining Class I and II types of wildlife. The commission shall also establish regulations and requirements necessary to insure that permits are granted only to persons qualified to possess and care properly for wildlife and that permitted wildlife possessed as personal pets will be maintained in sanitary surroundings and appropriate neighborhoods.

(4) Any person, firm, corporation, or association exhibiting or selling wildlife and being duly permitted as provided by s. 372.921 shall be exempt from the requirement to obtain a permit under the provisions of this section.

(5) Persons in violation of this section shall be punishable as provided in s. 372.71.

History.—s. 1, ch. 74-199.

372.97 Jim Woodruff Dam; reciprocity agreements.—The Game and Fresh Water Fish Commission of the state is hereby authorized to enter into an agreement of the reciprocity with the game and fish commissioners or the appropriate officials or departments of the State of Georgia and the State of Alabama relative to the taking of game and freshwater fish from the waters of the lake created by the Jim Woodruff Dam by permitting reciprocal license privileges.

History.—s. 1, ch. 57-194.

372.971 St. Mary's River; reciprocity agreements.—The Game and Fresh Water Fish Commission of the state is hereby authorized to enter into an agreement of reciprocity with the game and fish commissioner or the appropriate officials or departments of the State of Georgia relative to the taking of game and freshwater fish from the waters of the St. Mary's River by permitting reciprocal agreement license privileges.

History.—s. 1, ch. 61-523.

372.98 Possession of nutria; license; inspection; penalty for violation.—

(1) No person shall release, permit to be released, or be responsible for the release of, within the state, any animal of the species *myocastor coypu* and known commonly in Florida and referred to herein as nutria.

(2) No person shall have in his possession for sale or otherwise any nutria until such person has obtained a license as provided herein. The fee for such license shall be $25 per year. Application for such license shall be made with the Game and Fresh Water Fish Commission on forms providing therefor.

(3) All persons licensed under this law to keep, possess or exhibit nutria shall provide safe, secure and proper housing for said nutria which will adequately safeguard against the escape of any nutria. Requirements for the construction of such pens or housing shall be as prescribed by the Game and Fresh Water Fish Commission.

(4) All premises upon which nutria are kept shall be subject to inspection by authorized representatives of the Game and Fresh Water Fish Commission. Such officers shall determine whether the said nutria are securely, properly and safely housed. In the event the said nutria are not securely, properly and safely housed, the inspecting officer shall so advise in writing the person owning said nutria. Failure of the owner to provide within 30 days after such written notice secure, proper, and safe housing as prescribed by the Game and Fresh Water Fish Commission shall be grounds for revocation of the license herein provided and confiscation and disposal of the said nutria as a public nuisance.

(5) Any person violating any provision of this section or any rule and regulation of the Game and Fresh Water Fish Commission pursuant hereto shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, 3, 4, 5, ch. 59-398; s. 319, ch. 71-136.

372.981 Regulation of importation of caiman.—The Game and Fresh Water Fish Commission shall promulgate regulations to control the importation of caiman.

History.—s. 2, ch. 71-299.

372.99 Illegal taking and possession of deer and wild turkey; evidence; penalty.—

(1) Whoever takes or kills any deer or wild turkey, or possesses a freshly killed deer or wild turkey, during the closed season prescribed by law or by the rules and regulations of the Game and Fresh Water Fish Commission, or whoever takes or attempts to take any deer or wild turkey by the use of gun and light in or out of closed season, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall forfeit any license or permit issued to him under the provisions of this chapter. No license shall be issued to such person for a period of 3 years following any such violation on the first offense. Any person guilty of a second or subsequent violation shall be permanently ineligible for issuance of a license or permit thereafter.

(2) The display or use of a light in a place where deer might be found, and in a manner capable of disclosing the presence of deer, together with the possession of firearms or other weapons customarily used for the taking of deer, between 1 hour after sunset and 1 hour before sunrise, shall be prima facie evidence of an intent to violate the provisions of subsection (1). This subsection does not apply to an owner or his employee when patrolling or inspecting the land of the owner, provided the employee has satisfactory proof of employment on his person.

(3) Whoever takes or kills any doe deer; fawn or baby deer; or deer, whether male or female, which does not have one or more antlers at least 5 inches in length, except as provided by law or the rules of the Game and Fresh Water Fish Commission, during the open season prescribed by the rules of the commission, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and may be required to forfeit any license or permit issued to such person for a period of 3 years following any such violation on the first offense. Any person guilty of a second or subsequent violation shall be permanently ineligible for issuance of a license or permit thereafter.

(4) Any person who cultivates agricultural crops may apply to the Game and Fresh Water Fish Commission for a permit to take or kill deer on land which that person is currently cultivating. When said person can show, to the satisfaction of the Game and Fresh Water Fish Commission, that such taking or killing of deer is justified because of damage to his crops caused by deer, the Game and Fresh Water Fish Commission may issue a limited permit to the applicant to take or kill deer without being in violation of subsection (1) or subsection (3).

(5) Whoever possesses for sale or sells deer or wild turkey taken in violation of this chapter or the rules and regulations of the commission is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 1, ch. 65-340; s. 320, ch. 71-136; s. 1, ch. 77-[illegible]; ss. 1, 2, ch. 77-311; s. 2, ch. 78-173; s. 144, ch. 79-400.

372.9901 Seizure of illegal devices; disposition; appraisal; forfeiture.—

(1) Any vehicle, vessel, animal, gun, light, or other hunting device used in the commission of an offense prohibited by s. 372.99, shall be seized by the arresting officer, who shall promptly make return of the seizure and deliver the property to the Director of the Game and Fresh Water Fish Commission. The return shall describe the property seized and recite in detail the facts and circumstances under which it was seized, together with the reason that the property was subject to seizure. The return shall also contain the names of all persons known to the officer to be interested in the property.

(2) The director of the commission, upon receipt of the property, shall promptly fix its value and make return thereof to the clerk of the circuit court of the county wherein the article was seized; after which on proper showing of ownership of the property by someone other than the person arrested the property shall be returned to the said owner.

(3) Upon conviction of the violator, the property, if owned by the person convicted, shall be forfeited to the state under the procedure set forth in ss. 372.312 through 372.318, where not inconsistent with this section. All amounts received from the sale or other disposition of the property shall be paid into the State Game Trust Fund. If the property is not sold or converted, it shall be delivered to the director of the Game and Fresh Water Fish Commission.

History.—s. 1, ch. 65-340.
Note.—Former s. 372.0100.

372.9902 Inapplicability of ss. 372.99 and 372.9901.—The provisions of ss. 372.99 and 372.9901 relating to seizure and forfeiture of vehicles, vessels and animals shall not apply when such vehicles, vessels or animals are owned by, or titled in the name of, innocent parties and provided further that such provisions shall not vitiate any valid lien, retain title contract or chattel mortgage on such vehicles, vessels or animals if such lien, retain title contract or chattel mortgage is properly of public record at the time of the seizure.

History.—s. 2, ch. 65-340; s. 208, ch. 73-333.
Note.—Former s. 372.0101.

372.9903 Illegal possession or transportation of freshwater game fish in commercial quantities; penalty.—

(1) Whoever possesses, moves, or transports any black bass, bream, speckled perch, or other freshwater game fish in commercial quantities in violation of law or the rules of the Game and Fresh Water Fish Commission shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) For the purposes of this section "commercial quantities" shall be deemed to be a quantity of freshwater game fish of 150 or more pounds, and the possession, movement, or transportation of freshwater game fish in excess of such weight shall constitute prima facie evidence of possession or transportation for commercial purposes.

History.—s. 1, ch. 70-390; s. 321, ch. 71-136.

372.9904 Seizure of illegal devices; disposition; appraisal; forfeiture.—

(1) Any vehicle, vessel, or other transportation device used in the commission of the offense prohibited by s. 372.9903, except a vehicle, vessel, or other transportation device duly registered as a common carrier and operated in lawful transaction of business as such carrier, shall be seized by the arresting officer, who shall promptly make return of the seizure and deliver the property to the director of the Game and Fresh Water Fish Commission. The return shall describe the property seized and recite in detail the facts and circumstances under which it was seized, together with the reason that the property was subject to seizure. The return shall also contain the names of all persons known to the officer to be interested in the property.

(2) The commission, upon receipt of the property, shall promptly fix its value and make return thereof to the clerk of the circuit court of the county wherein the article was seized; after which, on proper showing of ownership of the property by someone other than the person arrested, the property shall be returned by the court to the said owner.

(3) Upon conviction of the violator, the property, if owned by the person convicted, shall be forfeited to the state under the procedure set forth in ss. 372.312-372.318, when not inconsistent with this section. All amounts received from the sale or other disposition of the property shall be paid into the state game trust fund. If the property is not sold or converted, it shall be delivered to the director of the Game and Fresh Water Fish Commission.

History.—s. 2, ch. 70-390.

372.9905 Applicability of ss. 372.9903 and 372.9904.—The provisions of ss. 372.9903 and 372.9904 relating to seizure and forfeiture of vehicles, vessels, or other transportation devices shall not apply when such vehicles, vessels, or other transportation devices are owned by, or titled in the name of, innocent parties. The provisions of said sections shall not vitiate any valid lien, retain title contract, or chattel mortgage on such vehicles, vessels, or other transportation devices if such lien, retain title contract, or chattel mortgage is properly of public record at the time of the seizure.

History.—s. 3, ch. 70-390; s. 145, ch. 79-400.

372.991 Nongame Wildlife Trust Fund.—

(1) The Legislature recognizes the value of maintaining ecologically healthy and stable populations of a wide diversity of fish and wildlife species and recognizes the need for monitoring, research, management, and public awareness of all wildlife species in order to guarantee that self-sustaining populations be conserved. The Legislature further recognizes that research and management for game species traditionally have been supported by licenses and fees collected by the Game and Fresh Water Fish Commission for consumptive uses of wildlife and that no such support mechanism is available for species not commonly pursued for sport or profit. It is the intent of the Legislature that the funds provided herein be spent to identify and meet the needs of nongame wildlife as a first priority with the ultimate goal of establishing an integrated approach to the management and conservation of all native fish, wildlife, and plants.

(2)(a) There is established within the Game and Fresh Water Fish Commission the Nongame Wildlife Trust Fund. The commission shall designate an identifiable unit to administer the trust fund.

(b) Proceeds from the trust fund shall be used for the following purposes:

1. Documentation of population trends of nongame wildlife and assessment of wildlife habitat, in coordination with the data base of Florida natural areas inventory.
2. Establishment of effective conservation, management, and regulatory programs for nongame wildlife of the state.
3. Public education programs.

(3) The commission may enter into cooperative agreements or memoranda of understanding with related agencies to coordinate nongame programs.

History.—s. 1, ch. 83-173.

[1]372.992 Nongame Wildlife Advisory Council.—

(1) There is created the Nongame Wildlife Advisory Council, which shall consist of the following nine members appointed by the Governor: one representative each from the Game and Fresh Water Fish Commission, the Department of Natural Resources, and the United States Fish and Wildlife Services; the director of the Florida State Museum or his designee; one representative from a professional wildlife organization; one representative from a private wildlife institution; one representative from a Florida university or college who has expertise in nongame biology; and two members from conservation organizations. As soon as practicable after July 1, 1983, four members shall be appointed for terms ending August 1, 1985; and, thereafter, all appointments shall be for 4-year terms. Members shall be eligible for reappointment.

(2) The council shall recommend to the commission policies, objectives, and specific actions for nongame wildlife research and management.

(3) Members of the council shall receive no compensation but shall be entitled to receive per diem and travel expenses as provided in s. 112.061, while carrying out official business with the council, from funds provided under s. 372.991.

History.—s. 1, ch. 83-173.
[1]Note.—Expires October 1, 1993, pursuant to s. 5, ch. 83-173, and is scheduled for review pursuant to s. 11.611 in advance of that date.

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CHAPTER 373

WATER RESOURCES

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373.197 Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin restoration project; measures authorized.

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, U. S. 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.—s. 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) 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, 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 prevent damage from floods, soil erosion, and excessive drainage;

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

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

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

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

(3) 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 Regulation 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.

History.—s. 2, part I, ch. 72-299; s. 38, ch. 79-65; s. 70, ch. 80-310.

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) "Department" means the Department of Environmental Regulation or its successor agency or agencies.

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

(3) "Governing board" means the governing board of a water management district.

(4) "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.

(5) "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.

(6) "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.

(7) "Nonregulated use" means any use of water which is exempted from regulation by the provisions of this chapter.

(8) "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.

(9) "Ground water" means water beneath the surface of the ground, whether or not flowing through known and definite channels.

(10) "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.

(11) "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.

(12) "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.

(13) "Coastal waters" means waters of the Atlantic Ocean or the Gulf of Mexico within the jurisdiction of the state.

(14) "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.

(15) "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.

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 of Environmental Regulation, 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; the first such bibliography shall be published no later than July 1, 1984.

(b) The department is additionally directed to establish priorities for the development of a computerized ground water data base upon the following principles:

1. Regions deemed prone to ground water 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.

(b) 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.

373.029 Southeast River Basins Resources Advisory Board.—

(1) The Governor of this state shall have authority to appoint a representative of this state to serve on the Resources Advisory Board, Southeast River Basins, as said board is now, or may hereafter be, authorized, designated, and constituted. This power of appointment shall include the authority to fill vacancies in the position of representative of this state on said board from whatever cause existing and, from time to time, to make appointments for successive terms.

(2) The representative of this state on said board shall be reimbursed by this state for his necessary travel expenses while engaged in the business of said board, as provided by s. 112.061.

(3) For the purpose of paying Florida's pro rata share of the expense of maintaining and operating the Resources Advisory Board, Southeast River Basins, the department may expend an amount not in excess of $25,000 per annum out of moneys allocated the department.

(4) The Resources Advisory Board, Southeast River Basins, is hereby authorized to enter into whatever agreement or agreements are necessary for the purpose of extending old-age and survivors insurance coverage to the employees of said board. Funds appropriated to or available to said board may be expended for such purpose. The board is hereby authorized to take whatever action or actions deemed necessary to provide the aforesaid coverage.

History.—ss. 1, 2, 3, ch. 63-427; s. 1, ch. 65-510; s. 1, ch. 67-595; ss. 25, 35, ch. 69-106; s. 25, ch. 72-190; s. 39, ch. 79-65.

Note.—Former s. 373.193.

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 provisions of s. 373.191 shall apply specifically to the authority of the board of county commissioners, or to 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, to expend funds from whatever source may be available to them 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, 26, ch. 69-106; s. 25, ch. 73-190; s. 14, ch. 74-95; s. 60, ch. 79-65; s. 85, ch. 79-164.
Note.—Former s. 373.184.

373.036 State water use plan.—

(1) The department shall proceed as rapidly as possible to study existing water resources in the state, means and methods of conserving and augmenting such waters; existing and contemplated needs and uses of water for protection and procreation of fish and wildlife, irrigation, mining, power development, and domestic, municipal, and industrial uses; and all other related subjects, including drainage, reclamation, flood plain or flood-hazard area zoning, and selection of reservoir sites. The department shall cooperate with the Executive Office of the Governor, or its successor agency, progressively to formulate, as a functional element of a comprehensive state plan, an integrated, coordinated plan for the use and development of the waters of the state, based on the above studies. This plan, with such amendments, supplements, and additions as may be necessary from time to time, shall be known as the state water use plan.

(2) In the formulation of the state water use plan, the department shall give due consideration to:

(a) The attainment of maximum reasonable-beneficial use of water for such purposes as those referred to in subsection (1).

(b) The maximum economic development of the water resources consistent with other uses.

(c) The control of such waters for such purposes as environmental protection, drainage, flood control, and water storage.

(d) The quantity of water available for application to a reasonable-beneficial use.

(e) The prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources.

(f) Presently exercised domestic use and permit rights.

(g) The preservation and enhancement of the water quality of the state and the provisions of the state water quality plan.

(h) The state water resources policy as expressed by this chapter.

(3) During the process of formulating or revising the state water use plan, the department shall consult with, and carefully evaluate the recommendations of, concerned federal, state, and local agencies, particularly the governing boards of the water management districts, and other interested persons.

(4) Each governing board is directed to cooperate with the department in conducting surveys and investigations of water resources, to furnish the department with all available data of a technical nature, and to advise and assist the department in the formulation and drafting of those portions of the state plan applicable to the district.

(5) The department shall not adopt or modify the state water use plan or any portion thereof without first holding a public hearing on the matter. At least 90 days in advance of such hearing, the department shall notify any affected governing boards, and shall give notice of such hearing by publication within the affected region pursuant to the provisions of chapter 120, except such notice by publication shall be extended at least 90 days in advance of such hearings.

(6) For the purposes of this plan the department may, in consultation with the affected governing board, divide each water management district into sections which shall conform as nearly as practicable to hydrologically controllable areas and describe all water resources within each area.

(7) The department shall give careful consideration to the requirements of public recreation and to the protection and procreation of fish and wildlife. The department may prohibit or restrict other future

uses on certain designated bodies of water which may be inconsistent with these objectives.

(8) The department 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.

(9) The department 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.

(10) The department, in cooperation with the Executive Office of the Governor, or its successor agency, may add to the state water use 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. 8, part I, ch. 72-299; ss. 2, 3, ch. 73-190; s. 122, ch. 79-164.

373.039 Florida water plan.—The state water use plan together with the water quality standards and classifications of the department or its successor agency shall constitute the Florida water plan. The state water use plan should be developed in coordination with the water quality standards system.

History.—s. 7, part I, ch. 72-299; s. 41, ch. 79-65.

373.0395 Ground water basin resource availability inventory.—Each water management district shall develop a ground water 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 ground water 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 ground water recharge areas.

(4) Criteria to establish minimum seasonal surface and ground water levels.

(5) Areas suitable for future water resource development within the ground water 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 ground water 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 ground water or other available water supplies.

History.—s. 6, ch. 82-101.

373.042 Minimum flows and levels.—Within each section, or the water management district as a whole, the department or the governing board shall establish the following:

(1) 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.

(2) Minimum water level. The minimum water level shall be the level of ground water 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.

History.—s. 6, part I, ch. 72-299; s. 2, ch. 73-190.
Note.—Former s. 373.036(7).

373.043 Adoption and enforcement of regulations by the department.—The department shall adopt, promulgate, and enforce such regulations and review procedures as may be necessary or convenient to administer the provisions of this chapter.

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

373.044 Rules and regulations; enforcement.—In administering this chapter the governing board of the district is authorized to make and adopt reasonable rules, regulations and orders consistent with law and such rules, regulations and orders may be enforced by mandatory injunction, or other appropriate action in the courts of the state.

History.—s. 4, ch. 29590, 1955; s. 25, ch. 73-190.
Note.—Former s. 378.151.

373.046 Interagency agreements.—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 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.

History.—s. 9, part I, ch. 72-299.

373.047 Cooperation between districts.—Any flood control district created under the authority of chapter 378 is authorized to advise other

flood control districts or 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. 81-245; s. 25, ch. 73-190.
Note.—Former s. 378.52.

373.056 State agencies, counties, drainage districts, municipalities, or governmental agencies or public corporations authorized to convey land to flood control 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 of improvement of any flood control 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 flood control district created under any law enacted by the Legislature at its 1949 session.

(b) The land to which this section applies shall be located within the boundaries of the flood control 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 flood control district within this chapter shall have authority to convey to any other agency described herein 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 flood control 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. 8, ch. 81-497; s. 25, ch. 73-190.
Note.—Former s. 378.65.

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 ½ of Section 13, Township 2 North, Range 5 East; thence north to the northwest corner of the east ½ 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 ½ 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 ½ of Section 18, Township 9 South, Range 23 East; thence northward to the northeast corner of the west ½ 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 ½ of Section 25, Township 8 South, Range 22 East; thence north to the northeast corner of the west ½ 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 ½ of Section 13, Township 2 North, Range 5 East; thence south to the southwest corner of the east ½ 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 Okeecho-

bee-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 ½ of Section 25, Township 8 South, Range 21

East; thence east to the northeast corner of the south ½ 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 ½ of Section 18, Township 9 South, Range 23 East; thence northward to the northeast corner of the west ½ 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 ½ of Section 25, Township 8 South, Range 22 East; thence north to the northeast corner of the west ½ 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 ¼ of Section 35, Township 38 South, Range 30 East; thence north along the ¼-section line of Sections 35, 26, and 23, Township 38 South, Range 30 East to the northeast corner of the west ¼ 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 ½ of Section 17, Township 30 South, Range 29 East; thence north along the ½-section line to the northeast corner of the west ½ 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 ¼ of the southwest ¼ of Section 28, Township 28 South, Range 28 East; thence east along the ¼-section line to the intersection of said ¼-section line with Lake Pierce; thence follow the shore line northeasterly to its intersection with the ½-section line of Section 28, Township 28 South, Range 28 East; thence north on the ½-section line to the northwest corner of the southeast ¼ of Section 28, Township 28 South, Range 28 East; thence east to the northeast corner of the southeast ¼ 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 ¼ of Section 35, Township 38 South, Range 30 East; thence north along the ¼-section line of Sections 35, 26, and 23, Township 38 South, Range 30 East to the northeast corner of the west ¼ 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 ½ of Section 17, Township 30 South, Range 29 East; thence north along the ½-section line to the northeast corner of the west ½ 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 ¼ of the southwest ¼ of Section 28, Township 28 South, Range 28 East; thence east along the ¼-section line to the intersection of said ¼-section line with Lake Pierce; thence follow the shore line northeasterly to its intersection with the ½-section line of Section 28, Township 28 South, Range 28 East; thence north on the ½-section line to the northwest corner of the southeast ¼ of Section 28, Township 28 South, Range 28 East; thence east along the ½-section line to the northeast corner of the southeast ¼ 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 I, ch. 78-399; s. 6, ch. 79-169; s. 1, ch. 79-129; s. 1, ch. 79-343; s. 213, ch. 79-164; s. 1, ch. 79-53.

373.0691 Transfer of areas.—

(1) At the time of change of boundaries of the respective districts under s. 373.069(3), 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. 79-343.

373.0693 Basins; basin boards.—

(1) Any areas within a district may be designated by the district governing board as subdistricts or basins. The designation 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. No subdistrict or basin in the St. Johns 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 included counties in the basin.

(3) Each member of the various basin boards shall serve for a period of 3 years or until his 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 chairman 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 July 1 preceding the date of his appointment and to terminate June 30 of the year of the end of his 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 such services, but while officially on work for the district shall receive their actual traveling expenses and subsistence and lodging, not to exceed the statutory amount allowed state officers and employees, and other expenses in the actual amount incurred.

(6) 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 chairman of the governing board shall be the ex officio chairman of the basin board. The ex officio chairman shall preside at all meetings of the basin board, except that the vice chairman may preside in his absence. The ex officio chairman 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.

(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 December 31, 1976, the area being 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 be formed into a subdistrict or basin of the St. Johns River Water Management District. Such basin shall be designated as the Oklawaha River Basin. The members of the governing board of the Oklawaha River Basin of the Southwest Florida Water Management District shall become the members of the governing board of the newly formed basin. The governing board of the St. Johns River Water Management District may change the boundaries, but may not abolish the basin.

(b)1. The entire area of the St. Johns River Water Management District, less those areas in the Oklawaha Basin, shall be formed into a subdistrict or basin of the St. Johns River Water Management District. Such area shall be designated as the Greater St. Johns River Basin. The Greater St. Johns River Basin shall have all the powers, duties, functions, and responsibilities provided and authorized for subdistricts or basins of water management districts.

2. The governing board of the St. Johns River Water Management District shall also serve as the governing board of the Greater St. Johns River Basin.

(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

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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 insure 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.

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.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

[1]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, or regional water supply authority, providing water supply and transmission facilities for the purpose of assisting such counties, municipalities, and 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.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

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 one 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.

[1]373.073 Governing board.—

(1)(a) The governing board of each water management district shall be composed of nine members who shall reside within the district. The term of office of members of the board shall be 4 years. Members of the governing boards continued under this chapter shall be appointed from the district at large as vacancies occur on the governing boards. Such vacancies shall be filled according to the residency requirements of paragraph (b).

(b) 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 U. S. Water Resources Council in U. S. Geological Survey, River Basin and Hydrological Unit Map of Florida—1975, Map Series No. 72:

1. Northwest Florida Water Management District:

a. 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.

b. 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.

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

d. 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.

e. 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.

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

2. Suwannee River Water Management District:

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

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

c. 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.

d. 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.

e. 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.

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

3. St. Johns River Water Management District:

a. 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.

b. 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.

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

d. One member shall reside in the area generally designated as the "St. Johns River Basin above the Oklawaha River" hydrologic unit.

e. 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.

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

4. South Florida Water Management District:

a. Two members shall reside in Dade County.

b. One member shall reside in Broward County.

c. One member shall reside in Palm Beach County.

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

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

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

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

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

5. Southwest Florida Water Management District:

a. One member shall reside in the river basin generally designated as the Withlacoochee River.

b. One member shall reside in the area generally comprised of the Hillsborough, Alafia, and Little Manatee River basins.

c. One member shall reside in the river basin generally designated as the Peace River.

d. One member shall reside in the area generally comprised of the Manatee and Myakka River basins.

e. One member shall reside in the watershed basins lying north of the Anclote River basin and west of the Oklawaha River basin, excluding the Withlacoochee River.

f. One member shall reside in the watershed basins lying south of the northern limits of the Anclote River basin and west of the Hillsborough River basin, including all of Pinellas County.

g. Three members shall be appointed at large, except that no county shall have more than two members on the governing board, and Pinellas County and Hillsborough County shall each have two members.

(2) 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 shall create a vacancy in the office to which the appointment was made.

History.—s. 13, part I, ch. 72-299; s. 11, ch. 73-22; s. 6, ch. 76-243; s. 1, ch. 77-72; s. 3, ch. 80-259; s. 225, ch. 81-259; s. 1, ch. 82-46.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

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[1]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.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

[1]373.079 Members of governing board; oath of office; staff.—

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

(2) Immediately after their appointment, and every 2 years thereafter, members composing the governing board shall meet at some convenient place and choose one of their number chairman of the board, and some suitable person secretary, 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 duties as the governing board may determine. 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 Florida or taxpayer in the district or his agent or attorney.

(3) The chairman and members of the board shall receive no compensation for such services, but while officially on work for the district shall receive their actual traveling expenses and subsistence and lodging, not to exceed the statutory amount allowed state officers and employees, and other expenses in the actual amount incurred therefor.

(4) The governing board of the district is authorized to employ an executive director and such engineers, other professional persons, and other personnel and assistants as the board may deem necessary and under such terms and conditions as it may determine, and to terminate such employment.

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

(a) Providing legal counsel on matters relating to the exercise of its powers and duties;

(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.

(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 chairman.

History.—s. 15, part I, ch. 72-299; s. 1, ch. 82-46.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

[1]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.

History.—s. 16, part I, ch. 72-299; s. 1, ch. 82-46.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

[1]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.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

Note.—Former s. 378.161.

[1]373.085 Use of works by other districts.—

(1) The governing board shall have authority to prescribe the manner in which local works provided by other districts or by private persons shall connect with and make use of the works of the district, to issue permits therefor, and to cancel the same for noncompliance with the conditions thereof, or for other cause. It shall be unlawful to connect with or make use of the works of said district without consent in writing from its governing board, and said board shall have authority to prevent, or if done to estop or terminate the same.

(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.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

Note.—Former s. 378.17.

[1]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 Regulation if the governing board issues an order declaring a water emergency which order is approved by the Secretary of Environmental Regulation. 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 Regulation 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. 67-296; s. 1, part VI, ch. 72-299; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 4, ch. 82-101.

[1]Note.—[2]Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

Note.—Former s. 378.18.

[1]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.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

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.

[1]373.089 Sale of lands.—The governing board of the district may sell lands to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Any lands determined by the governing board to be surplus may be sold by the district, at any time for the highest price obtainable.

(2) All sales of 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 land, except as provided in subsection (5), 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 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 the time and place of the sale and a description of lands to be offered for sale.

(4) All sales shall be conducted at the county courthouse in the county in which the land is located on any day of the week except Sunday and at any time specified in the notice between the hours of 11 a.m. and 2 p.m.

(5) Public sale shall not be required when surplus lands are being resold to the then owner of that adjacent parcel from which the surplus land was originally parted; provided such sale is made within 1 year from the time the land is declared surplus; and the owner of the adjacent parcel shall be notified by registered mail to the address shown on the county tax roll within 30 days after the land is declared surplus.

(6) Public sale shall not be required when a building determined to be surplus was constructed or purchased using funds from the General Revenue Fund and the buyer is another regional agency or state agency that will use the structure in furtherance of its programs.

History.—s. 4, ch. 29790, 1955; s. 25, ch. 73-190; s. 1, ch. 82-46; s. 9, ch. 82-101.

[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

Note.—Former s. 378.48.

[1]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:

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

(2) Before leasing any land, or interest in land in-

cluding 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.
[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.
Note.—Former s. 378.49.

[1]**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.
[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.
Note.—Former s. 378.50.

[1]**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 chairman or vice chairman 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.
[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.
Note.—Former s. 378.51.

[1]**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.

(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 state water use plan applicable to the district.

History.—s. 17, part I, ch. 72-299; s. 7, ch. 73-190; s. 2, ch. 80-259; s. 1, ch. 82-46.
[1]Note.—Repealed effective October 1, 1988, by s. 1, ch. 82-46, and scheduled for review pursuant to s. 11.611 in advance of that date.

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 shall have 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. 300(1) until delegated by the department to the districts.

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

(a) Buy water;

(b) Exchange water;

(c) Distribute water to persons in exchange for ceasing or reducing ground water 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 ground water replenishment.

History.—s. 18, part I, ch. 72-299; s. 14, ch. 78-95; s. 71, ch. 83-310.
[1]Note.—As enacted; the reference intended may be "s. 300h."

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 implements a permit system under part II, III, or IV of this chapter, it shall establish a schedule of fees for filing applications for the required permits. Such fees shall reflect the cost to the district for processing the application. However, permit fees shall not be required from any governmental entity.

(1) All moneys received under the provisions of this section shall be allocated for the use of the water management district and 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 shall constitute grounds for revocation of his permit.

History.—s. 19, part I, ch. 72-299; s. 7, ch. 76-243.

373.113 Adoption of regulations by the governing board.—In administering the provisions of this chapter the governing board shall adopt, promulgate, and enforce such regulations as may be reasonably necessary to effectuate its powers, duties, and functions pursuant to the provisions of chapter 120.

History.—s. 20, part I, ch. 72-299.

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.

(a) Such review may be initiated by the department or by a party to the proceeding 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; however, when the rule or order to be reviewed has statewide or regional significance, as determined by the Land and Water Adjudicatory Commission within 60 days after receipt of a request for review, the commission may accept a request for review from any affected person within 30 days after adoption of the rule or the rendering of the order.

(b) Review by the Land and Water Adjudicatory Commission is appellate in nature and shall be based on the record below. The matter shall be heard by the commission not more than 60 days after receipt of the request for review or the determination by the commission that the rule or order has statewide or regional significance, whichever is later.

(c) If the Land and Water Adjudicatory Commission determines that a rule or order is not consistent with the provisions and purposes of this chapter, it may, in the case of a rule, require the water management district to initiate rulemaking proceedings to amend or repeal the rule or, in the case of an order, rescind or modify the order or remand the proceeding to the water management district for further action consistent with the order of the Land and Water Adjudicatory Commission.

(d) 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.

(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 state water policy 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 state water policy, 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 state water policy, 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.

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.

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

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. 1, 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.

History.—s. 1, ch. 83-149.

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, or any local board 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 thereto.

(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.

History.—s. 16, ch. 57-380; s. 14, ch. 63-206; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 42, ch. 79-65.
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) 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.

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 fee title to real property and easements therein by purchase, gift, devise, lease, eminent domain, or otherwise for flood control, water storage, water management, and preservation

of wetlands, streams and lakes, except that eminent domain powers may be used only for acquiring real property for flood control and water storage.

(3) Lands acquired for the purposes enumerated in subsection (2) may also be used for recreational purposes, and whenever practicable such lands shall be open to the general public for recreational uses.

(4) For the purpose of introducing water into, or drawing water from, the underlying aquifer for storage or supply, the governing board is authorized to hold, control, and acquire by donation, lease, or purchase any land, public or private.

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

History.—s. 26, part I, ch. 72-299; s. 1, ch. 72-318.

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

History.—s. 11, ch. 25209, 1949; s. 27, part I, ch. 72-299; s. 25, ch. 73-190; s. 14, ch. 78-95.
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, Laws of Florida, 1949, 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 chapters 378 and 373, 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.

373.171 Rules and regulations.—

(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) Establish rules, regulations, or 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) Make other rules, regulations, and orders necessary for the preservation of the interests of the public and of affected water users.

(2) In promulgating rules and regulations 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, regulation 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 and regulations 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 Regulation.

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.

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, he 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. 72-299; s. 25, ch. 73-190; s. 1, ch. 73-295; s. 14, ch. 78-95; s. 35, ch. 83-218.
Note.—Former s. 378.152.

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373.191 County water conservation projects.—*The several counties of the state may cooperate* with the division by engaging in county water development and conservation projects and may use county funds and equipment for this purpose and to do all other things necessary in connection with the development and conservation of the county's water resources consistent with the provisions of this law and the rules and regulations adopted pursuant thereto.

History.—s. 13, ch. 57-390; ss. 25, 33, ch. 69-106.

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 Regulation 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 ground water, 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.

(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.

373.1961 Water production.—In the performance of, and in conjunction with, its other powers and duties, the governing board of a water management district existing pursuant to chapter 373:

(1) Shall engage in planning to assist counties, municipalities, and regional water supply authorities in meeting the water supply needs within its district 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.

(2) Upon request of a county, municipality, or regional water supply authority, shall assist such counties and municipalities and water supply authorities in meeting the water supply needs within its district 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.

(3) At the request of a county, municipality, or regional water supply authority, may establish water production and transmission facilities for the purpose of supplying water to such counties, municipalities, and regional water supply authorities.

(4) Shall not engage in local distribution.

(5) 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.

(6) 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.

(7) 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.

History.—s. 2, ch. 74-114; s. 14, ch. 76-243; s. 7, ch. 82-101.

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 Governor and Cabinet sitting as head of the Department of Natural Resources to insure 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, 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 Governor and Cabinet, sitting as head of the Department of Natural Resources, 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 insure 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 one-half 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) Not engage in local distribution.

(d) 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.

(e) 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.

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

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

(h) 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) 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 chapter 373, 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.

(4) 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.

(5) 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.

(6) 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.

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

History.—s. 7, ch. 76-116; s. 1, ch. 77-174; s. 38, ch. 79-5.

Note.—Section 11, ch. 79-22 transferred powers, duties, and functions of the Department of Natural Resources relating to water management to the Department of Environmental Regulation.

373.1963 Assistance to West Coast Regional Water Supply Authority.—

(1) In lieu of the provisions in paragraph 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

373.1965 Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin; coordinating council on restoration; project implementation.—

(1) There is created the Coordinating Council on the Restoration of the Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin. The council shall be composed of the Executive Director of the Department of Natural Resources, the Executive Director of the Florida Game and Fresh Water Fish Commission, the Executive Director of the Central and Southern Florida Flood Control District, and the Commissioner of the Department of Agriculture and Consumer Services, or their designees, and the Secretary of the Department of Environmental Regulation, who shall serve as chairman.

(2) In recognition of the complete findings of the Special Project to Prevent the Eutrophication of Lake Okeechobee, the council shall develop measures which are to be taken by the Department of Environmental Regulation, the Department of Natural Resources, the Game and Fresh Water Fish Commission, and the Central and Southern Florida Flood Control District to restore the water quality of the Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin. Such measures shall be designed to minimize and ultimately remove the threats to the agricultural industry, the wildlife, and the people of central and southern Florida, posed by land uses and water-management practices which cause the degradation of water quality in such area and shall be designed to alleviate excessive nutrient loading from the Taylor Creek-Nubbins Slough Basin. In developing such measures, the council shall seek to:

(a) Conserve and improve ground and surface water supplies throughout the region.

(b) Improve the quality of water for all beneficial purposes throughout the region, and in Lake Okeechobee.

(c) Restore the natural seasonal water level fluctuations in the lakes of the Kissimmee River and in its natural flood plains and marshlands.

(d) Recreate conditions favorable to increases in production of wetland vegetation, native aquatic life, and wetland wildlife.

(e) Protect presently developed areas from unnatural floods, to the extent that such protection is now achievable.

(f) Utilize the natural and free energies of the river system to the greatest extent possible, so as to hold to a minimum all recurring annual needs of petroleum energy supplies.

(g) Provide for the effective enforcement of existing laws designed to prevent excessive nutrient loading of area waters.

(3) The Department of Environmental Regulation, the Department of Natural Resources, the Game and Fresh Water Fish Commission, and the Central and Southern Florida Flood Control District shall each implement and enforce those measures developed by the council which are within its jurisdiction. The Secretary of the Department of Environmental Regulation shall be responsible for the overall supervision of the enforcement of such measures.

(4) The Central and Southern Florida Flood Control District or its successor agency shall establish a Special Trust Fund for the Restoration of the Kissimmee River Valley and Lake Okeechobee, which shall be funded from State General Revenue, federal matching funds, donations, and district funds, provided that district funds shall equal 20 percent of State General Revenue funds.

(5) The Secretary of the Department of Environmental Regulation shall present to the Legislature, within 1 year of the effective date of this act, the council's comprehensive report and complete plans for implementation of the corrective actions required, including fund requirements, and the implementation of the program within 5 years after the effective date of this act. During the 5-year implementation period, the Secretary of the Department of Environmental Regulation shall present to the Legislature an annual, comprehensive, interim progress report.

(6) Upon completion of the entire program to the satisfaction of the council and the Legislature, the council shall cease to exist, and all funds and moneys remaining in the Special Fund shall be immediately paid over to the General Revenue Fund.

History.—s. 1, ch. 79-115.

373.197 Kissimmee River Valley and Taylor Creek-Nubbins Slough Basin restoration project; measures authorized.—

(1) The Legislature hereby directs the Florida Department of Environmental Regulation, in conjunction with the South Florida Water Management District, to seek appropriate authorization by the Congress of the United States for a restudy of the Kissimmee River Valley and the Taylor Creek-Nubbins Slough Basin.

(2) The Legislature recommends that the authorization provide that the Board of Engineers for Rivers and Harbors, created under s. 3 of the Rivers and Harbors Act, approved June 13, 1902, be directed to review the report of the Chief of Engineers on Central and Southern Florida, published as House Document Numbered 643, Eightieth Congress, and other pertinent reports, with a view to determining whether any modification of the recommendations contained therein and of the system of works constructed pursuant thereto is advisable with respect to questions of the quality of water entering the Kissimmee River and Taylor Creek-Nubbins Slough and Lake Okeechobee therefrom, flood control, recreation, navigation, loss of fish and wildlife resources, other current and forseeable environmental problems, and loss of environmental amenities in those areas. Potential modification alternatives, if any, shall include, but not be limited to, consideration of restoration of all or parts of the Kissimmee River below Lake Kissimmee and of the Taylor Creek-Nubbins Slough Basin.

(3) The Department and the Water Management District shall also seek to assure that this restudy be conducted by the Corps of Engineers in close cooperation with the Coordinating Council on the Restoration of the Kissimmee River Valley and the Taylor Creek-Nubbins Slough Basin and that the study be responsive to the problems and needs identified by the Coordinating Council and consider development of detailed physical and mathematical models to assess and predict these identified problems.

History.—s. 1, ch. 77-404.

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 Department of Environmental Regulation.

(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.

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 business. Upon the determination by the Department of Environmental Regulation 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. 65-660; ss. 25, 35, ch. 69-106; s. 25, ch. 73-190; s. 45, ch. 79-65; s. 7, ch. 83-310.

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 ground water resource due to water quality degradation.

(2) Each water management district shall submit its work plan to the Secretary of Environmental Regulation no later than January 1, 1984. Thereafter, each water management district shall submit an annual update of its work plan until January 1, 1992, or until all wells identified by the plan are plugged, whichever is later.

History.—s. 8, ch. 83-310.

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 Regulation can show that the uncontrolled flow of water from the well does not have a reasonable and beneficial use, as defined in s. 373.019(5).

(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.

Note.—Former ss. 370.053, 373.041.

373.213 Certain artesian wells exempt.—Nothing in ss. 370.051-370.055 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.

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 Regulation, 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.

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(5); and

(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) 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.

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 chapter 373 or chapter 378 prior to December 31, 1976, shall remain in full force and effect in accordance with its terms until otherwise modified or revoked as authorized herein.
History.—s. 11, ch. 73-190; s. 5, ch. 73-125.

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(5) 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 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.

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 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) 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.

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.—
(1) Permits may be granted for any period of time not exceeding 20 years. The governing board or the department may base 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.
History.—s. 7, part II, ch. 72-299.

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 nonuse was due to extreme hardship caused by factors beyond his 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. 78-98.

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. Copies of the water shortage plan shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than October 31, 1983. As a part of this plan the governing board or the department shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.
(2) The governing board or the department by order may declare that a water shortage exists within all or part of the district when insufficient water is available to meet the requirements of the permit system 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 shall 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 permits 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 shall 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 permit or any suspension of his permit or of any other restriction on his 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 with the concurrence of the governing board, finds that the exercise of powers under subsection (1) are 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 may, pursuant to the provisions of s. 373.119, issue 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.

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.

PART III

REGULATION OF WELLS

373.303 Definitions.
373.306 Scope.
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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 ground water or disposing of water or liquid wastes is impracticable.

(2) "Construction of water wells" means all parts necessary to obtain ground water 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 Regulation.

(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 any person, firm, or corporation engaged in the business of constructing 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 ground water, 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.

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, 373.326, 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. 78, ch. 83-310.

373.309 Authority to adopt rules, regulations, and procedures.—The department shall adopt, and may from time to time amend, rules and regulations governing the location, construction, repair, and abandonment of water wells and shall be responsible for the administration of this part. With respect thereto, it shall:

(1) Enforce the provisions of this part and any rules and regulations adopted pursuant thereto.

(2) Delegate, at its discretion, to any political subdivision any of its authority under this part in the administration of the rules and regulations adopted hereunder.

(3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this part.

(4) Require at its discretion the making and filing of logs, and the saving of cuttings and cores, which shall be delivered to the department.

(5) Issue such additional regulations and take such other actions as may be necessary to carry out the provisions of this part.

History.—s. 3, part III, ch. 72-299; s. 229, ch. 81-259.

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 ground water 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 ground water 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 Water well contractor licenses; driller and drilling equipment registration.—

(1) WATER WELL CONTRACTOR LICENSES.—

(a) 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.

(b) The department may adopt and from time to time amend rules and regulations governing applications for water well contractor licenses. The water management district shall license as a water well contractor any person properly making application therefor who is an adult for all legal purposes, has knowledge of rules and regulations adopted under this part, and has had not less than 2 years' experience in the work for which he is applying for a license. The department shall prepare an examination which each such applicant must pass in order to qualify for such license.

(c) A political subdivision engaged in well drilling shall be licensed under this part but shall be exempt from paying the license fees for the drilling done by regular employees of, and with equipment owned by, it.

(d) Licenses issued pursuant to this section are not transferable and shall expire on July 1 of each year. A license may be renewed without examination for an ensuing year by making application not later than 30 days after the expiration date and paying the applicable fee. Such application shall have the effect of extending the validity of the current license until a new license is received or the applicant is notified by the department that it has refused to renew his license. After July 31 of each year, a license will be renewed only upon application and payment of the applicable fee plus a penalty of $50.

(e) Whenever the department or water management district determines that the holder of any license issued pursuant to this section has violated any provision of this part or any rule or regulation adopted pursuant thereto, the department or water management district is authorized to suspend or revoke any such license. Any order issued pursuant to this subsection shall become effective 30 days after service thereof unless a written petition requesting hear-

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ing under the procedure provided in chapter 120 is filed sooner.

(f) No application for a license issued pursuant to this section may be made within 1 year after revocation thereof.

(g) No later than October 1, 1984, the department shall delegate to the water management districts the powers and duties relating to processing and issuing water well contractor licenses. A license issued by any water management district shall be valid anywhere in the state.

(2) DRILLER AND DRILLING EQUIPMENT REGISTRATION.—

(a) Every person who operates drilling equipment for the purpose of constructing wells shall register with each water management district in which construction activity takes place. The governing board shall, as minimum conditions of such registration, require:

1. A written recommendation from a licensed water well contractor verifying the status of the driller as an employee of the contractor.

2. Demonstration of sufficient experience and practical knowledge needed to operate drilling equipment of the type to be used in actual well construction.

3. A written examination considered appropriate by the board and designed to verify the driller's knowledge of commonly accepted drilling practices and applicable rules of the district and the department.

(b) It is the responsibility of each licensed water well contractor to annually notify the governing board of the district in which he resides or in which his principal place of business is located of all registered drillers in his employ. In addition, each licensed contractor shall notify the board in a timely manner if a registered driller ceases to be an employee.

(c) Each licensed water well contractor shall register with the governing board each piece of drilling equipment he owns, leases, or operates. Upon registration of the equipment, the water well contractor's license number shall be prominently displayed thereon.

History.—s. 3, part III, ch. 72-299; s. 114, ch. [illegible]; s. 14, ch. 78-95; s. 77, ch. 83-310.

373.326 Exemptions.—

(1) When the department 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 department 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 his own or leased property, intended for use only in a single family house which is his residence, or intended for use only for farming purposes on his farm, and when the waters to be produced are not intended for use by the public or any residence other than his own. Such persons shall comply with all rules and regulations as to construction of wells adopted under this part.

History.—s. 8, part III, ch. 72-299.

373.329 Fees.—The following fees are required:

(1) A fee of $100 shall accompany each new application for a license required under s. 373.323.

(2) A fee of $25 shall accompany each application for a renewal of license under s. 373.323.

History.—s. 9, part III, ch. 72-299; s. 16, ch. 73-190.

373.333 Enforcement.—

(1) 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.

(2) 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. 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 department requiring described 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.

History.—s. 10, part III, ch. 72-299; s. 78, ch. 83-310.

373.336 Penalties.—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 ss. 775.082 and 775.083. Continuing violation after notice thereof shall constitute a separate violation for each day so continued.

History.—s. 11, part III, ch. 72-299; s. 17, ch. 73-190.

373.339 Existing regulations preserved.—The enactment of this chapter shall not apply in any area where water wells are regulated by a water regulatory district pursuant to the authority of chapter 373 unless and until the department shall modify or revoke such regulations and provide that such area will thereafter be governed by the provisions of this part.

History.—s. 12, part III, ch. 72-299.

373.342 Permits.—

(1) The governing board of any water regulatory district which, pursuant to the authority of s. 373.339 or pursuant to authority delegated to it by the department under s. 373.308 or s. 373.309(2), 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.

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.

History.—s. 1, part IV, ch. 72-299; s. 18, ch. 73-190; s. 4, ch. 80-259; s. 1, ch. 82-101.

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 Regulation or its successor agency, and nothing contained herein shall be construed to establish a basis for a cause of action for private litigants.

History.—s. 2, part IV, ch. 72-299; s. 47, ch. 79-65; s. 5, ch. 80-259; s. 2, ch. 82-101.

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 in the second degree, punishable under s. 775.082(5)(b).

History.—s. 3, part IV, ch. 72-299.

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 dam, impoundment, reservoir, appurtenant work, or works 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 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 cause a notice thereof to be published in a newspaper having general circulation within the affected area. In addition, the governing board or department shall send a copy of such notice to any person who has filed a written request for notification of any pending applications affecting the particular designated area. This notice shall be sent by regular mail prior to the date of publication. The notice shall contain:

(a) The name and address of the applicant 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 to be contained;

(e) The quantity of water to be contained;

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

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

(4) The notice provided for in subsection (3) shall state that written objections to the proposed permit may be filed with the governing board or department by a specified date. The governing board or department, at its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses.

(5) If no substantial objection to the application is received, the governing board or the department, after proper investigation by its staff, may at its discretion approve the application without a hearing. Otherwise, it shall set a time for a hearing in accordance with the provisions of chapter 120.

History.—s. 4, part IV, ch. 72-299; s. 19, ch. 73-190; s. 14, ch. 78-95.

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 dam, impoundment, reservoir, appurtenant work, or works 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 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.

History.—s. 5, part IV, ch. 72-299; s. 20, ch. 73-190.

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. 8, ch. 79-161.

373.419 Completion report.—Within 30 days after the completion of construction or alteration of any 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.

373.423 Inspection.—

(1) During the construction or alteration of any dam, impoundment, reservoir, appurtenant work, or works, the governing board or department shall make at its expense such periodic inspections as it deems necessary to insure 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. 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 Regulation or its successor agency shall have periodic inspections made, annually or more frequently as deemed necessary, of permitted 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. 46, ch. 79-65.

373.426 Abandonment.—

(1) Any owner of any 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 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 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 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.

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 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 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.

373.433 Abatement.—Any 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 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.

373.436 Remedial measures.—

(1) Upon completion of any inspection provided for by s. 373.423(3), the executive director 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 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.

373.439 Emergency measures.—

(1) The executive director, with the concurrence of the governing board, or the Department of Environmental Regulation shall immediately employ any remedial means to protect life and property if either:

(a) The condition of any 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 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 Regulation 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 Regulation shall continue in full charge and control of such 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.

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 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.

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(3) Control or regulation of 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.

PART V

FINANCE AND TAXATION

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373.495 Water resources development account.—There is hereby created in the General Revenue Fund an account to be known as the "Water Resources Development Account." Subject to such appropriation as the Legislature may make from time to time, the purpose of said account shall be to provide assistance to the water management districts created under this act for the protection, conservation, or development of the water resources of the state.

History.—s. 10, part I, ch. 72-299; ss. 4, 25, ch. 73-190.
Note.—Former s. 373.059.

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 Regulation, 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. 29, 35, ch. 69-106; s. 2, ch. 70-142; s. 25, ch. 73-190; s. 50, ch. 79-65.
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, Laws of Florida, 1949, 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) The districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, Laws of Florida, 1949, 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 Constitution of the State of Florida, 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:

(a) Northwest Florida Water Management District: 0.05 mill.

(b) Suwannee River Water Management District: 0.75 mill.

(c) St. Johns River Water Management District: 0.375 mill.

(d) Southwest Florida Water Management District: 1.0 mill.

(e) South Florida Water Management District: 0.80 mill.

The maximum millage assessed for district purposes shall not exceed 25 percent of the total authorized millage when there are one or more basins in a district, and the maximum millage assessed for basin purposes shall not exceed 75 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. 80-255; s. 41, ch. 80-274.
Note.—Chapter 76-243, which enacted paragraph (2)(b), was passed by the requisite three-fifths vote in each house. See s. 11(a)(21), Art. III, State Constitution.

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. 23, ch. 73-190; s. 15, ch. 76-243.
Note.—Former s. 378.19.

373.507 Districts, basins, and taxing authorities; budget and expense reports; audits.—Each district and basin referred to in chapter 373 shall 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 district or basin has jurisdiction or derives any funds for the operations of the district or basin. Each district, basin, and taxing authority shall make provision for an annual postaudit of its financial accounts. These postaudits shall be made in accordance with the rules of the Auditor General promulgated pursuant to ss. 166.241 and 11.47.

History.—s. 16, ch. 76-243; s. 1, ch. 77-387; s. 12, ch. 82-101.

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. 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 August 29 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)(f), in a newspaper of general paid circulation in said 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's 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.

(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 district's requirements.

(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.

(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 shall 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 the said funds, so long as notice of intention to amend shall be 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. Provided, in the event of disaster or of 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.

History.—s. 28, ch. 25209, 1949; s. 3, ch. 29790, 1955; s. 4, ch. 81-497; 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.
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 county tax roll the amount of such tax, determined at the rate certified to him 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.
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; 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 chairman or vice chairman 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 designated assistant to the treasurer or assistant treasurer and to the chairman or vice chairman 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.

(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. 32, ch. 25209, 1949; s. 3, ch. 83-224; s. 25, ch. 73-190; s. 1, ch. 73-213; s. 113, ch. 77-104; s. 13, ch. 82-101.
Note.—Former s. 378.32.

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 chairman 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 chairman 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. 75-402; s. 1, ch. 77-174; s. 147, ch. 79-400.
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 his 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.
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 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.
Note.—Former s. 378.41.

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 Audit by Auditor General.—At the direction of the Governor, audit of the district's accounts 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. Copy of such audit shall be furnished the Governor and the governing board of the district, and a copy shall be filed with the clerks of the circuit courts of each county within or partly within said district. The expense of said audit shall be paid by the district upon a statement thereof rendered to the district by the Auditor General. Payment of the amount thereof shall be made to the State Department of Banking and Finance to be entered in and to reimburse the account of the Auditor General so as not to reduce the legislative appropriation for said Auditor General.

History.—s. 43, ch. 25209, 1949; s. 8, ch. 69-92; ss. 12, 35, ch. 69-106; s. 25, ch. 73-190.
Note.—Former s. 378.43.

373.59 Water Management Lands Trust Fund.—

(1) There is established within the Department of Environmental Regulation 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 purpose of acquiring land in accordance with the provisions of this section.

(2) Each district shall file a 5-year plan for acquisition with the Legislature and the Secretary of Environmental Regulation by January 15, 1982. Annually thereafter, each district shall file with the Legislature and the secretary a report of acquisition activity together with modifications or additions to its 5-year plan of acquisition. Expenditure of moneys from the Water Management Lands Trust Fund shall be limited to the costs for acquisition of lands included within the plan as filed by each district.

(a) Prior to July 15, 1982, the use of moneys from the fund shall be limited to the following land acquisitions:

1. By South Florida Water Management District—lands in the water conservation areas and areas adversely affected by raising water levels of Lake Okeechobee in accordance with present regulation schedules, and the Savannahs Wetland area in Martin County and St. Lucie County.

2. By Southwest Florida Water Management District—lands in the Four River Basins areas, including Green Swamp, Upper Hillsborough and Cypress Creek, Anclote Water Storage Lands (Starkey), Withlacoochee and Hillsborough riverine corridors, and Sawgrass Lake addition.

3. By St. Johns River Water Management District—Seminole Ranch, Latt Maxey and Evans properties in the upper St. Johns River Basin.

4. By Suwannee River Water Management District—lands in Suwannee River Valley.

5. By Northwest Florida Water Management District—lands in the Choctawhatchee and Apalachicola River Valleys.

(b) After July 15, 1982, the use of moneys from the fund shall be used for continued acquisition of lands listed in paragraph (a) and as set forth in the 5-year land acquisition plan of the district.

(3) Moneys from the Water Management Lands Trust Fund shall be used for acquiring the fee or other interest in lands necessary for water management, water supply, and the conservation and protection of water resources, except that such moneys shall not be used for the acquisition of rights-of-way for canals or pipelines. Lands acquired with moneys from the fund shall be managed and maintained in an environmentally acceptable manner, and to the extent practicable, in such a way as to restore and protect their natural state and condition. The secretary of the Department of Environmental Regulation shall release moneys from the Water Management Lands Trust Fund to the districts following receipt of a resolution adopted by the governing board identifying the lands being acquired and certifying that such acquisition is consistent with the plan of acquisition and other provisions of this act.

(4) Water management land acquisition costs shall include payments to owners and costs and fees associated with such acquisition.

(5) The state-to-district ratio for funding of water management land acquisition shall be 4 to 1, except that the first $2 million of the moneys allocated to the district annually shall be exempt from the matching requirement. 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 land acquisition as provided in this section. The total moneys over the life of the fund available to any district under this section

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shall not be reduced except by resolution of the district governing board stating that the need for the moneys no longer exists.

(6) Moneys from the Water Management Lands Trust Fund shall be available 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.

(7) 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.

(8) Lands acquired for the purposes enumerated in this section shall also be used for general public recreational purposes that are not inconsistent with subsection (3).

(9) A district may dispose of land acquired under this section, pursuant to s. 373.089. However, revenue derived from such disposal may not be used for any purpose except the purchase of other lands meeting the criteria specified in this section.

(10) This section is repealed effective July 1, 1992. Any unobligated moneys remaining in the Water Management Lands Trust Fund on the date of the repeal of this section shall be deposited into the General Revenue Fund.

History.—ss. 3, 5, ch. 81-33; s. 38, ch. 83-318.

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.
373.609 Enforcement; city and county officers to assist.
373.613 Penalties.
373.614 Unlawful damage to district property or works; penalty.
373.616 Liberal construction.
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.

373.603 Power to enforce.—The Department of Environmental Regulation 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.
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, 112.12 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.

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. 26, 35, ch. 69-106; s. 25, ch. 73-190; s. 117, ch. 77-104; s. 252, 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. 16, ch. 25209; s. 6, ch. 25213, 1949; s. 26, 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. 79-65.

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. 87-10.

CHAPTER 375

OUTDOOR RECREATION AND CONSERVATION

375.011 Short title.
375.021 Comprehensive multipurpose outdoor recreation and conservation plan; Outdoor Recreation Advisory Committee.
375.031 Acquisition of land; Board of Trustees of the Internal Improvement Trust Fund.
375.032 Recreation; required purpose for purchase.
375.041 Land Acquisition Trust Fund.
375.044 Land Acquisition Trust Fund budget request.
375.051 Issuance of revenue bonds subject to constitutional authorization.
375.061 Construction.
375.065 Public beaches; financial and other assistance by Department of Natural Resources to local governments.
375.251 Limitation on liability of persons making available to public certain areas for recreational purposes without charge.
375.311 Legislative intent.
375.312 Definitions.
375.313 Commission powers and duties.
375.314 Damage to public lands.
375.315 Registration of off-road vehicles.

375.011 Short title.—This act may be known and cited as the "Outdoor Recreation and Conservation Act of 1963".

History.—s. 1, ch. 63-36.

375.021 Comprehensive multipurpose outdoor recreation and conservation plan; Outdoor Recreation Advisory Committee.—

(1) The Department of Natural Resources is given the responsibility, authority, and power to develop and execute a comprehensive multipurpose outdoor recreation and conservation plan for this state. The outdoor recreation and conservation plan shall be kept current through continual reevaluation and revision. Each project to be considered for acquisition in the comprehensive multipurpose outdoor recreation and conservation plan shall be subject to the selection procedures of s. 259.035 if the estimated value of such project exceeds $250,000. It shall be the responsibility of the department to supervise, and to ensure the beneficial management and use of, the lands acquired under the provisions of this act and to allocate by contract for management or by lease or otherwise such lands to the different agencies, subdivisions, or municipalities of the state in order to accomplish the purposes of this chapter.

[1](2) For the purposes of coordinating needs for outdoor recreation, conservation, and multipurpose land acquisition and obtaining professional guidance in the most beneficial use of lands acquired, there is established an Outdoor Recreation Advisory Committee, hereafter referred to as the "committee," whose primary duty it shall be to advise the Department of Natural Resources as to outdoor recreation and land acquisition needs and the most efficient use of lands acquired. The committee shall be composed of the following persons: the executive director of the Department of Natural Resources; the executive director of the Game and Fresh Water Fish Commission; the secretary of the Department of Community Affairs; the secretary of the Department of Transportation; the director of the Division of Forestry of the Department of Agriculture and Consumer Services; the director of the Division of Recreation and Parks of the Department of Natural Resources; and the director of the Division of Archives, History and Records Management of the Department of State. The executive director of the Department of Natural Resources shall also serve on the committee as its chairman. The committee shall meet upon the call of the chairman. The chief of the Bureau of Planning and Grants of the Division of Recreation and Parks shall serve as secretary of the committee. Any member of the committee may be represented at the various functions of the committee by his duly authorized representative. Nothing contained herein shall be construed as limiting the powers and authority of the officers, boards, agencies, and commissions represented on the committee or of the selection committee created pursuant to s. 259.035.

(3) The Department of Natural Resources may contract with the Government of the United States, or any agency or instrumentality thereof; or with the state or any county, municipality, district authority, or political subdivision; or with any private corporation, partnership, association, or person providing for or relating to the development of outdoor recreation or conservation in accomplishing the purposes of this act. The department may receive and accept from any federal agency, state agency, or other public body grants or loans for or in aid of the purposes of this act; and the department may receive and accept aid, contributions, or loans from any other source of money, property, labor, or other things of value to be held, used, and applied only for the purpose for which such aid, grants, or loans were made. Without limiting or modifying any of the powers and authority of the department, but specifically as an addition thereto, the department is expressly authorized to participate in the land and water conservation fund program, established by and pursuant to Pub. L. No. 88-578, as it may be amended from time to time.

History.—s. 2, ch. 63-36; ss. 1, 2, ch. 67-351; s. 5, ch. 67-461; ss. 25, 35, ch. 69-106; s. 136, ch. 71-377; s. 107, ch. 73-333; s. 2, ch. 80-356; s. 32, ch. 81-167; s. 1, ch. 82-46; s. 5, ch. 82-152; s. 32, ch. 83-55; s. 5, ch. 83-114; s. 2, ch. 83-265.

[1]Note.—Repealed effective October 1, 1989, by s. 1, ch. 82-48, as amended by s. 2, ch. 83-265, and scheduled for review pursuant to s. 11.611 in advance of that date.

375.031 Acquisition of land; Board of Trustees of the Internal Improvement Trust Fund.—

(1) The department is empowered and authorized to identify for acquisition lands, water areas, and related resources and to perform all other activities necessary or incident to improving, maintaining, selling, leasing, or disposing of land, water areas, and related resources, and improvements thereon. Prior to the department acquiring such land, the seller of the land shall file a statement with the Department of

State disclosing, for the period from January 1, 1970, to the date of the statement, all financial transactions concerning the land, all parties having a financial interest in any transaction, and the amount of the tax assessment thereon for each year. The Board of Trustees of the Internal Improvement Trust Fund shall hold title to lands so acquired, but the beneficial use, control, and management shall be with the department. All lands identified for acquisition under this chapter shall be acquired with funds from the Land Acquisition Trust Fund.

(2) The department may acquire, control, and oversee the development and use of all land, water areas, and related resources generally classified as outdoor areas and may construct, improve, enlarge, extend, and maintain capital improvements and facilities upon such outdoor areas as needed. In performing these functions, the department shall give full consideration to the recommendations of the committee and of other agencies using or desiring to use land or water areas provided by the department.

(3)(a) All land, water areas, and related resources hereafter needed by the state for outdoor recreation, wildlife management, forestry management, nature preservation, water conservation and control, and other similar or related purposes shall be acquired by the Division of State Lands of the Department of Natural Resources pursuant to the procedures set forth in chapter 253.

(b) Notwithstanding any provision of chapter 253, the executive director of the Department of Natural Resources or the director of the Division of State Lands may enter into an option contract to buy any parcel approved for purchase pursuant to this chapter. The option contract shall state that the final purchase price is subject to approval by the Board of Trustees of the Internal Improvement Trust Fund and that this price may not exceed the maximum offer allowed by law. The consideration for such option shall not exceed $1,000 or .01 percent of the estimate by the department of the value of the parcel, whichever is greater.

(4) The department may acquire by purchase, lease-purchase agreements, or otherwise, on such terms and conditions as it deems wise, any land, water areas, related resources, or other property which it deems is reasonably necessary for outdoor recreation or natural resources conservation under this act; and any and all rights, title, and interest in such land, water areas, related resources, and other property, including any public lands, parks, playgrounds, reservations, roads, or parkways, owned by or in which any county, political subdivision, city, town, village, public agency, or officer of the state has any right, title, or interest, or parts thereof or rights therein and any fee simple absolute or lesser interest in private property, and fee simple absolute in, easement upon, or the benefit of restrictions upon, abutting property to preserve and protect recreation and conservation areas and projects.

(5) Land, water areas, and related resources which may be identified through the procedures provided in this act shall include, but not be limited to, parks and recreation areas, wildlife preserves, forest areas, wetlands, floodways and water storage areas, beaches, water access sites, boating and navigational channels, submerged lands, historical and archaeological sites, and rights-of-way and sites for access roads which may be necessary for maximum development, use, and enjoyment of any outdoor recreation or conservation areas. The terms "land" and "lands" where used singly in this act shall be construed as inclusive of lands, water areas, and related resources.

(6) The department may acquire by the exercise of the power of eminent domain, in accordance with the statutes of the state, any land or water areas, related resources, and property and any and all rights, title, and interest in such land or water areas, related resources, and other property which it determines reasonably necessary for the preservation of floodways and water storage areas, boating and navigational channels, rights-of-way for access roads which may be necessary for maximum development and use of any outdoor recreation and conservation areas, and rights-of-way for access which may be necessary for the use and enjoyment of public waterways.

(7) The department may contract for the management or lease of acquired land, water areas, and related resources, or improvements thereon, with any state agency for its authorized purposes. The department may, in its discretion, require such state agency to pay, as rentals on such land, water areas, related resources, or improvements, all or any part of the revenues derived from the land.

(8) The department may, if it deems it desirable and in the best interest of the program, request the board of trustees to sell or otherwise dispose of any lands or water storage areas acquired under this act. The board of trustees, when so requested, shall offer the lands or water storage areas, on such terms as the department may determine, first to other state agencies and then, if still available, to the county or municipality in which the lands or water storage areas lie. If not acquired by another state agency or local governmental body for beneficial public purposes, the lands or water storage areas shall then be offered by the board of trustees at public sale, after first giving notice of such sale by publication in a newspaper published in the county or counties in which such lands or water storage areas lie not less than once a week for 3 consecutive weeks. All proceeds from the sale or disposition of any lands or water storage areas pursuant to this section shall be deposited in the Land Acquisition Trust Fund.

(9) The department may sell, lease, or otherwise dispose of certain products and user rights in, under, or upon land, water areas, and related resources acquired under the provisions of this act, including, but not limited to, oil and minerals, timber and forest products, sand, gravel, earth, grazing rights, and farming rights on such terms and conditions as it determines, if the sale, lease, or other disposition is not inconsistent with or injurious to the outdoor recreation, conservation, and other purposes for which such lands and water areas were acquired.

(10) The department is empowered and authorized to provide matching funds to counties and municipalities of up to 50 percent of the cost of purchasing, exclusive of condemnation, rights-of-way for access roads or walkways to public beaches contiguous with the Atlantic Ocean or the Gulf of Mexico.

History.—s. 3, ch. 63-36; s. 1, ch. 67-351; ss. 25, 27, 35, ch. 69-106; s. 1, ch. 72-104; s. 1, ch. 75-81; s. 17, ch. 79-255; s. 3, ch. 80-356; s. 6, ch. 83-114.

375.032 Recreation; required purpose for purchase.—No land shall be purchased under this act or any funds expended for any project unless a finding is made that recreation is the prime purpose of the purchase or of the project.

History.—s. 6, ch. 67-351.

375.041 Land Acquisition Trust Fund.—

(1) There is created a Land Acquisition Trust Fund to facilitate and expedite the acquisition of land, water areas, and related resources required to accomplish the purposes of this act. The Land Acquisition Trust Fund shall be held and administered by the department. All moneys and revenue from the operation, management, sale, lease, or other disposition of land, water areas, related resources, and the facilities thereon acquired or constructed under this act shall be deposited in or credited to the Land Acquisition Trust Fund. Moneys accruing to any agency for the purposes enumerated in this act may be deposited in this fund. There shall also be deposited into the Land Acquisition Trust Fund other moneys as authorized by appropriate act of the Legislature. All moneys so deposited into the Land Acquisition Trust Fund shall be trust funds for the uses and purposes herein set forth, within the meaning of s. 215.32(1)(b); and such moneys shall not become or be commingled with the General Revenue Fund of the state, as defined by s. 215.32(1)(a).

(2) The moneys on deposit in the Land Acquisition Trust Fund shall be first applied to pay the rentals due under lease-purchase agreements or to meet debt-service requirements of revenue bonds issued pursuant to s. 375.051.

(3) Any moneys in the Land Acquisition Trust Fund which are not pledged for rentals or debt service as above provided may be expended from time to time to acquire land, water areas, and related resources and to construct, improve, enlarge, extend, operate, and maintain capital improvements and facilities in accordance with the plan.

(4) The department may disburse moneys in the Land Acquisition Trust Fund to pay all necessary expenses to carry out the purposes of this act.

(5) When the Legislature has authorized the Department of Natural Resources to condemn a specific parcel of land and such parcel already has been approved for acquisition through the fund, the land may be acquired in accordance with the provisions of chapter 73 or chapter 74, and the fund may be used to pay the condemnation award and all costs, including a reasonable attorney's fee, associated with condemnation.

History.—s. 4, ch. 63-36; s. 4, ch. 67-351; ss. 25, 35, ch. 69-106; s. 4, ch. 80-356; s. 3, ch. 83-80.

375.044 Land Acquisition Trust Fund budget request.—

(1) The Department of Natural Resources shall submit to the Legislature a 10-year comprehensive budget request for the Land Acquisition Trust Fund.

(2) The legislative budget request shall be submitted to the Executive Office of the Governor and the Legislature in conjunction with the provisions of ss. 216.023, 216.031, and 216.043. The 10-year request shall include, but shall not be limited to:

(a) A 10-year annual cash-flow analysis of the Land Acquisition Trust Fund.

(b) The requested schedule of the agency for issuance of Save Our Coasts bonds.

(c) Forecasts of anticipated revenues to the Land Acquisition Trust Fund.

(d) The estimate of the agency of Land Acquisition Trust Fund encumbrances and commitments for each year and the corresponding estimates of expenditures.

History.—s. 1, ch. 83-57.

375.051 Issuance of revenue bonds subject to constitutional authorization.—The acquisition of lands, water areas, and related resources by the department under this act is a public purpose for which revenue bonds may be issued when and only when there has been granted in the State Constitution specific authorization for the department to issue revenue bonds to pay the cost of acquiring such lands, water areas, and related resources and to construct, improve, enlarge, and extend capital improvements and facilities thereon as determined by the department to be necessary for the purposes of this act. The department may utilize the services and facilities of the Department of Legal Affairs, the Board of Administration, or any other agency in this regard. No revenue bonds, revenue certificates, or other evidences of indebtedness shall be issued for the purposes of this act except as specifically authorized by the State Constitution. All revenue bonds, revenue certificates, or other evidences of indebtedness issued pursuant to this act shall be submitted to the State Board of Administration for approval or disapproval. No individual series of bonds may be issued pursuant to this section unless the first year's debt service [for such bonds] is specifically appropriated in the General Appropriations Act.

History.—s. 5, ch. 63-36; s. 5, ch. 67-351; ss. 11, 25, 28, 35, ch. 69-106; s. 5, ch. 80-356; s. 2, ch. 83-57.

[Note.—The words "for such bonds" were inserted by the editors.]

375.061 Construction.—The provisions of this act shall be liberally construed in a manner to accomplish the purposes thereof.

History.—s. 6, ch. 63-36.

375.065 Public beaches; financial and other assistance by Department of Natural Resources to local governments.—

(1) The Department of Natural Resources is authorized, within the limits of appropriations available to the department for such purposes, to utilize any one or more of the following procedures in establishing and operating a program of financial assistance to local governments for the acquisition of public beach properties:

(a) The department may make grants for, and advance loans to, the governing body of any county or municipality in an amount not to exceed the fair market value, as determined by the department, of any waterfront property sought to be purchased by said governing body for the purpose of establishing and maintaining a public beach.

(b) The department may require the local governing body to give assurance that it has the financial ability to furnish or secure funds to complete the purchase of the property sought. Any revenue from concessions, tolls, or parking or otherwise produced by the development or operation of such public beach may be pledged to amortize any indebtedness incurred in such beach acquisitions.

(2) The Department of Natural Resources may acquire waterfront property and may lease, sell, or grant acquired land, water areas, and related resources or improvements thereon to the governing body of any county or municipality upon such terms and conditions as the department may require in order to assure that such property will be reserved for public use and benefit in the future.

(3) The department is authorized to promulgate such rules and forms as may be necessary to carry out the purposes of this section and to ensure that all projects to which assistance is rendered hereunder are for the purpose of providing public beaches for recreation purposes.

(4) In addition to the authorized assistance procedures provided by this section, the Legislature hereby urges the Department of Natural Resources to give priority to applications relating to the acquisition of public beaches in urban areas, and to make full use of the federal Land and Water Conservation Fund Act of 1965, as amended, or other applicable federal programs. This section is supplemental to and shall not limit or repeal any provision of the Outdoor Recreation Act of 1963.

History.—ss. 1, 2, 3, ch. 72-86; s. 6, ch. 80-356.

375.251 Limitation on liability of persons making available to public certain areas for recreational purposes without charge.—

(1) The purpose of this act is to encourage persons to make available to the public land, water areas and park areas 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)(a) An owner or lessee who provides the public with a park area for outdoor recreational purposes owes no duty of care to keep that park area safe for entry or use by others, or to give warning to persons entering or going on that park area of any hazardous conditions, structures, or activities thereon. An owner or lessee who provides the public with a park area for outdoor recreational purposes shall not by providing that park area:

1. Be presumed to extend any assurance that such park area is safe for any purpose.

2. Incur any duty of care toward a person who goes on that park area, or

3. Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on that park area.

(b) This section shall not apply if there is any charge made or usually made for entering or using such park area, or any part thereof, or if any commercial or other activity for profit is conducted on such park area, or any part thereof.

(3)(a) An owner of land or water area leased to the state for 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. An owner who leases land or water area to the state for outdoor recreational purposes shall not by giving such lease:

1. Be presumed to extend any assurance that such land or water area is safe for any purpose,

2. Incur any duty of care toward a person who goes on the leased land or water area, or

3. Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the leased land or water area.

(b) The foregoing applies whether the person going on the leased land or water area is an invitee, licensee, trespasser, or otherwise.

(4) This act does not relieve any person of liability which would otherwise exist for deliberate, willful or malicious injury to persons or property. The provisions hereof shall not be deemed to create or increase the liability of any person.

(5) The term "outdoor recreational purposes" as used in this act shall include, but not necessarily be limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites.

History.—ss. 1, 2, 3, 4, 5, ch. 83-313; s. 1, ch. 75-17.

375.311 Legislative intent.—To protect and manage Florida's wildlife environment on lands conveyed for recreational purposes by private owners and public custodians, the Legislature hereby intends that the Game and Fresh Water Fish Commission shall regulate motor vehicle access and traffic control on Florida's public lands.

History.—s. 1, ch. 78-298; s. 1, ch. 78-355.

375.312 Definitions.—As used in this act, unless the context requires otherwise:

(1) "Motor vehicle" means any self-propelled vehicle, including every device in, upon, or by which any person or property is or may be transported or drawn, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) "Public lands" means any lands in the state which are owned by, leased by, or otherwise assigned to the state or any of its agencies and which are used by the general public for recreational purposes.

(3) "Commission" means the Florida Game and Fresh Water Fish Commission.

(4) "Off-road vehicle" means any motor vehicle under this act which is not licensed or registered under chapter 320, except those vehicles when used in timber harvest, reforestation, or other industry as may be directed by the landowner or mineral owner.

History.—s. 1, ch. 78-298; s. 1, ch. 78-355.

375.313 Commission powers and duties.—The commission shall:

(1) Regulate or prohibit, when necessary, the use of motor vehicles on the public lands of the state in order to prevent damage or destruction to said lands.

(2) Collect any registration fees imposed by s.

375.315 and deposit said fees in the State Game Trust Fund. The revenue resulting from said registration shall be expended for the funding and administration of ss. 375.311-375.315.

(3) Adopt and promulgate such reasonable rules as deemed necessary to administer the provisions of ss. 375.311-375.315, except that, before any such rules are adopted, the commission shall obtain the consent and agreement, in writing, of the owner, in the case of privately owned lands, or the owner or primary custodian, in the case of publicly owned lands.

History.—s. 1, ch. 78-238; s. 1, ch. 78-355.

375.314 Damage to public lands.—

(1) Whoever damages public lands by the use of a motor vehicle is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 or by restitution.

(2) For the purpose of this section, damage shall include, but is not limited to, injury to or destruction of trees, flora, sand dunes or other environmentally sensitive land, roads, trails, drainage systems or natural water courses or sources, wildlife resources, fences or gates, or crops or cultivated land.

(3) Any person who operates a motor vehicle on lands owned by the state or its agency shall be civilly liable for the actual damage to the lands by reason of his wrongful act, which damages may be recovered by suit and, when collected, shall go to the state or its agency to be used to restore or replace the damaged property.

History.—s. 1, ch. 78-238; s. 1, ch. 78-355; s. 66, ch. 79-164.

375.315 Registration of off-road vehicles.—

(1) Any off-road vehicle operated upon public lands and not registered or licensed under s. 320.02 or s. 320.06 must be registered as provided in this section.

(2) Upon the filing of an application by the owner of an off-road vehicle, the commission shall assign to such motor vehicle a registration license number and shall deliver to the owner a certificate of registration and one registration decal for each motor vehicle so registered.

(3) Registration shall be renewed annually upon payment of an annual registration fee for off-road vehicles not to exceed $10.

(4) Whoever operates any off-road vehicle on public lands without having attached thereto a registration decal for the current registration period is guilty of an infraction as defined in s. 318.13(3) and shall be penalized as provided in s. 318.18.

(5) Nothing contained herein shall be deemed to conflict with the provisions of chapter 320 or chapter 325.

History.—s. 1, ch. 78-238; s. 1, ch. 78-355.

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CHAPTER 376

POLLUTANT DISCHARGE PREVENTION AND REMOVAL

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376.011 Pollutant Spill Prevention and Control Act; short title.—Sections 376.011-376.17, 376.19-376.21 shall be known as the "Pollutant Spill Prevention and Control Act."

History.—s. 1, ch. 70-244; s. 1, ch. 74-336; s. 79, ch. 83-310.

376.021 Legislative intent with respect to pollution of coastal waters and lands.—

(1) The Legislature finds and declares that the highest and best use of the seacoast of the state is as a source of public and private recreation.

(2) The Legislature further finds and declares that the preservation of this use is a matter of the highest urgency and priority, and that such use can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches, and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(3) The Legislature further finds and declares that:

(a) The transfer of pollutants between vessels, between onshore facilities and vessels, between offshore facilities and vessels, and between terminal facilities within the jurisdiction of the state and state waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the state, to owners and users of shore front property, to public and private recreation, to citizens of the state and other interests deriving livelihood from marine-related activities, and to the beauty of the Florida coast;

(c) Such hazards have frequently occurred in the past, are occurring now, and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as herein set forth; and

(d) Such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in transferring pollutants and related activities.

(4) The Legislature intends by the enactment of ss. 376.011-376.21 to exercise the police power of the state by conferring upon the Department of Natural Resources power to:

(a) Deal with the hazards and threats of danger and damage posed by such transfers and related activities;

(b) Require the prompt containment and removal of pollution occasioned thereby; and

(c) Establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

(5) The Legislature further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the state in promoting its general welfare, preventing diseases, promoting health, and providing for the public safety and that the state's interest in such preservation outweighs any burdens of liability imposed by the Legislature upon those engaged in transferring pollutants and related activities.

(6) The Legislature further declares that it is the intent of ss. 376.011-376.21 to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, specifically those

provisions relating to the national contingency plan for removal of pollutants.

History.—s. 2, ch. 70-244; s. 2, ch. 74-336.

376.031 Definitions.—When used in ss. 376.011-376.21, unless the context clearly requires otherwise, the term:

(1) "Barrel" means 42 U.S. gallons at 60° Fahrenheit.

(2) "Board" means the board of arbitration.

(3) "Department" means the Department of Natural Resources.

(4) "Director" means the executive director of the Department of Natural Resources.

(5) "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping which occurs within the territorial limits of the state or outside the territorial limits of the state and affects lands and waters within the territorial limits of the state.

(6) "Discharge cleanup organization" means any group, incorporated or unincorporated, of owners or operators of waterfront terminal facilities in any port or harbor of the state, and any other person who may elect to join, organized for the purpose of containing and cleaning up discharges of pollutants through cooperative efforts and shared equipment and facilities. For the purposes of ss. 376.011-376.21, any third-party cleanup contractor or any local government shall be recognized as a discharge cleanup organization, provided such contractor or local government is properly certified by the department.

(7) "Fund" means the [1]Florida Coastal Protection Fund.

(8) "Other measurements" means measurements set by the department for products transferred at terminals which are other than fluid or which are not commonly measured by the barrel.

(9) "Owner" means any person owning a terminal facility; "operator" means any person operating a terminal facility, whether by lease, contract, or other form of agreement.

(10) "Person" means any individual, partner, joint venture, corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(11) "Person in charge" means the person on the scene who is in direct, responsible charge of a terminal facility or vessel from which pollutants are discharged, when the discharge occurs.

(12) "Pollutants" includes oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

(13) "Pollution" means the presence in the outdoor atmosphere or waters of the state of any one or more substances or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(14) "Registrant" is a terminal facility required to possess a valid registration certificate to operate as a terminal facility.

(15) "Terminal facility" means any waterfront or offshore facility of any kind, other than vessels not owned or operated by such facility, and directly associated waterfront or offshore appurtenances including pipelines located on land, including submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing, or refining pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. A vessel shall be considered a terminal facility only in the event of a ship-to-ship transfer of pollutants, and only that vessel going to or coming from the place of transfer and the terminal facility. For the purposes of ss. 376.011-376.21, the term "terminal facility" shall not be construed to include waterfront facilities owned and operated by governmental entities acting as agents of public convenience for operators engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants; however, each operator engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants through a waterfront facility owned and operated by such a governmental entity shall be construed as a terminal facility.

(16) "Transfer" or "transferred" includes onloading or offloading between terminal facility and vessel, vessel and vessel, or terminal facility and terminal facility.

(17) "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs.

History.—s. 1, ch. 70-244; s. 1, ch. 71-243; s. 1, ch. 74-336; s. 1, ch. 80-352; s. 80, ch. 83-310.

[1]Note.—The name of the fund was changed to "Florida Coastal Protection Trust Fund" by s. 11, ch. 74-336. See s. 376.11.

376.041 Pollution of waters and lands of the state prohibited.—The discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state in the manner defined by ss. 376.011-376.21 is prohibited.

History.—s. 4, ch. 70-244; s. 4, ch. 74-336.

376.051 Powers and duties of the Department of Natural Resources.—

(1) The powers and duties conferred by ss. 376.011-376.21 shall be exercised by the Department of Natural Resources and shall be deemed to be an essential governmental function in the exercise of the police power of the state. The Department of Environmental Regulation is directed to cooperate with the Department of Natural Resources and to offer consultative services, enforcement, prosecution, and technical advice to the department. The department may call upon any other state agency for consultative services and technical advice and the agencies are directed to cooperate in said request.

(2) The powers and duties of the department under ss. 376.011-376.21 shall extend to the boundaries

of the state described in s. 1, Art. II of the State Constitution.

(3) Registration certificates required under ss. 376.011-376.21 shall be issued from the department subject to such terms and conditions as are set forth in ss. 376.011-376.21 and as set forth in rules and regulations promulgated by the department as authorized herein.

(4) Whenever it becomes necessary for the state to protect the public interest under ss. 376.011-376.21, it shall be the duty of the department to keep an accurate record of costs and expenses incurred and thereafter diligently to pursue the recovery of any sums so incurred from the person responsible or from the Government of the United States under any applicable federal act.

(5) The department may bring an action on behalf of the state to enforce the liabilities imposed by s. 376.12. The Department of Legal Affairs shall represent the department in any such proceeding.

(6) Within 120 days of July 1, 1983, the department shall adopt rules providing for the coordination of the respective duties of the Department of Environmental Regulation and the Department of Natural Resources with respect to the implementation of ss. 376.011-376.21. Such rules shall specifically establish procedures that determine which of the two agencies should respond in cases of specific types of pollutant spill incidents, and such rules shall establish minimum criteria for response times. The rules shall also specify criteria and procedures for the expenditures of Florida Coastal Protection Trust Fund moneys for pollution incidents that require action by the Department of Environmental Regulation.

History.—s. 5, ch. 70-244; s. 2, ch. 71-137; s. 5, ch. 74-336; s. 92, ch. 79-65; s. 41, ch. 83-109.

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376.06 Operation of terminal facility without registration prohibited.—

(1) No person shall operate or cause to be operated a terminal facility as defined in s. 376.031(15) without a registration certificate.

(2) Registration certificates shall be issued on an annual basis and shall expire on December 31 annually, subject to such terms and conditions as the department may determine are necessary to carry out the purposes of ss. 376.011-376.21.

(3) As a condition precedent to the issuance or renewal of a registration certificate, the department shall require satisfactory evidence that the applicant has implemented, or is in the process of implementing, state and federal plans and regulations for prevention, control, and abatement of pollution when a discharge occurs.

(4) Registration certificates issued to any terminal facility shall include vessels used to transport pollutants between the facility and vessels within state waters.

(5) The department shall require, in connection with the issuance of a terminal facility registration certificate, the payment of a reasonable fee for processing applications for registration certificates. This fee shall be in addition to the excise tax imposed by s. 376.11(4). The fee shall be reasonably related to the administrative costs of verifying data submitted pursuant to obtaining the certificates and reasonable inspections; however, the fee shall not exceed $250 per terminal facility per year.

(6) No later than October 1, 1974, every owner or operator of a terminal facility shall obtain a registration certificate. The department shall issue a registration certificate upon the showing that the registrant can provide all required equipment to prevent, contain, and remove discharges of pollutants.

(7) On or after a date to be determined by the department, but in no case later than October 1, 1974, no person shall operate or cause to be operated any terminal facility without a terminal facility registration certificate issued by the department. No registration certificate shall be valid for more than 1 year unless revalidated by the department. Each applicant for a terminal facility registration certificate shall pay the registration certificate application fee and shall submit information, in a form satisfactory to the department, describing the following:

(a) The barrel or other measurement capacity of the terminal facility.

(b) All prevention, containment, and removal equipment, including, but not limited to, vehicles, vessels, pumps, skimmers, booms, chemicals, and communication devices to which the facility has access, whether through direct ownership or by contract or membership in an approved discharge cleanup organization.

(c) The terms of agreement and operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs.

(8) Upon showing of satisfactory containment and cleanup capability under this section, and upon payment of the registration certificate application fee required by the department under this section, the applicant shall be issued a registration certificate covering the terminal facility and related appurtenances, including vessels as defined in s. 376.031(12).

History.—s. 6, ch. 70-244; s. 1, ch. 70-439; s. 6, ch. 74-336.

376.07 Regulatory powers of department.—The department shall from time to time adopt, amend, repeal, and enforce reasonable regulations insofar as they relate to discharges of pollutants into the waters of this state or onto the coasts of this state.

(1) The regulations shall be adopted in accordance with the Administrative Procedure Act, chapter 120.

(2) The department shall adopt regulations including, but not limited to, the following matters:

(a) Operation and inspection requirements for terminal facilities, vessels, and other matters relating to certification under ss. 376.011-376.21, but shall not require vessels to maintain spill prevention gear, holding tanks of any kind, and containment gear in excess of federal requirements.

(b) Procedures and methods of reporting discharges and other occurrences prohibited by ss. 376.011-376.21.

(c) Procedures, methods, means, and equipment to be used by persons subject to regulation by ss. 376.011-376.21 in the removal of pollutants.

(d) Development and implementation of criteria and plans to meet pollution occurrences of various degrees and kinds.

(e) Creation by contract or administrative action of a state response team which shall be responsible for creating and maintaining a contingency plan of response, organization, and equipment for handling emergency cleanup operations. The state plans shall include detailed emergency operating procedures for the state as a whole and the team shall from time to time conduct practice alerts. These plans shall be filed with the Governor and all Coast Guard stations in the state and Coast Guard captains of the port having responsibility for enforcement of federal pollution laws within the state, on or before January 1, 1975. The contingency plan shall include all necessary information for the total containment and cleanup of pollution, including but not limited to an inventory of equipment and its location, a table of organization with the names, addresses, and telephone numbers of all persons responsible for implementing every phase of the plan, a list of available sources of supplies necessary for cleanup, and a designation of priority zones to determine the sequence and methods of cleanup. The state response team shall act independently of agencies of the Federal Government but is directed to cooperate with any federal cleanup operation.

(f) Requirements for minimum weather and sea conditions for permitting a vessel to enter port and for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment, and other equipment relating to the use and operation of terminals, facilities, and refineries, the approach and departure from terminals, facilities, and refineries and requirements that containment gear approved by the department be on hand and maintained by terminal facilities and refineries with adequate personnel trained in its use.

(g) Requirements that, prior to being granted entry into any port in this state, the master of a vessel shall report:

1. Any discharges of pollutants the vessel has had since leaving the last port;

2. Any mechanical problem on the vessel which creates the possibility of a discharge; and

3. Any denial of entry into any port during the current cruise of the vessel.

Any person who shall make or cause to be made any false statement in response to requirements of any provisions of ss. 376.011-376.21 with a fraudulent intent shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, as required in s. 837.01.

(h) Requirements that any registrant causing or permitting the discharge of a pollutant in violation of the provisions of ss. 376.011-376.21, and at other reasonable times, be subject to a complete and thorough inspection. If the department determines there are unsatisfactory preventive measures or containment and cleanup capabilities, it shall, a reasonable time after notice and hearing in compliance with chapter 120, suspend the registration until such time as there is compliance with the department requirements.

(i) Such other rules and regulations as the exigencies of any condition may require or as may reasonably be necessary to carry out the intent of ss. 376.011-376.21.

History.—s. 7, ch. 70-244; s. 2, ch. 74-336; s. 1, ch. 77-174.

376.09 Removal of prohibited discharges.—

(1) Any person discharging pollutants as prohibited by s. 376.041 shall immediately undertake to contain, remove, and abate the discharge to the department's satisfaction. Notwithstanding the above requirement, the department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the department.

(2) If the person causing a discharge, or the person in charge of facilities at which a discharge has taken place, fails to act, the department may arrange for the removal of the pollutant, except that if the pollutant was discharged into or upon the navigable waters of the United States, the department shall act in accordance with the national contingency plan for removal of such pollutant as established pursuant to the Federal Water Pollution Control Act, as amended, and the costs of removal incurred by the department shall be paid in accordance with the applicable provisions of said law. Federal funds provided under said act shall be used to the maximum extent possible prior to the expenditure of state funds.

(3) In the event of discharge the source of which is unknown, any local discharge cleanup organization shall, upon the request of the department or its designee, immediately contain and remove the discharge. No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the department or its designee, shall be construed as an admission of liability for the discharge.

(4) No person who, voluntarily or at the request of the department or its designee, renders assistance in containing or removing pollutants shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Nothing in ss. 376.011-376.21 shall affect the right of any person to render assistance in containing or removing any pollutant or any rights which that person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of the pollutant.

(6) Any person who renders assistance in containing or removing any pollutant may be eligible for reimbursement of the cost of containment or removal, provided prior approval for such reimbursement is granted by the department. The department may, upon petition and for good cause shown, waive the prior-approval prerequisite.

History.—s. 8, ch. 70-244; s. 1, ch. 70-439; s. 9, ch. 74-336; s. 2, ch. 80-187.

376.10 Personnel and equipment.—The department shall establish and maintain at such ports within the state and other places as it shall determine such employees and equipment, other than equipment furnished by the registrant, as in its judgment may be necessary to carry out the provisions of ss. 376.011-376.21. The department may employ and prescribe the duties of such employees, subject to the rules and regulations of the Division of Personnel of the Department of Administration. The salaries of the employees and the cost of the equipment shall be paid from the Florida Coastal Protection Fund es-

tablished by ss. 376.011-376.21. The department shall periodically consult with other departments of the state and specifically with the Department of Environmental Regulation relative to procedures for the prevention of discharges of pollutants into or affecting the coastal waters of the state from operations regulated by ss. 376.011-376.21.

History.—s. 3, ch. 70-244; s. 2, ch. 71-137; s. 1, ch. 73-328; s. 10, ch. 74-336; s. 5, ch. 79-65.

*Note.—The name of this fund was changed to "Florida Coastal Protection Trust Fund" by s. 11, ch. 74-336. See s. 376.11.

376.11 Florida Coastal Protection Trust Fund.—

(1) The purpose of this section is to provide a mechanism to have financial resources immediately available for cleanup and rehabilitation after a pollutant has been discharged, to prevent further damage by the pollutant, and to pay for damages. It is the legislative intent that this section be liberally construed to effect the purposes set forth, such interpretation being especially imperative in light of the danger to the environment and resources.

(2) The Florida Coastal Protection Trust Fund is established, to be used by the department as a nonlapsing revolving fund for carrying out the purposes of ss. 376.011-376.21. To this fund shall be credited all excise taxes, registration fees, penalties, judgments, and other fees and charges related to ss. 376.011-376.21. Charges against the fund shall be in accordance with this section.

(3)(a) Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under ss. 376.011-376.21 shall be deposited with the Treasurer to the credit of the fund and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the fund.

(b)1. Effective July 1, 1980, 50 percent of the interest earned from investments of the fund when the balance of the fund is greater than $30 million shall be used for the acquisition of spoil disposal sites and improvements to existing and future spoil sites for the ports of St. Petersburg Bayboro Harbor, Jacksonville, Port Canaveral, Ft. Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, Port St. Joe, Tampa, Panama City, Pensacola, and other navigable waters of the state. In the event that the balance of the fund is reduced to $30 million or less, the interest normally accruing to the priority acquisition and improvement program for spoil disposal sites shall be discontinued until the balance of the fund exceeds $30 million. The provisions of this subparagraph shall not apply if the Federal Government preempts the authority to levy, collect, and use an excise tax pursuant to this section or if the Governor and Cabinet declare an emergency related to a major pollutant hazard.

2. The Department of Natural Resources shall establish a priority acquisition and improvement program for spoil disposal sites, to be acquired using moneys from the fund, based upon its recommendations and the recommendations made by the ports and the Department of Environmental Regulation. Such priority acquisition and improvement program shall take into consideration the existing need of each port for spoil disposal sites, the frequency and volume of maintenance dredging at each port, the movement of petroleum and other pollutant hazards at each port, the protection of recreational and environmental quality, and whether the proposed site meets the permit requirements of chapters 403 and 253.

3. The recipient port authority or appropriate governmental entity shall contribute not less than 50 percent of the cost of acquisition of a spoil disposal site. Such contribution may include land owned or improvements to the spoil disposal site. The department shall establish procedures for the payment of funds and matching contributions consistent with the provisions herein.

4. Any moneys received from the sale of dredged materials deposited on a spoil disposal site acquired hereunder or from the sale of an acquired spoil disposal site shall be paid to the fund until the fund has been reimbursed for its participation in the purchase of that site. Any remaining funds shall be paid to the contributing governmental entity until that entity has been reimbursed for its contribution. Any funds remaining thereafter shall be paid to the fund.

(4)(a) There is hereby levied, to be collected from and paid by each registrant, including facilities subject to the excise tax levied by ss. 376.30-376.315, an excise tax upon each registrant for the privilege of operating a terminal facility and handling all pollutants covered by ss. 376.011-376.21, the amount of which is to be determined by the department as measured by the volume in barrels of liquid pollutants transferred to or from the registrant.

(b) The excise tax shall be 2 cents per barrel transferred until the balance in the fund equals or exceeds $30 million. For the fiscal year immediately following the year in which the balance in the fund equals or exceeds $30 million, no excise tax shall be levied unless:

1. The balance in the fund is less than or equal to $25 million. For the fiscal year immediately following the year in which the balance in the fund is less than or equal to $25 million, the excise tax shall be and shall remain 2 cents per barrel transferred until the fund again equals or exceeds $30 million. For the fiscal year immediately following the year in which the fund again is equal to or exceeds $30 million, the excise tax and fund shall be controlled as when the fund first was equal to or exceeded $30 million.

2. There is a discharge of catastrophic proportions, the results of which could significantly reduce the balance in the fund. In the event of such a catastrophic occurrence, the Governor and Cabinet as the head of the Department of Natural Resources may, by rule, relevy the excise tax in an amount not to exceed 10 cents per barrel for a period of time sufficient to maintain the fund at a balance of $30 million, after payment of the costs and damages related to the catastrophic discharge.

3. The fund is unable to pay any proven claims against the fund at the end of the fiscal year. Notwithstanding any other provision of this section, for the fiscal year following the year in which the fund is unable to pay any proven claims against the fund at the end of the fiscal year, the excise tax shall be and shall remain 5 cents per barrel transferred until all outstanding proven claims have been paid and the fund again equals or exceeds $10 million. For the fiscal year immediately following the year in which the fund, after levy of the 5-cent excise tax, again is equal to or exceeds $10 million, the excise tax and fund shall be controlled in accordance with subparagraph 1., unless otherwise provided.

4. The fund has had appropriated to it by the Legislature, but has not yet repaid, state funds from the General Revenue Fund. In such event, the excise tax shall continue to be in effect until all such funds are repaid to the General Revenue Fund.

(c) The excise tax provided for in this section shall be collected monthly by the Department of Revenue on the basis of records certified to the Department of Revenue and Department of Natural Resources and shall be credited to the fund. However, for the purposes of this section, the excise tax on each barrel of the pollutant shall be imposed only once, at the first transfer of the specific pollutant. Each tax barrel of the specific pollutant shall only be considered once for the purpose of this excise tax. This excise tax shall be in addition to all other taxes imposed upon or paid by the registrant. However, any terminal facility with a storage capacity of 250 barrels or less shall report and pay the excise tax semiannually.

(d) Except for the 3-percent collection allowance, the same duties and privileges imposed by chapter 212 respecting the remission of tax; the making of returns; penalties and interest; the keeping of books, records, and accounts; and the compliance with the rules of the Department of Revenue in the administration of that chapter shall apply to and be binding on all registrants who are subject to this section, except for the provisions of s. 212.12(1).

(e) The Department of Revenue shall maintain records indicating the amount of taxes collected. These records shall be confidential, as provided in s. 213.072.

(f) The Department of Revenue shall promulgate rules, establish audit procedures for the audit of registrants under this section, assess for delinquencies, and prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

(g) The Department of Revenue, according to the applicable rules of the Career Service Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature.

*(5) Moneys in the Florida Coastal Protection Trust Fund shall be disbursed for the following purposes and no others:

(a) Administrative expenses, personnel expenses, and equipment costs of the department related to the enforcement of ss. 376.011-376.21 subject to s. 376.185, until July 1, 1984.

(b) All immediate costs involved in the abatement of pollution related to the discharge of pollutants covered by ss. 376.011-376.21 and the abatement of other potential pollution hazards as authorized herein.

(c) All costs and expenses of the cleanup and rehabilitation of waterfowl, wildlife, and all other natural resources damaged by the discharge of pollutants, whether performed or authorized by the department or any other state or local agency.

(d) All provable costs and damages which are the proximate results of the discharge of pollutants covered by ss. 376.011-376.21.

(e) The acquisition of spoil disposal sites and improvements to existing and future spoil sites for the ports of St. Petersburg Bayboro Harbor, Jacksonville, Port Canaveral, Ft. Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, Port St. Joe, Tampa, Panama City, Pensacola, and other navigable waters of the state.

(f) A one-time expenditure of $11 million to the Water Quality Assurance Trust Fund created in s. 376.307.

(g) An annual expenditure of 50 percent of the interest earned from investments of the Florida Coastal Protection Trust Fund when the balance is greater than $30 million, to the Water Quality Assurance Trust Fund created pursuant to s. 376.307.

(h) The service charge imposed pursuant to chapter 215.

(6) Any interest in lands acquired using moneys in the Florida Coastal Protection Trust Fund shall be held by the Trustees of the Internal Improvement Trust Fund, and such lands shall be acquired pursuant to the procedures set forth in s. 253.025.

(7) The department shall recover to the use of the fund from the person or persons causing the discharge or from the Federal Government, jointly and severally, all sums owed or expended therefrom, pursuant to s. 376.12(4), except that recoveries resulting from damage due to a discharge of a pollutant or other similar disaster shall be apportioned between the Florida Coastal Protection Trust Fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of any sums disbursed therefrom as a result of such disaster. Requests for reimbursement to the fund for the above costs, if not paid within 30 days of demand, shall be turned over to the Department of Legal Affairs for collection.

History.—s. 11, ch. 70-244; s. 1, ch. 70-639; s. 2, ch. 74-336; s. 11, ch. 74-336; s. 4, ch. 80-192; s. 4, ch. 81-225; s. 52, ch. 83-319; s. 14, ch. 83-339; s. 1, ch. 83-353.

*Note.—Section 21.1072 was repealed by s. 4, ch. 80-222.

*Note.—The amendment of this subsection by s. 1 of ch. 83-353 during the special session of July 12-13, 1983, failed to incorporate the amendment of the same subsection by s. 14, ch. 83-139, during the special session of June 13-24, 1983. Although the circumstance that separate sessions were involved takes the transaction out of the operation of s. 1.04, there was no apparent intent to nullify the amendment of the June 13-24 special session. Therefore, the subsection as published gives full effect to both amendments.

cf.—ss. 215.20, 215.22 Service charge deduction for cost of general government paid from General Revenue Fund.

376.12 Liabilities and defenses of terminal facilities and vessels.—

(1) Because it is the intent of ss. 376.011-376.21 to provide the means for rapid and effective cleanup and to minimize damages, any vessel, or its agents or servants, who permits or suffers a prohibited discharge or other polluting condition to take place within state boundaries shall be liable to the fund for all costs of cleanup or abatement, up to an amount not to exceed $14 million or $100 per gross registered ton of such vessel, whichever is the lesser. When the department can show that such discharge was the result of willful or gross negligence or willful misconduct within the privity or knowledge of the owner or operator or agent thereof, such owner or operator shall be liable to the fund for the full amount of such sums expended. When a discharge of pollutants occurs from a terminal facility, recovery of costs of

abatement and cleanup shall be limited to an amount not to exceed $8 million, except that when the department can show that such discharge was the result of willful or gross negligence or willful misconduct within the privity or knowledge of the owner or operator, such owner or operator shall be liable to the fund for the full amount of such sums expended. In addition to the foregoing costs of cleanup, terminal facilities shall be liable to the fund for all damages in accordance with the terms of subsections (2), (3), and (4) and s. 376.11(7).

(2) Any person claiming to have suffered damages as a result of a discharge of pollutants prohibited by s. 376.041 may, within 180 days after the date of such discharge, apply to the department for reimbursement from the Florida Coastal Protection Trust Fund. It shall be the responsibility of the claimant to provide the department with the required documentation concerning the damages suffered as a direct result of the discharge. The department shall prescribe appropriate forms and details for such application, which application shall include a provision requiring the applicant to make a sworn verification of the damage claim to the best of his knowledge. The director of the department may, upon petition and for good cause shown, waive the 180-day limitation for filing damage claims.

(a) The director shall establish the amount of damage award and shall certify the amount of the award and the name of the claimant to the Treasurer, who shall pay the award from the fund, subject to the provisions of subsection (5). If the claimant agrees with the established amount of damage, the settlement shall be binding upon both parties as to all issues and cannot be further attacked, collaterally or by separate action, in the future. If the total amount of such awards exceeds the amount available to any claimant or claimants from the fund, such claimant or claimants shall have the right to a pro rata share of all funds available in the fund until the total amount of awards is paid to the claimant or claimants.

(b) If either the claimant or the person determined by the director to be responsible for the discharge disagrees with the amount of the damage award, such person may request a hearing pursuant to s. 120.57. If a hearing is requested, the final order shall be issued by the Governor and Cabinet as head of the department.

(c) Each person's damage claims arising from a single occurrence shall be stated in one application. Damages omitted from any claim at the time the award is made shall be deemed waived.

(d) If a person damaged by a discharge of pollutant chooses to make a claim against the fund and accepts payment from, or a judgment against, the fund, then the department shall be subrogated to any cause of action that the claimant may have had, to the extent of such payment or judgment, and shall diligently pursue recovery on that cause of action pursuant to subsection (4) and s. 376.11(7). In any such action, the amount of damages shall be proved by the department by submitting to the court a written report of the amounts paid or owed from the fund to claimants. Such written report shall be admissible in evidence, and the amounts paid from or owed by the fund to the claimants stated therein shall be irrebuttably presumed to be the amount of damages.

(e) The fund is absolutely liable for all proven damages against the fund as provided for in this section.

(f) The department shall be a necessary party to all administrative hearings and court proceedings under this section.

(3) It shall be the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sum expended from the fund for cleanup, abatement, and damages in accordance with the provisions of ss. 376.011-376.21. In any suit to enforce claims of the fund under ss. 376.011-376.21, it shall not be necessary for the department in administering the fund to plead or prove negligence in any form or manner. The department in administering the fund need only plead and prove that the prohibited discharge or other polluting condition occurred. The only defenses of a person alleged to be responsible for the discharge to an action for damages, costs, and expenses of cleanup, or abatement shall be to plead and prove that the occurrence was solely the result of any of the following or any combination of the following:

(a) An act of war.

(b) An act of government, either state, federal, or municipal.

(c) An act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party, without regard to whether any such act or omission was or was not negligent.

(4) In the event the total awards against the fund shall exceed the present balance of the fund, the claimants shall be paid from the future income of the fund.

(5) In the event the total awards for a specific occurrence exceed the current balance of the fund, the immediate award shall be paid on a prorated basis, and all claimants paid on a prorated basis shall be paid a pro rata share of all funds received by the fund until the total amount of the proven damages is paid to the claimant or claimants. However, amounts collected by the fund from the prosecution of causes of action pursuant to paragraph (2)(d) and subsection (4) shall be utilized to satisfy the claims as to which such prosecutions relate to the extent theretofore unsatisfied.

(6) Nothing contained herein shall be construed to limit the liability of vessels, terminal facilities, or the fund for damages.

(7) In addition to the civil penalty, the pilot and the master of any vessel or person in charge of any terminal facility who fails to give immediate notification of a discharge to the department or the nearest Coast Guard station shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. After reporting a discharge, a vessel shall remain in the jurisdiction of the department sufficient time to prove financial responsibility for the damages resulting from the discharge. The pilot and master of a vessel which fails to remain in the jurisdiction of the department for a reasonable time

after notice of a discharge shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In no event shall the department detain the vessel longer than 12 hours after proving financial responsibility. The department shall, by rules and regulations, require that the registrant designate a person at the terminal facility who shall be the person in charge of that facility for the purposes specified by this section.

History.—s. 12, ch. 70-244; s. 328, ch. 71-136; s. 12, ch. 74-336; ss. 4, 5, ch. 80-382.

376.13 Emergency proclamation; Governor's powers.—

(1) Whenever any emergency exists or appears imminent, arising from the discharge of oil, petroleum products or their byproducts, or any other pollutants, the Governor shall by proclamation declare the fact and that a state of emergency exists in any or all sections of the state. If the Governor is unavailable, the Lieutenant Governor shall, by proclamation, declare the fact and that a state of emergency exists in any or all sections of the state. A copy of such proclamation shall be filed with the Department of State.

(2) In performing his duties under this section, the Governor is authorized and directed to cooperate with all departments and agencies of the Federal Government, the offices and agencies of other states and foreign countries and the political subdivisions thereof, and private agencies in all matters pertaining to an emergency as described herein.

(3) In performing his duties under this section, the Governor is further authorized and empowered:

(a) To make, amend, and rescind the necessary orders, rules, and regulations to carry out this section within the limits of the authority conferred upon him and not inconsistent with the rules, regulations, and directives of the President of the United States or of any federal department or agency having specifically authorized emergency functions.

(b) To delegate any authority vested in him under this section and to provide for the subdelegation of any such authority.

(4) Whenever the Governor is satisfied that an emergency no longer exists, he may terminate the proclamation by another proclamation affecting the sections of the state covered by the original proclamation, or any part thereof. The proclamation shall be published in such newspapers of the state and posted in such places as the Governor, or any person acting in that capacity, deems appropriate.

History.—s. 13, ch. 70-244; s. 1, ch. 70-439; s. 39, ch. 83-334.

376.14 Terminal facilities and vessels; financial responsibility.—

(1) Each owner or operator of a terminal facility or vessel, including any barge, using any port in Florida shall be required to establish and maintain evidence of financial responsibility pursuant to federal laws and regulations. Such evidence of financial responsibility shall be the only evidence required by the department that such registrant or vessel has the ability to meet the liabilities which may be incurred under ss. 376.011-376.21.

(2) Any claim brought pursuant to ss. 376.011-376.21 by the fund or any damaged party may be brought directly against the bond, the insurer, or any other person providing a terminal facility or vessel with evidence of financial responsibility.

(3) Each owner or operator of a terminal facility or vessel subject to the provisions of ss. 376.011-376.21 shall designate a person in the state as his legal agent for service of process under ss. 376.011-376.21, and such designation shall be filed with the Department of State. In the absence of such designation, the Secretary of State shall be the designated agent for purposes of service of process under ss. 376.011-376.21.

History.—s. 14, ch. 70-244; s. 1, ch. 70-439; s. 13, ch. 74-336.

376.15 Derelict vessels.—

(1) It is unlawful for any person, firm, or corporation to store or leave any vessel in a wrecked, junked, or substantially dismantled condition or abandoned upon any public waters or at any port in this state without the consent of the agency having jurisdiction thereof or docked at any private property without the consent of the owner of the private property.

(2)(a) The department is hereby designated as the agency of the state authorized and empowered to remove any derelict vessel as described in subsection (1) from public waters.

(b) This section shall constitute the authority of the department for such removal, but is not intended to be in contravention of any applicable federal act.

(c) The Department of Legal Affairs shall represent the Department of Natural Resources in such actions.

History.—s. 15, ch. 70-244; s. 1, ch. 70-439; s. 5, ch. 80-382.

376.16 Enforcement and penalties.—

(1) It is unlawful for any person to violate any provision of ss. 376.011-376.21 or any rule, regulation, or order of the department made hereunder. Violation shall be punishable by a civil penalty of up to $50,000 per violation per day to be assessed by the department. Each day during any portion of which the violation occurs constitutes a separate offense.

(2) Penalties assessed herein for a discharge shall be the only penalties assessed by the state, and the assessed person or persons shall be excused from paying any additional penalty for water pollution assessable under chapter 403 for the same occurrence.

(3) The penalty provisions of this section shall not apply to any discharge promptly reported and removed by a registrant or vessel in accordance with the rules, regulations, and orders of the department.

History.—ss. 10, 16, ch. 70-244; s. 7, 14, ch. 74-336.

376.165 "Hold-harmless" agreements prohibited.—Any agreement entered into after July 1, 1974, to "hold-harmless" a vessel or terminal facility from liability for the occurrence of a discharge prohibited by ss. 376.011-376.21, agreed to by a governmental agency or political subdivision, is deemed contrary to public policy and is hereby prohibited.

History.—s. 14, ch. 74-336.

376.17 Reports to the Legislature.—The department shall include in its recommendations to each regular session of the Legislature specific rec-

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ommendations relating to the operation of ss. 376.011-376.21.

History.—s. 17, ch. 70-244; s. 15, ch. 74-336.

NEW

376.185 Budget approval.—The department shall submit to each regular session of the Legislature its budget recommendations for disbursements from the fund pursuant only to s. 376.11(5)(a). Upon appropriation thereof by the Legislature, the Comptroller shall authorize expenditures therefrom as approved by the department.

History.—s. 2, ch. 83-353.

376.19 County and municipal ordinances; powers limited.—Nothing in ss. 376.011-376.21 shall be construed to deny any county or municipality authority to exercise police powers by ordinance or law under any general or special act, and laws and ordinances promulgated in furtherance of the intent of ss. 376.011-376.21 to promote the general welfare, public health, and public safety shall be valid unless in direct conflict with the provisions of ss. 376.011-376.21 or any rule, regulation, or order of the department adopted under authority of ss. 376.011-376.21. However, in order to avoid unnecessary duplication, no county, municipality, or other political subdivision of the state may adopt or establish a similar program of licensing and fees for the accomplishment of the purposes of ss. 376.011-376.21.

History.—s. 19, ch. 70-244.

376.20 Limitation on application.—Nothing in ss. 376.011-376.21 shall be deemed to apply to the storage or transportation of liquefied petroleum gas or to industrial effluents discharged into the waters or atmosphere of the state pursuant to either a federal or state permit.

History.—s. 20, ch. 70-244; s. 2, ch. 74-137; s. 17, ch. 74-336.

376.205 Individual cause of action for damages under ss. 376.011-376.21.—The remedies in this act shall be deemed to be cumulative and not exclusive. Nothing in this act shall require pursuit of any claim against the fund as a condition precedent to any other remedy. Notwithstanding any other provision of law, nothing contained herein shall prohibit any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.011-376.21. In any such suit, it shall not be necessary for the person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it occurred. The only defenses to such cause of action shall be those specified in subsection 376.12(4). In addition to any other remedy, the injured party shall be entitled to recover costs of the action and reasonable attorneys' fees.

History.—s. 18, ch. 74-336.

376.21 Construction of ss. 376.011-376.21.—Sections 376.011-376.21, being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under ss. 376.011-376.21 and the Federal Water Pollution Control Act, as amended.

History.—s. 21, ch. 70-244; s. 19, ch. 74-336.

376.30 Legislative intent with respect to pollution of surface and ground waters.—

(1) The Legislature finds and declares that the preservation of surface and ground waters is a matter of the highest urgency and priority, and that such use can only be served effectively by maintaining the quality of inland waters as close to a pristine condition as possible, taking into account multiple-use accommodations necessary to provide the broadest possible promotion of public and private interests.

(2) The Legislature further finds and declares that:

(a) The storage of pollutants within the jurisdiction of the state and state inland waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants occurring as a result of procedures taken by private and governmental entities involving the storage of such products pose threats of great danger and damage to the environment of the state, to citizens of the state, and to other interests deriving livelihood from the state;

(c) Such hazards have occurred in the past, are occurring now, and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as set forth in this section; and

(d) Such state interests outweigh any economic burdens imposed by the Legislature upon those engaged in storing pollutants and related activities.

(3) The Legislature intends by the enactment of ss. 376.30-376.315 to exercise the police power of the state by conferring upon the Department of Environmental Regulation the power to:

(a) Deal with the hazards and threats of danger and damage posed by such storage and related activities;

(b) Require the prompt containment and removal of products occasioned thereby; and

(c) Establish a fund to provide for the inspection and supervision of such activities and guarantee the prompt payment of reasonable damage claims resulting therefrom.

(4) The Legislature further finds and declares that the preservation of surface and ground water quality is of prime public interest and concern to the state in promoting its general welfare, preventing diseases, promoting health, and providing for the public safety and that the interest of the state in such preservation outweighs any burdens of liability imposed by the Legislature upon those persons engaged in storing pollutants and related activities.

(5) The Legislature further declares that it is the intent of ss. 376.30-376.315 to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, specifically those provisions relating to the national contingency plan for removal of pollutants.

History.—s. 86, ch. 83-310.

376.301 Definitions of terms used in ss. 376.30-376.315.—When used in ss. 376.30-376.315,

unless the context clearly requires otherwise, the term:

(1) "Barrel" means 42 U.S. gallons at 60° Fahrenheit.

(2) "Department" means the Department of Environmental Regulation.

(3) "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping of any pollutant which occurs and which affects lands and the surface and ground waters of the state not regulated by ss. 376.011-376.21.

(4) "Facility" means any nonresidential location containing stationary tank or tanks not covered by ss. 376.011-376.21 which contain pollutants and which have storage capacities greater than 550 gallons.

(5) "Fund" means the Water Quality Assurance Trust Fund.

(6) "Operator" means any person operating a facility, whether by lease, contract, or other form of agreement.

(7) "Owner" means any person owning a facility.

(8) "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(9) "Person in charge" means the person on the scene who is in direct, responsible charge of a facility from which pollutants are discharged, when the discharge occurs.

(10) "Pollutants" includes oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

(11) "Pollution" means the presence on the land or in the waters of the state of pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property 'or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(12) "Secretary" means the secretary of the Department of Environmental Regulation.

History.—s. 86, ch. 83-310.

'Note.—The word "or" was inserted by the editors; compare s. 376.031(13).

376.302 Pollutive discharge of refined petroleum products upon waters and lands of the state prohibited.—The discharge of refined petroleum products upon any waters and lands of the state in the manner defined by ss. 376.30-376.315 is prohibited.

History.—s. 86, ch. 83-310.

376.303 Powers and duties of the Department of Environmental Regulation.—

(1) The department has the power and the duty to:

(a) Establish rules to implement the intent of ss. 376.30-376.315 and to regulate underground and aboveground facilities and their onsite integral piping systems not covered by ss. 376.011-376.21, including, but not limited to, construction standards, permitting of tanks, maintenance and installation standards, and removal or disposal standards.

(b) Provide for the development and implementation of criteria and plans to prevent and meet pollution occurrences of various kinds and degrees.

(c) Establish requirements that any facility covered by this act be subject to complete and thorough inspections at reasonable times. Any facility which has discharged a pollutant in violation of the provisions of ss. 376.30-376.315 shall be fully and carefully monitored by the department to ensure that such discharge does not continue to occur.

(d) Keep an accurate record of costs and expenses incurred for the removal of prohibited discharges and thereafter diligently to pursue the recovery of any sums so incurred from the person responsible or from the Government of the United States under any applicable federal act.

(e) Bring an action on behalf of the state to enforce the liabilities imposed by ss. 376.30-376.315. The provisions of ss. 403.121, 403.131, 403.141, and 403.161 apply to enforcement under ss. 376.30-376.315.

(2) The powers and duties of the department under ss. 376.30-376.315 shall extend to the land mass of the state not described in ss. 376.011-376.21.

History.—s. 86, ch. 83-310.

376.305 Removal of prohibited discharges.—

(1) Any person discharging a pollutant as prohibited by ss. 376.30-376.315 shall immediately undertake to contain, remove, and abate the discharge to the satisfaction of the department. Notwithstanding this requirement, the department may undertake the removal of the discharge and may contract and retain agents who shall operate under the direction of the department.

(2) If the person causing the discharge, or the person in charge of facilities at which the discharge has taken place, fails to act immediately, the department may arrange for the removal of the pollutant; except that, if the pollutant was discharged into or upon the navigable waters of the United States, the department shall act in accordance with the national contingency plan for removal of such pollutant as established pursuant to the Federal Water Pollution Control Act, as amended, and the costs of removal incurred by the department shall be paid in accordance with the applicable provisions of that law. Federal funds provided under that act shall be used to the maximum extent possible prior to the expenditure of state funds.

(3) No action taken by any person to contain or remove a discharge, whether such action is taken voluntarily or at the request of the department or its designee, shall be construed as an admission of liability for the discharge.

(4) No person who, voluntarily or at the request of the department or its designee, renders assistance in containing or removing any pollutant shall be liable for any civil damages to third parties resulting solely from the acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct.

(5) Nothing in ss. 376.30-376.315 shall affect the right of any person to render assistance in containing or removing any pollutant or any rights which that

person may have against any third party whose acts or omissions in any way have caused or contributed to the discharge of the pollutant.

(6) Any person who renders assistance in containing or removing any pollutant may be eligible for reimbursement of the cost of containment or removal, provided prior approval for such reimbursement is granted by the department. The department may, upon petition and for good cause shown, waive the prerequisite for prior approval of such reimbursement.

History.—s. 84, ch. 83-310.

376.307 Water Quality Assurance Trust Fund.—

(1) There is created in the State Treasury the Water Quality Assurance Trust Fund, to be administered by the Department of Environmental Regulation.

(2) The fund may be used to carry out the provisions of this act and for the cleanup and restoration of any site contaminated with:

(a) Hazardous wastes;

(b) Hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767;

(c) A pollutant;

(d) A substance which is or is suspected to be carcinogenic, mutagenic, teratogenic, or toxic to human beings, or acutely toxic to indigenous species of significance to the biological community affected by the hazardous waste or substance; or

(e) A substance which poses a serious danger to the public health, safety, or welfare.

(3) The trust fund shall be funded as follows:

(a) A one-time transfer of $11 million from the Florida Coastal Protection Trust Fund pursuant to s. 376.11(5)(f). This transfer shall not be subject to the General Revenue Fund deduction authorized in ss. 215.20 and 215.22.

(b) An annual transfer of interest funds from the Florida Coastal Protection Trust Fund pursuant to s. 376.11(5)(g).

(c) A monthly transfer of the interest from the State Water Pollution Control Trust Fund.

(4) The trust fund shall be used by the department as a nonlapsing revolving fund for carrying out the purposes of this act. To this fund shall be credited all excise taxes, penalties, judgments, and other fees and charges related to ss. 376.30-376.315. Charges against the fund shall be in accordance with this section.

(5)(a) There is hereby levied an excise tax, to be collected from and paid by each person for the privilege of operating a terminal facility, as defined in s. 376.031(9), and from each person for the privilege of operating a facility, served by air, rail, truck, or pipeline located in this state, used for the purpose of storing, handling, or transferring pollutants. The state and political subdivisions in the state are exempt from the excise tax.

(b) The excise tax shall be 2 cents per barrel, or equivalent measure as established by the department, coming to rest in the state, until the balance in the fund equals or exceeds an unobligated balance of $12 million. For the fiscal year immediately following the year in which the balance in the fund equals or exceeds an unobligated balance of $12 million, no excise tax shall be levied unless:

1. The balance in the fund is less than or equal to an unobligated balance of $3 million. For the fiscal year immediately following the year in which the balance in the fund is less than or equal to an unobligated balance of $3 million, the excise tax shall be and shall remain 2 cents per barrel coming to rest in the state, until the fund again equals or exceeds an unobligated balance of $12 million. For the fiscal year immediately following the year in which the fund again is equal to or exceeds an unobligated balance of $12 million, the excise tax and fund shall be controlled as when the fund first was equal to or exceeded an unobligated balance of $12 million.

2. The fund is unable to pay any proven costs against the fund at the end of the fiscal year. Notwithstanding any other provision of this section, for the fiscal year following the year in which the fund is unable to pay any proven costs against the fund at the end of the fiscal year, the excise tax shall be and shall remain 5 cents per barrel until all outstanding proven costs have been paid and the fund again equals or exceeds $1.5 million, when the excise tax shall be 2 cents per barrel until the fund again equals or exceeds an unobligated balance of $12 million. For the fiscal year immediately following the year in which the fund, after levy of the 5-cent excise tax, again is equal to or exceeds an unobligated balance of $12 million, the excise tax and fund shall be controlled in accordance with subparagraph 1., unless otherwise provided.

3. The fund has had appropriated to it by the Legislature, but has not yet repaid, state funds from the General Revenue Fund. In such event, the excise tax shall continue to be in effect until all such funds are repaid to the General Revenue Fund.

(c) The excise tax provided for in this section shall be collected monthly by the Department of Revenue on the basis of records certified to the Department of Revenue and the Department of Environmental Regulation and shall be credited to the fund. However, for the purposes of this section, the excise tax on each barrel of the pollutant shall be imposed only once, at the first transfer of a specific barrel of pollutant which comes to rest in this state. Each barrel of pollutant shall be considered only once for the purposes of this excise tax. This excise tax shall be in addition to all other taxes imposed upon or paid by the operator. However, any facility with a storage capacity of 250 barrels or less shall report and pay the excise tax semiannually.

(d) Except for the 3-percent collection allowance, the same duties and privileges imposed by chapter 212 respecting the remission of tax; the making of returns; penalties and interest; the keeping of books, records, and accounts; and the compliance with the rules of the Department of Revenue in the administration of that chapter shall apply to and be binding on all registrants who are subject to this section.

(e) The Department of Revenue shall maintain records indicating the amount of taxes collected. These records shall be confidential, as provided in s. 213.053.

(f) The Department of Revenue shall promulgate rules, establish audit procedures for the audit of operators under this section, assess for delinquencies, and prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

(g) The Department of Revenue, according to the applicable rules of the Career Service Commission, is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature.

(6) The department shall recover to the use of the fund from the person or persons causing the discharge or from the Federal Government, jointly and severally, all sums owed or expended therefrom, pursuant to s. 376.308(4), except that sums recovered as a result of damage due to a discharge of a pollutant or other similar disaster shall be apportioned between the fund and the General Revenue Fund so as to repay the full costs to the General Revenue Fund of any sums disbursed therefrom as a result of such disaster. Any request for reimbursement to the fund for such costs, if not paid within 30 days of demand, shall be turned over to the department for collection.

(7) Moneys in the fund which are not needed currently to meet the obligations of the department in the exercise of its responsibilities under ss. 376.30-376.315 shall be deposited with the Treasurer to the credit of the fund and may be invested in such manner as is provided for by statute. The interest received on such investment shall be credited to the fund.

History.—s. 84, ch. 83-310; s. 2, ch. 83-353.

Note.—The reference to s. 376.11(5)(f) was substituted by the editors for reference to s. 376.11(5)(e) to correct an apparent error in s. 3, ch. 83-353.

376.308 Liabilities and defenses of facilities.—It is the duty of the department in administering the fund diligently to pursue the reimbursement to the fund of any sums expended from the fund for cleanup, abatement, or damages in accordance with the provisions of ss. 376.30-376.315. In any suit to enforce claims of the fund under ss. 376.30-376.315, it is not necessary for the department in administering the fund to plead or prove negligence in any form or manner. The department in administering the fund need only plead and prove that the prohibited discharge or other polluting condition has occurred. The only defenses of a person alleged to be responsible for the discharge to an action for damages and costs and expenses of cleanup or abatement are to plead and prove that the occurrence was solely the result of any of the following or any combination of the following:

(1) An act of war.

(2) An act of government, either state, federal, or municipal.

(3) An act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(4) An act or omission of a third party, other than an employee or agent of the defendant or other than one whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the defendant, except when the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail, if the defendant establishes by a preponderance of the evidence that:

(a) The defendant exercised due care with respect to the pollutant concerned, taking into consideration the characteristics of such hazardous waste, in light of all relevant facts and circumstances; and

(b) The defendant took precautions against foreseeable acts or omissions of any such third party and against the consequences that could foreseeably result from such acts or omissions.

History.—s. 84, ch. 83-310.

Note.—The word "or" was substituted by the editors for the word "and."

376.309 Facilities, financial responsibility.—

(1) Each owner or operator of a facility is required to establish and maintain evidence of financial responsibility. Such evidence of financial responsibility shall be the only evidence required by the department that such owner or operator has the ability to meet the liabilities which may be incurred under ss. 376.30-376.315.

(2) Any claim brought pursuant to ss. 376.30-376.315 may be brought directly against the bond, the insurer, or any other person providing a facility with evidence of financial responsibility.

(3) Each owner or operator of a facility subject to the provisions of ss. 376.30-376.315 shall designate a person in the state as his legal agent for service of process under ss. 376.30-376.315, and such designation shall be filed with the Department of State. In the absence of such designation, the Secretary of State shall be the designated agent for purposes of service of process under ss. 376.30-376.315.

History.—s. 84, ch. 83-310.

376.311 Penalties for a discharge.—

(1) The penalty provisions of this section do not apply to any discharge promptly reported and removed by an operator in accordance with the rules and orders of the department.

(2) Penalties assessed herein for a discharge shall be in accordance with the provisions administered by the department in chapter 403.

History.—s. 84, ch. 83-310.

376.313 Individual cause of action for damages under ss. 376.30-376.315.—The remedies in ss. 376.30-376.315 shall be deemed to be cumulative and not exclusive. Nothing in ss. 376.30-376.315 shall require pursuit of any claim against the fund as a condition precedent to any other remedy. Notwithstanding any other provision of law, nothing contained in ss. 376.30-376.315 shall prohibit any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.315. In any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308(3). In addition to any other remedy, the injured party shall be entitled to recover costs of the action and reasonable attorneys' fees.

History.—s. 84, ch. 83-310.

376.315 Construction of ss. 376.30-376.315.—Sections 376.30-376.315, being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed to effect the purposes set forth under ss. 376.30-376.315 and the Federal Water Pollution Control Act, as amended.

History.—s. 84, ch. 83-310.

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CHAPTER 377

ENERGY RESOURCES

PART I REGULATION OF OIL AND GAS RESOURCES (ss. 377.01-377.41)

PART II PLANNING AND DEVELOPMENT (ss. 377.601-377.712)

PART I

REGULATION OF OIL AND GAS RESOURCES

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377.01 Governor to enter into interstate compact to conserve oil and gas.—The Governor of the state is hereby authorized and directed, for and in the name of the state, to join with other states in the interstate compact to conserve oil and gas, which was heretofore executed in the City of Dallas, Texas, on February 16, 1935, and is now deposited with the Department of State of the United States, and which has been extended with the consent of Congress to September 1, 1947.

History.—s. 1, ch. 22823, 1945.

377.02 Form of compact.—The interstate compact to conserve oil and gas referred to in the above section, and which it is hereby proposed to enter and to extend by agreement, reads as follows:

AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I.

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

ARTICLE II.

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III.

Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) The operation of any oil well with an inefficient gas-oil ratio.

(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas in paying quantities.

(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

(d) The creation of unnecessary fire hazards.

(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV.

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V.

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI.

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as the Interstate Oil Compact Commission, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as said commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the commission except: (1) By the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII.

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII.

This compact shall expire September 1, 1937, but any state joining herein may, upon 60 days' notice, withdraw herefrom.

The representative of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

Done in the City of Dallas, Texas, this sixteenth day of February, 1935.

History.—s. 2, ch. 22823, 1945.

377.03 Extension of compact.—The Governor of Florida is further authorized and empowered, for and in the name of the state, to execute agreements for the further extension of the expiration date of the said "The Interstate Oil Compact" to conserve oil and gas, and to determine if and when it shall be for the best interest of the state to withdraw from said compact upon 60 days' notice as provided by its terms. In the event he shall determine that the state should withdraw from said compact he shall have full power and authority to give necessary notice and to take any and all steps necessary and proper to effect the withdrawal of the state from said compact.

History.—s. 3, ch. 22823, 1945.

377.04 Official report of state.—The Governor shall be the official representative of the state on the Interstate Oil Compact Commission, provided for in the compact to conserve oil and gas, and shall exercise and perform for the state all the powers and duties as a member of the Interstate Oil Compact Commission; provided, that he shall have the authority to appoint an assistant representative who shall

act in his stead as the official representative of the state as a member of said commission. Said assistant representative shall take the oath of office prescribed by the Constitution, which shall be filed with the Department of State.

History.—s. 4, ch. 22823, 1945; ss. 10, 35, ch. 69-106.

377.06 Public policy of state concerning natural resources of oil and gas.—It is hereby declared to be the public policy of the state to conserve and control the natural resources of oil and gas in said state, and the products made therefrom; to prevent waste of said natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land wherein said natural resources lie and the owners and producers of oil and gas resources and the products made therefrom, and of others interested therein; to encourage and cause the development in said state of said natural resources of oil and gas and the products made therefrom, to encourage the continuous and economic supply of the demand therefor; to safeguard the health, property and public welfare of the citizens of said state and other interested persons and for all purposes indicated by the provisions herein. It is not the intention of this section to limit or restrict or modify in any way the provisions of this law.

History.—s. 1, ch. 22819, 1945.

377.07 Division of Resource Management; powers, duties, and authority.—The Division of Resource Management of the Department of Natural Resources is hereby vested with power, authority and duty to administer, carry out and enforce the provisions of this law as directed in s. 370.02(3).

History.—s. 2, ch. 22819, 1945; s. 8, ch. 61-231; ss. 25, 35, ch. 69-106; s. 64, ch. 79-65.

377.075 Division of Resource Management; geological functions.—

(1) PERSONNEL.—The Department of Natural Resources shall, through the Division of Resource Management, establish the Florida Geological Survey and employ such suitable persons as in the judgment of the department may be necessary to conduct the geological survey of the state.

(2) DISBURSEMENTS; SURVEY EXPENSES.—For the purpose of expeditiously and thoroughly carrying out the geological survey, there shall be included a sufficient appropriation in the annual general appropriations act. The Comptroller shall, upon the requisition of the Division of Resource Management, when approved by the Governor, draw his warrant on the Treasurer for the amount so appropriated in such sums as may be needed from time to time for the purpose of the survey as herein set forth; and for all such expenditures, the consent and approval of the Governor shall be obtained, and the vouchers for all such expenditures made from this fund shall be filed with the Comptroller; a statement of his receipts and expenditures shall be printed in the annual report of the division. The amount annually appropriated, or so much thereof as may be necessary, shall be expended for the salaries and for the contingent expenses of the survey, including compensation of all temporary and permanent assistance; traveling expenses of the division, purchase of materials, or other necessary expenses for outfit; expenses incurred in providing for the transportation, arrangement, and proper exhibition of the geological and other collections made under the provisions of this law and for postage, stationery, and printing and the printing and engraving of maps and sections to illustrate the annual reports.

(3) DUTIES.—The Division of Resource Management shall make annually to the Governor a report of the progress of its surveys and explorations of minerals, water supply, and other natural resources of the state and shall include in such report full description of such surveys and explorations, occurrences and location of mineral and other deposits of value, surface and subterranean water supply and power and mineral waters, and the best and most economical method of development, together with analyses of soils, minerals, and mineral waters, with maps, charts, and drawings of the same.

(4) COLLECTION OF GEOLOGICAL SPECIMENS.—The Division of Resource Management shall make collections of specimens illustrating the geological and mineral features of the state, one suite of which shall be deposited in the office of the division at Tallahassee and duplicate suites of which shall be deposited in the libraries of each of the state colleges. Each suite shall be correctly labeled for convenient use and study.

(5) NOTIFYING OWNER OF DEPOSITS LOCATED.—The person in charge of the Division of Resource Management and his assistants, when they discover any mineral deposits or other substance of value shall notify the owner of the land upon which such deposits occur. The failure to notify the owner of such deposit before disclosing the same to any other person constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) CHEMICAL ANALYSES BY STATE CHEMIST.—All chemical, analytical, or assay work shall be performed by the state chemist and his assistants at the direction of the Governor upon request of the Division of Resource Management.

History.—s. 2, ch. 28145, 1953; s. 4, ch. 61-231; ss. 25, 35, ch. 69-106; s. 327, ch. 71-136; s. 1, ch. 73-305; s. 65, ch. 79-65; s. 1, ch. 83-176.

Note.—Former ss. 370.04, 373.011.

377.10 Certain persons not to be employed by division.—No person in the employ of, or holding any official connection or position with any person, firm, partnership, corporation, or association of any kind, engaged in the business of buying or selling mineral leases, drilling wells in the search of oil or gas, producing, transporting, refining, or distributing oil or gas shall hold any position under, or be employed by, the Division of Resource Management in the prosecution of its duties under this law.

History.—s. 5, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 66, ch. 79-65.

377.18 Common sources of oil and gas.—All common sources of supply of oil and gas or either of them shall have the production therefrom controlled or regulated in accordance with the provisions of this law.

History.—s. 13, ch. 22819, 1945.

377.19 Definitions.—Unless the context otherwise requires, the words defined in this section shall have the following meanings when found in ss. 377.06, 377.07, 377.10-377.40:

(1) "Division" means the Division of Resource Management of the Department of Natural Resources.

(2) "State" means the State of Florida.

(3) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind.

(4) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(5) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (4).

(6) "Pool" means an underground reservoir containing or appearing to contain a common accumulation of oil or gas or both. Each zone of a general structure which is completely separated from any other zone on the structure is considered a separate pool as used herein.

(7) "Field" means the general area which is underlaid, or appears to be underlaid, by at least one pool; and "field" includes the underground reservoir, or reservoirs, containing oil or gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field," unlike "pool," may relate to two or more pools.

(8) "Owner" means the person who has the right to drill into and to produce from any pool and to appropriate the production either for himself or for himself and another, or others.

(9) "Producer" means the owner or operator of a well or wells capable of producing oil or gas, or both.

(10) "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. "Waste" includes:

(a) The inefficient, excessive, or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing the quantity of oil or gas ultimately to be recovered from any pool in this state.

(b) The inefficient storing of oil; and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas.

(c) Producing oil or gas in such a manner as to cause unnecessary water channeling or coning.

(d) The operation of any oil well or wells with an inefficient gas-oil ratio.

(e) The drowning with water of any stratum or part thereof capable of producing oil or gas.

(f) Underground waste however caused and whether or not defined.

(g) The creation of unnecessary fire hazards.

(h) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(i) The use of gas for the manufacture of carbon black.

(j) Permitting gas produced from a gas well to escape into the air.

(k) Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals, causing undue drainage between tracts of land.

(11) "Product" means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural gas gasoline, naphtha, distillate, condensate, gasoline, waste oil, kerosene, benzine, wash oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas, and blends or mixtures of two or more liquid products or byproducts derived from oil or gas, whether hereinabove enumerated or not.

(12) "Illegal oil" means oil which has been produced within the state from any well or wells in excess of the amount allowed by rule, regulation, or order of the division, as distinguished from oil produced within the state from a well not producing in excess of the amount so allowed, which is "legal oil."

(13) "Illegal gas" means gas which has been produced within the state from any well or wells in excess of the amount allowed by any rule, regulation, or order of the division, as distinguished from gas produced within the State of Florida from a well not producing in excess of the amount so allowed, which is "legal gas."

(14) "Illegal product" means any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal gas or illegal oil or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(15) "Reasonable market demand" means the amount of oil reasonably needed for current consumption, together with a reasonable amount of oil for storage and working stocks.

(16) "Tender" means a permit or certificate of clearance for the transportation or the delivery of oil, gas, or products, approved and issued or registered under the authority of the division.

(17) The use of the word "and" includes the word "or" and the use of "or" includes "and," unless the context clearly requires a different meaning, especially with respect to such expressions as "oil and gas" or "oil or gas."

(18) "Well site" means the general area around a well, which area has been disturbed from its natural or existing condition, as well as the drilling or production pad, mud and water circulation pits, and other operation areas necessary to drill for or produce oil or gas.

History.—s. 14, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 138, ch. 71-377; s. 1, ch. 76-104; s. 1, ch. 77-174; s. 67, ch. 79-65.

377.20 Waste prohibited.—Waste of oil or gas defined in this law is hereby prohibited.
History.—s. 15, ch. 22819, 1945.

377.21 Jurisdiction of division.—
(1) The division shall have jurisdiction and authority over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.
(2) The division shall have authority, and it shall be its duty, to make such inquiries as it may deem proper to determine whether waste, over which it has jurisdiction, exists or is imminent. In the exercise of such power, the division shall have the authority to:
(a) Collect data.
(b) Make investigations and inspections.
(c) Examine properties, leases, papers, books, and records and to examine, survey, check, test, and gauge oil and gas wells, tanks, storage tanks, treatment plants and facilities, and modes of transportation used to gather and process crude oil or gas and products derived from wells within the state, prior to delivery to a common carrier.
(d) Hold hearings.
(e) Provide for the keeping of records and the making of reports.
(f) Take such action as may be reasonably necessary to enforce this law.
(3) The jurisdiction of the division shall extend to the state boundaries as set forth in s. 1, Art. II of the State Constitution.
History.—s. 16, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 1, ch. 72-394; s. 1, ch. 76-188.

377.22 Rules, regulations, and orders.—
(1) The Department of Natural Resources shall provide, by rules and regulations, for ratable takings in all pools on a reasonable and equitable basis.
(2) The department shall adopt such rules and regulations, and shall issue such orders, governing all phases of the exploration, drilling, and production of oil, gas, or other petroleum products in the state, including exploration, drilling, and production in the offshore waters of the state as may be necessary for the proper administration and enforcement of this chapter. Such rules, regulations, and orders shall ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products. The department shall revise such rules and regulations from time to time as may be necessary for the proper administration and enforcement of this chapter. Rules, regulations, and orders promulgated in accordance with this section shall be for, but shall not be limited to, the following purposes:
(a) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state.
(b) To prevent the alteration of the sheet flow of water in any area.
(c) To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations.
(d) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another.
(e) To prevent the intrusion of water into an oil or gas stratum from a separate stratum, except as provided by rules of the division relating to the injection of water for proper reservoir conservation and brine disposal.
(f) To require a reasonable bond, conditioned upon the performance of the duty to plug properly each dry and abandoned well and the full and complete restoration, by the applicant, of the area over which the drilling or production is conducted to the similar contour and general condition in existence prior to such operation.
(g) To require and carry out a reasonable program of monitoring or inspection of all drilling operations or producing wells, including regular inspections by division personnel.
(h) To require the making of reports showing the location of all oil and gas wells, the making and filing of logs, the taking and filing of directional surveys, the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells, if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology, and the making of reports with respect to drilling and production records. However, such information, or any part thereof, at the request of the operator, shall be held confidential by the division for a period of 90 days after the completion of a well, and, at the option of the division, for a longer period.
(i) To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases or property.
(j) To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.
(k) To require the operation of wells with efficient gas-oil ratio, and to fix such ratios.
(l) To prevent "blowouts," "caving," and "seepage," in the sense that conditions indicated by such terms are generally understood in the oil and gas business.
(m) To prevent fires.
(n) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.
(o) To regulate the "shooting," perforating and chemical treatment of wells.
(p) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.
(q) To regulate gas cycling operations.
(r) If necessary for the prevention of waste, as herein defined, to determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state.

(s) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product.
(t) To regulate the spacing of wells and to establish drilling units.
(u) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage.
(v) To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas.
History.—s. 16, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 2, ch. 72-394; s. 1, ch. 76-103; s. 1, ch. 80-283.

377.23 Monthly reports to division.—Every producer of oil or gas in the state shall submit to the division, on forms prescribed by the division, a monthly report of the actual production from each and every oil and gas well operated by him. Said producer shall submit a duplicate copy of said report at the same time to the Department of Banking and Finance; and said reports shall be submitted through the medium of the United States mails, and it shall be unlawful for the same to be transmitted or received in any other way.
History.—s. 17, ch. 22819, 1945; s. 1, ch. 69-266; ss. 12, 25, 35, ch. 69-106.

377.24 Notice of intention to drill well; permits; abandoned wells and dry holes.—
(1) Before any well in search of oil or gas shall be drilled, the person desiring to drill the same shall notify the division upon such form as it may prescribe and shall pay a fee of $50 for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.
(2) Each application for the drilling of a well in search of oil or gas in this state shall include the address of the residence of the applicant, or each applicant, which address shall be the address of each person involved in accordance with the records of the Division of Resource Management until such address is changed on the records of the division after written request.
(3) Each abandoned well and each dry hole shall be plugged promptly in the manner and within the time required by regulations to be prescribed by the Department of Natural Resources, and the owner of such well shall give notice upon such form as the division may prescribe, of the drilling of each dry hole and of the owner's intention to abandon, and shall pay a fee of $15. No well shall be abandoned until such notice has been given and such fee has been paid.
(4) Application for permission to drill or abandon any well may be denied by the division for only just and lawful cause.
(5) No permit to drill a gas or oil well shall be granted within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly approved the application for such permit by resolution.
(6) No permit to drill a gas or oil well shall be granted at a location in the tidal waters of the state, abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly approved the application for such permit by resolution.
(7) No permit to drill a gas or oil well shall be granted on any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters of the state abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly approved the application for such permit by resolution.
(8) For the purposes of this section and law, an improved beach, situated outside of the corporate limits of any municipality or town, shall be and is hereby defined to be any beach adjacent to or abutting upon the tidal waters of the state and having not less than 10 hotels, apartment buildings, residences or other structures, used for residential purposes, on or to any given mile of such beach.
History.—s. 18, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 68, ch. 79-65.

377.2408 Application to conduct geophysical operations.—
(1) Before any geophysical operation in search of oil, gas, or minerals shall be conducted, the person desiring to conduct such operation shall make application to the Department of Natural Resources upon such forms as it may prescribe and shall pay a reasonable fee for processing.
(2) Each application shall contain a statement, in general terms, of the location in which such operation is intended to be conducted.
(3) Any information relating to location of the operation and other anticompetitive matter shall be kept confidential by the department and shall not be released to the public without the consent of the person submitting the application.
History.—s. 2, ch. 80-283.

377.241 Criteria for issuance of permits.—The division, in the exercise of its authority to issue permits as hereinafter provided, shall give consideration to and be guided by the following criteria:
(1) The nature, character and location of the lands involved; whether rural, such as farms, groves, or ranches, or urban property vacant or presently developed for residential or business purposes or are in such a location or of such a nature as to make such improvements and developments a probability in the near future.
(2) The nature, type and extent of ownership of the applicant, including such matters as the length of time the applicant has owned the rights claimed without having performed any of the exploratory operations so granted or authorized.
(3) The proven or indicated likelihood of the presence of oil, gas or related minerals in such quantities as to warrant the exploration and extraction of such products on a commercially profitable basis.
History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106.

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377.242 Permits for drilling or exploring and extracting through well holes or by other means.—The department is vested with the power and authority:

(1)(a) To issue permits for the drilling for, exploring for, or production of oil, gas, or other petroleum products which are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.

1. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed on any submerged land within any bay or estuary.

2. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed within 1 mile seaward of the coastline of the state.

3. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed within 1 mile of the seaward boundary of any state, local, or federal park or aquatic or wildlife preserve or on the surface of a freshwater lake, river, or stream.

4. No structure intended for the drilling for, or production of, oil, gas, or other petroleum products may be permitted or constructed within 1 mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream unless the department is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.

(b) Subparagraphs (a) 1. and 4. do not apply to permitting or construction of structures intended for the drilling for, or production of, oil, gas, or other petroleum products pursuant to an oil, gas, or mineral lease of such lands by the state under which lease any valid drilling permits are in effect on the effective date of this act. In the event that such permits contain conditions or stipulations, such conditions and stipulations shall govern and supersede subparagraphs (a) 1. and 4.

(c) The prohibitions in this subsection do not include "infield gathering lines," provided no other placement is reasonably available and all other required permits have been obtained.

(2) To issue permits to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole.

Each permit shall contain an agreement by the permitholder that the permitholder will not prevent inspection by division personnel at any time.

History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106; s. 3, ch. 72-394; s. 69, ch. 79-65; s. 3, ch. 80-283; s. 2, ch. 83-176.

377.2421 Division to review federal applications.—The division shall review all applications for federal oil leases in the territorial waters of the United States adjacent to Florida waters and shall signify its approval or objection to each application.

History.—s. 4, ch. 72-394.

377.2424 Conditions for granting permits for geophysical operations.—Exploration for oil, gas, or minerals by means of geophysical activities shall be exercised only pursuant to permit issued by the department, upon the applicant's complying with the following conditions:

(1) The applicant must have legal permission, which can be in the form of a lease, written permission of an owner of the minerals, or an affidavit of the applicant affirming that he will obtain permission to explore through geophysical operations for oil, gas, or minerals underlying the lands.

(2) The applicant shall post a good and sufficient surety bond with the department in such amount as the department may determine is adequate to protect state lands and areas of critical state concern upon which geophysical operations are conducted from failure by the applicant to restore the area to the general condition and the contour similar to that in existence prior to such operations. The bond shall contain reasonable standards and safeguards from which to determine whether any sum should be paid by the surety.

History.—s. 4, ch. 80-283.

377.2426 Abandonment of geophysical holes.—Each hole drilled as part of permitted geophysical operations shall be plugged promptly in the manner prescribed by the department.

History.—s. 4, ch. 80-283.

377.243 Conditions for granting permits for extraction through well holes.—

(1) Prior to the application to the Division of Resource Management for the permit to drill for oil, gas, and related products referred to in s. 377.242(1), the applicant must own a valid deed, or other muniment of title, or lease granting said applicant the privilege to explore for oil, gas, or related mineral products to be extracted only through the well hole on the land or lands included in the application. However, unallocated interests may be unitized, according to s. 377.27.

(2) As a condition precedent to the issuance or renewal of a permit, the division shall require satisfactory evidence that the applicant has implemented, or is in the process of implementing, programs for control of pollution related to oil, petroleum products or their byproducts, and other pollutants and the abatement thereof when a discharge occurs.

History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106; s. 5, ch. 72-394; s. 70, ch. 79-65.

377.244 Conditions for granting permits for surface exploratory and extraction operations.—

(1) Exploration for and extraction of minerals under and by virtue of the authority of a grant of oil, gas, or mineral rights, or which, subsequent to such grant, may be interpreted to include the right to explore for and extract minerals which are subject to extraction from the land by means other than through a well hole, that is by means of surface exploratory and extraction operations such as sifting of the sands, dragline, open pit mining, or other type of surface operation, which would include movement of sands, dirt, rock, or minerals, shall be exercised only

pursuant to permit issued by the Division of Resource Management upon applicant complying with the following conditions:

(a) The applicant must own a valid deed, or other muniment of title, or lease granting applicant the right to explore for and extract oil, gas, and other minerals from said lands.

(b) The applicant shall post a good and sufficient surety bond with the division in such amount as the division may determine is adequate to afford full and complete protection for the owner of the surface rights of the lands described in the application, conditioned upon the full and complete restoration, by the applicant, of the area over which the exploratory and extraction operations are conducted to the same condition and contour in existence prior to such operations.

(2) The provisions of this act shall not apply to the exploration and removal from lands of peat, muck, marl, limestone, limerock, kaolin, fuller's earth, phosphate, common clays, gravel, shell, sand, and similar substances, it being the legislative determination that the mining and extraction operations, and the grants of authority under which these activities are conducted for said substances exempted from the provisions of this act, are dissimilar from the exploratory and extraction operations and the grants of authority under which these activities are conducted for substances which come within the purview of the regulatory provisions of this act.

History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106; s. 71, ch. 79-65.

377.245 Provision for distribution of earnings to lessees or owners of the fractional undivided mineral rights not owned by applicant for permit under ss. 377.243 and 377.244.—Lessees or owners of the fractional undivided oil, gas or other mineral rights in lands described in permits issued under the provisions of ss. 377.243 and 377.244, not owned by the applicant named in said permits, shall, as to all productive wells or surface mineral operations on said lands, be entitled to and be paid their pro rata part of the earnings after costs of exploration and operation have been allocated. The division shall prescribe such reasonable and appropriate rules and regulations as shall be deemed necessary and proper to implement the provisions of this section and all other sections of this act.

History.—s. 1, ch. 61-299; ss. 25, 35, ch. 69-106.

377.25 Production pools; drilling units.—

(1) No rule, regulation or order of the division shall be such in terms or effect:

(a) That it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can without waste produce such share, or

(b) As to occasion net drainage from a tract, unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can without waste produce such tract's just and equitable share, as set forth in this section, of the production of such pool.

(2) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the board shall establish a drilling unit or units for each pool. A drilling unit, as contemplated herein, means the maximum area in a pool which may be efficiently and economically drained by one well, and such unit shall constitute a developed area as long as a well is located thereon which is capable of producing oil or gas in paying quantities.

(3) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may be reasonably necessary where the division finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome. Whenever an exception is granted, the division shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract, with respect to which the exception is granted, will be prevented or minimized, and the producer of the well drilled, as an exception, will be allowed to produce no more than his just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

(4) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool, also sometimes referred to as a tract's just and equitable share, is that part of the authorized production for the pool, whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on amount were imposed, which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract or tracts in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be practically ascertained; and, to that end, the rules, regulations, permits and orders of the division shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit, that is, drainage which is not equalized by counterdrainage, and will give to each producer the opportunity to use his just and equitable share of the reservoir energy.

History.—s. 19, ch. 22818, 1945; ss. 25, 35, ch. 69-106; s. 23, ch. 78-99.

377.26 Location of wells.—Whenever the division fixes the location of any well or wells on the surface, the point at which the maximum penetration of such well into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface; provided, that the division shall prescribe rules, regulations and orders governing the reasonableness of such variation.

History.—s. 20, ch. 22818, 1945; ss. 25, 35, ch. 69-106.

377.27 Drilling units.—

(1) When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may validly agree to integrate their interest and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the division shall, for the prevention of waste and to avoid the risks involved in the drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit.

(2) Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the division is without authority to require integration as provided for in subsection (1), then, subject to all other applicable provisions of this law, the owners of each tract embraced within the drilling unit may drill on their respective tracts; but the allowable production therefrom shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

History.—s. 21, ch. 22819, 1945; s. 23, 35, ch. 49-100

377.28 Cycling, pooling, and unitization of oil and gas.—

(1) The Department of Natural Resources may consider the need for the operation as a unit of an entire field, or of any pool or pools, portion or portions, or combinations thereof within a field, for the production of oil or gas, or both, and other minerals which may be associated and produced therewith, in order to avoid the drilling of unnecessary wells, otherwise to prevent waste, or to increase the ultimate recovery of the unitized minerals by additional recovery methods.

(2) The department shall issue an order requiring unit operation if it finds that:

(a) Unit operation of the field, or of any pool or pools, portion or portions, or combinations thereof within the field, is reasonably necessary to prevent waste, to avoid the drilling of unnecessary wells, or to increase the ultimate recovery of oil or gas by additional recovery methods; and

(b) The estimated additional cost incident to the conduct of such operation will not exceed the value of the estimated additional recovery of oil or gas.

The phrase "additional recovery methods" as used herein includes, but is not limited to, the maintenance or partial maintenance of reservoir pressures; recycling; flooding a pool or pools, or parts thereof, with air, gas, water, liquid hydrocarbons, any other substance, or any combination thereof; or any other method of producing additional hydrocarbons approved by the department.

(3) The order shall be fair and reasonable under all the circumstances, shall protect the rights of interested parties, and shall include:

(a) A description of the area embraced, termed the "unit area" and a description of the pool or pools, or portions thereof, affected and lying within the unit area.

(b) A statement of the nature of the operations contemplated.

(c) A method of allocation among the separately owned tracts in the unit area of all the oil or gas, or both, produced from the unit pool within the unit area and not required in the conduct of such operation or unavoidably lost, such method of allocation to be on a formula that is fair and equitable and that will protect the correlative rights of all interested parties.

(d) A provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investments in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for any such item shall be determined by the owners of the unit area (not including royalty owners). However, if said owners of the unit area are unable to agree upon the amount of such charges or upon the correctness thereof, the department shall determine the amount. The net amount charged against the owners of a separately owned tract shall be considered expense of unit operation chargeable against such tract. The adjustment provided for herein may be treated separately and handled by agreements separate from the unitization agreement.

(e) A provision that the costs and expenses of unit operation, including investment, past and prospective, be charged to the separately owned tracts in the same proportions that such tracts share in unit production. The expenses chargeable to a tract shall be paid by the person not entitled to share in production free of operating costs and who, in the absence of unit operation, would be responsible for the expense of developing and operating such tracts, and such person's interest in the separately owned tract shall be primarily responsible therefor. The obligation or liability of such persons in the several, separately owned tracts for the payment of unit expense shall at all times be several, and not joint or collective. The unit operator shall have a first and prior lien upon:

1. The leasehold estate, exclusive of the royalty interest provided thereby, and upon unleased oil and gas rights, exclusive of one-eighth interest therein, in and to each separately owned tract; and

2. The interest of the owners thereof in and to the unit production and all equipment in possession of the unit,

to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract.

(f) The designation of, or a provision for the selection of, a unit operator. The conduct of all unit operations by the unit operator and the selection of a successor to the unit operator shall be governed by the terms and provisions of the unitization agreements.

(g) A provision that when the full amount of any charge made against any interest in a separately owned tract is not paid when due by the person or persons primarily responsible therefor, then all of the oil and gas production allocated to the interest in default in such separately owned tract, upon which operator has a lien, may be appropriated by the unit operator and marketed and sold for the payment of such charge, together with interest at a rate of 6 percent per annum. The remaining portion of the unit production, or the proceeds derived therefrom, allocated to each separately owned tract shall in all events be regarded as royalty to be paid to the owners, free and clear of all unit expense and free and clear of any lien therefor. The owner of any overriding royalty, oil and gas payment, or other interest who is not primarily responsible for the unpaid obligation shall, to the extent of any payment or deduction from his share, be subrogated to all the rights of the unit operator with respect to the interest or interests primarily responsible for such payment. Any surplus received by the operator from any such sale of production shall be credited to the person or persons from whom it was deducted, in the proportion of their respective interest.

(h) The time the unit operation shall become effective and the manner in which, and the circumstances under which, the unit operation shall terminate.

(4) An order requiring unit operation shall not become effective unless and until:

(a) A contract incorporating the unitization agreement has been signed or ratified or approved in writing by the owners of at least 75 percent in interest as costs are shared under the terms of the order and by 75 percent in interest as production is to be allocated to the royalty owners in the unit area. If any entity owns both royalty interests and interests responsible for costs, such party may vote as an owner responsible for costs or as a royalty owner, at his election, but not as both, and his interest that is not voted shall be excluded in calculating the percentages of consent and nonconsent.

(b) A contract incorporating the required arrangements for operations has been signed or ratified or approved in writing by the owners of at least 75 percent in interest as costs are shared,

and the department has made a finding to that effect either in the order or in a supplemental order. Both contracts may be encompassed in a single document. In the event the required percentage interests have not signed, ratified, or approved the said agreements within 6 months after the date of such order, or within such extended period as the department may prescribe, it shall be automatically revoked.

(5)(a) The department, by entry of new or amending orders, may from time to time add to unit operations portions of pools not theretofore included, may add to unit operations new pools or portions thereof, and may extend the unit area as required. Any such order, in providing for allocation of production from a unitized zone of the unit area, shall first allocate to such pool or pools or portion thereof so added a portion of the total production of oil or gas, or both, from all pools affected within the unit area, as enlarged, and not required in the conduct of unit operations or unavoidably lost; such allocation to be based on a formula for sharing that is considered to treat each tract and each owner fairly and equitably during the remaining course of unit operations. The production so allocated to such added pool or pools or portions thereof shall be allocated to the separately owned tracts which participate in such production on a fair and equitable basis. The remaining portion of unit production shall be allocated among the separately owned tracts within the previously established unit area in the same proportions as those specified prior to the enlargement unless such proportions are shown to be erroneous by data developed subsequent to the former determination, in which event the errors shall be corrected. Orders promulgated under this section shall become operative at 7 a.m. on the first day of the month next following the day on which the order becomes effective.

(b) An order promulgated by the department shall not become effective unless and until:

1. All of the terms and provisions of the unitization agreement relating to the extension or enlargement of the unit area or to the addition of pools or portions thereof to unit operations have been fulfilled and satisfied and evidence thereof has been submitted to the department.

2. The extension or addition effected by such order has been agreed to in writing by the owners of at least 75 percent in interest as costs are shared in the area or pools or portions thereof to be added to the unit operation by such order and by 75 percent in interest as production is to be allocated to the royalty owners in the area or pools or portions thereof to be added to the unit operations by such order and evidence thereof has been submitted to the department. If any entity owns both royalty interests and interests responsible for costs, such party may vote as an owner responsible for costs or as a royalty owner, at his election, but not as both, and his interest that is not voted shall be excluded in calculating the percentages of consent and nonconsent.

In the event both of the requirements specified in subparagraphs 1. and 2. are not fulfilled within 6 months after the date of such order, or within such extended period as the department may prescribe, it shall be automatically revoked.

(6) When the contribution of a separately owned tract with respect to any unit pool has been established, such contribution shall not be subsequently altered except to correct a mathematical or clerical error that caused the tract contribution to be erroneous, unless an enlargement of the unit is effected. No change or correction of the contribution of any separately owned tract shall be given retroactive effect, but appropriate adjustment shall be made for the investment charges as provided in this section.

(7) The portion of unit production allocated to a separately owned tract within the unit area shall be deemed, for all purposes, to have been actually produced from such tract, and operations with respect to any unit pool within the unit area shall be deemed, for all purposes, to be the conduct of operations for the production of oil or gas, or both, from each separately owned tract in the unit area.

(8) Subsections (1) through (7) shall apply only to field or pool units, and shall not apply to the unitization of interests within an individual drilling unit.

(9) All orders requiring integration, pooling, cycling, repressuring pressure maintenance, or secondary recovery operations shall be upon terms and conditions that are just and reasonable, will afford to the owner of each tract the opportunity to recover his just and equitable share of the oil and gas in the pool

without unnecessary expense, and, as to individual drilling units, will prevent or minimize reasonably avoidable drainage from each unit which is not equalized by counterdrainage. The portion of the production allocated to the owner of each tract included in unit operation formed by a unit operation order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon. In the event such integration or pooling is required, the operator designated by the department to develop and operate the unit operation shall have the right to charge against each other owner's interest in the production from the wells drilled by such designated operator the actual expenditures required for such purpose, not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from such wells drilled by him thereon which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well so that the amount due by each of them for his share of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production, with the value of production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. In the event of any dispute relative to such costs, the division shall determine the proper cost. In the event a dry hole should be drilled on an individual drilling unit, no liability for any part of the cost of drilling said well shall attach to any person or persons by reason of the unit operation order of the department.

History.—s. 22, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 31, ch. 74-316; s. 1, ch. 77-174; s. 23, ch. 78-95.

377.29 Agreements in interest of conservation.—Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners and operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid, by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of the pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the division, are hereby authorized and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.

History.—s. 23, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

377.30 Limitation on amount of oil or gas taken.—

(1) Whenever the total amount of oil or gas which all the pools in the state can produce exceeds the amount reasonably required to meet the reasonable market demand for oil or gas in this state, then the division shall limit the total amount of oil or gas which may be produced in the state by fixing an allowable for the state among the pools on a reasonable basis and in such a manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the allowable for the state, and in fixing allowable for pools producing oil or gas, the division shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil and gas and shall formulate rules setting forth standards or a program for the distribution of the allowable for the state, and shall distribute the allowable for the state in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the division shall permit the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste; and provided, further, that if the amount allocated to a pool as its share of the allowable for the state is in excess of the amount which the pool should produce to prevent waste, then the division shall fix the allowable for the pool so that waste will be prevented.

(2) Whenever the division limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, which limitation may be imposed either incidentally to, or without, a limitation of the total amount of oil or gas which may be produced in the state, the division shall prorate or distribute the allowable production among the producers in the pool on a reasonable basis so as to prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage, and so that each producer will have the opportunity to produce or receive his just and equitable share, as above set forth, subject to the reasonable requirement for the prevention of waste.

(3) After the effective date of any rule, regulation or order of the division fixing the allowable production of oil or gas, or both, for any pool, no person shall produce from any well, lease or property more than the allowable production which is applicable, nor shall such amount be produced in a different manner than that which may be authorized.

History.—s. 24, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

377.31 Evidence of rules and orders.—A certified copy of any division rule, regulation, or order shall be received in evidence in all courts of this state with the same effect as the original thereof.

History.—s. 25, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95.

377.32 Issuance of subpoenas; service, etc.—

(1) The division is hereby empowered to issue subpoenas for witnesses, to require their attendance and the giving of testimony before it, and to require the production of books, papers and records in any proceeding before the division as may be material upon questions lawfully before the division. Such subpoenas shall be served by the sheriff or any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying, or from producing books, papers and records before the division or a court, or from obedience to the subpoena of the division or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; provided, that nothing herein contained shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any inquiry not pertinent to some question lawfully before the division or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may be required to testify or produce evidence, documentary or otherwise, before the division or court, or in obedience to its subpoena; provided, that no person testifying shall be exempted from prosecution and punishment for perjury committed in so testifying.

(2) In case of failure or refusal on the part of any person to comply with any subpoena issued by the division, or, in case of the refusal of any witness to testify or answer as to any matter regarding which he may be lawfully interrogated, any circuit court in this state, on the application of the division, may issue an attachment for such person and compel him to comply with such subpoena and to attend before the division and produce such documents, and give his testimony upon such matters as may be lawfully required, and such court shall have the power to punish for contempt as in case of disobedience of like subpoena issued by or from such court, or for refusal to testify therein.

History.—s. 26, ch. 22819, 1945; s. 23, ch. 29737, 1955; ss. 25, 35, ch. 69-106.

377.33 Injunctions against division.—

(1) Any interested person adversely affected by any statute of this state with respect to conservation of oil or gas, or both, or by provisions of this law may seek relief by a suit for injunction against the division, as defendant, or the members thereof by suit in the chancery court in the county or counties wherein the property involved is situated, or in the chancery court of Leon County. Such suit shall have precedence over all other causes, proceedings, or suits on the docket of a different nature, and the attorney representing the division may have the case set for trial after 10 days' notice to the plaintiff or his attorney. Such trial shall be de novo, and the burden of proof shall be upon the plaintiff. The statute or provision of this law complained of shall be taken as prima facie valid, and such presumption shall not be overcome, in connection with any application for injunctive relief, including temporary restraining order, by verified complaint or affidavit of, or in behalf of, the applicant.

(2) No temporary restraining order or injunction shall be granted against the division or against its attorneys, agents, employees, or representatives restraining the attorneys, agents, employees, or representatives from enforcing any statute of this state relating to conservation of oil or gas, or any of the provisions of this law, except after due notice, served upon the executive director of the department, and after a hearing at which it shall be shown to the court by legal evidence that the act done or threatened is without sanction of law or that the provisions of this law are invalid or unreasonable and, if enforced against the complaining party, will cause an irreparable injury. If the division shall so request at such hearing, it shall be entitled to a trial on the merits within 10 days after the granting of any temporary order, and, if the plaintiff is not ready for trial at such time, the court shall be authorized to dissolve the temporary restraining order.

(3) No temporary injunction of any kind against the division, or against its attorneys, agents, employees or representatives, shall become effective until the plaintiff shall execute a bond in the amount and upon the conditions the court directs. The bond shall be made payable to the Governor and his successors in office, shall be approved by the court or clerk, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the injunction.

History.—ss. 27-29, ch. 22819, 1945; s. 10, ch. 26484, 1951; s. 2, ch. 29737, 1955; ss. 25, 35, ch. 69-106; s. 27, ch. 74-382; s. 23, ch. 78-95; s. 48, ch. 79-164.

377.34 Actions and injunctions by division.—

(1) Whenever it shall appear that any person is violating, or threatening to violate, any statute of this state with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule, regulation or order made thereunder by any act done in the operation of any well producing oil or gas, or by omitting any act required to be done thereunder, the division, through its counsel, or the Department of Legal Affairs on its own initiative, may bring suit against such person in the Circuit Court in the County of Leon, state, or in the circuit court in the county in which the well in question is located, at the option of the division, or the Department of Legal Affairs, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit, the division, or the Department of Legal Affairs, may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of a receiver appointed by the court if, in the judgment of the court, such action is advisable.

(2) In the event the division, or the Department of Legal Affairs, should fail to bring suit within 10 days to enjoin any actual or threatened violation of any statute of this state with respect to the conservation of oil and gas, or of any provision of this law, or of any rule, regulation or order made thereunder, then any person or party in interest adversely affected by such violation, and who has notified the division, or the Department of Legal Affairs, in writing of such violation, or threat thereof, and has requested the division, or the Department of Legal Affairs, to sue, may, to prevent any or further violation, bring suit for that purpose in the Circuit Court of the County of Leon, in the state. If, in such suit, the court should hold that injunctive relief should be granted, then the division, or the Department of Legal Affairs, shall be made a party and shall be substi-

tuted for the person who brought the suit, and the injunction shall be issued as if the division, or the Department of Legal Affairs, had at all times been the complainant.

(3) If any such defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in such suit may be obtained by service made upon him or any employee or agent of that defendant at any place in Florida and by the division, or the Department of Legal Affairs, mailing copy of the complaint in the action to the defendant at the address of the defendant then recorded with the division, or the Department of Legal Affairs.

History.—s. 30, ch. 22819, 1945; s. 1, ch. 69-350; ss. 11, 23, 35, ch. 69-106.

377.35 Suits, proceedings, appeals, etc.—In all proceedings brought under authority of this law, or of any oil or gas conservation statute of this state, or of any rule, regulation, or order made thereunder, and in all proceedings instituted for the purpose of contesting the validity of any provision of the law, or of any oil or gas conservation statute, or of any rule, regulation, or order made thereunder, review may be had pursuant to Art. V, State Constitution; the Florida Appellate Rules; and chapter 120.

History.—s. 31, ch. 22819, 1945; s. 22, ch. 63-512; s. 121, ch. 77-104.

377.36 False entries and statements; incomplete entries; penalties.—Any person who, for the purpose of evading this law, or of evading any rule, regulation, or order made hereunder, shall intentionally make, or cause to be made, any false entry or statement of fact in any report required to be made by this law, or by any rule, regulation, or order made hereunder; or who, for such purpose, shall make, or cause to be made, any false entry in any account, record, or memorandum kept by any person in connection with any provision of this law, or of any rule, regulation, or order made hereunder; or who, for such purpose, shall omit to make, or cause to be omitted, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of such person, as may be required by the division under authority given in this law, or by any rule, regulation, or order made hereunder; or who, for such purpose, shall remove out of the jurisdiction of the state, or who shall mutilate, alter, or, by any other means, falsify any book, record, or other paper pertaining to the transaction regulated by this law, or by any rule, regulation, or order made hereunder, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 32, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 227, ch. 71-136; s. 6, ch. 72-394.

377.37 Penalties.—

(1)(a) Any person who violates any provision of this law or any rule, regulation, or order of the division made under this chapter or who violates the terms of any permit to drill for or produce oil, gas, or other petroleum products referred to in s. 377.242(1), or any lessee, permitholder, or operator of equipment or facilities used in the exploration for, drilling for, or production of oil, gas, or other petroleum products who refuses inspection by the division as provided in this chapter, is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state. Furthermore, such person, lessee, permitholder, or operator is subject to the judicial imposition of a civil penalty in an amount of not more than $10,000 for each offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. Nothing herein shall give the department the right to bring an action on behalf of any private person.

(b) Whenever two or more persons pollute the air or waters of the state in violation of this chapter or any rule, regulation, or order of the department in such a manner that the damage is indivisible, each violator is jointly and severally liable for such damage and for the reasonable cost and expenses of the state incurred in tracing the source of the discharge; in controlling and abating the source and the pollutants; and in restoring the air, waters, and property, including the animal, plant, and aquatic life, of the state to their former condition. However, if the damage is divisible and may be attributed to a particular violator or violators, each violator is liable only for that damage attributable to his violation.

(c) The payment of any damages or penalties as provided for herein shall not have the effect of changing illegal product into legal product, illegal oil into legal oil, or illegal gas into legal gas; nor shall such payment have the effect of authorizing the sale, purchase, acquisition, transportation, refining, processing, or handling in any other way of such illegal oil, illegal gas, or illegal product.

(d) The payment of any such damages or penalties shall not impair or abridge any cause of action which any person may have against the person violating any provision of this law or any rule, regulation, or order for an injury resulting to him from such violation.

(2) Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this state relating to the conservation of oil or gas or the violation of any provision of this law, or any rule, regulation, or order made hereunder shall be subject to the same damages as are prescribed herein for the violation by such other person.

History.—s. 33, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 7, ch. 72-394; s. 3, ch. 83-178.

377.371 Pollution prohibited; reporting, liability.—

(1) No person drilling for or producing oil, gas, or other petroleum products shall pollute land or water; damage aquatic or marine life, wildlife, birds, or public or private property; or allow any extraneous matter to enter or damage any mineral or freshwater-bearing formation.

(2) All spills or leakage of oil, gas, other petroleum products, or waste material shall be reported to the division and those of any quantity which cannot be immediately controlled shall be reported immediately to the division and the appropriate federal agencies.

(3) Because it is the intent of this chapter to provide the means for rapid and effective cleanup and to minimize damages resulting from pollution in violation of this chapter, if the waters of the state are polluted by the drilling or production operations of any person or persons and such pollution damages or threatens to damage human, animal, or plant life, public or private property, or any mineral or water-bearing formation, said person shall be liable to the state for all costs of cleanup or other damage incurred by the state. In any suit to enforce claims of the state under this chapter, it shall not be necessary for the state to plead or prove negligence in any form or manner on the part of the person or persons conducting the drilling or production operations; the state need only plead and prove the fact of the prohibited discharge or other polluting condition and that it occurred at the facilities of the person or persons conducting the drilling or production operation. No person or persons conducting the drilling or production operation shall be liable if said person or persons prove that the prohibited discharge or other polluting condition was the result of any of the following:

(a) An act of war.

(b) An act of government, either state, federal, or municipal.

(c) An act of God, which means an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

(4) Any person who is found liable for damages or costs of cleanup as provided in this section shall not be liable for penalties under the provisions of chapter 403 or chapter 376.

History.—s. 8, ch. 72-394.

377.38 Illegal oil, gas, and other products; sale, purchase, acquisition, transportation, refining, processing, or handling prohibited.—

(1) The sale, purchase, or acquisition, or the transportation, refining, processing, or handling in any other way, of illegal oil, illegal gas, or illegal product is hereby prohibited.

(2) Unless and until the division provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase, or acquisition, or of transportation, refining, processing, or handling in any other way, involves illegal oil, illegal gas, or illegal product, no liquidated damage shall be imposed for the sale, purchase, or acquisition, or the transportation, refining, processing, or handling in any other way, of illegal oil, illegal gas, or illegal product, except under circumstances hereinafter stated. Liquidated damages shall be imposed for the commission of each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas, or illegal product is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, liquidated damages as provided in this law shall apply in any sale, purchase, or acquisition, and to the transportation, refining, processing, or handling in any other way, of illegal oil, illegal gas, or illegal product, where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which liquidated damages shall be imposed for any person to sell, purchase, or acquire, or to transport, refine, process, or handle in any other way any oil, gas, or product without complying with all applicable rules, regulations, or orders of the division relating thereto.

History.—s. 34, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

377.39 Seizure and sale of illegal oil, gas, or product.—

(1) Apart from, and in addition to, any other remedy or procedure which may be available to the division, or any liquidated damages which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas, or illegal product, all illegal oil, illegal gas, and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find, in the proceeding provided for in this subsection, that the commodity involved is contraband. Whenever the division believes that illegal oil, illegal gas, or illegal product is subject to seizure and sale, as provided herein, it shall, through its counsel, bring a civil action in rem for that purpose in the circuit court of the county where the commodity is found or the action may be maintained in connection with any suit or cross action for injunction or for liquidated damages relating to any prohibited transaction involving such illegal oil, illegal gas, or illegal product. Any interested person, who may show himself to be adversely affected by any such seizure and sale, shall have the right to intervene in such suit to protect his rights.

(2) The action referred to above shall be strictly in rem and shall proceed in the name of the state as plaintiff against the illegal oil, illegal gas, or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons without undertaking to name them, who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within 30 days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. One copy of such summons

shall be posted at least 5 days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the state. A copy of the summons shall also be published once each week for 4 successive weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein if such a newspaper is published. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of 5 days from the last publication or posting of said summons. Proof of service of said summons, and the manner thereof, shall be provided by general law.

(3) Where it appears by a verified pleading on the part of the plaintiff or by affidavit or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue an order of seizure, which shall be signed by the clerk and bear the seal of the court. Such order of seizure shall specifically describe the illegal oil, illegal gas, or illegal product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas, or illegal product described therein; and to hold the same subject to the orders of the court. Said order of seizure shall be executed as a writ of attachment is executed. No bond shall be required before the issuance of such order of seizure, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

(4) In a proper case, the court may direct the sheriff to deliver the custody of any illegal oil, illegal gas, or illegal product, seized by him under an order of seizure, to a receiver or conservator to be appointed by the court, which receiver or conservator shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas, or illegal product, as may come into his custody and possession in accordance with the order of the court; provided, that the court may in its discretion appoint any agent of the division as such receiver or conservator.

(5) Sales of illegal oil, illegal gas, or illegal product made under the authority of this law, and notices of such sales, shall be in accordance with the laws of this state relating to the sale and disposition of attached property; provided, however, that where the property is in the custody of a receiver or conservator, the sale shall be held by said receiver or conservator, and not by the sheriff. For his services hereunder, such receiver or conservator shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

(6) The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the act which is found by the court to make the commodity contraband. The judgment shall provide for payment of the proceeds of the sale into the General Revenue Fund, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil, legal gas, or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, and rules, regulations, and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

(7) Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lienholder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas, or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character.

History.—s. 35, ch. 22819, 1945; ss. 25, 35, ch. 69-106; s. 1, ch. 77-174.

377.40 Negligently permitting gas and oil to go wild or out of control.—

(1) In order to protect further the gas fields and oil fields in the state, it is hereby declared to be unlawful for any person to permit negligently any gas or oil well to go wild or to get out of control. The owner of any such well shall, after 24 hours' written notice by the division given to him or the person in possession of such well, make reasonable effort to control such well.

(2) In the event of the failure of the owner of such well, within 24 hours after service of notice above provided for, to control the same, if such can be done within the period or to begin, in good faith upon service of such notice, operations to control such well, or upon failure to prosecute diligently such operations, then the division shall have the right to take charge of the work of controlling such well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to control the well or otherwise to prevent the escape or loss of gas or oil from such well, all at the reasonable expense of the owner of the well. In order to secure the division in the payment of the reasonable cost and expense of controlling or plugging of such well, the division shall retain the possession of the same and shall be entitled to receive and retain the rents, revenues and income therefrom until the costs and expenses incurred by the division shall be repaid. When all such costs and expenses have been repaid, the division shall restore possession of such well to the owner; provided, that in the event the income received by the division shall not be sufficient to reimburse the division, as provided for in this section, the division shall have lien or privilege upon all of the property of the owner of such well, except such as is exempt by law, and the division shall proceed to enforce such lien or privilege by suit brought in any court of competent jurisdiction, the same as any other like civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the division which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of such well.

History.—s. 36, ch. 22819, 1945; ss. 25, 35, ch. 69-106.

377.41 Disposition of fines.—Moneys collected

as fines for violations of this part, implementing rules, or permit conditions shall be paid into the Hazardous Waste Management Trust Fund established pursuant to s. 403.725. Moneys from these fines shall be used first to pay all amounts necessary to restore the polluted areas which were the subject of state action. Any remaining moneys shall be used in accordance with the provisions of s. 403.725.

History.—s. 3, ch. 83-176.

PART II

PLANNING AND DEVELOPMENT

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377.601 Legislative intent.—

(1) The Legislature finds that the ability to deal effectively with present shortages of resources used in the production of energy is aggravated and intensified because of inadequate or nonexistent information and that intelligent response to these problems and to the development of a state energy policy demands accurate and relevant information concerning energy supply, distribution, and use. The Legislature finds and declares that a procedure for the collection and analysis of data on the energy flow in this state is essential to the development and maintenance of an energy profile defining the characteristics and magnitudes of present and future energy demands and availability so that the state may rationally deal with present energy problems and anticipate future energy problems.

(2) The Legislature further recognizes that every state official dealing with energy problems should have current and reliable information on the types and quantity of energy resources produced, imported, converted, distributed, exported, stored, held in reserve, or consumed within the state.

(3) It is the intent of the Legislature in the passage of this act to provide the necessary mechanisms for the effective development of information necessary to rectify the present lack of information which is seriously handicapping the state's ability to deal effectively with the energy problem. To this end, the provisions of ss. 377.601-377.608 should be given the broadest possible interpretation consistent with the stated legislative desire to procure vital information.

(4) It is the policy of the State of Florida to:

(a) Develop and promote the effective use of energy in the state and discourage all forms of energy waste.

(b) Play a leading role in developing and instituting energy management programs aimed at promoting energy conservation.

(c) Include energy considerations in all planning.

(d) Utilize and manage effectively energy resources used within state agencies.

(e) Encourage local governments to include energy considerations in all planning and to support their work in promoting energy management programs.

(f) Include the full participation of citizens in the development and implementation of energy programs.

(g) Consider in its decisions the energy needs of each economic sector, including residential, industrial, commercial, agricultural, and governmental uses.

(h) Promote energy education and the public dissemination of information on energy and its environmental, economic, and social impact.

(i) Encourage the research, development, demonstration, and application of alternative energy resources, particularly renewable energy resources.

(j) Consider, in its decision making, the social, economic, and environmental impacts of energy-related activities, so that detrimental effects of these activities are understood and minimized.

(k) Develop and maintain energy-emergency-preparedness plans to minimize the effects of an energy shortage within Florida.

History.—s. 1, ch. 74-186; s. 1, ch. 77-333; s. 2, ch. 78-25.

377.602 Definitions.—As used in ss. 377.601-377.608:

(1) "Energy resources" includes, but shall not be limited to:

(a) Propane, butane, motor gasoline, kerosene, home heating oil, diesel fuel, other middle distillates, aviation gasoline, kerosene-type jet fuel, naphtha-type jet fuel, residual fuels, crude oil, and other petroleum products and hydrocarbons as may be determined by the director to be of importance.

(b) All natural gas, including casinghead gas, all other hydrocarbons not defined as petroleum products in paragraph (a), and liquefied petroleum gas as defined in s. 527.01.

(c) All types of coal and products derived from its conversion and used as fuel.

(d) All types of nuclear energy, special nuclear material, and source material, as defined in s. 290.07.

(e) Every other energy resource, whether natural or manmade which the director determines to be important to the production or supply of energy, including, but not limited to, energy converted from solar radiation, wind, hydraulic potential, tidal movements, and geothermal sources.

(f) All electrical energy.

(2) "Center" means the Energy Data Center of the Executive Office of the Governor.

(3) "Director" means the chief administrator of the Energy Data Center of the Executive Office of the Governor.

(4) "Person" means producer, refiner, wholesaler, marketer, consignee, jobber, distributor, storage operator, importer, exporter, firm, corporation, broker, cooperative, public utility as defined in s. 366.02, rural electrification cooperative, municipality engaged in the business of providing electricity or other energy resources to the public, pipeline company, person transporting any energy resources as defined in subsection (1), and person holding energy reserves for further production; however, "person" does not include persons exclusively engaged in the retail sale of petroleum products.

History.—s. 2, ch. 74-186; s. 122, ch. 77-104; s. 2, ch. 78-25; s. 123, ch. 79-190.

377.603 Energy Data Center; powers and duties.—

(1) There is created an Energy Data Center in the Executive Office of the Governor whose duty it shall be to collect data on the extraction, production, importation, exportation, refinement, transportation, transmission, conversion, storage, sale, or reserves of energy resources in this state in an efficient and expeditious manner.

(2) The center shall prepare periodic reports of energy data it collects.

(3) The center shall prescribe and furnish forms for the collection of information as required by ss. 377.601-377.608 and shall consult with other state entities to assure that such data collected will meet their data requirements.

(4) The center may adopt and promulgate such rules and regulations as are necessary to carry out the provisions of ss. 377.601-377.608. Such rules shall be pursuant to chapter 120.

(5) The center shall maintain internal validation procedures to assure the accuracy of information received.

History.—s. 3, ch. 74-186; s. 122, ch. 77-104; s. 2, ch. 78-25; s. 124, ch. 79-190.

377.604 Required reports.—Every person who produces, imports, exports, refines, transports, transmits, converts, stores, sells, or holds known reserves of any form of energy resources used as fuel shall report to the director of the center at a frequency set, and in a manner prescribed, by the director, on forms provided by the center and prepared with the advice of representatives of the energy industry. Such forms shall be designed in such a manner as to indicate:

(1) The identity of the person or persons making the report.

(2) The quantity of energy resources extracted, produced, imported, exported, refined, transported, transmitted, converted, stored, or sold except at retail.

(3) The quantity of energy resources known to be held in reserve in the state.

(4) The identity of each refinery from which petroleum products have normally been obtained and the type and quantity of products secured from that refinery for sale or resale in this state.

(5) Any other information which the center deems proper pursuant to the intent of ss. 377.601-377.608.

History.—s. 4, ch. 74-186; s. 2, ch. 78-25.

377.605 Use of existing information.—The office shall utilize to the fullest extent possible any existing energy information already prepared for state or federal agencies. Every state, county, and municipal agency shall cooperate with the center and shall submit any information on energy to the center upon request.

History.—s. 5, ch. 74-186; s. 2, ch. 78-25.

377.606 Records of the Energy Data Center; limits of confidentiality.—The information or records of individual persons, as defined herein, obtained by the center as a result of a report, investigation, or verification required by the center, except such information as is requested to be held confidential by the person providing said information, shall be open to the public. Information reported by entities other than the Energy Data Center in documents or reports open to public inspection shall under no circumstances be classified as confidential by the center. Divulgence of such information as is requested to be held confidential, except upon order of a court of competent jurisdiction or except to an officer of the state entitled to receive the same in his official capacity, shall be a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083. Nothing herein shall be construed to prohibit the publication or divulgence by other means of data so classified as to prevent identification of particular accounts or reports made to the center in compliance with s. 377.603 or to prohibit the disclosure of such information to properly qualified legislative committees. The center shall establish a system which permits reasonable access to information developed.

History.—ss. 6, 7, ch. 74-186; s. 1, ch. 77-174; s. 2, ch. 78-25.

377.607 Violations; penalties.—Any person who willfully fails to submit information as required by ss. 377.601-377.608, or submits false information, is guilty of a misdemeanor in the first degree, punishable as provided in ss. 775.082 and 775.083.

History.—s. 9, ch. 74-186; s. 2, ch. 78-25.

377.608 Prosecution of cases by state attorney.—The state attorney shall prosecute all cases certified to him for prosecution by the Executive Office of the Governor immediately upon receipt of the evidence transmitted by the office, or as soon thereafter as practicable.

History.—s. 8, ch. 74-186; s. 122, ch. 77-104; s. 2, ch. 78-25; s. 125, ch. 79-190; s. 30, ch. 81-169.

377.701 Petroleum allocation.—

(1) The Executive Office of the Governor shall assume the state's role in petroleum allocation and conservation, including the development of a fair and equitable petroleum plan. The office shall constitute the responsible state agency for performing the functions of any federal program delegated to the state, which relates to petroleum supply, demand, and allocation.

(2) The Executive Office of the Governor shall, in addition to assuming the duties and responsibilities provided by subsection (1), perform the following:

(a) In projecting available supplies of petroleum, coordinate with the Department of Revenue to secure information necessary to assure the sufficiency and accuracy of data submitted by persons affected by any federal fuel allocation program.

(b) Require such periodic reports from public and private sources as may be necessary to the fulfillment of its responsibilities under this act. Such reports may include: Petroleum use; all sales, including end-user sales, except retail gasoline and retail fuel oil sales; inventories; expected supplies and allocations; and petroleum conservation measures.

(c) In cooperation with the Department of Revenue and other relevant state agencies, provide for long-range studies regarding the usage of petroleum in the state in order to:

1. Comprehend the consumption of petroleum resources.

2. Predict future petroleum demands in relation to available resources.

3. Report the results of such studies to the Legislature.

(3) For the purpose of determining accuracy of data, all state agencies shall timely provide the Executive Office of the Governor with petroleum-use information in a format suitable to the needs of the allocation program.

(4) No state employee shall divulge or make known in any manner any proprietary information acquired under this act except in accordance with a court order, as otherwise provided by law, or in the publication of statistical information compiled by methods which would not disclose the identity of individual suppliers or companies. Nothing in this subsection shall be construed to prevent inspection of reports by the Attorney General, members of the Legislature, and interested state agencies; however, such agencies and their employees and members are bound by the requirements set forth in this subsection.

(5) Any person who willfully fails to submit information required by this act or submits false information or who violates any provision of this act is guilty of a misdemeanor of the first degree and shall be punished as provided in ss. 775.082 and 775.083.

History.—ss. 1, 2, ch. 74-189; s. 2, ch. 78-256; s. 126, ch. 79-190; s. 31, ch. 81-169.

377.703 Additional functions of Executive Office of the Governor; energy emergency contingency plan; federal and state conservation programs.—

(1) LEGISLATIVE INTENT.—Recognizing that energy supply and demand questions have become a major area of concern to the state which must be dealt with by effective and well-coordinated state action, it is the intent of the Legislature to promote the efficient, effective, and economical management of energy problems, centralize energy coordination responsibilities, pinpoint responsibility for conducting energy programs, and insure the accountability of state agencies for the implementation of s. 377.601(4), the state energy policy. It is the specific intent of the Legislature that nothing in this act shall in any way change the powers, duties, and responsibilities assigned by the Florida Electrical Power Plant Siting Act, part II of chapter 403, or the powers, duties, and responsibilities of the Florida Public Service Commission.

(2) DEFINITIONS.—

(a) "Coordinate," "coordination," or "coordinating" means the examination and evaluation of state plans and programs and the providing of recommendations to the Cabinet, Legislature, and appropriate state agency on any measures deemed necessary to ensure that such plans and programs are consistent with state energy policy.

(b) "Energy conservation" means increased efficiency in the utilization of energy.

(c) "Energy emergency" means an actual or impending shortage or curtailment of usable, necessary energy resources, such that the maintenance of necessary services, the protection of public health, safety, and welfare, or the maintenance of basic sound economy is imperiled in any geographical section of the state or throughout the entire state.

(d) "Energy source" means electricity, fossil fuels, solar power, wind power, hydroelectric power, nuclear power, or any other resource which has the capacity to do work.

(e) "Facilities" means any building or structure not otherwise exempted by the provisions of this act.

(f) "Fuel" means petroleum, crude oil, petroleum product, coal, natural gas, or any other substance used primarily for its energy content.

(g) "Local government" means any county, municipality, regional planning agency, or other special district or local governmental entity the policies or programs of which may affect the supply or demand, or both, for energy in the state.

(h) "Promotion" or "promote" means to encourage, aid, assist, provide technical and financial assistance, or otherwise seek to develop and expand.

(i) "Regional planning agency" means those agencies designated as regional planning agencies by the Executive Office of the Governor.

(j) "Renewable energy resource" means any method, process, or substance the use of which does not diminish its availability or abundance, including, but not limited to, biomass conversion, geothermal energy, solar energy, wind energy, wood fuels derived from waste, ocean thermal gradient power, hydroelectric power, and fuels derived from agricultural products.

(3) EXECUTIVE OFFICE OF THE GOVERNOR; DUTIES.—The Executive Office of the Governor shall, in addition to assuming the duties and responsibilities provided by ss. 20.31(7) and 377.701, perform the following functions consistent with the development of a state energy policy:

(a) The office shall assume the responsibility for development of an energy emergency contingency plan to respond to serious shortages of primary and secondary energy sources in coordination with the Florida Public Service Commission, which shall have exclusive responsibility for electrical and natural gas emergency contingency plans. Upon a finding by the Governor, implementation of any emergency program shall be upon order of the Governor that a particular kind or type of fuel is, or that the occurrence of an event which is reasonably expected within 30 days will make the fuel, in short supply. The office

shall then respond by instituting the appropriate measures of the contingency plan to meet the given emergency or energy shortage. The Governor may utilize the provisions of s. 252.36(5) to carry out any emergency actions required by a serious shortage of energy sources.

(b) The office shall constitute the responsible state agency for performing or coordinating the functions of any federal energy programs delegated to the state, including energy supply, demand, conservation, or allocation.

(c) The office shall analyze present and proposed federal energy programs and recommend the state's position.

(d) The office shall coordinate efforts to seek federal support or other support for state energy activities, including energy conservation, research, or development, and shall be the state agency responsible for the coordination of multiagency energy conservation programs.

(e) The office shall analyze energy data collected and prepare long-range forecasts of energy supply and demand in coordination with the Florida Public Service Commission, which shall have responsibility for electricity and natural gas forecasts. To this end, the forecasts published in 1980 and thereafter shall contain:

1. An analysis of the relationship of state economic growth and development to energy supply and demand, including the constraints to economic growth resulting from energy supply constraints.

2. Plans for the development of renewable energy resources and reduction in dependence on depletable energy resources, particularly oil and natural gas, and an analysis of the extent to which renewable energy sources are being utilized in the state.

3. Consideration of alternative scenarios of statewide energy supply and demand for 5, 10, and 20 years, to identify strategies for long-range action, including identification of potential social, economic, and environmental effects.

4. An assessment of the state's energy resources, including examination of the availability of commercially developable and imported fuels, and an analysis of anticipated effects on the state's environment and social services resulting from energy resource development activities or from energy supply constraints, or both.

(f) The office shall make an annual report to the Legislature, 60 days prior to each regular session, reflecting its activities and making recommendations of policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the people of Florida. The report shall include a report from the Florida Public Service Commission on electricity and natural gas and information on energy conservation programs conducted and under way in the past year and shall include recommendations for energy conservation programs for the state, including, but not limited to, the following factors:

1. Formulation of specific recommendations for improvement in the efficiency of energy utilization in governmental, residential, commercial, industrial, and transportation sectors.

2. Collection and dissemination of information relating to energy conservation.

3. Development and conduct of educational and training programs relating to energy conservation.

4. An analysis of the ways in which state agencies are seeking to implement s. 377.601(4), the state energy policy, and recommendations for better fulfilling this policy.

(g) The office is authorized to make any rules or regulations pursuant to chapter 120 as are necessary to carry out the purposes of this act.

(h) The office shall promote energy conservation in all energy use sectors throughout the state and shall constitute the state agency primarily responsible for this function. To this end, the office shall coordinate the energy conservation programs of all state agencies and review and comment on the energy conservation programs of all state agencies.

(i) The office shall serve as the state clearinghouse for indexing and gathering all information related to energy programs in state universities, in private universities, in federal, state, and local government agencies, and in private industry and shall prepare and distribute such information in any manner necessary to inform and advise the citizens of the state of such programs and activities. The office shall coordinate, promote, and respond to efforts by all sectors of the economy to seek financial support for energy activities. The office shall provide information to consumers regarding the anticipated energy-use and energy-saving characteristics of products and services in coordination with any federal, state, or local governmental agencies as may provide such information to consumers.

(j) The office shall coordinate energy-related programs of state government, including, but not limited to, the programs provided in this section. To this end, the office shall:

1. Provide assistance to other state agencies, counties, municipalities, and regional planning agencies to further and promote their energy planning activities.

2. Require, in cooperation with the Department of General Services, all state agencies to operate state-owned and state-leased buildings in accordance with energy conservation standards as adopted by the Department of General Services. Beginning 120 days following July 1, 1978, and every 3 months thereafter, the Department of General Services shall furnish the office data on agencies' energy consumption in a format mutually agreed upon by the office and the Department of General Services.

3. Promote the development and use of renewable energy resources and energy conservation technologies. To this end, the office shall:

a. Aid and promote the commercialization of solar energy technology, in cooperation with the Florida Solar Energy Center of the State University System, the Department of Commerce, and any other federal, state, or local governmental agency which may seek to promote research, development, and demonstration of solar energy equipment and technology.

b. Promote the recovery of energy from wastes, including, but not limited to, the utilization of waste heat, the use of agricultural products as a source of

energy, and recycling of manufactured products. Such promotion shall be conducted in conjunction with, and after consultation with, the Department of Environmental Regulation, the Florida Public Service Commission where electrical generation or natural gas is involved, and any other relevant federal, state, or local governmental agency having responsibility for resource recovery programs.

(k) Upon advisement by the Florida Energy Research and Development Task Force, the office shall develop, coordinate, and promote a comprehensive research plan for state programs. Such plan shall be consistent with state energy policy and shall be updated on a biennial basis.

(4) The Department of Community Affairs shall be responsible for the administration of the Coastal Energy Impact Program provided for and described in Pub. L. No. 94-370, 16 U.S.C. s. 1456a.

History.—s. 3, ch. 75-256; s. 1, ch. 77-174; s. 1, ch. 78-25; s. 127, ch. 79-190; s. 1, ch. 80-167; s. 33, ch. 81-167; s. 32, ch. 81-169; s. 33, ch. 83-55.

377.705 Solar Energy Center; development of solar energy standards.—

(1) SHORT TITLE.—This act shall be known and may be cited as the Solar Energy Standards Act of 1976.

(2) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature recognizes that if present trends continue, Florida will increase present energy consumption six-fold by the year 2000. Because of this dramatic increase and because existing domestic conventional energy resources will not provide sufficient energy to meet the nation's future needs, new sources of energy must be developed and applied. One such source, solar energy, has been in limited use in Florida for 30 years. Applications of incident solar energy, the use of solar radiation to provide energy for water heating, space heating, space cooling, and other uses, through suitable absorbing equipment on or near a residence or commercial structure, must be extensively expanded. Unfortunately, the initial costs with regard to the production of solar energy have been prohibitively expensive. However, because of increases in the cost of conventional fuel, certain applications of solar energy are becoming competitive, particularly when life-cycle costs are considered. It is the intent of the Legislature in formulating a sound and balanced energy policy for the state to encourage the development of an alternative energy capability in the form of incident solar energy.

(b) Toward this purpose, the Legislature intends to provide incentives for the production and sale of, and to set standards for, solar energy systems. Such standards shall ensure that solar energy systems manufactured or sold within the state are effective and represent a high level of quality of materials, workmanship, and design.

(3) DEFINITIONS.—

(a) "Center" is defined as the Florida Solar Energy Center of the Board of Regents.

(b) "Solar energy systems" is defined as equipment which provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications which normally require or would require a conventional source of energy such as petroleum products, natural gas, or electricity and which performs primarily with solar energy. In such other systems in which solar energy is used in a supplemental way, only those components which collect and transfer solar energy shall be included in this definition.

(4) FLORIDA SOLAR ENERGY CENTER TO SET STANDARDS, REQUIRE DISCLOSURE, SET TESTING FEES.—

(a) The center shall develop and promulgate standards for solar energy systems manufactured or sold in this state based on the best currently available information and shall consult with scientists, engineers, or persons in research centers who are engaged in the construction of, experimentation with, and research of solar energy systems to properly identify the most reliable designs and types of solar energy systems.

(b) The center shall establish criteria for testing performance of solar energy systems and shall maintain the necessary capability for testing or evaluating performance of solar energy systems. The center may accept results of tests on solar energy systems made by other organizations, companies, or persons when such tests are conducted according to the criteria established by the center and when the testing entity has no vested interest in the manufacture, distribution or sale of solar energy systems.

(c) The center shall be entitled to receive a testing fee sufficient to cover the costs of such testing. All testing fees shall be transmitted by the center to the State Treasurer to be deposited in the Solar Energy Center Testing Trust Fund, which is hereby created in the State Treasury, and disbursed for the payment of expenses incurred in testing solar energy systems.

(d) All solar energy systems manufactured or sold in the state must meet the standards established by the center and shall display accepted results of approved performance tests in a manner prescribed by the center.

History.—s. 1, 2, 3, 4, ch. 76-249; s. 1, ch. 78-309.

377.706 Florida Energy Research and Development Task Force; creation; membership; responsibilities.—

(1) There is established the Florida Energy Research and Development Task Force the purpose of which shall be to coordinate, promote, and monitor energy research within this state. The task force shall be chaired jointly by the State Energy Director of the Executive Office of the Governor and the Chancellor of the State University System. Membership of the task force may consist of up to 20 persons, chosen by the joint chairmen as necessary to implement the provisions of this section. Membership shall include one representative from each of the universities in the State University System who is recommended by the president of each such university.

(2) The responsibilities and duties of the Florida Energy Research and Development Task Force shall be as follows:

(a) To develop and maintain a current index and profile of all research activities of state universities, of private universities, of federal, state, and local governmental agencies, and of private industry. Such in-

dex shall be identified by energy area and may include a summary of the project: the amount and sources of funding; anticipated completion dates; or, in the case of completed research, conclusions, recommendations, and applicability to state government or private sector functions.

(b) To establish a priority agenda for energy research which is consistent with state energy policy and the intent of this part.

(c) To coordinate and promote research activities which reflect the goals and objectives of the priority agenda for energy research as established in paragraph (b).

(3) The activities of the task force, the research index, and the research agenda are to be included in the annual report required by s. 377.703(3)(f).

History.—s. 2, ch. 80-167; s. 1, ch. 82-46; s. 2, ch. 83-265.

[1]Note.—Repealed effective October 1, 1987, by s. 1, ch. 82-46, as amended by s. 2, ch. 83-265, and scheduled for review pursuant to s. 11.611 in advance of that date.

[1]377.71 Definitions; Southern Interstate Nuclear Compact.—As used in this act, unless the context requires otherwise:

(1) "Compact" means the Southern Interstate Nuclear Compact;

(2) "Board" means the Southern Interstate Nuclear Board.

History.—s. 1, ch. 61-227; s. 2, ch. 79-348.

[1]Note.—Section 2, ch. 79-348, amended this section effective "only when the substance of section 1 is adopted by nine party states to the Southern Interstate Nuclear Compact and the Congress of the United States consents to the substance of section 1." As amended, this section will read:

377.71 Definitions; Southern States Energy Compact.—As used in this act, unless the context requires otherwise:

(1) "Compact" means the Southern States Energy Compact;

(2) "Board" means the Southern States Energy Board.

Note.—Former s. 290.30.

[1]377.711 Florida party to Southern Interstate Nuclear Compact.—The Southern Interstate Nuclear Compact is enacted into law and entered into by the state as a party, and is of full force and effect between the state and any other states joining therein in accordance with the terms of the compact, which said compact is substantially as follows:

(1) POLICY AND PURPOSE.—The party states recognize that the proper employment of nuclear energy, facilities, materials and products can assist substantially in the industrialization of the South and the development of a balanced economy for the region. They also recognize that optimum benefit from an acquisition of nuclear resources and facilities requires systematic encouragement, guidance and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the South and contribute to the individual and community well-being of the people of this region.

(2) BOARD.—

(a) There is hereby created an agency of the party states to be known as the Southern Interstate Nuclear Board (hereinafter called the board). The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any less period of time) by a deputy or assistant, if the laws of his state make specific provision therefor. The Federal Government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party state shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The board shall appoint an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, shall be bonded in such amounts as the board may require.

(e) The executive director, with approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors' insurance, provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services (conditional or otherwise) from any state or the United States or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules and regulations. The board shall publish its bylaws, rules and regulations in convenient form and shall also file a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

(3) FINANCES.—

(a) The board shall submit to the executive head or designated officer or officers of each state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one-quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the latest official decennial census; and one-quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under subsection (2)(h), provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under subsection (2)(h), the board shall not incur any obligation prior to the allotment of funds by the party jurisdiction adequate to meet the same.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection.

(4) ADVISORY COMMITTEES.—The board may establish such advisory and technical committees as it may deem necessary, membership on which to include but not to be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

(5) POWERS.—The board shall have the power to:

(a) Ascertain and analyze on a continuing basis the position of the South with respect to nuclear and related industries.

(b) Encourage the development and use of nuclear energy facilities, installations and products as part of a balanced economy.

(c) Collect, correlate and disseminate information relating to civilian uses of nuclear energy, materials and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine or education or the promotion or regulation thereof.

2. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materia products, installations or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of nuclear product, material or equipment use and disposal and of proper techniques or processes for the application of nuclear resources to the civilian economy or general welfare.

(f) Undertake such nonregulatory functions with respect to nonnuclear sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety and other standards, laws, codes, rules, regulations and administrative practices in or related to nuclear fields.

(h) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made, in the case of Florida, through the Department of Commerce.

(i) Prepare, publish and distribute (with or without charge) such reports, bulletins, newsletters or other material as it deems appropriate.

(j) Cooperate with the Atomic Energy Commission or any agency successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(k) Act as licensee of the United States Government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the ren-

dering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic areas covered by this compact.

(6) SUPPLEMENTARY AGREEMENTS.—

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes, its duration and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this act shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this act shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(7) OTHER LAWS AND REGULATIONS.—Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish or otherwise impair jurisdiction exercised by the Atomic Energy Commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative Act of Congress.

(c) Alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the board own or operate any facility or installation for industrial or commercial purposes.

(8) ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL.—

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law: provided that it shall not become initially effective until enacted into law by seven states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

(9) SEVERABILITY AND CONSTRUCTION.—The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

History.—s. 2, ch. 61-227; ss. 17, 35, ch. 69-106; s. 1, ch. 79-348.

[1]Note.—Section 1, ch. 79-348, amended this section effective "only when the substance of section 1 is adopted by nine party states to the Southern Interstate Nuclear Compact and the Congress of the United States consents to the substance of section 1." As amended, this section will read:

377.711 Florida party to Southern States Energy Compact.—The Southern States Energy Compact is enacted into law and entered into by the state as a party, and is of full force and effect between the state and any other states joining therein in accordance with the terms of the compact, which compact is substantially as follows:

(1) POLICY AND PURPOSE.—The party states recognize that the proper employment and conservation of energy and employment of energy related facilities, materials, and products, within the context of a responsible regard for the environment, can assist substantially in the industrialization of the South and the development of a balanced economy for the region. They also recognize that optimum benefit from an acquisition of energy resources and facilities requires systematic encouragement, guidance, and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the South and contribute to the individual and community well-being of the people of this region.

(2) BOARD.—

(a) There is hereby created an agency of the party states to be known as the Southern States Energy Board (hereinafter called the board). The board shall be composed of three members from each party state, one of whom shall be appointed or designated in each state to represent the governor, the state senate, and the state house of representatives, respectively. Each member shall be designated or appointed in accordance with the law of the state which he represents and shall serve and be subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any less period of time) by a deputy or assistant, if the laws of his state make specific provision therefor. The Federal Government may be represented without vote if provision is made by federal law for such representation.

(b) Each party state shall be entitled to one vote on the board, to be determined by majority vote of each member or member's representative from the party state present and voting on any question. No action of the board shall be binding unless taken at a meeting at which a majority of all party states are represented and unless a majority of the total number of votes are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The board shall appoint an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, shall be bonded in such amounts as the board may require.

(e) The executive director, with approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel, or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors' insurance, provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm, or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules, and regulations for the conduct of its business and shall have the power to amend and rescind these bylaws, rules, and regulations. The board shall publish its bylaws, rules, and regulations in convenient form and shall also file a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

(3) FINANCES.—

(a) The board shall submit to the executive head or designated officer or officers of each state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one-quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the latest official decennial census; and one-quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under paragraph (3)(b), provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under paragraph (2)(b), the board shall not incur any obligation prior to the allotment of funds by the party jurisdiction adequate to meet the same.

(d) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual report of the board.

(e) The accounts of the board shall be open at any reasonable time for inspection.

(4) ADVISORY COMMITTEES.—The board may establish such advisory and technical committees as it may deem necessary, membership on which will include, but not be limited to, private citizens; expert and lay personnel; representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, and voluntary health agencies; and officials of local, state, and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

(5) POWERS.—The board shall have the power to:

(a) Ascertain and analyze on a continuing basis the position of the South with respect to energy, energy-related industries, and environmental concerns.

(b) Encourage the development, conservation, and responsible use of energy and energy-related facilities, installations, and products as part of a balanced economy and a healthy environment.

(c) Collect, correlate, and disseminate information relating to combat uses of energy and energy-related materials and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Energy, environment and application of energy, environmental, and related concerns to industry, medicine, or education or the promotion or regulation thereof.

2. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of energy and energy-related materials, products, installations, or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of energy product, material, or equipment use and disposal and of proper techniques or processes for the application of energy resources to the civilian economy or general welfare.

(f) Undertake such nonregulatory functions with respect to sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to energy and environmental fields.

(h) Recommend such changes in, or amendments or additions to, the laws, codes, rules, regulations, administrative procedures and practices, or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made, in the case of Florida, through the Department of Commerce.

(i) Prepare, publish, and distribute (with or without charge) such reports, bulletins, newsletters, or other material as it deems appropriate.

(j) Cooperate with the United States Department of Energy or any agency successor thereto, any other officer or agency of the United States, any other governmental unit or agency or officer thereof, and any private persons or agencies in any of the fields of its interest.

(k) Act as licensee of the United States Government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of energy and environmental incidents in the area comprising the party states, coordinate the nuclear, environmental, and other energy-related incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states, and facilitate the rendering of aid by the party states to each other in coping with energy and environmental incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with energy and environmental incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic areas covered by this compact.

(6) SUPPLEMENTARY AGREEMENTS.—

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes, its duration and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project, and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this subsection shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this subsection shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(7) OTHER LAWS AND REGULATIONS.—Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order, or ordinance of a party state or subdivision thereof now or hereafter made, enacted, or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the United States Department of Energy or any agency successor thereto or any other federal department, agency, or officer pursuant to and in conformity with any valid and operative Act of Congress.

(c) Alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the board own or operate any facility or installation for industrial or commercial purposes.

(8) ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL.—

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia, the Commonwealth of Puerto Rico, and the United States Virgin Islands shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, except that it shall not become initially effective until enacted into law by seven states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

(9) SEVERABILITY AND CONSTRUCTION.—The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable, and if any phrase, clause, sentence, or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

Note.—Former s. 290.31.

377.712 Florida participation.—

[1](1) The Governor shall appoint the board member from Florida. The member or the Governor may designate another person as his deputy or assistant.

(2) Any supplementary agreement entered into under s. 290.31(6) requiring the expenditure of funds shall not become effective as to Florida until the required funds are appropriated by the Legislature.

(3) The department, agencies and officers of this state, and its subdivisions are authorized to cooperate with the board in the furtherance of any of its activities pursuant to the compact, provided such proposed activities have been made known to, and have the approval of, either the Governor or the Department of Health and Rehabilitative Services.

History.—s. 3, ch. 61-227; s. 6, ch. 63-474; s. 22, ch. 65-420; ss. 17, 35, ch. 69-106; s. 2, ch. 78-373; s. 3, ch. 79-348.

[1]Note.—Section 3, ch. 79-348, amended this subsection effective "only when the substance of section 1 is adopted by nine party states to the Southern Interstate Nuclear Compact and the Congress of the United States consents to the substance of section 1." As amended, subsection (1) will read:

(1)(a) The Governor shall appoint one member of the Southern States Energy Board. The member or the Governor may designate another person as the deputy or assistant to such member.

(b) The President of the Senate shall appoint one member of the Southern States Energy Board. The member or the president may designate another person as the assistant or deputy to such member.

(c) The Speaker of the House of Representatives shall appoint one member of the Southern States Energy Board. The member or the speaker may designate another person as the assistant or deputy to such member.

Note.—Former s. 290.12.

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CHAPTER 380

LAND AND WATER MANAGEMENT

PART I ENVIRONMENTAL LAND AND WATER MANAGEMENT (ss. 380.012-380.12)

PART II COASTAL PLANNING AND MANAGEMENT (ss. 380.19-380.25)

PART I

ENVIRONMENTAL LAND AND WATER MANAGEMENT

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380.012 Short title.—Sections 380.012-380.10 shall be known and may be cited as "The Florida Environmental Land and Water Management Act of 1972."

History.—s. 1, ch. 72-317.

380.021 Purpose.—It is the legislative intent that, in order to protect the natural resources and environment of this state as provided in s. 7, Art. II of the State Constitution, insure a water management system that will reverse the deterioration of water quality and provide optimum utilization of our limited water resources, facilitate orderly and well-planned development, and protect the health, welfare, safety, and quality of life of the residents of this state, it is necessary adequately to plan for and guide growth and development within this state. In order to accomplish these purposes, it is necessary that the state establish land and water management policies to guide and coordinate local decisions relating to growth and development; that such state land and water management policies should, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development; and that all the existing rights of private property be preserved in accord with the constitutions of this state and of the United States.

History.—s. 2, ch. 72-317.

380.031 Definitions.—As used in this chapter:

(1) "Administration commission" or "commission" means the Governor and the Cabinet; and for purposes of this chapter the commission shall act on a simple majority.

(2) "Developer" means any person, including a governmental agency, undertaking any development as defined in this chapter.

(3) "Development order" means any order granting, denying, or granting with conditions an application for a development permit.

(4) "Development permit" includes any building permit, zoning permit, plat approval, or rezoning, certification, variance, or other action having the effect of permitting development as defined in this chapter.

(5) "Downtown development authority" means a local governmental agency established under part III of chapter 163 or created with similar powers and responsibilities by special act for the purpose of planning, coordinating, and assisting in the implementation, revitalization, and redevelopment of a specific downtown area of a city.

(6) "Governmental agency" means:

(a) The United States or any department, commission, agency, or other instrumentality thereof;

(b) This state or any department, commission, agency, or other instrumentality thereof;

(c) Any local government, as defined in this chapter, or any department, commission, agency, or other instrumentality thereof;

(d) Any school board or other special district, authority, or other governmental entity.

(7) "Land" means the earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

(8) "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land.

(9) "Land use" means the development that has occurred on land.

(10) "Local comprehensive plan" means any or all local comprehensive plans or elements or portions thereof prepared, adopted, or amended pursuant to ss. 163.3161-163.3211, the Local Government Comprehensive Planning Act of 1975, as amended.

(11) "Local government" means any county or municipality and, where relevant, any joint airport zoning board.

(12) "Major public facility" means any publicly owned facility of more than local significance.

(13) "Parcel of land" means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit.

(14) "Person" means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(15) "Regional planning agency" means the agency designated by the state land planning agency to exercise responsibilities under this chapter in a particular region of the state.

(16) "Rule" means a rule adopted under chapter 120.

(17) "State land development plan" means a comprehensive statewide plan or any portion thereof setting forth state land development policies.

*(18) "State land planning agency" means the agency designated by law, or its successor agency, to undertake statewide comprehensive planning.

(19) "Structure" means anything constructed, installed, or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. "Structure" also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.

(20) "Resource planning and management committee" or "committee" means a committee appointed pursuant to s. 380.045.

History.—s. 3, ch. 72-317; s. 1, ch. 79-73; s. 1, ch. 80-313; s. 1, ch. 83-308.
*Note.—See s. 163.3164(18), which defines "state land planning agency" for purposes of the Local Government Comprehensive Planning Act of 1975 as the Department of Community Affairs.

380.032 State land planning agency; powers and duties.—The state land planning agency shall have the power and the duty to:

(1) Exercise general supervision of the administration and enforcement of this act and all rules and regulations promulgated hereunder.

(2)(a) Adopt or modify rules to carry out the intent and purposes of this act. Such rules shall be consistent with the provisions of this act.

(b) Within 20 days following adoption, any substantially affected party may initiate review of any rule adopted by the state land planning agency interpreting the guidelines and standards by filing a request for review with the Administration Commission and serving a copy on the state land planning agency. Filing a request for review shall stay the effectiveness of the rule pending a decision by the Administration Commission. Within 45 days following receipt of a request for review, the commission shall either reject the rule or adopt the rule, with or without modification.

(3) Enter into agreements with any landowner, developer, or governmental agency as may be necessary to effectuate the provisions of this act or any rules promulgated hereunder.

History.—s. 1, ch. 77-215; s. 2, ch. 80-313.

380.04 Definition of development.—

(1) The term "development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

(2) The following activities or uses shall be taken for the purposes of this chapter to involve "development," as defined in this section:

(a) A reconstruction, alteration of the size, or material change in the external appearance of a structure on land.

(b) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.

(c) Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any "coastal construction" as defined in s. 161.021.

(d) Commencement of drilling, except to obtain soil samples, mining, or excavation on a parcel of land.

(e) Demolition of a structure.

(f) Clearing of land as an adjunct of construction.

(g) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(a) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

(b) Work by any utility and other persons engaged in the distribution or transmission of gas or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, powerlines, towers, poles, tracks, or the like.

(c) Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d) The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

(f) A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(g) A change in the ownership or form of ownership of any parcel or structure.

(h) The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

(4) "Development," as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular

operations is not intended to limit the generality of subsection (1).

History.—s. 4, ch. 72-317; s. 2, ch. 83-308.

380.045 Resource planning and management committees; objectives; procedures.—

(1) Prior to recommending an area as an area of critical state concern pursuant to s. 380.05, the Governor, acting as the chief planning officer of the state, shall appoint a resource planning and management committee for the area under study by the state land planning agency. The objective of the committee shall be to organize a voluntary, cooperative resource planning and management program to resolve existing, and prevent future, problems which may endanger those resources, facilities, and areas described in s. 380.05(2) within the area under study by the state land planning agency.

(2) The committee shall include, but not be limited to, representation from each of the following: Elected officials from the local governments within the area under study; the planning office of each of the local governments within the area under study; the state land planning agency; any other state agency under chapter 20 a representative of which the Governor feels would be relevant to the compilation of the committee; and a water management district, if appropriate, and regional planning council all or part of whose jurisdiction lies within the area under study. After the appointment of the members, the Governor shall select a chairman and vice chairman. A staff member of the state land planning agency shall be appointed by the director of such agency to serve as the secretary of the committee. The state land planning agency shall, to the greatest extent possible, provide technical assistance and administrative support to the committee. Meetings will be called as needed by the chairman or on demand of three or more members of the committee. The committee will act on a simple majority of a quorum present and shall make a report within 6 months to the head of the state land planning agency. The committee shall, from the time of appointment, remain in existence for no less than 6 months.

History.—s. 2, ch. 79-73.

380.05 Areas of critical state concern.—

(1)(a) The state land planning agency may from time to time recommend to the Administration Commission specific areas of critical state concern. In its recommendation, the agency shall include recommendations with respect to the purchase of lands situated within the boundaries of the proposed area as environmentally endangered lands and outdoor recreation lands under the Land Conservation Act of 1972. The agency also shall include any report or recommendation of a resource planning and management committee appointed pursuant to s. 380.045; the dangers that would result from uncontrolled or inadequate development of the area and the advantages that would be achieved from the development of the area in a coordinated manner; a detailed boundary description of the proposed area; specific principles for guiding development within the area; and an inventory of lands owned by the state, federal, county, and municipal governments within the proposed area.

(b) Within 45 days following receipt of a recommendation from the agency, the commission shall either reject the recommendation as tendered or adopt the same with or without modification, and by rule designate the area of critical state concern and the principles for guiding the development of the area. The rule shall become effective 20 days after filing with the Secretary of State, except that an emergency rule adopted by the commission and designating an area of critical state concern shall become effective immediately on filing. Any rule adopted pursuant to this paragraph shall be presented to the Legislature for review pursuant to paragraph (c). An economic impact statement prepared pursuant to s. 120.54(2)(a) shall not be grounds for a challenge of the rule; however, a landowner shall not be precluded from using adverse economic results as grounds for challenge. Such principles for guiding development shall apply to any development undertaken subsequent to the legislative review pursuant to paragraph (c) of the designation of the area of critical state concern with or without modification but prior to the adoption of land development rules and regulations or a local comprehensive plan for the critical area pursuant to subsections (6) and (8). No boundary or principles for guiding development shall be adopted without a specific finding by the commission that the boundaries or principles are consistent with the protection of the resources or area sought to be protected. The commission is not authorized to adopt any rule that would provide for a moratorium on development in any area of critical state concern.

(c) A rule adopted by the commission pursuant to paragraph (b) designating an area of critical state concern and principles for guiding development shall be submitted to the President of the Senate and the Speaker of the House for review no later than 30 days prior to the next regular session of the Legislature. The Legislature may reject, modify, or take no action relative to the adopted rule. In its deliberations, the Legislature may consider, among other factors, whether a resource planning and management committee has established a program pursuant to s. 380.045. In addition to any other data and information required pursuant to this chapter, all rules presented to the Legislature shall include a detailed legal description of the boundary of the area of critical state concern, proposed principles for guiding development, and a detailed statement of how the area meets the criteria for designation as provided in subsection (2).

(d) If, after the repeal of the boundary designation of an area of critical state concern pursuant to subsection (15), the state land planning agency determines that the administration of the local land development regulations or a local comprehensive plan within a formerly designated area is inadequate to protect the former area of critical state concern, then the state land planning agency may recommend to the commission that the area be redesignated as an area of critical state concern. Within 45 days following the receipt of the recommendation from the agency, the commission shall either reject the recommendation as tendered or adopt the same with or without

modification. The commission may, by rule, make such redesignation effective immediately, at which time the boundaries, regulations, and plans in effect at the time the previous designation was repealed shall be reinstated. Within 90 days of such redesignation, the commission shall begin rulemaking procedures to designate the area an area of critical state concern under paragraph (b).

(2) An area of critical state concern may be designated only for:

(a) An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources. Specific criteria which shall be considered in designating an area under this paragraph include:

1. Whether the economic value of the area, as determined by the type, variety, distribution, relative scarcity, and condition of the environmental or natural resources within the area, is of substantial regional or statewide importance.

2. Whether the ecological value of the area, as determined by the physical and biological components of the environmental system, is of substantial regional or statewide importance.

3. Whether the area is a designated critical habitat of any state or federally designated threatened or endangered plant or animal species.

4. Whether the area is inherently susceptible to substantial development due to its geographic location or natural aesthetics.

5. Whether any existing or planned substantial development within the area will directly, significantly, and deleteriously affect any or all of the environmental or natural resources of the area which are of regional or statewide importance.

(b) An area containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts. Specific criteria which shall be considered in designating an area under this paragraph include:

1. Whether the area is associated with events that have made a significant contribution to the history of the state or region.

2. Whether the area is associated with the lives of persons who are significant to the history of the state or region.

3. Whether the area contains any structure that embodies the distinctive characteristics of a type, period, or method of construction, that represents the work of a master, that possesses high artistic values, or that represents a significant and distinguishable entity the components of which may lack individual distinction and which are of regional or statewide importance.

4. Whether the area has yielded, or will likely yield, information important to the prehistory or history of the state or region.

(c) An area having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment including, but not limited to, highways, ports, airports, energy facilities, and water management projects.

(3) Each regional planning agency may recommend to the state land planning agency from time to time areas wholly or partially within its jurisdiction that meet the criteria for areas of critical state concern as defined in this section. Each regional planning agency shall solicit from the local governments within its jurisdiction suggestions as to areas to be recommended. A local government in an area where there is no regional planning agency may recommend to the state land planning agency from time to time areas wholly or partially within its jurisdiction that meet the criteria for areas of critical state concern as defined in this section. If the state land planning agency does not recommend to the commission as an area of critical state concern an area substantially similar to one that has been recommended, it shall respond in writing as to its reasons therefor.

(4) Prior to submitting any recommendation to the commission under subsection (1), the state land planning agency shall give notice to any committee appointed pursuant to s. 380.045 and to all local governments and regional planning agencies that include within their boundaries any part of any area of critical state concern proposed to be designated by the rule, in addition to any notice otherwise required under chapter 120.

(5) After the commission adopts a rule designating the boundaries of and principles for guiding development in an area of critical state concern and within 180 days of such adoption, the local government having jurisdiction may submit to the state land planning agency its existing land development regulations and local comprehensive plan for the area, if any, or shall prepare, adopt, and submit new or modified regulations and plan, taking into consideration the principles set forth in the rule designating the area.

(6) If the state land planning agency finds that the land development regulations and local comprehensive plan submitted by a local government comply with the principles for guiding the development of the area specified under the rule designating the area, the state land planning agency shall by rule approve the land development regulations and plan. Such approval shall be no later than 60 days after submission of the land development regulations and plan by the local government. No proposed land development regulation or local comprehensive plan within an area of critical state concern becomes effective under this subsection until the state land planning agency rule approving it becomes effective.

(7) The state land planning agency and any applicable regional planning agency shall, to the greatest extent possible, provide technical assistance to local governments in the preparation of land development regulations and local comprehensive plan for areas of critical state concern.

(8) If any local government fails to submit land development regulations or a local comprehensive plan within 180 days after the commission adopts a rule designating an area of critical state concern, or if the regulations or plan submitted do not comply with the principles for guiding development set out in the rule designating the area of critical state concern, in either case, within 120 days, the state land planning agency shall submit to the commission recommended land development regulations and a local comprehensive plan or portions thereof applicable to that local government's portion of the area of critical state concern. Within 45 days following receipt of the recommendation from the agency, the commission shall either reject the recommendation as tendered or adopt the same with or without modification, and by rule establish land development regulations and a local comprehensive plan applicable to that local government's portion of the area of critical state concern. However, such rule shall not become effective prior to legislative review of an area of critical state concern pursuant to paragraph (1)(c). In the rule, the commission shall specify the extent to which its land development regulations and plans will supersede local land development regulations and plans or be supplementary thereto. Notice of any proposed rule issued under this section shall be given to all local governments and regional planning agencies in the area of critical state concern, in addition to any other notice required under chapter 120. The land development regulations and local comprehensive plan adopted by the commission under this section may include any type of regulation and plan that could have been adopted by the local government. Any land development regulations or local comprehensive plan adopted by the commission under this section shall be administered by the local government as part of, or in the absence of, the local land development regulations and local comprehensive plan.

(9) If, within 12 months after the commission adopts a rule designating an area of critical state concern, land development regulations or local comprehensive plans for the area have not become effective under either subsection (6) or subsection (8), the designation of the area as an area of critical state concern terminates. No part of such area may be recommended for redesignation until at least 12 months after the date the designation terminates pursuant to this subsection. The running of the 12-month period subsequent to the initial designation shall be tolled upon challenge pursuant to the provisions of chapter 120 to either the designation of the area of critical state concern or the adoption of land development regulations and local comprehensive plans under subsection (6) or subsection (8).

(10) At any time after the adoption of land development regulations and plans by the commission under this section, a local government may propose land development regulations or a local comprehensive plan which, if approved by the state land planning agency as provided in subsection (6), will supersede any regulations or plans adopted under subsection (8).

(11) Land development regulations or a local comprehensive plan submitted by a local government in an area of critical state concern and approved pursuant to subsection (6) may be amended or rescinded by the local government, but the amendment or rescission becomes effective only upon approval thereof by the state land planning agency. The state land planning agency shall either approve or reject the requested changes within 60 days of receipt thereof. Land development regulations or local comprehensive plans for an area of critical state concern adopted by the commission under subsection (8) may be amended or rescinded by rule by the commission in the same manner as for original adoption.

(12) Upon request of a substantially interested person pursuant to s. 120.54(5), a local government or regional planning agency within the designated area, or the state land planning agency, the commission may by rule remove, contract, or expand any designated boundary. Boundary expansions shall be subject to legislative review pursuant to paragraph (1)(c). No boundary may be modified without a specific finding by the commission that such changes are consistent with necessary resource protection. The total boundaries of an entire area of critical state concern shall not be removed by the commission unless a minimum time of 1 year has elapsed from the adoption of regulations and a local comprehensive plan pursuant to subsection (1), subsection (6), subsection (8), or subsection (10). Before totally removing such boundaries, the commission shall make findings that the regulations and plans adopted pursuant to subsection (1), subsection (6), subsection (8), or subsection (10) are being effectively implemented by local governments within the area of critical state concern to protect the area and that adopted local government comprehensive plans within the area have been conformed to principles for guiding development for the area.

(13) If the state land planning agency determines that the administration of the local land development regulations or local comprehensive plans within the area is inadequate to protect the state or regional interest prior to the repeal of the critical state concern designation pursuant to subsection (15), the state land planning agency may institute appropriate judicial proceedings, as provided in s. 380.11, to compel proper enforcement of the land development regulations or plans.

(14) Any local government which lies either wholly or partially within an area of critical state concern and which has previously adopted a local government comprehensive plan pursuant to chapter 163 shall conform such plans to the principles for guiding development for the area of critical state concern. No later than January 1, 1984, or any other time as agreed upon in writing by the state land planning agency and the governing body of the local government, these plans shall be submitted to the state land planning agency for review and action as provided in subsection (6) or subsection (8).

(15) Any rule adopted pursuant to this section designating the boundaries of an area of critical state concern and the principles for guiding development therein shall be repealed by the commission no earlier than 12 months and no later than 3 years after approval by the state land planning agency or adoption by the commission of all land development regulations and local comprehensive plans pursuant to subsection (6), subsection (8), or subsection (10). Any repeal pursuant to this subsection may be limited to any portion of the area of critical state concern. Such repeal shall be contingent upon approval by the state land planning agency of local land development regulations and plans pursuant to subsection (6) or subsection (10) and upon such regulations and plans being effective for a period of 12 months.

(16) No person shall undertake any development within any area of critical state concern except in accordance with this chapter.

(17) If an area of critical state concern has been designated under subsection (1) and if land development regulations for the area of critical state concern have not yet become effective under subsection (6) or subsection (8), a local government may grant development permits in accordance with such land development regulations as were in effect immediately prior to the designation of the area as an area of critical state concern.

(18) Neither the designation of an area of critical state concern nor the adoption of any regulations for such an area shall in any way limit or modify the rights of any person to complete any development that has been authorized by registration of a subdivision pursuant to chapter 498 or former chapter 478, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued, prior to the approval under subsection (6), or the adoption under subsection (8), of land development regulations for the area of critical state concern. If a developer has by his actions in reliance on prior regulations obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to his interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

(19) In addition to any other notice required to be given under the local land development regulations, the local government shall give notice to the state land planning agency of any application for a development permit in any area of critical state concern, except to the extent that the state land planning agency has in writing waived its right to such notice in regard to all or certain classes of such applications. The state land planning agency may by rule specify additional classes of persons who shall have the right to receive notices of and participate in hearings under this section.

(20) At no time shall a land area be designated an area of critical state concern if the effect of such designation would be to subject more than 5 percent of the land of the state to supervision under this section; except that, if any supervision by the state is retained, the area shall be considered to be included within the limitations of this subsection. If 5 percent of the lands of the state are designated as areas of critical state concern pursuant to this section, a redesignation pursuant to paragraph (1)(d) will not be prohibited by this subsection.

(21) Within 30 days after the effective date of the designation of an area of critical state concern pursuant to paragraph (1)(c) or paragraph (1)(d), the state land planning agency shall record a legal description of the boundaries of the area of critical state concern in the public records of the county or counties in which the area of critical state concern is located.

History.—s. 5, ch. 72-317; s. 1, ch. 74-296; s. 1, ch. 76-195; s. 4, ch. 79-73; s. 235, ch. 81-259; s. 3, ch. 82-308.

cf.—ch. 259 Land Conservation Act of 1972.

380.055 Big Cypress Area.—

(1) SHORT TITLE.—This section shall be known and may be cited as "The Big Cypress Conservation Act of 1973."

(2) LEGISLATIVE INTENT.—It is the intent of the Legislature to conserve and protect the natural resources and scenic beauty of the Big Cypress Area of Florida. It is the finding of the Legislature that the Big Cypress Area is an area containing and having a significant impact upon environmental and natural resources of regional and statewide importance and that designation of the area as an area of critical state concern is desirable and necessary to accomplish the purposes of "The Florida Environmental Land and Water Management Act of 1972" and to implement s. 7, Art. II of the State Constitution.

(3) DESIGNATION AS AREA OF CRITICAL STATE CONCERN.—The "Big Cypress Area," as defined in this subsection, is hereby designated as an area of critical state concern. "Big Cypress Area" means the area generally depicted on the map entitled "Boundary Map, Big Cypress National Freshwater Reserve, Florida," numbered BC-91,001 and dated November 1971, which is on file and available for public inspection in the office of the National Park Service, Department of the Interior, Washington, D.C., and in the office of the Board of Trustees of the Internal Improvement Trust Fund, which is the area proposed as the Federal Big Cypress National Freshwater Reserve, Florida, together with such contiguous land and water areas as are ecologically linked with the Everglades National Park, certain of the estuarine fisheries of South Florida, or the freshwater aquifer of South Florida, the definitive boundaries of which shall be set in the following manner: Within 120 days following the effective date of this act, the state land planning agency shall recommend definitive boundaries for the Big Cypress Area to the Administration Commission, after giving notice to all local governments and regional planning agencies which include within their boundaries any part of the area proposed to be included in the Big Cypress Area and holding such hearings as the state land planning agency deems appropriate. Within 45 days following receipt of the recommended boundaries, the Administration Commission shall adopt, modify, or reject the recommendation and shall by rule establish the boundaries of the area defined as the Big Cypress Area.

(4) ADOPTION OF LAND DEVELOPMENT REGULATIONS.—The provisions of subsections (5)-(11), (17), and (20) of s. 380.05 shall not apply to the Big Cypress Area. All other provisions of this chapter shall apply to the Big Cypress Area. Any provision of this chapter to the contrary notwithstanding, the state land planning agency has the right, and

its duty shall be, to submit recommended land development regulations applicable to the Big Cypress Area to the Administration Commission concurrent with the boundaries recommended pursuant to subsection (3). The Administration Commission shall either reject the recommendation as tendered or adopt the same by rule with or without modification. The commission shall specify the extent to which regulations adopted pursuant to this section supersede local land development regulations.

(5) ACQUISITION OF BIG CYPRESS NATIONAL PRESERVE.—

(a) It is the intent of the Legislature to provide the means to accomplish an agreement between the State of Florida and the Government of the United States, whereby the state will contribute toward the cost of a program of acquisition of land and water areas and related rights and interests within the area proposed as the Federal Big Cypress National Preserve, Florida. It is the intent of the Legislature that the Governor and the Cabinet begin immediately an acquisition program within the area proposed as the Federal Big Cypress National Preserve, Florida, on behalf of the state pending action by the Government of the United States in the Big Cypress Area.

(b) The Governor and Cabinet shall set aside from the proceeds of the full faith and credit bonds authorized by the Land Conservation Act of 1972, or from other funds authorized, appropriated, or allocated for the acquisition of environmentally endangered lands, or from both sources, $40 million for acquisition of the area proposed as the Federal Big Cypress National Preserve, Florida, or portions thereof.

(c) The Governor and Cabinet are empowered to acquire land and water areas within the Federal Big Cypress National Preserve, Florida, created by Pub. L. No. 93-440, in order to conserve and protect the natural resources and scenic beauty therein and to donate and convey title in land and water areas so acquired or currently owned by the state to the Government of the United States or its agency upon the expenditure by the United States of an amount of federal funds at least equal to the acquisition cost of the land and water areas donated by the state. The intent of this condition for the donation of land and water areas by the state is to insure that the investment of federal funds in the acquisition of land and water areas for the Big Cypress National Preserve will be not less than the investment of state funds in the land and water areas so donated. In making such acquisitions, the Governor and Cabinet shall give priority to those land and water areas within the area proposed as the Federal Big Cypress National Preserve, Florida, which are essential to the integrity of the environment, the destruction of which would cause irreparable damage to the Everglades National Park, the estuarine fisheries of South Florida, or the underlying freshwater aquifer.

(6) FUNCTION OF WATER MANAGEMENT DISTRICT.—It is the finding of the Legislature that the Big Cypress Area, as a water storage and recharge area, is an integral part of the water resources of any water management district of which the Big Cypress Area is or may be a part. It is the legislative intent that there be close cooperation and coordination of efforts between the water management district and the Department of Natural Resources in carrying out the intent and purposes of this section. The Governor and Cabinet as head of the Department of Natural Resources are authorized to delegate to the water management district, or to a board therein, any power authorized in this section to be exercised by the department, and the district or basin is authorized to accept the powers delegated to it and shall have the power and duty to carry out the intent and purposes of this section to the fullest extent possible within its capabilities and resources.

(7) EMINENT DOMAIN WITHIN BIG CYPRESS AREA.—The Governor and Cabinet as the head of the Department of Natural Resources are empowered and authorized to acquire by the exercise of the power of eminent domain any land or water areas and related resources and property, and any and all rights, title and interest in such land or water areas and related resources and other property, lying within the boundaries of the Big Cypress Area. The Legislature finds that the exercise of the power of eminent domain within the Big Cypress Area to accomplish the purposes of this section is necessary and for a public purpose.

(8) INDIAN RIGHTS.—Notwithstanding any provision of this section to the contrary, members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida may continue their usual and customary use and occupancy of lands and waters within the Big Cypress Area, including hunting, fishing, and trapping on a subsistence basis and traditional tribal ceremonials. Nothing in this section shall be construed to deny or impair, or authorize the denial or impairment, of any rights granted by or pursuant to chapter 285 relative to Indian reservation and affairs, and the lands of the Seminole Tribe of Florida and of the Miccosukee Tribe of Indians of Florida, as described in s. 285.061(1), shall be excluded from the Big Cypress Area as defined in this section.

History.—ss. 1, 2, 3, 4, 5, ch. 73-131; s. 1, ch. 75-175; s. 4, ch. 78-95; s. 99, ch. 79-164; s. 226, ch. 81-259.
cf.—ch. 259 Land Conservation Act of 1972.

380.0551 Green Swamp Area; designation as area of critical state concern.—

(1) The Green Swamp Area, the boundaries of which are described in chapter 22F-5, Florida Administrative Code, is hereby designated an area of critical state concern effective July 1, 1979. The state land planning agency, in conjunction with the applicable local governments, shall review suggested changes to the existing boundary in the area immediately to the south of the southern boundary of the City of Clermont in Lake County and the area along the existing southern boundary around Lake Juliana and the City of Polk City in Polk County for possible deletion from the area of critical state concern. The state land planning agency shall report to, and shall make specific recommendations to, the commission relative to any proposed deletion by August 1, 1979. The commission shall take action on the recommendations of the state planning agency no later than October 1, 1979. Chapters 22F-5, 22F-6, and 22F-7, Florida Administrative Code, are hereby adopted and incorporated herein by reference. The boundaries described in chapter 22F-5, Florida Administrative Code, shall be modified pursuant to s. 380.05(12). There shall be appointed a resource planning and management committee as provided in s. 380.045.

(2) The land development regulations contained in chapters 22F-6 and 22F-7, Florida Administrative Code, shall be the land development regulations for the applicable local government's portion of the area of critical state concern until either:

(a) An applicable local government complies with the provisions of s. 380.05(10); or

(b) Such regulations are repealed pursuant to subsection (3).

(3) Chapters 22F-5, 22F-6, and 22F-7, Florida Administrative Code, shall be repealed by the commission no earlier than July 1, 1980, and no later than July 1, 1982. Upon recommendation by the state land planning agency to the commission, any repeal of such rules pursuant to this subsection may be effective only for one local government's portion of the Green Swamp Area. Such repeal shall be contingent upon approval by the state land planning agency of local land development regulations pursuant to s. 380.05(6) or (10), upon such regulations being effective for a period of 12 months, and upon adoption or modification by the applicable local government of a local government comprehensive plan pursuant to s. 380.05(14).

History.—s. 5, ch. 79-73.

380.0552 Florida Keys Area; designation as area of critical state concern.—

(1) The Florida Keys Area, the boundaries of which are described in chapter 22F-8, Florida Administrative Code, is hereby designated an area of critical state concern effective July 1, 1979. Chapters 22F-8 through 22F-13, Florida Administrative Code, are hereby adopted and incorporated herein by reference. There shall be appointed a resource planning and management committee as provided in s. 380.045.

(2) The land development regulations contained in chapters 22F-9 through 22F-13, Florida Administrative Code, shall be the land development regulations for the applicable local government's portion of the area of critical state concern until either:

(a) An applicable local government complies with the provisions of s. 380.05(10); or

(b) Such regulations are repealed pursuant to subsection (4).

(3) The City of Key West, as incorporated, shall be removed from under the provisions of chapters 22F-8 and 22F-12, Florida Administrative Code, upon approval by the state land planning agency of the land use element of the local government comprehensive plan pursuant to chapter 163, notwithstanding the 1-year minimum requirement of subsection (4).

(4) Chapters 22F-8 through 22F-13, Florida Administrative Code, shall be repealed by the commission no earlier than July 1, 1980, and no later than July 1, 1982. Upon recommendation by the state land planning agency to the commission, any repeal of such rules pursuant to this subsection may be effective only for one local government's portion of the Florida Keys Area. Such repeal shall be contingent upon approval by the state land planning agency of local land development regulations pursuant to s. 380.05(6) or (10), upon such regulations being effective for a period of 12 months, and upon adoption or modification by the applicable local government of a local government comprehensive plan pursuant to s. 380.05(14).

History.—s. 6, ch. 79-73.

380.06 Developments of regional impact.—

(1) The term "development of regional impact," as used in this section, means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

(2)(a) The state land planning agency shall recommend to the Administration Commission specific guidelines and standards for adoption pursuant to this subsection. The Administration Commission shall by rule adopt guidelines and standards to be used in determining whether particular developments shall be presumed to be of regional impact. The standards and guidelines previously adopted by the Administration Commission and approved by the Legislature shall remain in effect unless revised pursuant to this section. Revisions to the present standards and guidelines, after adoption by the Administration Commission, shall be transmitted on or before March 1 to the President of the Senate and the Speaker of the House of Representatives for presentation at the next regular session of the Legislature. Unless approved by joint resolution of the Legislature, the revisions to the present standards and guidelines shall not become effective.

(b) In adopting its guidelines and standards, the Administration Commission shall consider and be guided by:

1. The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise.
2. The amount of pedestrian or vehicular traffic likely to be generated.
3. The number of persons likely to be residents, employees, or otherwise present.
4. The size of the site to be occupied.
5. The likelihood that additional or subsidiary development will be generated.
6. The extent to which the development would create an additional demand for, or additional use of, energy, including the energy requirements of subsidiary developments.
7. The unique qualities of particular areas of the state.

(c) Any modifications to the initial guidelines and standards prescribed pursuant to this subsection shall not modify or abridge rights that have vested pursuant to subsection (18) or development-of-regional-impact status determinations acquired through executed agreements or binding letters issued pursuant to this section, upon which the developer has relied and upon the basis of which he has changed his position prior to the effective date of such rules.

(3) Each regional planning agency may recommend to the state land planning agency from time to time modifications to guidelines and standards

adopted under subsection (2). Each regional planning agency shall solicit from the local governments within its jurisdiction suggestions regarding modifications to be recommended.

(4)(a) If any developer is in doubt whether his proposed development would be a development of regional impact, whether his rights have vested pursuant to subsection (18), or whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (18) would divest such rights, he may request a determination from the state land planning agency. Requests for a binding letter of interpretation shall be in writing and in such form and content as prescribed by the state land planning agency. Within 15 days of receiving an application for a binding letter of interpretation or a supplement to a pending application, the state land planning agency shall determine and notify the applicant whether the information in the application is sufficient to enable the agency to issue a binding letter or shall request any additional information needed. The applicant shall either provide the additional information requested or shall notify the state land planning agency in writing that the information will not be supplied and the reasons therefor. If the applicant does not respond to the request for additional information within 120 days, the application for a binding letter of interpretation shall be deemed to be withdrawn. Within 30 days of acknowledging receipt of a sufficient application, or of receiving notification that the information will not be supplied, the state land planning agency shall issue a binding letter of interpretation with respect to the proposed development. A binding letter of interpretation issued by the state land planning agency shall bind all state, regional, and local agencies, as well as the developer.

(b) In determining whether a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (18) would divest such rights, the state land planning agency shall review the proposed change within the context of:

1. Criteria specified in paragraph (17)(b);
2. Its conformance with any adopted state comprehensive plan and any rules of the state land planning agency;
3. All rights and obligations arising out of the vested status of such development;
4. Permit conditions or requirements imposed by the Department of Environmental Regulation, the Department of Natural Resources, or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency; and
5. Any regional impacts arising from the proposed change.

(c) If a proposed substantial change to a development of regional impact concerning which rights had previously vested pursuant to subsection (18) would result in reduced regional impacts, the change shall not divest rights to complete the development pursuant to subsection (18).

(5) A developer may undertake a development of regional impact if:

(a) The land on which the development is proposed is within the jurisdiction of a local government that has adopted subdivision regulations or a zoning ordinance under chapter 163 or under appropriate special or local laws or ordinances and the development has been approved under the requirements of this section;

(b) The land on which the development is proposed is within an area of critical state concern and the development has been approved under the requirements of s. 380.05; or

(c) The developer has given written notice to the state land planning agency and to any local government having jurisdiction to adopt zoning or subdivision regulations for the area in which the development is proposed and, after 90 days have passed, no zoning or subdivision regulations have been adopted or designation of area of critical state concern issued.

(6) If the development of regional impact is to be located within the jurisdiction of a local government that has adopted a zoning ordinance or subdivision regulations, the developer shall file an application for development approval with the appropriate local government having jurisdiction. The application shall contain, in addition to such other matters as may be required, a statement that the developer proposes to undertake a development of regional impact as defined under this section.

(7)(a) Before filing an application for development approval, the developer shall contact the regional planning agency with jurisdiction over the proposed development to arrange a preapplication conference. Upon the request of the developer or the regional planning agency, other affected state and regional agencies shall participate in this conference and shall identify the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development. The regional planning agency shall provide the developer information about the development-of-regional-impact process and the use of preapplication conferences to identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development.

(b) The regional planning agency shall establish by rule a procedure by which a developer may enter into binding written agreements with the regional planning agency to eliminate questions from the application for development approval when those questions are found to be unnecessary for development-of-regional-impact review. It is the legislative intent of this subsection to encourage reduction of paperwork, to discourage unnecessary gathering of data, and to encourage the coordination of the development-of-regional-impact review process with federal, state, and local environmental reviews when such reviews are required by law.

(8) An optional coordinated review process is established consisting of the following:

(a) As part of the preapplication conference, the developer may, in addition to regular development-of-regional-impact review, elect to proceed in a coordinated review process with other affected state or regional licensing agencies. The developer may select the state or regional agencies which will participate in this coordinated review process.

(b) The developer may request a binding agreement from an agency on any of the following:

1. The identifiable areas of agency jurisdiction over the proposed development.
2. The identifiable agency rules, subject to changes imposed by law, applicable to the proposed development.
3. The types and categories of information which may be required at the time of license or permit application for the proposed development.
4. Any other appropriate agreement pursuant to appropriate state or federal law or regulation.

Any agreements entered into under this paragraph are subject to the provisions of chapter 120 and are not subject to paragraph (14)(a). Every agreement entered into pursuant to this paragraph shall be binding upon the developer and the agency, unless the agency determines that the information upon which the agreement was based was inaccurate, that conditions have changed substantially, or that a modification has been proposed which materially changes the circumstances of the proposed development. The developer shall notify the agency of any such modification. The binding agreement shall be valid for a period of 5 years after issuance.

(c) The developer may request that agencies, for nonbinding information purposes only, identify issues or problems which could later constitute grounds for permit denial or major modifications of the proposed agreement.

(d) The regional planning agency shall notify all affected agencies and coordinate this review process. To further effectuate this review process, the regional planning agency may encourage additional preapplication conferences, the development of permit-processing schedules with other agencies, concurrent processing of applications, and the use of the development-of-regional-impact application for development approval as a substitute for permit-data requirements or plans when appropriate.

(e) The developer must submit copies of the application for development approval to all state or regional agencies which are to participate in this coordinated review process.

(9)(a) When an application for development approval is filed with a local government, the developer shall also send copies of the application to the appropriate regional planning agency and the state land planning agency.

(b) If a regional planning agency determines that the application for development approval is insufficient for the agency to discharge its responsibilities under subsection (11), it shall provide in writing to the appropriate local government and the applicant a statement of any additional information desired within 30 days of the receipt of the application by the regional planning agency. The applicant may supply the information requested by the regional planning agency and shall communicate its intention to do so in writing to the appropriate local government and the regional planning agency within 5 working days of the receipt of the statement requesting such information, or the applicant shall notify the appropriate local government and the regional planning agency in writing that the requested information will not be supplied. Within 30 days after receipt of such additional information, the regional planning agency 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 an applicant does not provide the information requested by a regional planning agency within 120 days of its request, or within a time agreed upon by the applicant and the regional planning agency, the application shall be considered withdrawn.

(c) The regional planning agency shall notify the local government that a public hearing date may be set when the regional planning agency determines that the application is sufficient or when it receives notification from the developer that the additional requested information will not be supplied, as provided for in paragraph (b).

(10) Upon receipt of the sufficiency notification from the regional planning agency required by paragraph (9)(c), the appropriate local government shall give notice and hold a public hearing on the application in the same manner as for a rezoning as provided under the appropriate special or local law or ordinance, except that such hearing proceedings shall be recorded by tape or a certified court reporter and made available for transcription at the expense of any interested party. When a development of regional impact is proposed within the jurisdiction of more than one local government, the local governments, at the request of the developer, may hold a joint public hearing. The local government shall comply with the following additional requirements:

(a) The notice of public hearing shall state that the proposed development would be a development of regional impact.

(b) The notice shall be published at least 60 days in advance of the hearing and shall specify where the information and reports on the development of regional impact application may be reviewed.

(c) The notice shall be given to the state land planning agency, to the applicable regional planning agency, to any state or regional permitting agency participating in a coordinated review process under subsection (8), and to such other persons as may have been designated by the state land planning agency as entitled to receive such notices.

(d) A public hearing date shall be set by the appropriate local government at the next scheduled meeting.

(11)(a) Within 50 days after receipt of the notice of public hearing required in paragraph (10)(c), the regional planning agency, if one has been designated for the area including the local government, shall prepare and submit to the local government a report and recommendations on the regional impact of the proposed development. In preparing its report and recommendations, the regional planning agency shall identify regional issues based upon the following review criteria and make recommendations to the local government on these regional issues, specifically considering whether, and the extent to which:

1. The development will have a favorable or unfa-

vorable impact on the environment and natural resources of the region.

2. The development will have a favorable or unfavorable impact on the economy of the region.

3. The development will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary public facilities.

4. The development will efficiently use or unduly burden public transportation facilities.

5. The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

6. The development complies with such other criteria for determining regional impact as the regional planning agency deems appropriate, including, but not limited to, the extent to which the development would create an additional demand for, or additional use of, energy, provided such criteria and related policies have been adopted by the regional planning agency pursuant to s. 120.54. Regional planning agencies may also review and comment upon issues which affect only the local governmental entity with jurisdiction pursuant to this section; however, such issues shall not be grounds for or be included as issues in a regional planning agency appeal of a development order under s. 380.07.

(b) At the request of the regional planning agency, other appropriate agencies shall review the proposed development and shall prepare reports and recommendations on issues that are clearly within the jurisdiction of those agencies. Such agency reports shall become part of the regional planning agency report; however, the regional planning agency may attach dissenting views. When water management district and Department of Environmental Regulation permits have been issued, the regional planning council may comment on the regional implications of the permits, but may not offer conflicting recommendations.

(c) The regional planning agency shall afford the developer or any substantially affected party reasonable opportunity to present evidence to the regional planning agency head relating to the proposed regional agency report and recommendations.

(12) If the development is in an area of critical state concern, the local government shall approve it only if it complies with the land development regulations therefor under s. 380.05.

(13) If the development is not located in an area of critical state concern, in considering whether the development shall be approved, denied, or approved subject to conditions, restrictions, or limitations, the local government shall consider whether, and the extent to which:

(a) The development unreasonably interferes with the achievement of the objectives of an adopted state land development plan applicable to the area;

(b) The development is consistent with the local land development regulations; and

(c) The development is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (11).

(14)(a) The appropriate local government shall render a decision on the application within 30 days after the hearing unless an extension is requested by the developer.

(b) When possible, local governments shall issue development orders concurrently with any other local permits or development approvals that may be applicable to the proposed development.

(c) The development order shall include findings of fact and conclusions of law consistent with subsections (12) and (13). The development order:

1. Shall specify the monitoring procedures and the local official responsible for assuring compliance by the development with the development order.

2. May establish expiration dates for the development order, including a deadline for commencing physical development, for compliance with conditions of approval or phasing requirements, and for the termination of the order.

3. Shall specify the requirements for the annual report designated under subsection (16), including the date of submission, parties to whom the report is submitted, and contents of the report, based upon the rules adopted by the state land planning agency. Such rules shall specify the scope of any additional local requirements that may be necessary for the report.

4. May specify the types of changes to the development which shall require submission for a substantial deviation determination under paragraph (17)(a).

5. Shall include a legal description of the property.

(d) Notice of the adoption of a development order or the subsequent modification of an adopted development order shall be recorded by the developer, in accordance with s. 28.222, with the clerk of the circuit court for each county in which the development is located. The notice shall include a legal description of the property covered by the order and shall state which unit of local government adopted the development order, the date of adoption, the date of adoption of any modifications to the development order, the location where the adopted order with any modifications may be examined, and that the development order constitutes a land development regulation applicable to the property. The recording of this notice shall not constitute a lien, cloud, or encumbrance on real property, nor actual nor constructive notice of any of the same. This paragraph shall only apply to developments initially approved under this section after July 1, 1980.

(e) If the property is annexed by another local jurisdiction, the annexing jurisdiction shall adopt a new development order that incorporates all previous rights and obligations specified in the prior development order.

(15) The local government issuing the development order is primarily responsible for monitoring the development and enforcing the provisions of the development order. Local governments shall not issue any permits or approvals or provide any extensions of services if the developer fails to act in substantial compliance with the development order.

(16) The developer shall submit an annual report on the development of regional impact to the local government, the regional planning agency, the state land planning agency, and all affected permit agencies, on the date specified in the development order. If the annual report is not received, the regional planning agency or the state land planning agency shall

notify the local government. If the local government does not receive the annual report or receives notification that the regional planning agency or the state land planning agency has not received the report, the local government shall request in writing that the developer submit the report within 30 days. Failure to submit the report after 30 days shall result in the temporary suspension of the development order by the local government.

(17)(a) A developer shall submit proposed changes to a development of regional impact previously approved pursuant to this section to the local government for a substantial deviation determination. The local government shall review the proposed changes pursuant to the criteria enumerated in this subsection and shall make a substantial deviation determination. The local government shall, at the conclusion of local review, modify the development order to reflect approved changes to the development and shall notify the regional planning agency and the state land planning agency of the changes to the development order, with the findings subject to the appeal provisions of s. 380.07. If the proposed changes are found to be a substantial deviation, the development shall be subject to further review pursuant to this section. Nothing in this section precludes the right of the local government or of the state land planning agency to injunctive relief under s. 380.11. As used in this section, "substantial deviation" means any change to the previously approved development of regional impact which creates a reasonable likelihood of additional adverse regional impact, or any other regional impact created by the change not previously reviewed by the regional planning agency.

(b) In determining whether a development of regional impact previously approved pursuant to this section is subject to further review pursuant to this section, the local government shall consider the following changes which shall be presumed not to be substantial deviations requiring further review:

1. An increase in the number of dwelling units of not more than 5 percent or 200 dwelling units, whichever is less.

2. A decrease in the number of dwelling units which does not require a major redistribution of density.

3. A decrease in the area set aside for common open space of not more than 5 percent or 50 acres, whichever is less.

4. An increase in the area set aside for common open space.

5. An increase in the floor area proposed for nonresidential use of not more than 5 percent or 10,000 square feet, whichever is less.

6. A decrease in the regional impact of the development.

7. A change required by permit conditions or requirements imposed by the Department of Environmental Regulation, the Department of Natural Resources, or any water management district created by s. 373.069 or any of their successor agencies or by any appropriate federal regulatory agency.

(c) Unless the presumptions set forth in paragraph (b) are rebutted by clear and convincing evidence offered by the moving party, the development shall not be subject to further development-of-regional-impact review pursuant to this section. The appropriate local government shall afford a reasonable opportunity for a developer or other substantially affected party to present evidence to support or rebut such presumptions.

(18) Nothing in this section shall limit or modify the rights of any person to complete any development that has been authorized by registration of a subdivision pursuant to chapter 478, by recordation pursuant to local subdivision plat law, or by a building permit or other authorization to commence development on which there has been reliance and a change of position, and which registration or recordation was accomplished, or which permit or authorization was issued, prior to the effective date of the rules issued by the Administration Commission pursuant to subsection (2). If a developer has, by his actions in reliance on prior regulations, obtained vested or other legal rights that in law would have prevented a local government from changing those regulations in a way adverse to his interests, nothing in this chapter authorizes any governmental agency to abridge those rights.

(a) For the purpose of determining the vesting of rights under this subsection, approval pursuant to local subdivision plat law, ordinances, or regulations of a subdivision plat by formal vote of a county or municipal governmental body having jurisdiction after August 1, 1967, and prior to July 1, 1973, shall be sufficient to vest all property rights for the purposes of this subsection; and no action in reliance on, or change of position concerning, such local governmental approval shall be required for vesting to take place.

(b) For the purpose of this act, the conveyance of, or the agreement to convey, property to the county, state, or local government as a prerequisite to zoning change approval shall be construed as an act of reliance to vest rights as determined under this subsection, provided such zoning change is actually granted by such government.

(19) The state land planning agency shall print biweekly, and mail to any person upon payment of a reasonable charge to cover costs of preparation and mailing, a list of all notices of applications for developments of regional impact that have been filed with the state land planning agency.

(20)(a) If a development project includes two or more developments of regional impact, a developer may file a comprehensive development-of-regional-impact application.

(b) If a proposed development is planned for development over an extended period of time, the developer may file an application for master development approval of the project and agree to present subsequent increments of the development for preconstruction review. This agreement shall be entered into by the developer, the regional planning agency, and the appropriate local government having jurisdiction. The provisions of subsection (8) do not apply to this subsection.

1. Prior to adoption of the master plan development order, the developer, the landowner, the appropriate regional planning agency, and the local government having jurisdiction shall review the draft of the development order to ensure that anticipated region-

al impacts have been adequately addressed and that information requirements for subsequent incremental application review are clearly defined. The development order for a master application shall specify the information which must be submitted with an incremental application and shall identify those issues which can result in the denial of an incremental application.

2. The review of subsequent incremental applications shall be limited to that information specifically required and those issues specifically raised by the master development order, unless substantial changes in the conditions underlying the approval of the master plan development order are demonstrated or the master development order is shown to have been based on substantially inaccurate information.

(c) The state land planning agency, by rule, shall establish uniform procedures to implement this subsection.

(21)(a) A downtown development authority may submit a development-of-regional-impact application for development approval pursuant to subsection (6). The area described in the application may consist of any or all of the land over which a downtown development authority has the power described in s. 380.031(5). For the purposes of this subsection, a downtown development authority shall be considered the developer whether or not the development will be undertaken by the downtown development authority.

(b) In addition to information required by the development-of-regional-impact application, the application for development approval submitted by a downtown development authority shall specify the total amount of development planned for each land use category. In addition to the requirements of subsection (14), the development order shall specify the amount of development approved within each land use category. Development undertaken in conformance with a development order issued under this section does not require further review.

(c) If a development is proposed within the area of a downtown development plan approved pursuant to this section which would result in development in excess of the amount specified in the development order for that type of activity, the local government shall make a substantial deviation determination in regard to that proposal, pursuant to subsection (17).

(d) The provisions of subsection (8) do not apply to this subsection.

(22)(a) The state land planning agency shall adopt rules to ensure uniform procedural review of developments of regional impact by the state land planning agency and regional planning agencies under this section. These rules shall be adopted pursuant to chapter 120 and shall include all forms, application content, and review guidelines necessary to implement developments-of-regional-impact review.

(b) All regional planning agencies shall develop a list of regional issues to be used in reviewing development-of-regional-impact applications. Within 9 months of the effective date of this paragraph, these lists of regional issues must be submitted to the state land planning agency for its adoption or rejection. Should a new agency be designated a regional planning agency pursuant to s. 380.031(15), that agency shall have 9 months from its date of designation to submit a list of regional issues to the state land planning agency for its adoption or rejection.

(c) Regional planning agencies shall be subject to rules adopted by the state land planning agency; however, a regional planning agency may adopt additional rules, not inconsistent with rules adopted by the state land planning agency, to promote efficient review of developments-of-regional-impact applications. Regional planning agency rules shall be adopted pursuant to chapter 120.

(23) Any proposed hospital which has a designed capacity of not more than 100 beds is exempt from the provisions of this section.

(24) Any proposed electrical transmission line or electrical power plant is exempt from the provisions of this section, except any steam or solar electrical generating facility of less than 50 megawatts in capacity attached to a development of regional impact.

(25) Any proposed addition to an existing sports facility complex is exempt from the provisions of this section if the addition meets the following characteristics:

(a) It would not operate concurrently with the scheduled hours of operation of the existing facility.

(b) Its seating capacity would be no more than 75 percent of the capacity of the existing facility.

(c) The sports facility complex property is owned by a public body prior to July 1, 1983.

This exemption does not apply to any pari-mutuel facility.

History.—s. 6, ch. 72-317; s. 2, ch. 74-326; s. 5, ch. 75-167; s. 1, ch. 76-99; s. 2, ch. 77-215; s. 118, ch. 79-400; s. 3, ch. 80-313; s. 22, ch. 83-222; s. 4, ch. 83-308.

380.07 Florida Land and Water Adjudicatory Commission.—

(1) There is hereby created the Florida Land and Water Adjudicatory Commission, which shall consist of the Administration Commission.

(2) Whenever any local government issues any development order in any area of critical state concern, or in regard to any development of regional impact, copies of such orders as prescribed by rule by the state land planning agency shall be transmitted to the state land planning agency, the regional planning agency, and the owner or developer of the property affected by such order. Within 45 days after the order is rendered, the owner, the developer, an appropriate regional planning agency by vote at a regularly scheduled meeting, or the state land planning agency may appeal the order to the Florida Land and Water Adjudicatory Commission by filing a notice of appeal with the commission. The appellant shall furnish a copy of the notice of appeal to the opposing party, as the case may be, and to the local government which issued the order. The filing of the notice of appeal shall stay the effectiveness of the order and shall stay any judicial proceedings in relation to the development order, until after the completion of the appeal process.

(3) Prior to issuing an order, the Florida Land and Water Adjudicatory Commission shall hold a hearing pursuant to the provisions of chapter 120. The commission shall encourage the submission of appeals on the record made below in cases in which the development order was issued after a full and

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complete hearing before the local government or an agency thereof.

(4) The Florida Land and Water Adjudicatory Commission shall issue a decision granting or denying permission to develop pursuant to the standards of this chapter and may attach conditions and restrictions to its decisions.

History.—s. 7, ch. 72-317; s. 1, ch. 77-117; s. 3, ch. 77-215; s. 15, ch. 78-95.

380.08 Protection of landowners' rights.—

(1) Nothing in this chapter authorizes any governmental agency to adopt a rule or regulation or issue any order that is unduly restrictive or constitutes a taking of property without the payment of full compensation, in violation of the constitutions of this state or of the United States.

(2) If any governmental agency authorized to adopt a rule or regulation or issue any order under this chapter shall determine that, to achieve the purposes of this chapter, it is in the public interest to acquire the fee simple or lesser interest in any parcel of land, such agency shall so certify to the state land planning agency, the Board of Trustees of the Internal Improvement Trust Fund, and other appropriate governmental agencies. Prior to such agency's acquiring such land, the seller of the land shall file a statement with the Department of State disclosing, for the period from January 1, 1970, to the date of the statement, all financial transactions concerning the land, all parties having a financial interest in any transaction, and the amount of the tax assessment thereon for each year.

(3) If any governmental agency denies a development permit under this chapter, it shall specify its reasons in writing and indicate any changes in the development proposal that would make it eligible to receive the permit.

History.—s. 8, ch. 72-317; s. 2, ch. 75-81.

380.085 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 part.

(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. 1-6, ch. 78-85.

380.11 Enforcement; procedures; remedies.—

(1) JUDICIAL REMEDIES.—

(a) The state land planning agency, a state attorney, a county, and a municipality are each authorized to bring an action for injunctive relief, both temporary and permanent, against any person or developer found to be in violation of the provisions of this part or any rules, regulations, or orders issued thereunder.

(b) It shall not be a defense to, or ground for dismissal of, an action for injunctive relief brought by the state land planning agency that it has failed to exhaust its administrative remedies.

(2) ADMINISTRATIVE REMEDIES.—

(a) If the state land planning agency has reason to believe a violation of s. 380.05, s. 380.055, s. 380.0551, or s. 380.0552 or of any rule, development order, or other order issued thereunder has occurred or is about to occur, it may institute an administrative proceeding pursuant to this section to prevent, abate, or control the conditions or activity creating the violation.

(b) An administrative proceeding shall be instituted by service by the state land planning agency of a written notice of violation upon the alleged violator, by certified mail. The notice shall specify the law, rule, development order, or other order alleged to be violated and the facts alleged to constitute a violation. An order directing cessation or prevention of the conditions or action that caused the notice of violation to be served may be included with the notice. However, no order served with the notice of violation is final and effective until 20 days after the date of service or until the conclusion of a properly requested administrative hearing. A request for an administrative hearing shall be in writing and shall be filed with the clerk of the state land planning agency within 20 days after the date of service of the notice upon the

alleged violator. The failure to request an administrative hearing within the 20-day period constitutes a waiver thereof, and the notice of violation and any accompanying corrective order shall become final agency action. The state land planning agency may seek enforcement of its final agency action in accordance with s. 120.69 or by written agreement entered into with the alleged violator pursuant to s. 380.032(3).

(c) The state land planning agency may institute an administrative proceeding against any developer or responsible party pertaining to any area of critical state concern designated in s. 380.05, s. 380.055, s. 380.0551, or s. 380.0552:

1. To enjoin development activity if the damage or injury is caused by the development activity or by a violation of s. 380.05, s. 380.055, s. 380.0551, s. 380.0552, a rule of any governmental agency, or a development order.

2. To require the responsible party to replace or restore a deteriorated, damaged, injured, or otherwise significantly impacted natural, historical, or archaeological resource, major public facility, or area of major public investment if the damage or injury is caused by the development activity or by a violation of s. 380.05, s. 380.055, s. 380.0551, s. 380.0552, a rule of any governmental agency, or a development order.

3. To require the governmental agency to properly administer critical area regulations.

History.—s. 3, ch. 74-326; s. 129, ch. 79-190; s. 34, ch. 81-167; s. 34, ch. 83-55; s. 5, ch. 83-308.

380.12 Rights unaffected by chapter 75-22, Laws of Florida.—Nothing in chapter 75-22, Laws of Florida, shall alter or affect rights previously vested under this chapter.

History.—s. 23, ch. 75-22.

PART II

COASTAL PLANNING AND MANAGEMENT

380.19 Department of Environmental Regulation.
380.20 Short title.
380.21 Legislative intent.
380.22 Lead agency authority and duties.
380.23 Federal consistency.
380.24 Local government participation.
380.25 Previous coastal zone atlases rejected.

380.19 Department of Environmental Regulation.—

(1) It is the intent of the Legislature that the environmental aspects of the coastal areas of this state have attracted a high percentage of permanent population and visitors and that this concentration of people and their requirements has had a serious impact on the natural surroundings and has become a threat to the health, safety, and general welfare of the citizens of this state. It is further determined that a coordinated effort of interested federal, state, and local agencies of government is imperative to plan for and effect a solution to this threat, and that the creation of an advisory council will aid in accomplishing this purpose and in the implementation of s. 7, Art. II of the State Constitution, and s. 20.03(9).

(2) As used in this section:

(a) [[1]"Department" means the Department of Environmental Regulation.]

(b) "Coastal zone" means that area of land and water from the territorial limits seaward to the most inland extent of maritime influences.

(c) "Interested agency" means any unit of state or local government administering laws, regulations, or ordinances designed to manage an environmental aspect of the coastal zone.

[2](3) There is created within the Department of Natural Resources the Florida Coastal Coordinating Council, to consist of the executive director of the Department of Natural Resources, who shall be chairman, the executive director of the Board of Trustees of the Internal Improvement Trust Fund and the executive director of the Department of Pollution Control, all of whom shall serve ex officio on the council and who shall be considered as the base members of the council. Additional members from interested state or local units of government may serve on the council by unanimous request and at the pleasure of its base members.

(4) The duties of the [1][department] shall be:

(a) To employ a staff director and such other personnel as may be necessary to aid in carrying out the work of the [1][department];

(b) To conduct, direct, encourage, coordinate, and organize a continuous program of research into problems relating to the coastal zone;

(c) To review, upon request, all plans and activities pertinent to the coastal zone and to provide coordination in these activities among the various levels of government and areas of the state;

(d) To develop a comprehensive state plan for the protection, development, and zoning of the coastal zone, making maximum use of any federal funding for this purpose;

(e) To provide a clearing service for coastal zone matters by collecting, processing, and disseminating pertinent information relating thereto;

(f) To make use of pertinent data as may be secured from departments, boards, commissions, officials, agencies, and institutions, except such records or information as may be required by law to be confidential; and

(g) To provide such other services as any interested agency may request.

All interested agencies are requested to make available such records, data, information, and statistics as are necessary or proper for the operation of the [1][department].

(5)(a) Any research project or any form of empirical study prepared by the [1][department] or its staff which is wholly or partially financed by state funds shall be reported to the office of the Governor or his designee, with two copies of the report each to the Speaker of the House, the President of the Senate, and the library maintained by the Joint Legislative Management Committee.

(b) Reports shall be submitted 30 days prior to commencement of the project and on January 1 of each year thereafter until termination of the project. Upon conclusion of the project a final report shall be submitted.

(c) All reports shall contain a description of the project or study conducted. The description shall include the source of funds and the duration, purpose, and location of each project or study. Final reports shall also include all findings and conclusions of the research or study.

(d) Nothing in this section shall require the filing of reports on projects that have been classified due to national defense or security.

(e) The Joint Legislative Management Committee shall make report forms available and keep records of all reports submitted.

(6) The [1][department] is to be advisory to any interested agency requesting its service in matters relating to the coastal zone to provide coordination of efforts and to avoid duplication of effort in the interest of governmental efficiency.

(7) The [1][department] is authorized to make and shall adopt rules for the implementation of this section in accordance with the provisions of the Administrative Procedure Act, chapter 120.

History.—ss. 1-7, ch. 70-259; s. 2, ch. 71-137; s. 20, ch. 72-178.

[1]Note.—Bracketed language substituted for a reference to the Coastal Coordinating Council. See s. 18, ch. 75-22, which transferred the powers, duties, and functions of the council to the Division of Resource Management of the Department of Natural Resources; also see s. 4, ch. 77-306, which transferred the "powers, duties, personnel, and functions . . . described in s. 370.0211(4)(a)-(g)" to the Department of Environmental Regulation.

[2]Note.—The Coastal Coordinating Council was abolished and its powers, duties, and functions transferred. See s. 18, ch. 75-22.

Note.—Former s. 370.0211.

380.20 Short title.—Sections 380.21-380.25 may be cited as the "Florida Coastal Management Act of 1978."

History.—s. 5, ch. 78-287.

380.21 Legislative intent.—

(1) The Legislature finds that:

(a) The coast is rich in a variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources, including, but not limited to, energy facilities, as that term is defined in s. 304(5) of the Federal Coastal Zone Management Act of 1972, of immediate potential value to the present and future well-being of the residents of this state.

(b) It is in the state and national interest to protect, maintain, and develop these resources through coordinated management.

(c) State land and water management policies should, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development.

(2) The Legislature therefore grants authorization for the Department of Environmental Regulation to compile a program based on existing statutes and existing rules and submit an application to the appropriate federal agency as a basis for receiving administrative funds under the Federal Coastal Zone Management Act of 1972. It is the further intent of the Legislature that enactment of this legislation shall not amend existing statutes or provide additional regulatory authority to any governmental body except as otherwise provided by s. 380.23. The enactment of this legislation shall not in any other way affect any existing statutory or regulatory authority.

History.—s. 5, ch. 78-287.

380.22 Lead agency authority and duties.—

(1) The Department of Environmental Regulation shall be the lead agency pursuant to 16 U.S.C. ss. 1451 et seq., and shall compile and submit to the appropriate federal agency an application, to receive funds pursuant to s. 306 of the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. ss. 1451-1464). The application for federal approval of the state's program shall include program policies that only reference existing statutes and existing implementing administrative rules. In the event the application or the program submitted pursuant to this subsection is rejected by the appropriate federal agency because of failure of this act, the existing statutes, or the existing implementing administrative rules to comply with the requirements of the Federal Coastal Zone Management Act of 1972, as amended, no state coastal management program shall become effective without prior legislative approval. The coastal management application or program may be amended from time to time to include changes in statutes and rules adopted pursuant to statutory authority other than this act.

(2) The Department of Environmental Regulation shall also have authority to:

(a) Establish advisory councils with sufficient geographic balance to insure statewide representation.

(b) Coordinate central files and clearinghouse procedures for coastal resource data information and encourage the use of compatible information and standards.

(c) Provide, to the extent practicable, financial, technical, research, and legal assistance to effectuate the purposes of this act.

(d) Review rules of other affected agencies to determine consistency with the program and to report any inconsistencies to the Legislature.

(3) The Secretary of Environmental Regulation shall adopt by rule a specific formula for allocation of federal funds for the administration of the program.

History.—s. 5, ch. 78-287.

380.23 Federal consistency.—

(1) When an activity requires a permit or license subject to federal consistency review, the issuance or renewal of a state license shall automatically constitute the state's concurrence that the licensed activity or use, as licensed, is consistent with the federally approved program. When an activity requires a permit or license subject to federal consistency review, the denial of a state license shall automatically constitute the state's finding that the proposed activity or use is not consistent with the state's federally approved program, unless the United States Secretary of Commerce determines that such activity or use is in the national interest as provided in the Federal Coastal Zone Management Act of 1972.

(2) Where federal licenses, permits, activities, and projects listed in subsection (3) are subject to federal consistency review and are seaward of the jurisdiction of the state, or there is no state agency with sole jurisdiction, the Department of Environmental Regulation shall be responsible for the consistency review and determination; however, the department shall not make a determination that the license, permit, activity, or project is consistent if any other state agency with significant analogous responsibility

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makes a determination of inconsistency. All decisions and determinations under this subsection shall be appealable to the Governor and Cabinet.

(3) Consistency review shall be limited to review of the following activities, uses, and projects to ensure that such activities and uses are conducted in accordance with the state's coastal management program:

(a) Federal development projects and activities of federal agencies which significantly affect coastal waters and the adjacent shorelands of the state.

(b) Federal assistance projects which significantly affect coastal waters and the adjacent shorelands of the state and which are reviewed as part of the review process developed pursuant to OMB Circular A-95.

(c) Federally licensed or permitted activities affecting land or water uses when such activities are in or seaward of the jurisdiction of local governments required to develop a coastal zone protection element as provided in s. 380.24 and when such activities involve:

1. Permits required under ss. 10 and 11 of the Rivers and Harbors Act of 1899, as amended.

2. Permits required under s. 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

3. Permits required under ss. 201, 402, 403, 404, and 405 of the Federal Water Pollution Control Act of 1972, as amended, unless such permitting activities pursuant to such sections have been delegated to the state pursuant to said act.

4. Permits required under the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. ss. 1401, 1402, 1411-1421, and 1441-1444.

5. Permits for the construction of bridges and causeways in navigable waters required pursuant to 33 U.S.C. s. 401, as amended.

6. Permits relating to the transportation of hazardous substance materials or transportation and dumping which are issued pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. ss. 1801-1812, as amended, or 33 U.S.C. s. 419, as amended.

7. Permits and licenses required under 43 U.S.C. s. 717 for construction and operation of interstate gas pipelines and storage facilities.

8. Permits required under 15 U.S.C. s. 717, as amended, for construction and operation of facilities needed to import and export natural gas.

9. Permits and licenses required for the siting and construction of any new electrical power plants as defined in s. 403.503(7), as amended.

10. Permits and licenses required for drilling and mining on public lands.

11. Permits for areas leased under the OCS Lands Act, as amended, including leases and approvals under 43 U.S.C. s. 1331, as amended, of exploration, development, and production plans.

12. Permits for pipeline rights of way for oil and gas transmissions.

13. Permits and licenses required for deepwater ports under 33 U.S.C. s. 1503, as amended.

(4) The department shall by rule adopt procedures for the expeditious handling of emergency repairs to existing facilities for which consistency review is required pursuant to subsections (1), (2), and (3).

(5) In any coastal management program submitted to the appropriate federal agency for its approval pursuant to this act, the department shall specifically waive its right to determine the consistency with the coastal management program of all federally licensed or permitted activities not specifically listed in subsection (3).

(6) Agencies shall not review for federal consistency purposes an application for a federally licensed or permitted activity if the activity is vested, exempted, or excepted under its own regulatory authority.

(7) The department shall review the items listed in subsection (3) to determine if in certain circumstances such items would constitute minor permit activities. If the department determines that the list contains minor permit activities, it may by rule establish a program of general concurrence pursuant to federal regulation which shall allow similar minor activities, in the same geographic area, to proceed without prior department review for federal consistency.

(8) This section shall not apply to the review of federally licensed or permitted activities for which permit applications are filed with the appropriate federal agency prior to approval of the state coastal management program by the appropriate federal agency pursuant to 16 U.S.C. ss. 1451 et seq.

History.—s. 9, ch. 78-287.

380.24 Local government participation.—Units of local government abutting the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the state where marine species of vegetation listed by rule pursuant to s. 403.817 constitute the dominant plant community, shall develop a coastal zone protection element pursuant to s. 163.3177. Such units of local government shall be eligible to receive technical assistance from the state in preparing coastal zone protection elements and shall be the only units of local government eligible to apply to the department for available financial assistance. Local government participation in the coastal management program authorized by this act shall be voluntary.

History.—s. 9, ch. 78-287.

380.25 Previous coastal zone atlases rejected.—The legislative draft of the coastal management program submitted to the Legislature by the department dated March 1, 1978, and the previously prepared coastal zone atlases are expressly rejected as the state's coastal management program. The department shall not divide areas of the state into vital, conservation, and development areas.

History.—s. 10, ch. 78-287.

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CHAPTER 388

MOSQUITO CONTROL

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388.011 Definitions.—As used in this act:

(1) "County" means a political subdivision of the state administered by a board of county commissioners.

(2) "District" means any mosquito control district established in this state by law for the express purpose of controlling arthropods within boundaries of said districts.

(3) "Board of commissioners" means the governing body of any mosquito control district, and may include boards of county commissioners when context so indicates.

(4) "Arthropod" means arthropods of public health importance, including all mosquitoes, midges, sand flies, dog flies, yellow flies, and house flies.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 146, ch. 74-377; s. 156, ch. 77-147.

388.021 Creation of mosquito control districts.—

(1) The abatement or suppression of mosquitoes and other arthropods, whether disease-bearing or merely pestiferous, within any or all counties of this state, is advisable and necessary for the maintenance and betterment of the comfort, health, welfare, and prosperity of the people thereof and is found and declared to be for public purposes. All depressions, lagoons, marshes, ponds, or lakes wherein mosquitoes incubate or hatch are declared to be public nuisances, as harmful or inimical to the comfort, health, welfare, and prosperity of the inhabitants, and may be abated as hereinafter provided. Therefore, any city, town, or county, or any portion or portions thereof, whether such portion or portions include incorporated territory or portions of two or more counties in the state, may be created into a special taxing district for the control of mosquitoes and other arthropods under the provisions of this chapter.

(2) It is the legislative intent that those mosquito control districts established prior to July 1, 1980, pursuant to the petition process formerly contained in s. 388.031, may continue to operate as outlined in this chapter. However, on and after that date, no mosquito control districts may be created except pursuant to s. 125.01.

History.—s. 2, ch. 59-195; s. 9, ch. 80-281.

388.101 District boards of commissioners; term of office.—

(1) Following the creation of the district, and in the general election each 4 years thereafter, the district board of commissioners shall be elected on a nonpartisan basis by the electors of the district. The three persons receiving the highest number of votes cast in the general election shall serve 4 years and shall take office at the same time as do other county officers, on the first Tuesday after the first Monday in January next after their election, and serve on the same cycle as do other constitutional county officers.

(2) The board of county commissioners shall call and provide for said election. Members of the district board of commissioners shall be resident registered electors.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; s. 10, ch. 80-281.

388.111 District boards of commissioners; vacancies.—In the event of a vacancy due to any cause in any board of commissioners, the same shall be filled by appointment by the Governor for the unexpired term.

History.—s. 2, ch. 59-195.

388.121 District boards of commissioners; organization.—As soon as practicable after such commissioners have been elected and qualified, they shall meet and organize by the election from among their number of a chairman, a secretary and a treasurer. Two members of the board shall constitute a quorum. The vote of two members shall be necessary to transact business.

History.—s. 2, ch. 59-195.

388.131 Commissioners; surety bond.—Each commissioner, before he assumes office, shall be required to give the Governor a good and sufficient surety bond in the sum of $2,000, the cost thereof being borne by the district; conditioned on the faithful performance of the duties of his office, said bond to be approved and filed in the same manner as is that of the board of county commissioners. The failure of any person to make and file this bond within 10 days after his election shall create a vacancy on said board.

History.—s. 2, ch. 59-195.

388.141 Commissioners; compensation.—Members of the board of commissioners shall each be paid $5 a day for each day's service; provided the per diem compensation shall not exceed the sum of $300 for each commissioner during any one year, and that the per diem herein provided for shall apply for services rendered for inspection of work or other services for the district under this chapter. Said members shall be reimbursed for traveling expenses incurred in the performance of their duties as provided in s. 112.061.

History.—s. 2, ch. 59-195; s. 13, ch. 63-400.

388.151 District boards of commissioners; meetings.—All boards of commissioners shall hold regular monthly meetings, and special meetings as needed, in the courthouse or in the offices of the district. The time and place of said regular meetings shall be on file in the office of the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 59-195; ss. 19, 35, ch. 69-106; s. 157, ch. 77-147.

388.161 District boards of commissioners; powers and duties.—

(1) The board of commissioners may do any and all things necessary for the control and elimination of all species of mosquitoes and other arthropods of public health importance and the board of commissioners is specifically authorized to provide for the construction and maintenance of canals, ditches, drains, dikes, fills, and other necessary works and to install and maintain pumps, excavators, and other machinery and equipment, to use oil, larvicide paris green, or any other chemicals approved by the Department of Health and Rehabilitative Services but only in such quantities as may be necessary to control mosquito breeding and not be detrimental to fish life.

(2) The board of commissioners shall have all the powers of a body corporate, including the power to sue and be sued as a corporation in said name in any court; to contract, to adopt and use a common seal and alter same at pleasure, to purchase, hold, lease, and convey such real estate and personal property as said board may deem proper to carry out the purpose of this chapter; to acquire by gift real estate, personal property, and moneys and to employ a field director and such trained personnel, legal, clerical or otherwise, and laborers as may be required. The board of commissioners shall promulgate such rules and regulations not inconsistent with the provisions of this chapter or with other legislation which in its judgment may be necessary for the proper enforcement of this chapter provided such rules and regulations are approved by the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 59-195; ss. 19, 35, ch. 69-106; s. 158, ch. 77-147.

388.162 Direction of the program.—The program shall be administered for the board of commissioners by a qualified person. The Department of Health and Rehabilitative Services shall establish minimum qualifications for employment of a director in accordance with the responsibilities attached to the position.

History.—s. 2, ch. 63-236; ss. 19, 35, ch. 69-106; s. 159, ch. 77-147.

388.171 Power to perform work.—The board of commissioners may have any and all work performed by contract with or without advertisement, or without contract, by machinery, equipment, and labor employed directly by the board of commissioners.

History.—s. 2, ch. 59-195.

388.181 Power to do all things necessary.—The respective districts of the state are hereby fully authorized to do and perform all things necessary to carry out the intent and purposes of this law.

History.—s. 2, ch. 59-195.

388.191 Power of eminent domain.—The board of commissioners may hold, control, and acquire by gift or purchase for the use of the district, any real or personal property, and may condemn any land or easements needed for the purposes of said district. Said board may exercise the right of eminent domain and institute and maintain condemnation proceedings as provided in chapter 73.

History.—s. 2, ch. 59-195.

388.201 District budgets, hearing.—

(1) The fiscal year of districts operating under the provisions of this chapter shall be the 12-month period extending from October 1 of one year through September 30 of the following year. The governing board of the district shall before June 30 complete the preparation of a detailed work plan budget covering its proposed operations and requirements for arthropod control measures during the ensuing fiscal year, and for the purpose of determining eligibility for state aid, shall submit copies as may be required to the Department of Health and Rehabilitative Services for review and approval. The detailed work plan budget shall set forth, classified by account number,

title and program items, and by fund from which to be paid, the proposed expenditures of the district for construction, for acquisition of land, and other purposes, for the operation and maintenance of the district's works, the conduct of the district generally, to which may be added an amount to be held as a reserve.

(2) The detailed work plan 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 any and all other sources for meeting the district's requirements.

(3) On a date to be fixed by the board of commissioners, said board shall publish a notice of its intention to adopt the budget or as the same may be amended for the district for the ensuing fiscal year. The notice shall set forth the total amount of funds budgeted under each title classification of the budget, subtotals by fund under each title classification, and grand totals. The notice shall advise all owners of property subject to the district taxes that on a date, time, and place specified in the notice, opportunity will be afforded to such owners, their attorney or agent, to appear before the board, examine the work plan and detailed work plan budget if desired, and to show their objections to adoption of the proposed budget. The notice shall be published for 2 consecutive weeks, at not less than 7-day intervals, in a newspaper published in the county or counties having land in the district. The last insertion shall appear not less than 1 nor more than 2 weeks prior to the date set by the board for the hearing on the budget. If there be no such newspaper in the county, then the notice shall be posted as provided by s. 50.021.

(4) The hearing shall be by and before the governing board of the district on a date to be fixed by said board not earlier than 1 week and not later than 2 weeks after the date of the last publication of notice of intention to adopt the budget, and may be continued from day to day until terminated by the board. Promptly thereafter, the governing board shall give consideration to objections filed against adoption of the budget and in its discretion, may amend, modify, or change the tentative detailed work plan budget, and shall by September 15 following, adopt and execute on a form furnished by the Department of Health and Rehabilitative Services a certified budget for the district, which shall be the operating and fiscal guide for the district. Certified copies of this budget shall be submitted by September 15 to the department for approval.

(5) County commissioners' mosquito and arthropod control budgets shall be made and adopted as prescribed by subsections (1) and (2); summary figures shall be incorporated into the county budgets as prescribed by the Department of Banking and Finance.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 12, 19, 35, ch. 69-106; s. 160, ch. 77-147.

388.211 Change in district boundaries.—

(1) The board of commissioners of any district formed prior to July 1, 1980, may, for and on behalf of the district or the qualified electors within or without the district, request that the board of county commissioners in each county having land within the district approve a change in the boundaries of the district.

(2) If the board of county commissioners approves such change, an amendment shall be made to the order creating the district to conform with the boundary change.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; s. 3, ch. 71-323; s. 11, ch. 80-281.

388.221 Tax levy.—The board of commissioners of such district may levy upon all of the real and personal taxable property in said district a special tax not exceeding 10 mills on the dollar during each year as maintenance tax to be used solely for the purposes authorized and prescribed by this chapter. Said levy shall be made each year not later than July 1 of each year by resolution of said board or a majority thereof, duly entered upon its minutes. Certified copies of such resolution executed in the name of said board by its chairman and secretary and under its corporate seal shall be made and delivered to the board of county commissioners of the county in which such district is located, and to the Department of Revenue not later than July 1 of such year. The board of county commissioners shall order the property appraiser of said county to assess and the collector of said county to collect the amount of taxes so assessed and levied by said board of commissioners of said district upon all of the taxable real and personal property in said district at the rate of taxation adopted by said board for said year and included in said resolution, and said levy shall be included in the warrants of the property appraiser and attached to the assessment roll of taxes for said county each year. The tax collector shall collect such taxes so levied by said board in the same manner as other taxes are collected and shall pay the same within the time and in the manner prescribed by law to the treasurer of said board. The Department of Revenue shall assess and levy on all the railroad lines and railroad property and telegraph and telephone lines and telegraph and telephone property situated in said district in the amount of each such levy as in case of other state and county taxes, and collect said taxes thereon in the same manner as it is required by law to assess and collect taxes for state and county purposes, and remit the same to the treasurer of said board. All such taxes shall be held by said treasurer for the credit of said board and paid out by him as ordered by said board.

History.—s. 2, ch. 59-195; ss. 21, 35, ch. 69-106; s. 1, ch. 77-102.

388.231 Restrictions on use, loan or rental of equipment; charges.—

(1) Equipment purchased for use in control of mosquitoes and other arthropods and paid for with funds budgeted for arthropod control shall not be used for any private purpose. No county or district shall lend or rent equipment so purchased to any other department within the county, or to another county, district or any public agency or political subdivision of the state without the prior written approval of the Department of Health and Rehabilitative Services; nor shall it be so lent or rented without making

a use or rental charge for the use thereof. The department is authorized to establish a fair use or rental charge on equipment so purchased and may require the maintenance of reasonable and proper records in connection with the loan or rental of such equipment.

(2) Any district, county, municipality or public agency using said equipment on a use or rental basis shall send a warrant made payable to the county or district, or to such control fund of the county owning the equipment, for the full payment of such use or rent at the end of each month. All funds received by a county or district from the renting of its equipment shall be deposited promptly by the county or district in their state fund account. Upon failure of any county or district to secure prior written approval from the department before lending or renting its equipment, or upon the failure of the county or district to collect rents due for the use of its equipment at rates established by the department, and to deposit said rents promptly under state funds, the department may immediately remove the equipment and utilize it for arthropod control purposes in any other area of the state.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 161, ch. 77-147.

388.241 Board of county commissioners vested with powers and duties of board of commissioners in certain counties.—In those counties voting against the formation of a separate or special board of commissioners, all the rights, powers and duties of a board of commissioners as conferred in this chapter shall be vested in the board of county commissioners of said county.

History.—s. 2, ch. 59-195.

388.251 Delegation of authority to county health department.—The board of county commissioners may authorize the county health department to administer and direct arthropod control in the county provided by this chapter, upon the following conditions:

(1) The county health department shall keep the books and make all reports required by this chapter.

(2) All purchases, whether by bid or otherwise, shall be made in accordance with the procedure followed by the board of county commissioners in making other purchases.

(3) The county health department shall submit to the board of county commissioners, with supporting vouchers and invoices, monthly itemized statements of expenses incurred in carrying out the control program in the county.

History.—s. 2, ch. 59-195.

388.261 State aid to districts; limitation on type of control; amount.—

(1) Every county or district budgeting local funds, derived either by special tax levy or funds appropriated or otherwise made available for the control of mosquitoes and other arthropods under a plan submitted by the county or district and upon approval by the Department of Health and Rehabilitative Services, shall be eligible to receive state funds, supplies, services, and equipment on a dollar for dollar matching basis up to but not exceeding $15,000 for any one county for any one year. These funds may be expended for any and all types of control measures approved by the department.

(2) In addition, every county or district budgeting local funds to be used exclusively for the control of mosquitoes and other arthropods under a plan submitted by the county or district and approved by the department, shall be eligible to receive state funds and supplies, services and equipment for permanent control measures up to but not exceeding 75 percent of the amount of local funds budgeted for such control. Should state funds appropriated by the Legislature be insufficient to grant each county or district 75 percent of the amount budgeted in local funds, the department shall prorate said state funds based on the amount of matchable local funds budgeted for expenditure by each county or district.

(3) Every county shall be limited to receive a total of $150,000 of state funds, exclusive of state funds brought forward, during any one year.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 162, ch. 77-147.

388.271 Prerequisites to participation.—

(1) Each county or district eligible to participate hereunder may begin participation on October 1 of any year by filing with the Department of Health and Rehabilitative Services not later than July 1 a work plan and detailed work plan budget providing for the control of mosquitoes or other arthropods. Following approval of the plan and budget by the Department of Health and Rehabilitative Services, two copies of the county's or district's certified budget based on the approved work plan and detailed work plan budget shall be submitted to the Department of Health and Rehabilitative Services not later than September 15 following. State funds, supplies, and services shall be made available to such county or district by and through the Department of Health and Rehabilitative Services immediately upon release of funds by the Executive Office of the Governor.

(2) All purchases of supplies, materials and equipment by counties or districts shall be made in accordance with the laws governing purchases by boards of county commissioners, except that districts with special laws relative to competitive bidding shall make purchases in accordance therewith.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 2, 3, ch. 67-371; ss. 19, 31, 35, ch. 69-106; s. 163, ch. 77-147; s. 130, ch. 79-190.

388.281 Use of state matching funds.—

(1) All funds, supplies and services released to counties and districts hereunder shall be used in accordance with the detailed work plan and certified budget approved by both the Department of Health and Rehabilitative Services and the county or district. The plan and budget may be amended at any time upon prior approval of the department.

(2) All funds, supplies and services released on the 75-percent matching basis shall be used exclusively for permanent eliminative measures, unless otherwise approved by the department. These measures include sanitary landfills, drainage, diking, filling of mosquito and other arthropod breeding areas, and the purchase, maintenance, and operation of all types of equipment including trucks, dredges, drag-

lines, bulldozers, or any other type of machinery and materials utilized in ditching, ditch lining, ditch construction, diking, filling, hiring personnel, rental of equipment, and payment for contract work awarded to the lowest responsible bidder.

(3) Should a control problem exist in a county or district where it would not be economically sound or feasible to carry on permanent control work, a county or district may be authorized by the department to use 75-percent matching funds for temporary control measures.

(4) In any county or district where the arthropod problem has been eliminated, or reduced to such an extent that it does not constitute a health, comfort, or economic problem as determined by the department, the maximum amount of state funds available under this chapter shall be reduced to the amount necessary to meet actual need.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 164, ch. 77-147.

388.291 Eliminative control measures; supervision by Department of Health and Rehabilitative Services.—

(1) Any county or district may perform permanent eliminative control measures in conformity with good engineering practices in any area, provided the Department of Health and Rehabilitative Services cooperating with the county or district has approved the operating or construction plan, and it has been determined that the area or areas to be controlled would produce mosquitoes or other arthropods in significant numbers to constitute a health or comfort problem.

(2) The county or district shall manage the detailed business affairs and supervise said work, and the department shall advise the districts as to the best and most effective measures to be used in bringing about better temporary control and the permanent elimination of breeding conditions. The department may at its discretion discontinue any state aid provided hereunder in the event it finds the jointly agreed upon program is not being followed, or is not efficiently and effectively administered.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 165, ch. 77-147.

388.301 Payment of state funds; supplies and services.—State funds shall be payable quarterly, in accordance with the rules and regulations of the Department of Health and Rehabilitative Services, upon requisition by the department to the Comptroller. The department is authorized to furnish insecticides, chemicals, materials, equipment, vehicles, and personnel in lieu of state funds where mass purchasing may save funds for the state, or where it would be more practical and economical to utilize equipment, supplies, and services between two or more counties or districts.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 166, ch. 77-147.

388.311 Carry over of state funds and local funds.—State and local funds budgeted for the control of mosquitoes and other arthropods shall be carried over at the end of the county or district's fiscal year, and rebudgeted for such control measures the following fiscal year.

History.—s. 2, ch. 59-195.

388.321 Equipment to become property of the county or district.—All equipment purchased under this chapter with state funds made available directly to the county or district shall become the property of the county or district unless otherwise provided, and may be traded in on other equipment, or sold, when no longer needed by the county or district.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236.

388.322 Record and inventory of certain property.—A record and inventory of certain property owned by the district shall be maintained in accordance with s. 274.02.

History.—s. 2, ch. 63-236.

388.323 Disposal of surplus property.—Surplus property shall be disposed of according to the provisions set forth in s. 274.05 with the following exceptions:

(1) Serviceable equipment no longer needed by a county or district shall first be offered to any or all other counties or districts engaged in arthropod control at a price established by the board of commissioners owning the equipment. If no acceptable offer is received within a reasonable time, the equipment shall be offered to such other governmental units as defined in s. 274.05.

(2) The alternative procedure for disposal of surplus property, as prescribed in s. 274.06, shall be followed if it has been determined no other county, district, or governmental unit has need for the equipment.

(3) All proceeds from the sale of any real or tangible personal property owned by the county or district shall be deposited in the county's or district's state fund account unless otherwise specifically designated by the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 63-236; ss. 19, 35, ch. 69-106; s. 167, ch. 77-147.

388.331 Audit.—All counties and districts carrying out programs for the control of mosquitoes and other arthropods involving the expenditure of state funds shall set up and maintain books and records under a method approved by the Auditor General and be subject to audit by same.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; s. 8, ch. 69-82.

388.341 Reports of expenditures and accomplishments.—Each county and district participating under the provisions of this chapter shall within 30 days after the end of each month submit to the Department of Health and Rehabilitative Services a monthly report for the preceding month of expenditures from all funds for arthropod control, and such reports of activities and accomplishments as may be required by the department.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 168, ch. 77-147.

388.351 Transfer of equipment, personnel, and supplies during an emergency.—The Department of Health and Rehabilitative Services, upon notifying a county or district and obtaining its approval, is authorized to transfer equipment, materials, and personnel from one district to another in the event of an emergency brought about by an arthropod-borne epidemic or other disaster requiring emergency control.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 169, ch. 77-147.

388.361 Rules and regulations.—The Department of Health and Rehabilitative Services is hereby authorized and empowered to adopt rules and regulations necessary and appropriate to enable it to perform the work and responsibilities hereunder.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 170, ch. 77-147.

388.381 Cooperation by counties and district.—Any county or district carrying on an arthropod control program may cooperate with another county, district, or municipality in carrying out a program for the control of mosquitoes and other arthropods, by agreement as to the program and reimbursement thereof, when approved by the Department of Health and Rehabilitative Services.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; ss. 19, 35, ch. 69-106; s. 171, ch. 77-147.

388.391 Control measures in municipalities and portions of counties located outside boundaries of districts.—Any district whose operation is limited to a portion of the county in which it is located may perform any control measures authorized by this chapter in any municipality located in the same county or in any portions of the same county, where there is no established district, when requested to do so by the municipality or county, pursuant to s. 388.381.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236.

388.401 Penalty for damage to property or operations.—Whoever shall willfully damage any of the property of any county or district created under this or other chapters, or any works constructed, maintained, or controlled by such county or district, or who shall obstruct or cause to be obstructed any of the operations of such county or district, or who shall knowingly or willfully violate any provisions of this chapter or any rule or regulation promulgated by any board of commissioners of any county or district shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 2, ch. 59-195; s. 1, ch. 63-236; s. 341, ch. 71-136.

388.411 Public lands, arthropod control.—

(1) It is declared to be in the best interests of the state that all public lands owned by the state, or any county, district, city, or other political unit, shall be subject to mosquito, sand fly, and other arthropod controls of the Department of Health and Rehabilitative Services not inconsistent with the provisions of subsection (4) in order to provide as nearly as possible a system of uniform and complete control.

(2) Any lands in the state hereafter granted by the state to a state or federal agency, county, district, or other political unit, shall contain a reservation or condition providing that arthropod control operations shall be conducted thereon, if deemed necessary, by the department except where the Governor shall deem that the same is unnecessary.

(3) As to lands not held by the United States, or any federal agency in the state, the department is authorized to enter negotiations for the purpose of working out agreements permitting the department, or any local antimosquito, sand fly, arthropod control unit cooperating with the department, to carry on arthropod control operations on any of said lands.

(4) When any lands or water areas subject to this act lie within an area where the department determines that mosquitoes, sand flies, or other arthropods of public health importance which may cause sickness or discomfort to the surrounding human population, may be bred, said areas shall be subject to control operations. The involved agencies shall mutually agree on the control procedure or plan and the methods employed shall be the minimum necessary and economically feasible and imposing the least hazard to the fish and wildlife being protected or managed in said areas. Such agreement shall be between the state or federal agencies managing the areas, the department, and the local mosquito control agency in whose jurisdiction these lands or waters may lie.

History.—ss. 1-4, ch. 61-382; ss. 19, 35, ch. 69-106; s. 172, ch. 77-147.

388.42 Laboratory west of St. Marks River; testing insecticides for arthropods control.—

(1) The Department of Health and Rehabilitative Services is hereby authorized to construct, maintain, and operate a laboratory at a suitable location on the Gulf Coast, west of the St. Marks River, for the purpose of testing insecticide resistance in dog flies, yellow flies, and other arthropods, and to carry out other experimental work with chemicals, insecticides, and other substances and procedures, for testing effective methods for the control of such flies and other arthropods.

(2) Any funds which may become available from the Federal Government, from the board of county commissioners of the county in which the laboratory is to be established, or from any other sources, may be used according to law in constructing, equipping and operating of said buildings.

History.—ss. 1, 2, ch. 63-443; ss. 19, 35, ch. 69-106; s. 173, ch. 77-173.

388.43 Florida Medical Entomology Laboratory.—

(1) The Florida Medical Entomology Laboratory, located in Vero Beach, shall be a research and training center for the state under the supervision of the Board of Regents. The laboratory shall be an operational unit of the University of Florida and an integral part of the Institute of Food and Agricultural Sciences.

(2) The Florida Medical Entomology Laboratory shall perform basic and applied research in the biology and control of biting insects and other arthropods of importance as transmitters of disease or as pest annoyances, with special attention to the needs of the various mosquito-control organizations, districts,

counties, and municipalities of the state. On a quarterly basis, the laboratory shall provide the Department of Health and Rehabilitative Services with such information as the department shall require to assist it in the performance of its duties with respect to mosquito control under this chapter. The laboratory shall also be a center for the training of students and personnel in the entomological aspects of public health, veterinary science, sanitation, mosquito control, drainage and irrigation design, wetlands management, and other areas of service requiring knowledge of medical entomology. Research and training may extend to international programs of the university under appropriate contract and grant arrangements with international, foreign, and federal agencies.

History.—s. 1, ch. 79-253; s. 242, ch. 81-259.

CHAPTER 403

ENVIRONMENTAL CONTROL

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PART II ELECTRICAL POWER PLANT SITING (ss. 403.501-403.539)

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PART I

POLLUTION CONTROL

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403.011 Short title.—This act shall be known and cited as the "Florida Air and Water Pollution Control Act."

History.—s. 2, ch. 67-436.

403.021 Legislative declaration; public policy.—

(1) The pollution of the air and waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and other aquatic life, and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air and water.

(2) It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses, and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water.

(3) It is declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

(4) It is declared that local and regional air and water pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air and water pollution prevention, abatement and control for the securing and maintenance of appropriate levels of air and water quality.

(5) It is hereby declared that the prevention, abatement, and control of the pollution of the air and waters of this state are affected with a public interest, and the provisions of this act are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(6) The Legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air or water resources in the state and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to insure conservation of natural resources, to insure a continued safe environment, to insure purity of air and water, to insure domestic water supplies, to insure protection and preservation of the public health, safety, welfare, and economic well-being, to insure and provide for recreational and wildlife needs as the population increases and the economy expands, and to insure a continuing growth of the economy and industrial development.

(7) The Legislature further finds and declares that:

(a) Compliance with this law will require capital outlays of hundreds of millions of dollars for the installation of machinery, equipment, and facilities for the treatment of industrial wastes which are not productive assets and increased operating expenses to owners without any financial return and should be separately classified for assessment purposes.

(b) Industry should be encouraged to install new machinery, equipment and facilities as technology in environmental matters advances, thereby improving the quality of the air and waters of the state and benefiting the citizens of the state without pecuniary benefit to the owners of industries, and the Legislature should prescribe methods whereby just valuation may be secured to such owners and exemptions from certain excise taxes should be offered with respect to such installations.

(c) Facilities as herein defined should be classified separately from other real and personal property of any manufacturing or processing plant or installation, as such facilities contribute only to general welfare and health and are assets producing no profit return to owners.

(d) In existing manufacturing or processing plants it is more difficult to obtain satisfactory results in treating industrial wastes than in new plants being now planned or constructed and that with respect to existing plants in many instances it will be necessary to demolish and remove substantial portions thereof and replace the same with new and more modern equipment in order to more effectively treat, eliminate or reduce the objectionable characteristics of any industrial wastes and that such replacements should be classified and assessed differently from replacements made in the ordinary course of business.

(8) The Legislature further finds and declares that the public health, welfare, and safety may be affected by disease-carrying vectors and pests. The department shall assist all governmental units charged with the control of such vectors and pests. Furthermore, in reviewing applications for permits, the department shall consider the total well-being of the public and shall not consider solely the ambient pollution standards when exercising its powers, if there may be danger of a public health hazard.

(9)(a) The Legislature finds and declares that it is essential to preserve and maintain authorized water depth in the existing navigation channels, port harbors, turning basins, and harbor berths of this state in order to provide for the continued safe navigation of deepwater shipping commerce. The department shall recognize that maintenance of authorized channel depths is an ongoing, continuous, beneficial, and necessary activity; and it shall develop a regulatory process which shall enable the ports of this state to conduct such activities in an environmentally sound, expeditious, and efficient manner.

(b) The provisions of paragraph (a) shall apply

only to the port waters, spoil disposal sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, and Pensacola.

History.—s. 1, ch. 67-436; s. 1, ch. 78-98; ss. 1, 3, ch. 81-228.

403.071 Definitions.—*In construing* this chapter, or rules and regulations adopted pursuant thereto, the words, phrases or terms, unless the context otherwise indicates, shall have the following meanings:

(1) "Department" is the Department of Environmental Regulation.

(2) "Pollution" is the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(3) "Waters" shall include, but not be limited to rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface or underground. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural.

(4) "Contaminant" is any substance which is harmful to plant, animal or human life.

(5) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state.

(6) "Treatment works" and "disposal systems" means any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

(7) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(8) "Installation" is any structure, equipment, facility, or appurtenances thereto, or operation which may emit air or water contaminants in quantities prohibited by rules of the department.

(9) "Plant" is any unit operation, complex, area, or multiple of unit operations that produce, process, or cause to be processed any materials, the processing of which can, or may, cause air or water pollution.

(10) "Source" is any and all points of origin of the item defined in subsection (4), whether privately or publicly owned or operated.

(11) "Person" means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

(12) "Effluent limitations" means any restriction established by the department on quantities, rates, or concentrations of chemical, physical, biological, or other constituents which are discharged from sources into waters of the state.

History.—s. 4, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 71-36; s. 2, ch. 71-137; s. 153, ch. 71-377; s. 1, ch. 73-46; s. 112, ch. 73-333; ss. 1, 2, ch. 74-133; s. 1, ch. 77-174; s. 72, ch. 79-65.

403.061 Meetings; hearings and procedure.—

(1) The department shall cause a transcript of the proceedings at all meetings to be made.

(2)(a) Any department planning, design, construction, modification, or operating standards, criteria, and requirements for treatment works, disposal systems, and sewerage systems for wastes from any source shall be promulgated as a rule or regulation.

(b) The department shall not withhold the issuance of a permit to consider matters not addressed by the permit application or to consider standards, criteria, and requirements not adopted as required by paragraph (a).

History.—s. 4, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-84; s. 2, ch. 71-137; s. 1, ch. 71-138; s. 154, ch. 71-377; s. 1, ch. 72-223; s. 1, ch. 74-308; s. 14, ch. 78-95; s. 58, ch. 83-218.

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules and regulations adopted and promulgated by it, and for this purpose to:

(1) Approve and promulgate current and long-range plans developed to provide for air and water quality control and pollution abatement.

(2) Hire only such employees as may be necessary to effectuate the responsibilities of the department.

(3) Utilize the facilities and personnel of other state agencies, including the Department of Health and Rehabilitative Services, and delegate to any such agency any duties and functions as the department may deem necessary to carry out the purposes of this act.

(4) Secure necessary scientific, technical, research, administrative, and operational services by interagency agreement, contract, or otherwise. All state agencies, upon direction of the department, shall make these services and facilities available.

(5) Accept state appropriations, loans and grants from the Federal Government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes of this act.

(6) Exercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.

(7) Adopt, modify, and repeal rules and regulations to carry out the intent and purposes of this act. Any rules or regulations adopted pursuant to this act shall be consistent with the provisions of federal law, if any, relating to control of emissions from motor vehicles, effluent limitations, pretreatment requirements, or standards of performance. Rules adopted

pursuant to this act shall not require dischargers of waste into waters of the state to improve natural background conditions. The department may not adopt standards more stringent than federal regulations, except as provided in s. 403.804.

(8) Issue such orders as may be necessary to effectuate the control of air and water pollution and enforce the same by all appropriate administrative and judicial proceedings.

(9) Adopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state, and from time to time review and modify such program as necessary.

(10) Develop a comprehensive program for the prevention, abatement, and control of the pollution of the waters of the state. In order to effect this purpose, a grouping of the waters into classes may be made in accordance with the present and future most beneficial uses. Such classifications may from time to time be altered or modified. However, before any such classification is made, or any modifications made thereto, public hearings shall be held by the department.

(11) Establish ambient air quality and water quality standards for the state as a whole or for any part thereof, and also standards for the abatement of excessive and unnecessary noise. The department is authorized to establish reasonable zones of mixing for discharges into waters. No mixing zones for point source discharges shall be permitted in outstanding Florida waters except for:

(a) Sources which have received permits from the department prior to April 1, 1982, or the date of designation, whichever is later;

(b) Blowdown from new power plants certified pursuant to the Florida Electrical Power Plant Siting Act; and

(c) Discharges of water necessary for water management purposes which have been approved by the governing board of a water management district and, if required by law, by the secretary.

Nothing in this act shall be construed to invalidate any existing department rule relating to mixing zones. The department shall cooperate with the Department of Highway Safety and Motor Vehicles in the development of regulations required by s. 316.272(1).

(12)(a) Cause field studies to be made and samples to be taken out of the air and from the waters of the state periodically and in a logical geographic manner so as to determine the levels of air quality of the air and water quality of the waters of the state.

(b) Determine the source of the pollution whenever a study is made or a sample collected which proves to be below the air or water quality standard set for air or water.

(13) Require persons engaged in operations which may result in pollution to file reports which may contain information relating to locations, size of outlet, height of outlet, rate and period of emission and composition and concentration of effluent, and such other information as the department shall prescribe to be filed relative to pollution.

(14) Establish a permit system whereby a permit may be required for the operation, construction, or expansion of any installation that may be a source of air or water pollution and provide for the issuance and revocation of such permits and for the posting of an appropriate bond to operate.

(a) Notwithstanding any other provision of this chapter, the Department of Environmental Regulation may authorize, by rule, the Department of Transportation to perform any activity requiring a permit from the Department of Environmental Regulation covered by this chapter, upon certification by the Department of Transportation that it will meet all requirements imposed by statute, rule, or standard for environmental control and protection as such statute, rule, or standard applies to a governmental program. To this end, the Department of Environmental Regulation may accept such certification of compliance for programs of the Department of Transportation, may conduct investigations for compliance, and, if a violation is found to exist, may take all necessary enforcement action pertaining thereto, including, but not limited to, the revocation of certification. The authorization shall be by rule of the Department of Environmental Regulation, shall be limited to the maintenance, repair, or replacement of existing structures, and shall be conditioned upon compliance by the Department of Transportation with specific guidelines or requirements which are set forth in the formal acceptance and deemed necessary by the Department of Environmental Regulation to assure future compliance with this chapter and applicable department rules. Failure of the Department of Transportation to comply with any provision of the written acceptance shall constitute grounds for its revocation by the Department of Environmental Regulation.

(b) The provisions of chapter 120 shall be accorded any person when substantial interests will be affected by an activity proposed to be conducted by the Department of Transportation pursuant to its certification and the acceptance of the Department of Environmental Regulation. If a proceeding is conducted pursuant to s. 120.57, the Department of Environmental Regulation may intervene as a party. Should a hearing officer of the Division of Administrative Hearings of the Department of Administration submit a recommended order pursuant to s. 120.57, the Department of Environmental Regulation shall issue a final department order adopting, rejecting, or modifying the recommended order pursuant to such action.

(15) Consult with any person proposing to construct, install, or otherwise acquire a pollution control device or system, concerning the efficacy of such device or system, or the pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this act, rules and regulations of the department or any other provision of law.

(16) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this act.

(17) Encourage local units of government to handle pollution problems within their respective juris-

dictions on a cooperative basis, and provide technical and consultative assistance therefor.

(18) Encourage and conduct studies, investigations, and research relating to pollution and its causes, effects, prevention, abatement, and control.

(19) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and the several parts thereof, and make recommendations to appropriate public and private bodies with respect thereto.

(20) Collect and disseminate information and conduct educational and training programs relating to pollution.

(21) Advise, consult, cooperate, and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department.

(22) Adopt, modify, and repeal rules governing the specifications, construction, and maintenance of industrial reservoirs, dams, and containers which store or retain industrial wastes of a deleterious nature.

(23) Adopt rules and regulations to ensure that no detergents are sold in Florida after December 31, 1972, which are reasonably found to have a harmful or deleterious effect on human health or on the environment. Any regulations adopted pursuant to this subsection shall apply statewide. Subsequent to the promulgation of such rules and regulations, no county, municipality, or other local political subdivision shall adopt or enforce any local ordinance, special law, or local regulation governing detergents which are less stringent than state law or regulation. Regulations, ordinances, or special acts adopted by a county or municipality governing detergents shall be subject to approval by the department, except that regulations, ordinances, or special acts adopted by any county or municipality with a local pollution control program approved pursuant to s. 403.182 shall be approved as an element of the local pollution control program.

(24)(a) Establish a permit system to provide for spoil site approval, as may be requested and required by local governmental agencies as defined in s. 403.1822(3), or mosquito control districts as defined in s. 388.011(2), to facilitate these agencies in providing spoil sites for the deposit of spoil from maintenance dredging of navigation channels, port harbors, turning basins, and harbor berths, as part of a federal project, when the agency is acting as sponsor of a contemplated dredge and fill operation involving an established navigation channel, harbor, turning basin, or harbor berth. A spoil site approval granted to the agency shall be granted for a period of 10 to 25 years when such site is not inconsistent with an adopted local governmental comprehensive plan and the requirements of this chapter. The department shall periodically review each permit to determine compliance with the terms and conditions of the permit. Such review shall be conducted at least once every 10 years.

(b) This subsection shall apply only to those maintenance dredging operations permitted after July 1, 1980, where the United States Army Corps of Engineers is the prime dredge and fill agent and the local governmental agency is acting as sponsor for the operation, and shall not require the redesignation of currently approved spoil sites under such previous operations.

(25) Establish and administer a program for the restoration and preservation of bodies of water within the state. The department shall have the power to acquire lands, to cooperate with other applicable state or local agencies to enhance existing public access to such bodies of water, and to adopt all rules necessary to accomplish this purpose.

(26)(a) Develop standards and criteria for waters used for deepwater shipping which standards and criteria consider existing water quality; appropriate mixing zones and other requirements for maintenance dredging in previously constructed deepwater navigation channels, port harbors, turning basins, or harbor berths; and appropriate mixing zones for disposal of spoil material from dredging and, where necessary, develop a separate classification for such waters. Such classification, standards, and criteria shall recognize that the present dedicated use of these waters is for deepwater commercial navigation.

(b) The provisions of paragraph (a) shall apply only to the port waters, spoil disposal sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, and Pensacola.

(27) Establish rules which provide for a special category of water bodies within the state, to be referred to as "outstanding Florida waters," which water bodies shall be worthy of special protection because of their natural attributes. Nothing in this subsection shall affect any existing rules of the department.

(28) Perform any other act necessary to control and prohibit air and water pollution, and to delegate any of its responsibilities, authority, and powers, other than rulemaking powers, to any state agency now or hereinafter established.

(29) Adopt by rule special criteria to protect Class II shellfish harvesting waters. Rules previously adopted by the department in s. 17-4.28(8)(a), Florida Administrative Code, are hereby ratified and determined to be a valid exercise of delegated legislative authority and shall remain in effect unless amended by the Environmental Regulation Commission.

History.—s. 7, ch. 67-436; ss. 19, 20, 35, ch. 69-106; s. 1, ch. 71-35; s. 2, ch. 71-36; s. 3, ch. 72-29; s. 1, ch. 72-53; s. 1(1), ch. 73-333; s. 3, ch. 74-133; s. 1, ch. 77-21; s. 137, ch. 77-104; s. 266, ch. 77-147; s. 2, ch. 77-308; s. 14, ch. 78-95; s. 2, ch. 78-437; s. 73, ch. 79-65; s. 1, ch. 79-130; s. 96, ch. 79-164; s. 160, ch. 79-400; s. 1, ch. 80-56; ss. 2, 5, ch. 81-228; s. 5, ch. 82-27; s. 1, ch. 82-79; s. 2, ch. 82-90; s. 66, ch. 83-310.

cf.—ss. 403.501-403.517 Florida Electrical Power Plant Siting Act.

403.0615 Water resources restoration and preservation.—

(1) This section may be cited as the "Water Resources Restoration and Preservation Act."

(2) The Department of Environmental Regulation shall establish a program to assist in the restoration and preservation of bodies of water and to enhance existing public access when deemed necessary for the enhancement of the restoration effort. This program shall be funded from the General Revenue Fund, from funds available from the Pollution Recovery Fund, and from available federal moneys.

(3) The department shall adopt, by rule, criteria for the allocation of restoration and preservation funds. Such criteria shall include, but not be limited to, the following:

(a) The degree of water quality degradation;

(b) The degree to which sources of pollution which have contributed to the need for restoration or preservation have been abated;

(c) The public uses which can be made of the subject waters;

(d) The ecological value of the subject waters in relation to other waters proposed for restoration and preservation;

(e) The implementation by local government of regulatory or management programs to prevent further and subsequent degradation of the subject waters; and

(f) The commitment of local government resources to assist in the proposed restoration and preservation.

(4) There is hereby created the Water Resources Restoration and Preservation Trust Fund for the deposit and disbursement of funds available from the Pollution Recovery Fund and from federal moneys in accordance with the provisions of this act.

(5) The provisions of this act are for the benefit of the public and shall be liberally construed to accomplish the purposes set forth in this act.

History.—ss. 1, 4, 5, ch. 77-369; s. 2, ch. 79-130.

403.062 Pollution control; underground, surface, and coastal waters.—The department and its agents shall have general control and supervision over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state insofar as their pollution may affect the public health or impair the interest of the public or persons lawfully using them.

History.—s. 2, ch. 29934, 1955; ss. 26, 35, ch. 69-106.

Note.—Formerly s. 381.63; s. 381.251.

403.063 Ground water quality monitoring.—

(1) The department, in cooperation with other state and federal agencies, water management districts, and local governments, shall establish a ground water quality monitoring network designed to detect or predict contamination of the ground water resources of the state.

(2) The department may by rule determine the priority of sites to be monitored within such ground water quality monitoring network, based upon the following criteria:

(a) The degree of danger to the public health caused or potentially caused by contamination.

(b) The susceptibility of each site to contamination.

(3) This information shall be made available to state and federal agencies and local governments to facilitate their regulatory and land use planning decisions.

(4) To the greatest extent practicable, the actual sampling and testing of ground water pursuant to the provisions of this section may be conducted by local and regional agencies.

History.—s. 3, ch. 81-310.

403.081 Performance by other state agencies.—All state agencies, including the Department of Health and Rehabilitative Services, shall be available to the Department of Environmental Regulation to perform, at its direction, the duties required of the Department of Environmental Regulation under this act.

History.—s. 9, ch. 67-436; ss. 19, 26, 35, ch. 69-106; s. 269, ch. 77-147.

403.085 Sanitary sewage disposal units; advanced and secondary waste treatment; industrial waste, ocean outfall, inland outfall, or disposal well waste treatment.—

(1) Neither the Department of Health and Rehabilitative Services nor any other state agency, county, special district, or municipality shall approve construction of any ocean outfall or disposal well for sanitary sewage disposal which does not provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Regulation.

(2) Sanitary sewage disposal treatment plants which discharge effluent through ocean outfalls or disposal wells on July 1, 1970, shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of [Environmental Regulation] by January 3, 1974. Failure to conform by said date shall be punishable by a fine of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(3) Neither the Department of Health and Rehabilitative Services nor any other state agency, county, special district, or municipality shall approve construction of any ocean outfall, inland outfall, or disposal well for the discharge of industrial waste of any kind which does not provide for secondary waste treatment or such other treatment as is deemed necessary and ordered by the Department of Environmental Regulation.

(4) Industrial plants or facilities which discharge industrial waste of any kind through ocean outfalls, inland outfalls, or disposal wells on July 1, 1973, shall provide for secondary waste treatment or such other waste treatment as deemed necessary and ordered by January 1, 1973, by the Department of [Environmental Regulation]. Failure to conform by said date shall be punishable as provided in s. 403.161(2).

History.—ss. 1, 2, ch. 70-82; s. 2, ch. 71-137; s. 1, ch. 71-274; s. 270, ch. 77-147; s. 74, ch. 79-65.

*Note.—Bracketed words substituted by the editors for words "Pollution Control." See s. 8, ch. 75-22, which transferred the Department of Pollution Control to the Department of Environmental Regulation.

403.086 Sewage disposal facilities; advanced and secondary waste treatment.—

(1)(a) Neither the Department of Health and Rehabilitative Services nor any other state agency, county, special district, or municipality shall approve construction of any facilities for sanitary sewage dis-

posal which do not provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Regulation.

(b) No facilities for sanitary sewage disposal constructed after June 14, 1978, shall dispose of any wastes by deep well injection without providing for secondary waste treatment and, in addition thereto, advanced waste treatment deemed necessary by the Department of Environmental Regulation to protect adequately the beneficial use of the receiving waters.

(2) Any facilities for sanitary sewage disposal existing on July 1, 1971, shall provide for secondary waste treatment by January 1, 1973, and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the former Department of Pollution Control or its successor, the Department of Environmental Regulation. Failure to conform by said date shall be punishable by a civil penalty of $500 for each 24-hour day or fraction thereof that such failure is allowed to continue thereafter.

(3) This section shall not be construed to prohibit or regulate septic tanks or other means of individual waste disposal which are otherwise subject to state regulation.

History.—s. 1, 2, 3, ch. 71-259; s. 2, ch. 71-137; s. 1, ch. 72-58; s. 271, ch. 73-147; s. 1, ch. 78-298; s. 75, ch. 79-65; s. 1, ch. 80-371; s. 1, ch. 81-246; s. 262, ch. 82-258.

403.087 Permits; general issuance; denial; revocation; prohibition; penalty.—

(1) No stationary installation which will reasonably be expected to be a source of air or water pollution shall be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department, unless exempted by department rule. In no event shall a permit for a water pollution source be valid for more than 5 years. However, upon expiration, a new permit may be issued by the department in accordance with this act and the rules and regulations of the department.

(2) The department shall adopt, amend, or repeal rules, regulations, and standards for the issuance, denial, and revocation of permits.

(3) The department shall issue permits on such conditions as are necessary to effect the intent and purposes of this section.

(4) The department shall issue permits to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution only when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules promulgated by the department, except as provided in s. 403.088, and which will comply with the prohibitions in 40 C.F.R. 124.41.

(5)(a) The department may require an application fee in an amount sufficient to cover the costs of reviewing and acting upon any application and the costs of surveillance and other field services associated with any permit issued; but the amount in no case shall exceed $100, except that:

1. The permit fee for any of the following permits shall not exceed $500:

a. Air pollution, operation permit.
b. Industrial waste, construction permit.
c. Domestic waste, temporary operation permit.
d. Industrial waste, temporary operation permit.
e. Stormwater, temporary operation permit.

2. The permit fee for any of the following permits shall not exceed $1,000:

a. Air pollution, construction permit.
b. Dredge and fill, standard form permit.
c. Deep well injection, construction permit.
d. Deep well injection, operation permit.
e. Hazardous waste permit.

(b) The fee schedule shall be adopted by rule based on a sliding scale relating to the size or type of installation which is proposed by the applicant. If the department requires by rule or by permit condition that a permit be renewed more frequently than once every 5 years, the permit fee shall be prorated based upon the permit fee schedule in effect at the time of permit renewal.

(6) A permit issued pursuant to this section shall not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder:

(a) Has submitted false or inaccurate information in his application;

(b) Has violated law, department orders, rules, or regulations, or permit conditions;

(c) Has failed to submit operational reports or other information required by department rule or regulation; or

(d) Has refused lawful inspection under s. 403.091.

(7) The department shall not issue a permit to any person for the purpose of engaging in, or attempting to engage in, any activity relating to the extraction of solid minerals not exempt pursuant to chapter 211 within any state or national park or state or national forest when the activity will degrade the ambient quality of the waters of the state or the ambient air within those areas. In the event the Federal Government prohibits the mining or leasing of solid minerals on federal park or forest lands, then, and to the extent of such prohibition, this act shall not apply to those federal lands.

(8) A violation of this section is punishable as provided in this chapter.

History.—s. 1, ch. 71-203; s. 4, ch. 74-132; s. 14, ch. 78-95; s. 14, ch. 82-27; s. 1, ch. 82-54; s. 1, ch. 82-122; s. 59, ch. 83-218.

403.0871 Florida Permit Fee Trust Fund.—There is established within the Department of Environmental Regulation a nonlapsing trust fund to be known as the "Florida Permit Fee Trust Fund." All funds received from applicants for permits pursuant to chapter 253 and s. 403.087(5) shall be deposited in the Florida Permit Fee Trust Fund and shall be used by the department with the advice and consent of the Legislature to supplement appropriations and other funds received by the department for the administration of its responsibilities under this chapter and chapter 253. In no case shall funds from the Florida Permit Fee Trust Fund be used for salary increases without the approval of the Legislature.

History.—s. 2, ch. 82-122.

403.0875 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. 7, ch. 79-161.

403.0876 Permits; processing.—Within 30 days after receipt of an application for a permit under this chapter, the department shall review the application and shall request submittal of all additional information the department is permitted by law to require. If the applicant believes any departmental request for additional information is not authorized by law or departmental rule, the applicant may request a hearing pursuant to s. 120.57. Within 30 days after receipt of such additional information, the department 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 for such additional information is not authorized by law or departmental rule, the department, at the applicant's request, shall proceed to process the permit application. Permits 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. 2, ch. 80-68.

403.088 Water pollution operation permits; temporary permits; conditions.—

(1) No person, without written authorization of the department, shall discharge into waters within the state any waste which, by itself or in combination with the wastes of other sources, reduces the quality of the receiving waters below the classification established for them. However, this section shall not be deemed to prohibit the application of pesticides to waters in the state for the control of insects, aquatic weeds, or algae, provided the application is performed pursuant to a program approved by the Department of Health and Rehabilitative Services, in the case of insect control, or the Department of Natural Resources, in the case of aquatic weed or algae control. The Department of Environmental Regulation is directed to enter into interagency agreements to establish the procedures for program approval. Such agreements shall provide for public health, welfare, and safety, as well as environmental factors. Approved programs must provide that only chemicals approved for the particular use by the Federal Environmental Protection Agency or by the Department of Agriculture and Consumer Services may be employed and that they be applied in accordance with registered label instructions, state standards for such application, and the provisions of the Florida Pesticide Law, chapter 487.

(2)(a) Any person intending to discharge wastes into the waters of the state shall make application to the department for an operation permit. Application shall be made on a form prescribed by the department and shall contain such information as the department requires.

(b) If the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them, it shall deny the application and refuse to issue a permit. If the department finds that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them, it may issue an operation permit if it finds that such degradation is necessary or desirable under federal standards and under circumstances which are clearly in the public interest.

(c) A permit shall:

1. Specify the manner, nature, volume, and frequency of the discharge permitted;

2. Require proper operation and maintenance of any pollution abatement facility by qualified personnel in accordance with standards established by the department;

3. Contain such additional conditions, requirements, and restrictions as the department deems necessary to preserve and protect the quality of the receiving waters; and

4. Be valid for the period of time specified therein.

(d) An operation permit may be renewed upon application to the department. No renewal permit shall be issued if the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them.

(3)(a) A person who does not qualify for an operation permit or has been denied an operation permit under paragraph (b) of subsection (2) may apply to the department for a temporary operation permit. Application shall be made on a form prescribed by the department and shall contain such information as the department may require. The department may require such person to submit any additional information reasonably necessary for proper evaluation.

(b) The department shall give notice to people resident in the drainage area of the receiving waters for the proposed discharge concerning the period during which they may present objections to the proposed discharge.

(c) After consideration of the application, any additional information furnished, and all written objections submitted, the department shall grant or deny a temporary operation permit. No temporary permit shall be granted by the department unless it affirmatively finds:

1. The proposed discharge does not qualify for an operation permit;

2. The applicant is constructing, installing, or placing into operation, or has submitted plans and reasonable schedules for constructing, installing or placing into operation, an approved pollution abatement facility or alternate waste disposal system, or that the applicant has a waste for which no feasible and acceptable method of treatment or disposal is known or recognized but is making a bona fide effort

through research and other means to discover and implement such a method;
3. The applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternate waste disposal system;
4. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;
5. The denial of a temporary operation permit would work an extreme hardship upon the applicant;
6. The granting of a temporary operation permit will be in the public interest; or
7. The discharge will not be unreasonably destructive to the quality of the receiving waters.
(d) A temporary operation permit issued shall:
1. Specify the manner, nature, volume, and frequency of the discharge permitted;
2. Require the proper operation and maintenance of any interim or temporary pollution abatement facility or system required by the department as a condition of the permit;
3. Require the permitholder to maintain such monitoring equipment and make and file such records and reports as the department deems necessary to insure compliance with the terms of the permit and to evaluate the effect of the discharge upon the receiving waters;
4. Be valid only for the period of time necessary for the permit holder to place into operation the facility, system, or method contemplated in his application as determined by the department; and
5. Contain other requirements and restrictions which the department deems necessary and desirable to protect the quality of the receiving waters and promote the public interest.
(4)(a) The provisions of this section shall not be construed to repeal or restrict any other provisions of this chapter, but shall be cumulative thereto.
(b) This section shall not be construed to exempt any permittee from the pollution control requirements of any local air and water pollution control rule, regulation, ordinance, or code, or to authorize or allow any violation thereof.

History.—ss. 2, 1, 5, ch. 71-[illegible]; s. 1, ch. 73-[illegible]; s. 5, ch. 74-133; s. 2, ch. 76-112; s. 1, ch. 77-174; s. 14, ch. 78-95; s. 2, ch. 78-[illegible]; s. 97, ch. 79-164; s. 60, ch. 81-219.

403.091 Inspections.—Any duly authorized representative of the department may enter and inspect, at any reasonable time for the purpose of ascertaining the state of compliance with the law or rules and regulations of the department, any property, premises, or place, except a building which is used exclusively for a private residence, on or at which a hazardous waste generator, transporter, or facility or other air or water contaminant source or a resource recovery and management facility is located or is being constructed or installed. No person shall refuse immediate entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.

History.—s. 10, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 80-302; s. 6, ch. 82-27.

403.092 Package sewage treatment facilities; inspection.—The Department of Environmental Regulation shall implement a program to conduct regular and continuing inspection of package sewage treatment facilities. To the greatest extent possible consistent with the abilities and the financial resources of local governments, the inspection program shall be delegated to local governments.

History.—s. 4, ch. 83-310.

[1]403.101 Classification and reporting; regulation of operators of water purification plants and wastewater treatment plants.—
(1) The department, by rule, may classify air and water contaminant sources, which sources in its judgment may cause or contribute to air or water pollution, according to levels and types of emissions and other characteristics which relate to air or water pollution, and may require reporting for any such class or classes. Classifications made pursuant to this section may be made for application to the state as a whole or to any designated area of the state, and shall be made with special reference to physical effects on property and effects on health, economic, social, and recreational factors.
(2) Any person operating, or responsible for the operation of, air or water contaminant sources of any class for which the rules of the department require reporting shall make reports containing information as may be required concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time period or duration of emissions, and such other information as is relevant to air and water pollution and available or reasonably capable of being assembled.
(3) The department is authorized to establish qualifications for, and to examine and certify, water and wastewater treatment plant operators; to issue, deny, revoke, and suspend operator certificates pursuant to its rules and chapter 120; and to charge a fee not in excess of $15 for certification, and to charge a fee not in excess of $30 for application processing and renewal of certification. In assessing fees authorized by this subsection, the department is directed to adjust the fees as needed within the established limits to ensure that generated revenues from the certification program will equal or exceed the cost of operation. Certificate renewal shall be biennial, effective January 1, 1980. A fee not to exceed $5 may be charged for the issuance of a duplicate certificate. Such fees shall be nonrefundable.
(4) No person shall perform the duties of operator of a water or wastewater treatment plant unless he holds a current operator's certificate issued by the department. However, this section shall not apply to public lodging establishments licensed under chapter 509. No owner of a water or wastewater plant shall employ any person to perform the duties of an operator unless such person possesses a valid certificate at the required level of certification.

(5) All funds collected pursuant to this section shall be deposited in the General Revenue Fund.
(6) The department may promulgate rules and minimum standards to effectuate the provisions of this section and to ensure efficient, hygienic water purification and wastewater treatment operations in this state.
(7) For purposes of this section, "operator" means any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a drinking water purification plant or a domestic wastewater treatment plant and includes the person in charge of a shift or period of operation during any part of the day.

History.—s. 11, ch. 67-436; ss. 26, 35, ch. 69-106; s. 18, ch. 77-337; s. 161, ch. 79-400; s. 3, ch. 80-66; s. 2, ch. 81-318; ss. 1, 2, 3, ch. 82-44.
[1]Note.—Expires October 1, 1992, pursuant to s. 3, ch. 82-44, and is scheduled for review pursuant to s. 11.61 in advance of that date.

403.111 Confidential records.—Any information, other than effluent data, relating to secret processes, methods of manufacture or production which may be required, ascertained, or discovered by inspection or investigation, shall not be disclosed in public hearings and shall be kept confidential by any member, officer, or employee of the department. Provided that nothing herein shall be construed to prevent the use of such records in judicial proceedings in connection with the prosecution of violations of this act, when ordered to be produced by appropriate subpoena or by order of the court. No such subpoena or order of the court shall abridge or alter the rights or remedies of persons affected in the protection of trade secrets or secret processes, in the manner provided by law, and such persons affected may take any and all steps available by law to protect such trade secrets or processes.

History.—s. 12, ch. 67-436; ss. 26, 35, ch. 69-106; s. 6, ch. 74-133.

403.121 Enforcement; procedure; remedies.—The department shall have the following judicial and administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).
(1) Judicial remedies:
(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.
(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than $10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.
(c) It shall not be a defense to, or ground for dismissal of, these judicial remedies for damages and civil penalties that the department has failed to exhaust its administrative remedies, has failed to serve a notice of violation, or has failed to hold an administrative hearing prior to the institution of a civil action.
(2) Administrative remedies:
(a) The department may institute an administrative proceeding to establish liability and to recover damages for any injury to the air, waters, or property, including animal, plant, or aquatic life, of the state caused by any violation. The department may order that the violator pay a specified sum as damages to the state. Judgment for the amount of damages determined by the department may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.
(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action.
(c) An administrative proceeding shall be instituted by the department's serving of a written notice of violation upon the alleged violator by certified mail. The notice shall specify the provision of the law, rule, regulation, permit, certification, or order of the department alleged to be violated and the facts alleged to constitute a violation thereof. An order for corrective action may be included with the notice. However, no order shall become effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period shall constitute a waiver thereof.
(d) Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law.

History.—s. 13, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-114; s. 1, ch. 70-139; s. 349, ch. 71-136; s. 112, ch. 71-355; s. 1, ch. 72-286; s. 138, ch. 77-104; s. 1, ch. 77-117; s. 14, ch. 78-95; s. 263, ch. 81-259.

403.131 Injunctive relief; cumulative remedies.—
(1) The department may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this chapter or any rule, regulation, permit certification, or order; to enjoin any violation specified in s. 403.161(1); and to seek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the state and to protect human health, safety, and welfare caused or threatened by any violation.
(2) All the judicial and administrative remedies in this section and s. 403.121 are independent and cumulative except that the judicial and administrative remedies to recover damages are alternative and mutually exclusive.

History.—s. 14, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-139; s. 1, ch. 70-439; s. 2, ch. 72-286.

403.141 Civil liability; joint and several liability.—
(1) Whoever commits a violation specified in s. 403.161(1) is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition, and furthermore is subject to the judicial imposition of a civil penalty for each offense in an amount of not more than $10,000 per offense. However, the court may receive evidence in mitigation. Each day

during any portion of which such violation occurs constitutes a separate offense. Nothing herein shall give the department the right to bring an action on behalf of any private person.

(2) Whenever two or more persons pollute the air or waters of the state in violation of this chapter or any rule, regulation, or order of the department so that the damage is indivisible, each violator shall be jointly and severally liable for such damage and for the reasonable cost and expenses of the state incurred in tracing the source of discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including the animal, plant, and aquatic life of the state, to their former condition. However, if said damage is divisible and may be attributed to a particular violator or violators, each violator is liable only for that damage attributable to his violation.

(3) In assessing damages for fish killed, the value of the fish is to be determined in accordance with a table of values for individual categories of fish which shall be promulgated by the department. At the time the table is adopted, the department shall utilize tables of values established by the Department of Natural Resources and the Game and Fresh Water Fish Commission. The total number of fish killed may be estimated by standard practices used in estimating fish population.

(4) The damage provisions of this section shall not apply to damage resulting from the application of federally approved or state-approved chemicals to the waters in the state for the control of insects, aquatic weeds, or algae, provided the application of such chemicals is done in accordance with a program approved pursuant to s. 403.088(1) and provided said application is not done negligently.

History.—s. 15, ch. 67-436; ss. 28, 35, ch. 69-106; s. 1, ch. 70-141; s. 1, ch. 71-204; s. 3, ch. 72-298; s. 7, ch. 74-131; s. 1, ch. 76-112; s. 3, ch. 78-98.

403.151 Compliance with rules or orders of department.—All rules or orders of the department which require action to comply with standards adopted by it, or orders to comply with any provisions of this act, may specify a reasonable time for such compliance.

History.—s. 16, ch. 67-436; ss. 28, 35, ch. 69-106.

403.161 Prohibitions, violation, penalty, intent.—

(1) It shall be a violation of this chapter, and it shall be prohibited:

(a) To cause pollution, except as otherwise provided in this chapter, 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 chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the department pursuant to its lawful authority.

(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 chapter, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, rule, regulation, or order issued under this chapter.

(2) Whoever commits a violation specified in subsection (1) is liable to the state for any damage caused and for civil penalties as provided in s. 403.141.

(3) Any person who willfully or negligently commits a violation specified in subsections (1)(a) or (b) shall be 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 less than $2,500 or more than $25,000, or punishable by 1 year in jail, 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 subsection (1)(c) shall be 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.

(5) It is the legislative intent that the civil penalties and criminal fines imposed by the court be of such amount as to insure immediate and continued compliance with this act.

History.—s. 17, ch. 67-436; ss. 28, 35, ch. 69-106; s. 1, ch. 70-156; s. 1, ch. 70-439; s. 4, ch. 72-298; s. 8, ch. 74-132; s. 139, ch. 77-104; s. 1, ch. 77-174.

403.165 Use of pollution awards; pollution recovery fund.—

(1) Any moneys recovered by the state in an action against any person who has polluted the air, soil, or water of the state in violation of this chapter shall be used to restore the polluted area which was the subject of suit to its former condition.

(2) There is hereby created a Pollution Recovery Fund which is to be supervised and used by the department to restore polluted areas of the state, as defined by the department, to the condition they were in before pollution occurred. The fund shall consist of all moneys specified in subsection (1). The moneys shall be disbursed first to pay all amounts necessary to restore the respective polluted areas which were the subjects of state actions. Any moneys remaining in the fund shall then be used by the department, as it sees fit, to pay for any work needed to restore areas which required more money than the state was able to obtain by court action or otherwise or to restore areas in which the state brought suit but was unable to recover any moneys from the alleged violators.

History.—s. 5, ch. 72-298.

403.1655 Environmental short-term emergency response program.—

(1) It is the purpose of this section to provide a mechanism through which the state can immediately respond to short-term emergencies involving a threat to or an actual contamination of surface and ground water. It is the intent of the Legislature that the department provide not only technical assistance when responding to these short-term emergencies, but also financial resources to respond to emergencies which pose an immediate environmental or public health threat.

(2) The department shall be the lead agency for

interdepartmental coordination relating to water pollution, toxic substances, and hazardous waste and other environmental and health emergencies not specifically designated within other statutes.

(3) The Water Quality Assurance Trust Fund shall be utilized to enable the department to respond during an emergency to incidents which threaten the environment or public health when otherwise responsible parties do not adequately respond.

(4) The department shall adopt rules for the purposes of this section.

History.—s. 42, ch. 83-310.

403.1815 Construction of water distribution mains and sewage collection laterals; local regulation.—Notwithstanding any other provision of this chapter to the contrary, the department may, upon request, allow any county or municipality to regulate independently the construction of water distribution mains and sewage collection laterals of 10 inches or less in size which may be connected to any water system or sewerage system owned by the county or municipality. In considering such request, the department shall determine the administrative and engineering ability of a county or municipality to administer and comply with the requirements of this section. In the event the department allows any county or municipality to regulate independently the construction of such water distribution mains and sewage collection laterals, these types of construction projects shall be exempt from department permit requirements. However, nothing in this section shall relieve a county or a municipality from any requirement to obtain the necessary permits for construction activities in waters of the state or of the United States or from complying with all other provisions of this chapter and rules promulgated thereunder. The exemption provided by this section shall not apply to any lateral connection to any water or sewerage system which the department has deemed to be in substantial noncompliance with applicable laws and standards if the department has so notified the respective county or municipality. Each county or municipality granted such authority shall submit monthly reports to the department of the number of connections and geographical location of such connections made to any sewerage system owned by such county or municipality and shall, not later than July 1 of each year, submit an updated map of any water distribution system and sewage collection system owned by the county or municipality. Such map shall indicate the extensions of such water mains and sewer laterals constructed for the preceding year.

History.—s. 1, ch. 80-394.

403.182 Local pollution control programs.—

(1) Each county and municipality or any combination thereof may establish and administer a local pollution control program if it complies with this act. Local pollution control programs in existence on the effective date of this act shall not be ousted of jurisdiction if such local program complies with this act. All local pollution control programs, whether established before or after the effective date of this act, must:

(a) Be approved by the department as adequate to meet the requirements of this act and any applicable rules and regulations pursuant thereto.

(b) Provide by ordinance, regulation, or local law for requirements compatible with, or stricter or more extensive than those imposed by this act and regulations issued thereunder.

(c) Provide for the enforcement of such requirements by appropriate administrative and judicial process.

(d) Provide for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program.

(2) The department shall have the exclusive authority and power to require and issue permits; provided, however, that the department may delegate its power and authority to local pollution control organizations if the department finds it necessary or desirable to do so.

(3) If the department finds that the location, character or extent of particular concentrations of population, contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air and water quality without an areawide pollution control program, the department may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(4)(a) If the department has reason to believe that a pollution control program in force pursuant to this section is inadequate to prevent and control pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this act, it shall proceed to determine the matter.

(b) If the department determines that such program is inadequate to prevent and control pollution in the municipality or county or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed 90 days.

(c) If the municipality, county, or municipalities or counties fail to take such necessary corrective action within the time required, the department shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this act. Such pollution control program shall supersede all municipal or county pollution laws, regulations, ordinances and requirements in the affected jurisdiction.

(d) If the department finds that the control of a particular class of contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local pollution control authorities or may be more efficiently and economically performed at the state level, it may assume and retain jurisdiction over that class of contaminant source. Classifications pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any municipality or county in which the department administers its pollution control program pursuant to subsection (4) of this section may with the approval of the department establish or resume a municipal or county pollution control program which meets the requirements of subsection (1) of this section.

(6) Notwithstanding the existence of any local pollution control program, whether created by a county or municipality or a combination thereof or by a special law, the department shall have jurisdiction to enforce the provisions of this chapter and any rules, regulations, or orders issued pursuant to this chapter throughout the state; however, whenever rules, regulations, or orders of a stricter or more stringent nature have been adopted by a local pollution control program, the department, if it elects to assert its jurisdiction, shall then enforce the stricter rules, regulations, or orders in the jurisdiction where they apply.

(7) It shall be a violation of this chapter to violate, or fail to comply with, a rule, regulation, or order of a stricter or more stringent nature adopted by a local pollution control program, and the same shall be punishable as provided by s. 403.161. If any local program changes any rule, regulation, or order, whether or not of a stricter or more stringent nature, such change shall not apply to any installation or source operating at the time of such change in conformance with a currently valid permit issued by the Department of Environmental Regulation.

(8) Nothing in this act shall prevent any local pollution control program from enforcing its own rules, regulations, or orders. All remedies of the Department of Environmental Regulation under this chapter shall be available, as an alternative to local enforcement provisions, to each local pollution control program to enforce any provision of local law. When the department and a local program institute separate lawsuits against the same party for violation of a state or local pollution law, rule, regulation, or order arising out of the same act, the suits shall be consolidated when possible.

(9) Each local pollution control program shall cooperate with and assist the department in carrying out its powers, duties, and functions.

History.—s. 19, ch. 67-436; ss. 26, 35, ch. 69-106; s. 2, ch. 71-137; ss. 1, 2, ch. 73-236; s. 14, ch. 74-95; s. 76, ch. 79-65.

403.1821 Water pollution control and sewage treatment.—Sections 403.1821-403.1832 shall be known and cited as the "Florida Water Pollution Control and Sewage Treatment Plant Grant Act."

History.—s. 1, ch. 70-251; s. 47, ch. 83-310.
cf.—s. 403.1835 Sewage treatment facilities revolving loan program.

403.1822 Definitions for ss. 403.1821-403.1832.—As used in ss. 403.1821-403.1832, the term:

(1) "Department" refers to the Department of Environmental Regulation.

(2) "Grants," "grant," "state grants," or "state grant" refers to disbursements from the State Water Pollution Control Trust Fund pursuant to s. 403.1825.

(3) "Local governmental agencies" refers to any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing, acting jointly in connection with a project, having jurisdiction over collection, transmission, treatment, or disposal of sewage, industrial wastes, or other wastes.

(4) "Project" means all or part of a sewage treatment or disposal facility, or other cost-effective alternative, and may include the construction or reconstruction of existing sewage collection or transmission lines.

History.—s. 2, ch. 70-251; s. 1, ch. 70-439; s. 2, ch. 71-137; s. 113, ch. 71-355; s. 77, ch. 79-65; s. 44, ch. 83-310.

403.1823 Department of Environmental Regulation; rulemaking authority; administration of funds.—The department shall:

(1) Promulgate rules and regulations to carry out the purposes of ss. 403.1821-403.1832.

(2) Administer and control all funds appropriated to or received by the department for the purposes of ss. 403.1821-403.1832.

History.—s. 3, ch. 70-251; s. 1, ch. 70-439; s. 19, ch. 83-310.

403.1824 State Water Pollution Control Trust Fund.—A trust fund to be known as the "State Water Pollution Control Trust Fund" is established in the State Treasury to be used for state grants to local governmental agencies for the construction or reconstruction of sewage collection, transmission, treatment, or disposal facilities or cost-effective alternatives. All funds received by the department to carry out the purposes of ss. 403.1821-403.1832 shall be deposited in this fund; however, at least 45 percent of the funds received by the department and deposited in this fund shall be transferred to the Small Community Sewer Construction Assistance Trust Fund. The department may expend up to 2 percent of the State Water Pollution Control Trust Fund to cover the cost of reviewing and acting upon grant applications by a local governmental agency and the cost of surveillance and other field services associated with the application.

History.—s. 4, ch. 70-251; s. 1, ch. 70-439; s. 50, ch. 83-310.

403.1825 Grant payments.—Warrants for the payment of grants to local governmental agencies or increments thereof from the Water Pollution Control Trust Fund shall be issued by the State Comptroller upon certification to him by the department that such payments are due and payable under the department's published rules and regulations.

History.—s. 5, ch. 70-251; s. 1, ch. 70-439.

403.1826 Grants, requirements for eligibility.—

(1) Grants shall be made under ss. 403.1821-403.1832 for projects eligible as provided in rules of the department. Only those projects to be constructed after the effective date of this act are eligible for grants pursuant to this act.

(2) No grant may be made for any project unless such project and the plans and specifications therefor are approved by the department, subject to such requirements as the department imposes. The costs for advanced waste treatment facilities, or portions thereof, required for discharge to surface waters or ground water protection or protection of public health are eligible for funding.

(3) No grant may be made until the local governmental agency has available to it that part of the total cost of the project which is in excess of the applicable grant.

(4) The department shall require local governmental funds in the amount of 45 percent of eligible project costs as determined by rules of the department. The department is authorized to establish a maximum amount for a grant pursuant to this act.

(5) Grants made under ss. 403.1821-403.1832 shall be paid to the local governmental agency as provided by department rule.

(6) No grant may be made unless the local governmental agency assures the department of the proper and efficient operation and maintenance of the project after construction. Revenue sufficient to ensure that the facility will be self-supporting shall be generated from sources, including, but not limited to, service charges and connection fees and shall reflect the amortized capital investment in existing facilities as well as the cost of the facility for which the grant is sought.

(7) No grant may be made unless the local governmental agency has filed properly executed forms and applications prescribed by the department.

(8) Any local government agency receiving assistance under ss. 403.1821-403.1832 shall keep such records as the department prescribes, including records which fully disclose the amount and disposition by the recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with such assistance given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. The department and the Auditor General or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received under ss. 403.1821-403.1832.

(9) Any project satisfactorily planned and designed in accordance with the requirements of the United States Environmental Protection Agency is eligible for funding under this act.

History.—s. 6, ch. 70-251; s. 1, ch. 70-439; s. 51, ch. 83-310.

403.1829 Funding of projects; priorities.—Eligible projects shall be funded according to priorities established by department rule. Such priorities shall be established according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. Advanced waste treatment facilities or portions thereof which are required for discharge to surface waters or ground water protection or protection of public health, which are required by the department, and which are determined to be ineligible for federal funding are eligible for supplemental state funding under this act.

History.—s. 9, ch. 70-251; s. 1, ch. 70-439; s. 52, ch. 83-310.

403.1832 Department to accept federal aid.—The department is designated as the administrative agency of the state to apply for and accept any funds or other aid and to cooperate and enter into contracts and agreements with the Federal Government relating to the planning, design, construction, operation, maintenance, and enforcement activities of the program to provide clean water and pollution abatement of the waters of the state or to any other related purpose which the Congress of the United States has authorized or may authorize. The department is authorized in the name of the state to make such applications, sign such documents, give such assurances, and do such other things as are necessary to obtain such aid from or cooperate with the United States Government or any agency thereof. The department may consent to enter into contracts and agreements and cooperate with any other state agency, local governmental agency, person, or other state when it is necessary to carry out the provisions of ss. 403.1821-403.1832.

History.—s. 12, ch. 70-251; s. 1, ch. 70-439; s. 53, ch. 83-310.

403.1834 State bonds to finance or refinance facilities; exemption from taxation.—

(1) The issuance of state bonds to finance or refinance the construction of water supply and distribution facilities, and air and water pollution control and abatement and solid waste disposal facilities, payable primarily from the pledged revenues provided for by s. 14, Art. VII of the State Constitution or from such pledged revenues and the full faith and credit of any county, municipality, district, authority, or any agency thereof, and pledging the full faith and credit of the state as additional security, is authorized, subject and pursuant to the provisions of s. 14, Art. VII of the State Constitution, the provisions of the State Bond Act, ss. 215.57-215.83, as amended, and the provisions of this section.

(2) The State Board of Administration is designated as the state fiscal agency to make the determinations required by s. 14, Art. VII of the State Constitution in connection with the issuance of such bonds.

(3) The amount of the state bonds to be issued shall be determined by the Division of Bond Finance of the Department of General Services. However, the total principal amount issued shall not exceed $200,000,000 in any state fiscal year.

(4) The facilities to be financed or refinanced with the proceeds of such state bonds shall be determined and approved by the Department of Environmental Regulation and may be constructed, acquired, maintained, and operated by any county, municipality, district, or authority, or any agency thereof, or by the department.

(5) The Department of Environmental Regulation and the Division of Bond Finance of the Department of General Services are hereby authorized to enter into lease-purchase agreements between such departments or to enter into lease-purchase agreements or loan agreements between either of such departments and any county, municipality, district, or authority, or any agency thereof, for such periods and under such other terms and conditions as may be mutually agreed upon by the parties thereto in order to

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carry out the purposes of s. 14, Art. VII of the State Constitution, and this section.

(6) The Department of Environmental Regulation shall have power to fix, establish, and collect fees, rentals, or other charges for the use or benefit of said facilities, or may delegate such power to any county, municipality, district, authority, or any agency thereof under such terms and conditions and for such periods as may be mutually agreed upon.

(7) It is found and declared that said facilities will constitute a public governmental purpose necessary for the health and welfare of all the inhabitants of the state, and none of said facilities or said state bonds or the interest thereon shall ever be subject to taxation by the state or any political subdivision or agency thereof. The exemption granted by this subsection shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

(8) As used in this section, "water supply and distribution facilities" means a waterworks system as defined in s. 159.02(9) which is constructed, owned, or operated by a county, municipality, water management district created by chapter 373, or regional water supply authority created pursuant to chapter 373, or a water facility of an authority created by chapter 76-441, Laws of Florida, as amended by chapter 80-546, Laws of Florida.

History.—ss. 1, 2, 3, 4, 5, 6, 7, ch. 70-270; s. 1, ch. 70-448; s. 2, ch. 73-187; s. 1, ch. 73-256; s. 14, ch. 73-327; s. 75, ch. 79-65; s. 1, ch. 81-23; s. 81, ch. 81-259.

403.1835 Sewage treatment facilities revolving loan program.—

(1) The purpose of this section is to assist in implementing the legislative declaration of public policy as contained in s. 403.021 by establishing a loan program to accelerate construction of sewage treatment facilities by local governmental agencies.

(2) For the purposes of this section, the following terms, unless the context otherwise indicates, shall have the meanings ascribed them in this subsection:

(a) "Local governmental agencies" means local governmental agencies as defined in s. 403.1822(3).

(b) "Sewage treatment facilities" means all facilities necessary, including land, for the collection, treatment, and disposal of sewage and other water pollutants.

(3) The Department of Environmental Regulation is authorized to make loans to local governmental agencies to assist said agencies in the planning, designing, and preparation of environmental assessment studies for sewage treatment facilities. Loans may be made to local governmental agencies for interim financing for constructing, modifying, upgrading, and acquiring lands for sewage treatment facilities if the department has approved a permanent financing plan for said agencies through participation in the state pollution bonds program pursuant to s. 14, Art. VII, State Constitution, or through the issuance of local bonds, evidences of indebtedness, or other acceptable methods of repayment. Local governmental agencies are authorized to borrow funds made available pursuant to this section and may pledge any revenue available to them to repay any funds borrowed.

(4) The term of loans made pursuant to this section shall not exceed three years. The interest rate on loans shall be the same as that paid on the last bonds sold pursuant to s. 14, Art. VII, State Constitution, or 5 percent, whichever is less, except that the interest rate during the first twelve months of any loan shall be one half of the above determined rate.

(5) The department is authorized to make rules and regulations on or before February 1, 1973, necessary to carry out the purpose of this section and shall include in an annual report complete details of the amount loaned, interest earned, and loans outstanding at the end of each fiscal year.

(6) Each loan agreement made pursuant to this section shall provide for the repayment schedule and interest rate. In the event a local governmental agency becomes delinquent on its loan, the department shall so certify to the Comptroller who shall forward the amount delinquent to the department from any funds due to the local governmental agency under any revenue sharing or tax sharing fund established by the state, except as otherwise provided by the State Constitution.

(7) A trust fund to be known as the "Sewage Treatment Loan Fund" is hereby established in the State Treasury to be used as a revolving fund by the department to make loans to local governmental agencies. Any funds therein not needed for loans may be invested pursuant to s. 215.49. All interest earned shall be deposited in the General Revenue Fund, unallocated for appropriation as the Legislature authorizes. The cost of administering this program shall be paid by the department from funds otherwise appropriated to it. All funds available in the sewage treatment loan fund are hereby appropriated to carry out the purpose of this section, and the principal of all loans repaid or investments made shall be deposited into this fund.

(8) On July 1, 1975, the cash balance in the Sewage Treatment Loan Fund shall revert and be transferred to the General Revenue Fund, unallocated. Loan repayments received in the Sewage Treatment Loan Fund after July 1, 1975, shall immediately revert and be transferred to the General Revenue Fund, unallocated.

History.—s. 1, ch. 72-75; s. 79, ch. 79-65.

403.1838 Small Community Sewer Construction Assistance Act.—

(1) This section may be cited as the "Small Community Sewer Construction Assistance Act."

(2)(a) There is established within the Department of Environmental Regulation the Small Community Sewer Construction Assistance Trust Fund.

(b) The funds shall be used by the department to assist small communities with their needs for adequate sewer facilities. The term "small community" means an incorporated municipality with a population of 35,000 or less, according to the latest decennial census.

(3) The department may provide grants to small communities. Grants shall be made from the Small Community Sewer Construction Assistance Trust Fund in accordance with rules adopted by the Environmental Regulation Commission. No grant may exceed $3 million.

(4) The Environmental Regulation Commission shall:

(a) Require a 45-percent nonstate match, except that grants of less than $50,000 may be funded 100 percent by the department, and the commission may waive all or a part of the matching requirement:

1. Where water quality standards have been exceeded by an amount that constitutes an immediate health hazard; or

2. In communities where the gross per capita income is below the state average, as determined by the United States Department of Commerce, and where sewer systems have failed to meet department standards.

(b) Require appropriate user charges and connection fees sufficient to ensure the long-term operation and maintenance of the facility to be constructed under any grant.

(c) Require compliance with all water quality standards.

(d) Establish a system to determine eligibility and relative priority for applications for grants by small communities.

(e) Require applications for grants to be submitted on appropriate forms with appropriate supporting documentation, require construction to be in accordance with plans approved by the department, and require recordkeeping.

(5) Any project satisfactorily planned and designed in accordance with the requirements of the United States Environmental Protection Agency is eligible for funding under this act.

History.—s. 55, ch. 83-310.

403.191 Construction in relation to other law.—

(1) It is the purpose of this act to provide additional and cumulative remedies to prevent, abate, and control the pollution of the air and waters of the state. Nothing contained herein shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this act, or any act done by virtue thereof, be construed as estopping the state or any municipality, or person affected by air or water pollution, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(2) No civil or criminal remedy for any wrongful action which is a violation of any rule or regulation of the department shall be excluded or impaired by the provisions of this chapter.

(3) This act shall limit and restrict the application of chapter 24952, 1947, Laws of Florida, to any person operating any industrial plant that has located in the State of Florida in reliance thereon and exercised rights and powers granted thereby on and before the effective date of this act; provided such person shall henceforth in the exercise of such rights and powers install and use treatment works or control measures generally equivalent to those installed and used by other similar industrial plants pursuant to the requirements of the department.

History.—s. 29, ch. 67-436; ss. 26, 35, ch. 69-106.

403.201 Variances.—

(1) Upon application, the department in its discretion may grant a variance from the provisions of this act or the rules and regulations adopted pursuant hereto. Variances and renewals thereof may be granted for any one of the following reasons:

(a) There is no practicable means known or available for the adequate control of the pollution involved.

(b) Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.

(c) To relieve or prevent hardship of a kind other than those provided for in paragraphs (a) and (b). Variances and renewals thereof granted under authority of this paragraph shall each be limited to a period of 24 months, except that variances granted pursuant to part II may extend for the life of the permit or certification.

(2) The department shall publish notice, or shall require a petitioner for a variance to publish notice, in the Florida Administrative Weekly and in a newspaper of general circulation in the area affected, of proposed agency action; and the department shall afford interested persons an opportunity for a hearing on each application for a variance. If no request for hearing is filed with the department within 14 days of published notice, the department may proceed to final agency action without a hearing.

(3) The department may prescribe such time limits and other conditions to the granting of a variance as it deems appropriate.

History.—s. 31, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 74-170; s. 14, ch. 78-95; s. 7, ch. 83-27.

403.221 Pending proceedings.—No legal proceedings shall be abated because of any transfers made in this section, but the appropriate party exercising like authority or performing like duties or functions shall be substituted in said proceedings.

History.—s. 21, ch. 67-436.

403.231 Department of Legal Affairs to represent the state.—The Department of Legal Affairs shall represent the state and its agencies as legal adviser in carrying out the provisions of this act.

History.—s. 21, ch. 67-436; ss. 11, 26, ch. 69-106.

403.251 Safety clause.—The Legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health and safety.

History.—s. 27, ch. 67-436.

403.261 Provisions specifying jurisdiction repealed.—All rulemaking jurisdiction over air and water pollution matters held by other agencies within the state on September 1, 1967, is hereby repealed including, but without limitation, such jurisdiction held by the Florida State Board of Health, the Game and Fresh Water Fish Commission, the State Board of Conservation and the several water management districts within the state.

History.—s. 1, ch. 67-436.

403.281 Definitions; Weather Modification Law.—As used in this chapter relating to weather modification:

(1) "Department" means the Department of Environmental Regulation.

(2) "Person" includes any public or private corporation.

History.—s. 1, ch. 57-128; ss. 26, 35, ch. 69-106; s. 2, ch. 71-137; s. 158, ch. 71-377; s. 80, ch. 79-65.
Note.—Former s. 373.291.

403.291 Purpose of weather modification law.—The purpose of this law is to promote the public safety and welfare by providing for the licensing, regulation and control of interference by artificial means with the natural precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere.

History.—s. 2, ch. 57-128.
Note.—Former s. 373.271.

403.301 Artificial weather modification operation; license required.—No person without securing a license from the department, shall cause or attempt to cause by artificial means condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere, or shall prevent or attempt to prevent by artificial means the natural condensation or precipitation of rain, snow, hail, moisture or water in any form contained in the atmosphere.

History.—s. 3, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.281.

403.311 Application for licensing; fee.—

(1) Any person desiring to do or perform any of the acts specified in s. 403.301 may file with the department an application for a license on a form to be supplied by the department for such purpose setting forth all of the following:

(a) The name and post-office address of the applicant.

(b) The education, experience and qualifications of the applicant, or if the applicant is not an individual, the education, experience and qualifications of the persons who will be in control and in charge of the operation of the applicant.

(c) The name and post-office address of the person on whose behalf the weather modification operation is to be conducted if other than the applicant.

(d) The nature and object of the weather modification operation which the applicant proposes to conduct, including a general description of such operation.

(e) The method and type of equipment and the type and composition of materials that the applicant proposes to use.

(f) Such other pertinent information as the department may require.

(2) Each application shall be accompanied by a filing fee in the sum of $100 and proof of financial responsibility as required by s. 403.321.

History.—s. 4, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.291.

403.321 Proof of financial responsibility.—

(1) No license shall be issued to any person until he has filed with the department proof of ability to respond in damages for liability on account of accidents arising out of the weather modification operations to be conducted by him in the amount of $10,000 because of bodily injury to or death of one person resulting from any one incident, and subject to said limit for one person, in the amount of $100,000 because of bodily injury to or death of two or more persons resulting from any one incident, and in the amount of $100,000 because of injury to or destruction of property of others resulting from any one incident.

(2) Proof of financial responsibility may be given by filing with the department a certificate of insurance or a bond in the required amount.

History.—s. 5, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.301.

403.331 Issuance of license; suspension or revocation; renewal.—

(1) The department shall issue a license to each applicant who:

(a) By education, skill and experience appears to be qualified to undertake the weather modification operation proposed in his application.

(b) Files proof of his financial responsibility as required by s. 403.321.

(c) Pays filing fee required in s. 403.311.

(2) Each such license shall entitle the licensee to conduct the operation described in the application for the calendar year for which the license is issued unless the license is sooner revoked or suspended. The conducting of any weather modification operation or the use of any equipment or materials other than those described in the application shall be cause for revocation or suspension of the license.

(3) The license may be renewed annually by payment of a filing fee in the sum of $50.

History.—s. 6, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.311.

403.341 Filing and publication of notice of intention to operate; limitation on area and time.—Prior to undertaking any operation authorized by the license, the licensee shall file with the department and cause to be published a notice of intention. The licensee shall then confine his activities substantially within the time and area limits set forth in the notice of intention.

History.—s. 7, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.321.

403.351 Contents of notice of intention.—The notice of intention shall set forth all of the following:

(1) The name and post-office address of the licensee.

(2) The name and post-office address of the persons on whose behalf the weather modification operation is to be conducted if other than the licensee.

(3) The nature and object of the weather modification operation which licensee proposes to conduct, including a general description of such operation.

(4) The method and type of equipment and the type and composition of the materials the licensee proposes to use.

(5) The area in which and the approximate time during which the operation will be conducted.

(6) The area which will be affected by the operation as nearly as the same may be determined in advance.

History.—s. 8, ch. 57-128.
Note.—Former s. 373.331.

403.361 Publication of notice of intention.—The licensee shall cause the notice of intention to be published at least once a week for 2 consecutive weeks in a newspaper having general circulation and published within any county wherein the operation is to be conducted and in which the affected area is located, or if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then such notice shall be published in like manner in a newspaper having a general circulation and published within each of such counties. In case there is no newspaper published within the appropriate county, publication shall be made in a newspaper having a general circulation within the county.

History.—s. 9, ch. 57-128.
Note.—Former s. 373.341.

403.371 Proof of publication.—Proof of publication shall be filed by the licensee with the department 15 days from the date of the last publication of notice. Proof of publication shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the notice.

History.—s. 10, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.351.

403.381 Record and reports of operations.—

(1) Each licensee shall keep and maintain a record of all operations conducted by him pursuant to his license showing the method employed, the type and composition of materials used, the times and places of operation, the name and post office address of each person participating or assisting in the operation other than licensee and such other information as may be required by the department and shall report the same to the department at such times as it may require.

(2) The records of the department and the reports of all licensees shall be available for public examination.

History.—s. 11, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.361.

403.391 Emergency licenses.—Notwithstanding any provisions of this act to the contrary, the department may grant a license permitting a weather modification operation without compliance by the licensee with the provisions of ss. 403.351-403.371, and without publication of notice of intention as required by s. 403.341 if the operation appears to the department to be necessary or desirable in aid of the extinguishment of fire, dispersal of fog, or other emergency.

History.—s. 12, ch. 57-128; ss. 26, 35, ch. 69-106.
Note.—Former s. 373.371.

403.401 Suspension or revocation of license.—Any license may be revoked or suspended if the department finds that the licensee has failed or refused to comply with any of the provisions of this act.

History.—s. 13, ch. 57-128; s. 21, ch. 63-512; ss. 26, 35, ch. 69-106; s. 14, ch. 78-95.
Note.—Former s. 373.381.

403.411 Penalty.—Any person conducting a weather modification operation without first having procured a license, or who shall make a false statement in his application for license, or who shall fail to file any report or reports as required by this act, or who shall conduct any weather modification operation after revocation or suspension of his license, or who shall violate any other provision of this act, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; and, if a corporation, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083. Each such violation shall be a separate offense.

History.—s. 14, ch. 57-128; s. 351, ch. 71-136.
Note.—Former s. 373.391.

403.412 Environmental Protection Act.—

(1) This section shall be known and may be cited as the "Environmental Protection Act of 1971."

(2)(a) The Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against:

1. Any governmental agency or authority charged by law with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations;

2. Any person, natural or corporate, governmental agency or authority to enjoin such persons, agencies, or authorities from violating any laws, rules or regulations for the protection of the air, water, and other natural resources of the state.

(b) In any suit under paragraph (a), the Department of Legal Affairs may intervene to represent the interests of the state.

(c) As a condition precedent to the institution of an action pursuant to paragraph (a), the complaining party shall first file with the governmental agencies or authorities charged by law with the duty of regulating or prohibiting the act or conduct complained of a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. Upon receipt of a complaint, the governmental agency or authority shall forthwith transmit, by registered or certified mail, a copy of such complaint to those parties charged with violating the laws, rules, and regulations for the protection of the air, water and other natural resources of the state. The agency receiving such complaint shall have 30 days after the receipt thereof within which to take appropriate action. If such action is not taken within the time prescribed, the complaining party may institute the judicial proceedings authorized in paragraph (a). However, failure to comply with this subsection shall not bar an action for a temporary restraining order to prevent

immediate and irreparable harm from the conduct or activity complained of.

(d) In any action instituted pursuant to paragraph (a), the court, in the interest of justice, may add as party defendant any governmental agency or authority charged with the duty of enforcing the applicable laws, rules, and regulations for the protection of the air, water and other natural resources of the state.

(e) No action pursuant to this section may be maintained if the person (natural or corporate) or governmental agency or authority charged with pollution, impairment, or destruction of the air, water, or other natural resources of the state is acting or conducting operations pursuant to currently valid permit or certificate covering such operations, issued by the appropriate governmental authorities or agencies, and is complying with the requirements of said permits or certificates.

(f) In any action instituted pursuant to this section, the prevailing party or parties shall be entitled to costs and attorney fees. If the court has reasonable ground to doubt the solvency of the plaintiff or the plaintiff's ability to pay any cost or judgment which might be rendered against him in an action brought under this section, the court may order the plaintiff to post a good and sufficient surety bond or cash.

(3) The court may grant injunctive relief and impose conditions on the defendant which are consistent with and in accordance with law and any rules or regulations adopted by any state or local governmental agency which is charged to protect the air, water, and other natural resources of the state from pollution, impairment, or destruction.

(4) The doctrines of res judicata and collateral estoppel shall apply. The court shall make such orders as necessary to avoid multiplicity of actions.

(5) In any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction, the Department of Legal Affairs, a political subdivision or municipality of the state, or a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state.

(6) Venue of any causes brought under this law shall lie in the county or counties wherein the cause of action is alleged to have occurred.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 71-343.

403.413 Florida Litter Law.—

(1) SHORT TITLE.—This section shall be known as and may be cited as the "Florida Litter Law of 1971."

(2) DEFINITIONS.—As used in this section:

(a) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, container, paper, lighted or unlighted cigarette or cigar, or flaming or glowing material.

(b) "Person" means any individual, firm, corporation, or unincorporated association.

(c) "Law enforcement officer" means any officer of the Florida Highway Patrol, county sheriffs' departments, municipal law enforcement departments, law enforcement departments of any other political subdivision, Department of Natural Resources, and Game and Fresh Water Fish Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipal park or recreation department designated by the department head as a litter enforcement officer.

(3) RESPONSIBILITY OF BOARD OF COUNTY COMMISSIONERS.—The board of county commissioners shall determine the training and qualifications of any employee of the county or municipal park or recreation department designated to enforce the provisions of this section if the designated employee is not a regular law enforcement officer.

(4) ACTS PROHIBITED.—It is unlawful for any person to throw, discard, place, or deposit litter in any manner or amount:

(a) In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor; when any litter is thrown or discarded from a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in violation of this section;

(b) In or on any freshwater lake, river, or stream or tidal or coastal water of the state; when any litter is thrown or discarded from a boat, the operator or owner of the boat, or both, shall be deemed in violation of this section; or

(c) In or on any private property, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local law, rule, or regulation.

(5) PENALTIES; ENFORCEMENT.—

(a) Any person violating the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082 and 775.083. The court may impose the additional penalties of picking up litter or performing other labor commensurate with the offense committed.

(b) It shall be the duty of all law enforcement officers, as defined herein, to enforce the provisions of this section.

History.—ss. 1, 2, 3, 4, 4A, ch. 71-279; s. 1, ch. 75-298; s. 1, ch. 77-92; s. 1, ch. 78-397; s. 7, ch. 80-382; s. 1, ch. 82-63.

403.414 Pollution control awards program.—

(1) There is hereby created a pollution control awards program to be administered by the Department of Commerce.

(2) Awards under the pollution control awards program may be granted to agencies, municipalities, counties, or other governmental units and private organizations, institutions, industries, communication media, and residents of the state for efforts in preventing or cleaning up pollution as provided by rules and regulations promulgated by the Department of Commerce. Special awards may be granted to those agencies, municipalities, counties, or other governmental units and private organizations, institutions, industries, communication media, and residents of

the state who have made an outstanding effort to prevent or clean up pollution as provided by rules and regulations promulgated by the Department of Commerce. All awards and special awards must be approved by the Department of Commerce, but the Department of Environmental Regulation shall have the power to veto any award which, in the opinion of the Department of Environmental Regulation, would be so controversial as to be unadvisable.

(3) Awards or special awards may be presented in the following categories:

(a) Water pollution.
(b) Air pollution.
(c) Noise pollution.
(d) Communication media on pollution problems.

(4) Any agency, municipality, county, or other governmental unit or private organization, institution, industry, communication medium, or resident of the state may submit to the Department of Commerce at any time the name of any agency, municipality, county, or other governmental unit or private organization, institution, industry, communication medium, or resident of the state for consideration for an award or special award. Prior to consideration by the Department of Commerce, nominees shall be required to submit to the department such additional information as the department may require, including, but not limited to, a list of all plant operations and subsidiaries in Florida. The Department of Commerce shall consider such nominations at least twice a year.

(5) The Department of Commerce shall adopt reasonable rules and regulations to carry out the intent and purposes of this act in accordance with chapter 120.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 74-60; s. 81, ch. 79-65; s. 264, ch. 81-259.

403.415 Motor vehicle noise.—

(1) SHORT TITLE.—This act shall be known and may be cited as the "Florida Motor Vehicle Noise Prevention and Control Act of 1974."

(2)(a) LEGISLATIVE INTENT.—The intent of the Legislature is to implement the state constitutional mandate of s. 7, Art. II of the State Constitution to improve the quality of life in the state by limiting the noise of new motor vehicles sold in the state and the noise of motor vehicles used on the highways of the state.

(b) It is also the intent of the Legislature to recognize the proposed United States Environmental Protection Act Noise Commission Standards Regulations for medium and heavy-duty trucks as being the most comprehensive available and in the best interest of Florida's citizenry and, further, that such regulation shall preempt all state standards not identical to such regulation.

(3) DEFINITIONS.—The following words and phrases when used in this section shall have the meanings respectively assigned to them in this subsection, except where the context otherwise requires:

(a) "dB A" means the composite abbreviation for A-weighted sound level, and the unit of sound level, the decibel.

(b) "Gross combination weight rating" or "GCWR" means the value specified by the manufacturer as the loaded weight of a combination vehicle.

(c) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the loaded weight of a single vehicle.

(d) "Motor vehicle" means any vehicle which is self-propelled and any vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(e) "Motorcycle" means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(f) "Motor-driven cycle" means every motorcycle and every motor scooter with a motor which produces not to exceed 5 brake horsepower, including every bicycle with a motor attached.

(g) "Sound level" means the A-weighted sound pressure level measured with fast response using an instrument complying with the specification for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only A-weighting and fast dynamic response need be provided.

(h) "Vehicle" means any device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(i) "Department" means the Department of Environmental Regulation.

(4) NEW VEHICLE NOISE LIMITS.—No person shall sell, offer for sale, or lease a new motor vehicle that produces a maximum sound level exceeding the following limits at a distance of 50 feet from the center of the lane of travel under test procedures established under subsection (5):

(a) For motorcycles other than motor-driven cycles:

Date of manufacture	Sound level limit
From January 1, 1973, to December 31, 1974	86 dB A
On or after January 1, 1975	83 dB A

(b) For any motor vehicle with a GVWR over 10,000 pounds, for any school bus, and for any multipurpose passenger vehicle, which is defined as a motor vehicle with motive power designed to carry 10 persons or less and constructed either on a truck chassis or with special features for occasional off-road operation:

Date of manufacture	Sound level limit
From January 1, 1973, to December 31, 1976	86 dB A
On or after January 1, 1977	83 dB A

(c) For motor-driven cycles and any other motor vehicles not included in paragraph (a) or paragraph (b):

Date of manufacture	Sound level limit
On or after January 1, 1975	80 dB A

(5) TEST PROCEDURES.—The test procedures for determining compliance with this section shall be established by regulation of the Department of Envi-

...mental Regulation and in cooperation with the Department of Highway Safety and Motor Vehicles in substantial conformance with applicable standards and recommended practices established by the Society of Automotive Engineers, Inc., or its successor bodies, and the American National Standards Institute, Inc., or its successor bodies, for the measurement of motor vehicle sound levels. Regulations establishing these test procedures shall be promulgated no later than December 1, 1974.

(6) CERTIFICATION.—The manufacturer, distributor, importer, or designated agent thereof shall file a written certificate with the department stating that the specific makes and models of motor vehicles described thereon comply with the provisions of this section. No new motor vehicle shall be sold, offered for sale, or leased unless such certificate has been filed.

(7) NOTIFICATION OF CERTIFICATION.—The department shall notify the Department of Highway Safety and Motor Vehicles of all makes and models of motor vehicles for which valid certificates of compliance with the provisions of this section are filed.

(8) REPLACEMENT EQUIPMENT.—

(a) No person shall sell or offer for sale for use as a part of the equipment of a motor vehicle any exhaust muffler, intake muffler, or other noise abatement device which, when installed, will permit the vehicle to be operated in a manner that the emitted sound level of the vehicle is increased above that emitted by the vehicle as originally manufactured and determined by the test procedures for new motor vehicle sound levels established under this section.

(b) The manufacturer, distributor, or importer, or designated agent thereof, shall file a written certificate with the department that his products sold within this state comply with the requirements of this section for their intended applications.

(9) OPERATING VEHICLE NOISE MEASUREMENTS.—The department shall establish, with the cooperation of the Department of Highway Safety and Motor Vehicles, measurement procedures for determining compliance of operating vehicles with the noise limits of s. 316.293(2). The department shall advise the Department of Highway Safety and Motor Vehicles on technical aspects of motor vehicle noise enforcement regulations, assist in the training of enforcement officers, and administer a sound-level meter loan program for local enforcement agencies.

(10) ENACTMENT OF LOCAL ORDINANCES LIMITED.—The provisions of this section shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by this section unless expressly authorized. However, this subsection shall not prevent any local authority from enacting an ordinance when such enactment is necessary to vest jurisdiction of violation of this section in the local court.

History.—[illegible]

403.4151 Exempt motor vehicles.—The provisions of this act shall not apply to any motor vehicle which is not required to be licensed under the provisions of chapter 320.

History.—s. 7, ch. 74-110.

403.4153 Federal preemption.—On and after the date of promulgation of noise emission standards by the administrator of the United States Environmental Protection Agency for a class of new motor vehicles as described in paragraphs 403.415(4)(a), (b), or (c), the state sound level limits in effect at that time for that class of vehicles shall be maintained until the federal standards become effective.

History.—s. 1, ch. 76-288.

PART II

ELECTRICAL POWER PLANT SITING

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403.501 Short title.—Sections 403.501-403.517 shall be known and may be cited as the "Florida Electrical Power Plant Siting Act."

History.—s. 1, ch. 73-33; s. 2, ch. 76-76.

403.502 Legislative intent.—The Legislature finds that the present and predicted growth in electric power demands in this state requires the development of a procedure for the selection and utilization of sites for electrical generating facilities and the identification of a state position with respect to each proposed site. The Legislature recognizes that the selection of sites and the routing of associated transmission lines will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. The Legislature finds that the efficiency of the permit application and review process at both the state and local level would be improved with the implementation of a process whereby a permit application would be centrally coordinated and all permit decisions could be reviewed on the basis of standards and recommendations of the deciding agencies. It is the policy of this state that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public. Such action will be based on these premises:

(1) To assure the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

(2) To effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state.

(3) To provide abundant, low-cost electrical energy.

History.—s. 3, ch. 73-33.

403.503 Definitions.—

(1) "Applicant" means any electric utility which makes application for an electric power plant site certification pursuant to the provisions of this act.

(2) "Application" means the documents required by the department to be filed to initiate a certification proceeding.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(4) "Electric utility" means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

(5) "Site" means any proposed location wherein an electrical power plant, or an electrical power plant alteration or addition resulting in an increase in generating capacity, will be located, including offshore sites within state jurisdiction.

(6) "Certification" means the written order of the board approving an application in whole or with such modifications or conditions as the board may deem appropriate.

(7) "Electrical power plant" means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, and includes associated facilities and those directly associated transmission lines required to connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect, except that this term does not include any steam or solar electrical generating facility of less than 50 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act.

(8) "Department" means the Department of Environmental Regulation.

(9) "Board" means the Governor and Cabinet sitting as the Siting Board.

(10) "Agency," as the context requires, means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government, including a regional or local governmental entity.

(11) "State comprehensive plan" means that plan prepared in accordance with the provisions of part I of chapter 23.

(12) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(13) "Designated hearing officer" means the hearing officer assigned by the Division of Administrative Hearings pursuant to chapter 120 to conduct the hearings required by this part.

(14) "Notice of intent" means that notice which is filed with the department on behalf of an electric utility prior to submission of an application pursuant to this act and which notifies the department of an intent to file an application.

(15) "Modification" means any change in the certification order after issuance, including a change in the conditions of certification.

(16) "Amendment" means any change in the application for certification made after the initial filing.

History.—s. 1, ch. 73-33; s. 3, ch. 76-76; s. 1, ch. 79-76; s. 3, ch. 81-131.

403.504 Department of Environmental Reg-

ulation; powers and duties enumerated.—The Department of Environmental Regulation shall have the following powers and duties in relation to this act:

(1) To adopt, promulgate, or amend reasonable rules to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the location and operation of electrical power plants.

(2) To prescribe the form and content of the notice of intent and the form, content, and necessary supporting documentation and studies to be prepared by the applicant for electric power plant site certification applications.

(3) To receive applications for electrical power plant site certifications and to determine the completeness and sufficiency thereof.

(4) To make, or contract for, studies of electrical power plant site certification applications.

(5) To administer the processing of applications for electric power plant site certifications and to ensure that the applications are processed as expeditiously as possible.

(6) To notify all affected agencies of the filing of an application within 15 days of receiving the complete application.

(7)(a) To require an application fee for certification not to exceed $50,000. The application fee shall be paid to the department upon the filing of each application for site certification. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, or increase in generating capacity proposed by the application. A minimum fee of $5,000 shall be required for each application. All reasonable expenses and costs of the proceeding incurred by the department, the Division of Administrative Hearings, the Public Service Commission, the Department of Community Affairs, the water management district, created pursuant to chapter 373, in the jurisdiction of which the facility is to be located, or any other agency from which the department requests special studies pursuant to s. 403.507(1)(d), including those expenses and costs which are associated with the cost of publication of public notices, the preparation and conduct of the hearings, the recording and transcription of the proceedings, and the studies required of the agencies by this act, shall be paid from the application fee. Any sums remaining after the payment of authorized costs shall be refunded to the applicant within 90 days of the issuance or denial of certification or withdrawal of the application. The applicant shall be provided with an itemized accounting of the expenditures.

(b) To require a fee of $2,500 to be submitted to the department with a notice of intent. The notice-of-intent fee shall be used, disbursed, and refunded in the same manner as the application fee and shall be a credit toward the application fee.

(8) To prepare a written analysis which shall be filed with the designated hearing officer and served on all parties no later than 8 months after the complete application is filed with the department, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the rules of the department.

(b) The report from the Public Service Commission as required by ss. 403.507 and 403.519.

(c) The report of the Department of Community Affairs as required by s. 403.507.

(d) The report from the water management district as required by s. 403.507.

(e) The studies conducted pursuant to s. 403.507.

(f) The comments received by the department from any other agency.

(g) The recommendation of the department as to the disposition of the application and any proposed conditions of certification which the department believes should be imposed.

(9) To provide adequate public notice of the filing of the application and of the proceedings conducted pursuant to this part.

(10) To prescribe the means for monitoring the effects arising from the construction and operation of electrical power plants to assure continued compliance with terms of the certification.

(11) To notify all agencies affected of the filing of a notice of intent within 15 days of receipt of the notice and to publish public notice that the department has received such notice of intent.

(12) To require a certification modification fee, not to exceed $5,000, from the party petitioning for the modification, which fee shall be submitted to the department with a formal petition for modification to the department pursuant to s. 403.516(3). Any sums remaining after the proceeding shall be refunded to the petitioner within 90 days after approval or denial of the modification.

(13) To withhold from the application fee established by this section a reasonable sum sufficient to cover costs associated with postcertification review of activities required by any condition of certification. Such sums shall be specified as a part of each condition. Upon completion of any such reviews, any sums remaining shall be refunded to the applicant.

History.—s. 1, ch. 73-33; s. 1, ch. 76-76; s. 1, ch. 77-174; s. 132, ch. 79-190; s. 4, ch. 81-131; s. 33, ch. 81-167; s. 35, ch. 83-55.

403.506 Applicability and certification.—

(1) The provisions of this chapter shall apply to any electrical power plant as defined herein, except that the provisions of the Power Plant Siting Act shall not apply to any electrical power plant or steam generating plant of less than 50 megawatts in capacity unless the applicant has elected to apply for certification under this act. No construction of any new electrical power plant or expansion in steam generating capacity of any existing electrical power plant may be undertaken after October 1, 1973, without first obtaining certification in the manner as herein provided, except that this act shall not apply to any such electrical power plant which is presently operating or under construction or which has, upon the effective date of chapter 73-33, Laws of Florida, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nonnuclear fuels, internal related hardware, or operating conditions not in conflict with certification which increase the electrical output of a

unit to no greater capacity than the maximum operating capacity of the existing generator shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

History.—s. 1, ch. 73-33; s. 3, ch. 76-76; s. 2, ch. 79-78; s. 5, ch. 81-131.

403.5063 Notice of intent to file application.—

(1) To expedite the processing of the application, which may be filed subsequently, the applicant for a proposed power plant may file a notice of intent to file an application with the department.

(2) The department shall establish, by rule, a procedure by which an applicant, after public notice, may enter into binding written agreements with the department and other affected agencies as to the scope, quantity, and level of information to be provided in the application, as well as the methods to be used in providing such information and the nature of the supporting documents to be included in the application.

History.—s. 6, ch. 81-131.

403.5065 Appointment of hearing officer; determination of completeness; amendment to the application.—

(1) Within 7 days of receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate a hearing officer to conduct the hearings required by this act. The division director shall designate a hearing officer within 7 days of receipt of the request from the department. In designating a hearing officer for this purpose, the division director shall, whenever practicable, assign a hearing officer who has had prior experience or training in electric power plant site certification proceedings. Upon being advised that a hearing officer has been appointed, the department shall immediately file a copy of the application and all supporting documents with the designated hearing officer, who shall docket the application.

(2) Within 10 working days of receipt of an application, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the completeness, not the sufficiency, of the application. If the department declares the application to be incomplete, then, within 15 working days of the receipt by the department of the application, the applicant shall file with the Division of Administrative Hearings and with the department a statement agreeing with the statement of the department and withdrawing the application or contesting the statement of the department. If the application is not withdrawn, the hearing officer shall schedule a hearing on the statement of completeness. The hearing shall be scheduled as expeditiously as possible, but no later than 30 days after the receipt of the application by the department. The designated hearing officer shall make his decision within 10 days of the hearing. If the designated hearing officer determines that the application was not complete as filed, then the applicant shall withdraw the application. If the hearing officer determines that the application was complete at the time it was filed, then the times provided in this act shall run from the date of the filing of such application.

(3) Any amendment made to the application after filing shall be served on all parties and agencies that have received the initial application.

History.—s. 6, ch. 76-76; s. 1, ch. 77-174; s. 7, ch. 81-131.

403.507 Reports and studies.—

(1) It shall be the duty of the department to provide copies of the application as filed, within 15 days of its receipt by the department, to the Department of Community Affairs, the Public Service Commission, and the water management district, created by chapter 373, in the jurisdiction of which the facility is to be located. The applicant, at its cost, shall furnish such information, studies, and data as the department may direct.

(a) Within 5 months of receipt of a copy of the complete application, the Department of Community Affairs shall present a report as to the compatibility of the proposed electrical power plant with the state comprehensive plan to the department. The Department of Community Affairs shall submit a preliminary report within 60 days of receipt of a copy of the complete application.

(b) The Public Service Commission shall prepare a report as to the present and future need for the electrical generating capacity to be supplied by the proposed electrical power plant. The report may include the comments of the commission with respect to any matters within its jurisdiction. It shall submit its report to the department within 5 months of receipt of a copy of the complete application. The commission shall submit a preliminary report within 60 days of receipt of a copy of the complete application.

(c) Within 5 months of receipt of a copy of the complete application, the water management district, as defined in chapter 373, in the jurisdiction of which the proposed electrical power plant is to be located shall prepare a report as to matters within its jurisdiction. The water management district shall submit a preliminary report within 60 days of receipt of a copy of the complete application.

(d) The department may request that any other agency perform studies and prepare reports as to matters within the jurisdiction of that agency which may be potentially affected by the proposed electrical power plant. Such studies or reports shall be submitted to the department within 5 months of receipt of a copy of the complete application by that agency.

(2) As needed to verify or supplement the studies made by the applicant in support of the application, it shall be the duty of the department to conduct, or contract for, studies of the proposed electrical power plant and site, including, but not limited to, the following:

(a) Cooling system requirements.
(b) Construction and operational safeguards.
(c) Proximity to transportation systems.
(d) Soil and foundation conditions.
(e) Impact on suitable present and projected water supplies for this and other competing uses.
(f) Impact on surrounding land uses.
(g) Accessibility to transmission corridors.
(h) Environmental impacts.

(3) The department shall initiate the activities required by this section no later than 30 days after the complete application is filed. The department shall keep the applicant informed as to the progress of the studies and any issues raised thereby.

(4) The studies required by subsection (2) shall be completed no later than 7 months after the complete application is filed with the department.

History.—s. 1, ch. 73-33; s. 5, ch. 76-76; s. 132, ch. 79-190; s. 8, ch. 81-131; s. 33, ch. 81-169; s. 38, ch. 83-55.

403.508 Proceedings, parties, participants.—

(1) The designated hearing officer shall conduct a land use hearing in the county of the proposed site within 90 days of receipt of a complete application for electrical power plant site certification by the department. The place of such hearing shall be as close as possible to the proposed site. The department shall arrange for publication of notice of the land use hearing and of the deadline for filing of notice of intent to be a party at least 45 days before the date set for the land use hearing.

(2) The sole issue for determination at the land use hearing shall be whether or not the proposed site is consistent and in compliance with existing land use plans and zoning ordinances. The designated hearing officer's recommended order shall be issued within 30 days of completion of the hearing and shall be reviewed by the board within 45 days of receipt of the recommended order by the board. If it is determined by the board that the proposed site does conform with existing land use plans and zoning ordinances in effect as of the date of the application, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site unless certification is subsequently denied. If it is determined by the board that the proposed site does not conform, it shall be the responsibility of the applicant to make the necessary application for rezoning. Should the application for rezoning be denied, the applicant may appeal this decision to the board, which may, if it determines after notice and hearing that it is in the public interest to authorize a nonconforming use of the land as a site for an electrical power plant, authorize a variance to the existing land use plan and zoning ordinances. In the event a variance is denied, no further action may be taken on the complete application by the department until the proposed site conforms to existing land use plans or zoning ordinances.

(3) A certification hearing shall be held by the designated hearing officer no later than 10 months after the complete application is filed with the department; however, an affirmative determination of need by the Public Service Commission pursuant to s. 403.519 shall be a condition precedent to the conduct of the certification hearing. At the conclusion of the certification hearing, the designated hearing officer shall, after consideration of all evidence of record, submit to the board a recommended order no later than 12 months after receipt of the complete application by the department.

(4)(a) Parties to the proceeding shall include:

1. The applicant.
2. The Public Service Commission.
3. The Department of Community Affairs.
4. The water management district, as defined in chapter 373, in the jurisdiction of which the proposed electrical power plant is to be located.
5. The department.

(b) Upon the filing with the department of a notice of intent to be a party at least 15 days prior to the date set for the land use hearing, the following shall also be parties to the proceeding:

1. Any county or municipality in whose jurisdiction the proposed electrical power plant is to be located.
2. Any state agency not listed in paragraph (a) as to matters within its jurisdiction.
3. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote orderly development of the area in which the proposed electrical power plant is to be located.

(c) Notwithstanding paragraph (4)(d), failure of an agency described in subparagraphs (4)(b)1. or (4)(b)2. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that agency to participate as a party in the proceeding.

(d) Other parties may include any person, including those persons enumerated in paragraph (4)(b) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the designated hearing officer and upon such conditions as he may prescribe any time prior to 15 days before the commencement of the certification hearing.

(e) Any agency whose properties or works are being affected pursuant to s. 403.509(2) shall be made a party upon the request of the department or the applicant.

(5) When appropriate, any person may be given an opportunity to present oral or written communications to the designated hearing officer. If the designated hearing officer proposes to consider such communications, then all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(6) The designated hearing officer shall have all powers and duties granted to hearing officers by chapters 120 and 403 and by the rules of the department and the Administration Commission, including the authority to resolve disputes over the completeness of an application for certification.

History.—s. 1, ch. 73-33; s. 6, ch. 76-76; s. 1, ch. 77-174; s. 134, ch. 79-190; s. 9, ch. 81-131; s. 38, ch. 81-167; s. 37, ch. 83-55.

403.509 Final disposition of application.—

(1) Within 60 days of receipt of the designated hearing officer's recommended order, the board shall act upon the application by written order, approving in whole, approving with such modification as the board shall deem appropriate, or denying the issuance of a certificate and stating the reasons for issuance or denial. If the certificate is denied, the board shall set forth in writing the action the applicant would have to take to secure the board's approval of the application.

(2) In regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant and site and to direct any such agency to execute, within 30 days of the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

(3) The issuance or denial of the certification by the board shall be the final administrative action required as to that application.

History.—s. 1, ch. 73-33; s. 7, ch. 76-76; s. 141, ch. 77-104.

403.5095 Alteration of time limits.—Any time limitation in this part may be altered by the designated hearing officer upon stipulation between the department and the applicant or for good cause shown by any party.

History.—s. 8, ch. 76-76.

403.510 Superseded laws, regulations, and certification power.—

(1) If any provision of this act 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, this act shall govern and control, and such other law or ordinance or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the regulation and certification of electrical power plant sites and electrical power plants as defined in this act.

(3) The board shall have the power to adopt reasonable procedural rules to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop permitting process.

History.—s. 1, ch. 73-33; s. 9, ch. 76-76.

403.511 Effect of certification.—

(1) Subject to the conditions set forth therein, any certification signed by the Governor shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of the proposed electrical power plant, except as otherwise provided in subsection (4).

(2) The certification shall authorize the electric utility named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification. Except as provided in subsection (4), the certification agreement may include conditions which constitute variances from nonprocedural standards or regulations of the department or any other standards or regulations of any other agency which were expressly considered during the proceeding and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

(3) The certification shall be in lieu of any license, permit, certificate, or similar document required by any agency pursuant to, but not limited to, chapter 161, chapter 253, chapter 298, chapter 370, chapter 373, chapter 380, chapter 381, chapter 387, chapter 404, the Florida Transportation Code, or 33 U.S.C. s. 1341.

(4) This part shall not affect in any way the ratemaking powers of the Public Service Commission under chapter 366; nor shall this part in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with local building codes, standards, and regulations.

(5)(a) An electrical power plant certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Any holder of a certification issued pursuant to this act may choose to operate the certified electrical power plant in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings. This subsection shall apply to previously issued certifications.

History.—s. 1, ch. 73-33; s. 2, ch. 74-120; s. 10, ch. 76-76; s. 1, ch. 77-174; s. 60, ch. 79-65.

403.5111 County and municipal authority unaffected by chapter 75-22, Laws of Florida.—Except as provided in ss. 403.510 and 403.511, nothing in chapter 75-22, Laws of Florida, shall be construed to have altered the authority of county and municipal governments as provided by law.

History.—s. 22, ch. 75-22.

403.512 Revocation or suspension of certification.—Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the board's refusal to recommend a certification in the first instance.

(2) For failure to comply with the terms or conditions of the certification.

(3) For violation of the provisions of this chapter or regulations or orders issued hereunder.

History.—s. 1, ch. 73-33; s. 11, ch. 76-76.

403.513 Review.—Proceedings under this part shall be subject to judicial review as provided in chapter 120.

History.—s. 1, ch. 73-33; s. 12, ch. 76-76.

403.514 Enforcement of compliance.—Failure to obtain a certification, or to comply with the conditions thereof, or to comply with this part shall constitute a violation of chapter 403.

History.—s. 1, ch. 73-33; s. 12, ch. 76-76.

403.515 Availability of information.—The department shall make available for public inspection and copying during regular office hours, at the expense of any person requesting copies, any information filed or submitted pursuant to this act.

History.—s. 1, ch. 73-33.

403.516 Modification of certification.—A certification may be modified after issuance in any one of the following ways:

(1) The board may delegate to the department the authority to modify specific conditions in the certification.

(2) The parties to the certification proceeding may modify the terms and conditions of the certification by mutual written agreement. Upon execution of the agreement by the parties, the provisions of s. 120.57 shall apply to the proceedings for approval or denial of the agreement by the board.

(3) If the parties to the certification proceeding are unable to reach a mutual written agreement on modification of the terms and conditions of the certification, a petition for modification setting forth:

(a) The proposed modification,

(b) The factual reasons asserted for the modification, and

(c) The anticipated effects of the proposed modification on the applicant, the public, and the environment

shall be filed with the Division of Administrative Hearings. The provisions of s. 120.57 shall apply to the proceedings for approval or denial of the petition by the board.

(4) As required by s. 403.511(5).

History.—s. 13, ch. 76-76; s. 10, ch. 81-131.

403.517 Supplemental applications for sites certified for ultimate site capacity.—

(1)(a) The department shall adopt rules governing the processing of supplemental applications for certification of the construction and operation of electrical power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this part. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified for that site. The rules adopted pursuant to this section shall include provisions for:

1. Prompt appointment of a designated hearing officer.

2. The contents of the supplemental application.

3. Resolution of disputes as to the completeness of supplemental applications by the designated hearing officer.

4. Public notice of the filing of the supplemental applications.

5. Time limits for prompt processing of supplemental applications.

6. Final disposition by the board within 7 months of the filing of a complete supplemental application.

(b) The time limits shall not exceed any time limitation governing the review of initial applications for site certification pursuant to this part, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for electrical power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

(c) Any time limitation in this section or in rules adopted pursuant to this section may be altered by the designated hearing officer upon stipulation between the department and the applicant or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120 in considering and processing such supplemental applications. The department may charge a supplemental application fee not to exceed $25,000 to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application incurred by the department, the Division of Administrative Hearings, the Public Service Commission, the Department of Community Affairs, the water management district, or any other agency from which the department requests special studies pursuant to s. 403.507(1)(d). Any unused portion of the fee shall be refunded pursuant to s. 403.504.

(2) Supplemental applications shall be reviewed in accordance with the criteria and considerations of s. 403.507.

(3) The land use hearing requirements of s. 403.508(1) and (2) shall not be applicable to the processing of supplemental applications pursuant to this section so long as:

(a) The previously certified ultimate site capacity is not exceeded; and

(b) The lands required for the construction or operation of the electrical power plant which is the subject of the supplemental application are within the boundaries of the previously certified site.

(4) For the purposes of this part, the term "ultimate site capacity" means the maximum generating capacity for a site as certified by the board.

History.—s. 14, ch. 76-76; s. 11, ch. 81-131; s. 34, ch. 81-169; s. 38, ch. 83-55.

403.519 Exclusive forum for determination of need.—On request by a utility or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act. The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall

serve as the commission's report required by s. 403.507(1)(b).

History.—s. 5, ch. 80-65.

cf.—ss. 366.80-366.85 Florida Energy Efficiency and Conservation Act.

403.52 Short title.—Sections 403.52-403.536 may be cited as the "Transmission Line Siting Act."

History.—s. 1, ch. 80-65.

403.521 Legislative intent.—The legislative intent of this act is to establish a centralized and coordinated permitting process for the location of transmission line corridors and the construction and maintenance of transmission lines, which necessarily involves several broad interests of the public addressed through the subject matter jurisdiction of several agencies. The Legislature recognizes that transmission lines will have an effect upon the welfare of the population. Recognizing the need to ensure electric power system reliability and integrity, and in order to meet electrical energy needs in an orderly and timely fashion, the centralized and coordinated permitting process established by this act is intended to further the legislative goal of ensuring through available and reasonable methods that the location of transmission line corridors and the construction and maintenance of transmission lines produce minimal adverse effects on the environment and public health, safety, and welfare. It is the intent of this act to fully balance the need for transmission lines with the broad interests of the public in order to effect a reasonable balance between the need for the facility as a means of providing abundant low-cost electrical energy and the impact on the public and the environment resulting from the location of the transmission line corridor and the construction and maintenance of the transmission lines. The Legislature intends that the provisions of chapter 120 apply to this act and to proceedings pursuant to it except as otherwise expressly exempted by other provisions of this part.

History.—s. 1, ch. 80-65; s. 2, ch. 83-222.

403.522 Definitions.—As used in this act:

(1) "Agency," as the context requires, means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government within the state, including a county, municipality, or other regional or local governmental entity.

(2) "Amendment" means a material change in information provided in the application for certification made after the initial application filing.

(3) "Applicant" means any electric utility which applies for certification pursuant to the provisions of this act.

(4) "Application" means the documents required by the department to be filed to initiate a certification proceeding. An electric utility may file a comprehensive application encompassing all or a part of one or more proposed transmission lines.

(5) "Board" means the Governor and Cabinet sitting as the siting board.

(6) "Certification" means the approval by the board of a corridor proper for certification pursuant to subsection (9) and the construction and maintenance of transmission lines within such corridor with such modifications or conditions as the board deems appropriate. Certification shall be evidenced by a written order of the board.

(7) "Commission" means the Florida Public Service Commission.

(8) "Completeness" means that the application has addressed all applicable sections of the prescribed application format, but does not mean that those sections are sufficient in comprehensiveness of data or in quality of information provided.

(9) "Corridor" means the proposed area within which a transmission line right-of-way is to be located. The width of the corridor proposed for certification by an applicant or other party, at the option of the applicant, may be the width of the transmission line right-of-way or wider, not to exceed a width of 1 mile. After all property interests required for the transmission line right-of-way have been acquired by the applicant, the boundaries of the area certified shall narrow to only that land within the boundaries of the transmission line right-of-way. The corridors proper for certification shall be those addressed in the application, in amendments to the application filed pursuant to s. 403.5275, and in notices of acceptance of proposed alternate corridors filed by an applicant and the department pursuant to s. 403.527(5).

(10) "Department" means the Department of Environmental Regulation.

(11) "Local government" means a municipality or county in the jurisdiction of which the project is proposed 'to be located.

(12) "Modification" means any change in the certification order after issuance, including a change in the conditions of certification.

(13) "Regional planning council" means a regional planning council as defined in s. 160.003(4) in the jurisdiction of which the project is proposed 'to be located.

(14) "Sufficiency" means that the application is not only complete but that all sections are sufficient in comprehensiveness of data or in quality of information provided.

(15) "Transmission line" means any electrical transmission line extending from, but not including, an existing or proposed substation or power plant to, but not including, an existing or proposed transmission network or rights-of-way or substation to which the applicant intends to connect which defines the end of the proposed project and which is designed to operate at 230 kilovolts or more and which crosses a county line. The starting point and ending point of a transmission line must be specifically defined by the applicant and must be verified by the commission in its determination of need. A transmission line includes structures and maintenance and access roads that need to be constructed for the project to become operational. If the proposed location of a corridor is affected by the applicant's proposed intermediate substations, then the general location of the proposed intermediate substation, and not the permitting of such substation, shall be considered in the certification proceedings.

(16) "Transmission line right-of-way" means land necessary for the construction and maintenance of a transmission line. The typical width of the

right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

(17) "Water management district" means a water management district created pursuant to chapter 373 in the jurisdiction of which the project is proposed to be located.

(18) The following words have the same meaning as appears in s. 403.503:

(a) "Electric utility."

(b) "License."

(c) "Person."

History.—s. 1, ch. 80-65; s. 3, ch. 83-222.

*Note.—The words "to be located" were inserted by the editors.

403.523 Department of Environmental Regulation; powers and duties.—The department shall have the following powers and duties:

(1) To adopt or amend reasonable procedural rules to implement the provisions of this act and to adopt or amend rules to implement the provisions of subsection (14).

(2) To prescribe the form, content, and necessary supporting documentation, and any required studies, for certification applications. All such data and studies shall be related to the jurisdiction of the agencies relevant to the application.

(3) To receive applications for transmission line and corridor certifications and initially determine the completeness and sufficiency thereof.

(4) To make or contract for studies of certification applications. All such studies shall be related to the jurisdiction of the agencies relevant to the application. For studies in areas outside the jurisdiction of the department and in the jurisdiction of another agency, the department may initiate such studies, but only with the consent of such agency.

(5) To administer the processing of applications for certification and ensure that the applications are processed as expeditiously as possible.

(6) To notify all affected agencies of the filing of an application and of the filing of subsequent amendments within 15 days after receiving the complete application or subsequent amendments.

(7) To require an application fee, which shall be paid to the department upon the filing of each application for corridor certification. The application fee shall be $750 for each mile of the proposed transmission line corridor. A minimum fee of $20,000 shall be required for each application. The application fee shall be used to pay those expenses associated with the cost of the preparation and conduct of the hearings, the recording and transcription of the proceedings, the studies required by this act, and agency travel and per diem. Salaries for full-time state agency employees, excluding other personal services employees, may not be charged against the fee. If any sums remain after payment of such expenses, the application fee shall be applied pro rata to reimburse all reasonable expenses pursuant to this act incurred by the agencies. Any sums remaining after the payment of all authorized costs shall be refunded to the applicant within 90 days after the issuance or denial of certification or the withdrawal of the application. The applicant shall be provided with an itemized accounting of the expenditures.

(8) To prepare a compilation of agency reports and summaries of the material contained therein which shall be filed with the hearing officer and served on all parties no later than 4 months after the complete application is filed with the department, and which shall include:

(a) The studies and reports required by ss. 403.526 and 403.537, including the recommendations of the department relating to the disposition of the application.

(b) Comments received from any other agency.

(9) To provide public notice of the filing of the application and of the proceedings conducted pursuant to this act.

(10) To prescribe the means for monitoring the effects arising from the location of the transmission line corridor and the construction and maintenance of the transmission lines to assure continued compliance with the terms of the certification.

(11) To require a certification modification fee. If no corridor alignment change is proposed by the applicant, the modification fee shall be $2,000. If a corridor alignment change is proposed by the applicant, the fee shall be $2,000 plus $750 for each mile of realignment. Such fee shall be submitted to the department upon notification by an applicant that modification pursuant to s. 403.5315(2) or (3) is sought, and which shall be used, disbursed, and accounted for in the same manner as the application fee.

(12) To make a determination of acceptability of any alternate corridor proposed for consideration pursuant to s. 403.527(5).

(13) To withhold from the fees established by this section a reasonable sum sufficient to cover the costs associated with postcertification review of activities required by any condition of certification. Such sums shall be specified as part of each condition.

(14) To set requirements that reasonably protect the public health, safety, and welfare from the electric and magnetic fields of transmission lines for which an application is filed after the effective date of this act.

(15) To present rebuttal evidence on any issue properly raised at the certification hearing.

History.—s. 1, ch. 80-65; s. 37, ch. 81-167; s. 263, ch. 81-259; s. 39, ch. 83-56; s. 4, ch. 83-222.

403.524 Applicability and certification.—

(1) The provisions of this act apply to each transmission line, except a transmission line certified pursuant to the Florida Electrical Power Plant Siting Act.

(2) Except as provided in subsection (1), no construction of any transmission line may be undertaken without first obtaining certification under this act, but the provisions of this act do not apply to:

(a) Transmission lines for which development approval has been obtained pursuant to chapter 380.

(b) Transmission lines which have been exempted by a binding letter of interpretation issued under s. 380.06(4), or in which the Department of Community Affairs or its predecessor agency has determined the utility to have vested development rights within the meaning of s. 380.05(18) or s. 380.06(17).

(c) Transmission line development in which all construction is limited to established rights-of-way. Established rights-of-way include such rights-of-way for roads, highways, railroads, gas, water, oil, electricity, or sewage and any other public purpose rights-of-way. Except for transmission line rights-of-way, established rights-of-way include rights-of-way created before or after October 1, 1983. For transmission line rights-of-way, established rights-of-way include rights-of-way created before October 1, 1983.

(d) Transmission lines less than 15 miles in length which cross a county line, unless the applicant has elected to apply for certification under the act.

(3) The exemption of a transmission line under this act does not constitute an exemption for the transmission line from other applicable permitting processes under other provisions of law or local government ordinances.

(4) A utility shall notify the department in writing, prior to the start of construction, of its intent to construct a transmission line exempted pursuant to this section. Such notice shall be only for information purposes, and no action by the department shall be required pursuant to such notice.

History.—s. 1, ch. 80-65; s. 14, ch. 81-137; s. 38, ch. 81-167; s. 40, ch. 83-55; s. 5, ch. 83-222.

403.525 Appointment of hearing officer; determination of completeness or sufficiency.—

(1) Within 7 days after receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate a hearing officer to conduct the hearings required by this act. The division director shall designate a hearing officer to conduct the hearings required by this act within 7 days after receipt of the request from the department. Whenever practicable, the division director shall assign a hearing officer who has had prior experience or training in this type of certification proceeding. Upon being advised that a hearing officer has been designated, the department shall immediately file a copy of the application and all supporting documents with the hearing officer, who shall docket the application.

(2) Within 20 working days after receipt of an application or an amendment, the department shall file a statement with the Division of Administrative Hearings and with the applicant, declaring its position with regard to the completeness, not the sufficiency, of the application or amendment. If the department declares the application or amendment to be incomplete, then, within 15 days after the filing of the statement by the department, the applicant shall file with the Division of Administrative Hearings and with the department a statement agreeing with the statement of the department and withdrawing the application or amendment, a statement contesting the statement of the department, or supplemental information which makes the application or amendment complete. If the determination by the department that an application or amendment is incomplete and is contested, the hearing officer shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but no later than 14 days from the filing of the statement contesting the determination of the department. The hearing officer shall make a decision within 10 days after the hearing. If the hearing officer determines that the application or amendment was not complete as filed, then the applicant shall withdraw the application or amendment or make such additional submittals so as to complete it. If the hearing officer determines that the application was complete at the time it was filed, then the time provided in this act shall run from the date of the filing of such application.

(3) The department may by rule adopt procedures similar to those set forth in subsection (2) for the determination of the sufficiency of an application by the department, based on the recommendations of the agencies required to submit reports pursuant to s. 403.526. If contested by the applicant, the final decision on sufficiency shall be made by the hearing officer.

History.—s. 1, ch. 80-65; s. 6, ch. 83-222.

403.526 Reports and studies.—

(1) It shall be the duty of the department to provide copies of each application, within 7 days after filing, to the commission, the Department of Natural Resources, the Department of Community Affairs, the Game and Fresh Water Fish Commission, each water management district, each regional planning council, and each local government in the jurisdiction of which the proposed transmission line or corridor is to be located.

(2) The department shall prepare a report as to the impact of each proposed transmission line or corridor as it relates to matters within its jurisdiction.

(3) The Department of Natural Resources shall prepare a report as to the impact of each proposed transmission line or corridor on matters within its jurisdiction and shall submit its report to the department within 90 days after receipt of a copy of the complete application.

(4) Each water management district in the jurisdiction of which a proposed transmission line or corridor is to be located shall prepare a report as to the impact on water resources and other matters within its jurisdiction and shall submit its report to the department within 90 days after receipt of a copy of the complete application.

(5) The Department of Community Affairs shall prepare a report as to the impact of each proposed transmission line or corridor on land use and other matters within its jurisdiction and shall submit its report to the department within 90 days after receipt of the completed application.

(6) The Game and Fresh Water Fish Commission shall prepare a report as to the impact of each proposed transmission line or corridor on fish and wildlife resources and other matters within its jurisdiction and shall submit its report to the department within 90 days after receipt of the completed application.

(7) Each local government shall prepare a report as to the impact of each proposed transmission line or corridor on matters within its jurisdiction, or shall by resolution adopt the report prepared by the ap-

propriate regional planning council as required by subsection (8). It shall submit its report or resolution to the department within 90 days after its receipt of the complete application.

(8) Each regional planning council shall prepare a report on the impacts of each proposed transmission line or corridor on matters within its jurisdiction. It shall submit its report within 90 days after its receipt of the complete application.

(9) The report shall contain the information on variances required by s. 403.531(2) and proposed conditions of certification on matters within the jurisdiction of each agency. For each condition proposed by an agency, the agency shall list the specific statute, rule, or ordinance, as applicable, which authorizes the proposed condition.

(10) Each reviewing agency shall initiate the activities required by this section no later than 15 days after the complete application is filed. Preliminary reports shall be submitted to the department no later than 60 days after the receipt of a completed application by the department. Such reports shall be made available to each local government for use as information for public meetings pursuant to s. 403.5272. Each agency shall keep the applicant informed as to the progress of its studies and any issues raised thereby.

(11) The failure of any agency to submit a preliminary report or a report, or to submit its preliminary report or report within the allowed time, shall not be grounds for the alteration of any time limitation in this act pursuant to s. 403.528. Neither the failure to submit a preliminary report or a report nor the inadequacy of the preliminary report or report shall be grounds to deny or condition certification.

History.—s. 1, ch. 80-65; s. 39, ch. 81-167; s. 41, ch. 83-55; s. 7, ch. 83-222.

403.527 Notice, proceedings, parties, participants.—

(1)(a) No later than 15 days after the receipt of an application, the department shall arrange for publication of a notice of the application and of the proceedings required by this act.

(b) The department shall arrange for publication of a notice of the certification hearing and other public hearings provided for in this section and notice of the deadline for filing of notice of intent to be a party. Such notices shall be published at least 80 days before the date set for the hearing.

(c) The department shall arrange for publication of a reminder notice in the newspapers specified in paragraph (d) no more than 2 weeks prior to the certification hearing, reminding the public of the date and location of the hearing. This notice shall not constitute a point of entry for intervention in the proceeding.

(d) Notices shall be published:

1. In newspapers of general circulation within counties crossed by the transmission line corridors proper for certification. The required newspaper notices, other than the reminder notice, shall be one-half page in size in a standard-size newspaper or a full page in a tabloid-size newspaper. These notices shall include a map generally depicting all transmission corridors proper for certification. A newspaper of general circulation shall be the newspaper within a county crossed by a transmission line corridor proper for certification which newspaper has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, then the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county;

2. In the Florida Administrative Weekly; and

3. By giving notice to any persons who have requested to be placed on the departmental mailing list for this purpose.

(e) The department shall adopt rules specifying the content of notices required by this section. All published notices shall be paid for by the applicant and shall be in addition to the application fee. The department shall arrange for publication of notices required by this section.

(2) No later than 150 days after receipt of a complete application by the department, the hearing officer shall conduct a certification hearing pursuant to s. 120.57 at a central location in proximity to the proposed transmission line or corridor. One public hearing where members of the public who are not parties to the certification hearing may testify shall be held within the boundaries of each county, at the option of any local government. The local government shall notify the hearing officer and all parties not later than 50 days after the receipt of a complete application as to whether the local government wishes to have such a public hearing. The local government shall be responsible for [1]determining the location of the public hearing. Within 5 days of such notification, the hearing officer shall determine the date of such public hearing, which shall be held before or during the certification hearing. In the event two or more local governments within one county request such a public hearing, the hearing shall be consolidated so that only one such public hearing is held in any county. The location of a consolidated hearing shall be determined by the hearing officer. If a local government does not request a public hearing within 50 days after the receipt of a complete application, persons residing within [1]the jurisdiction of such local government may testify at the public hearing portion of the certification hearing.

(3)(a) At the conclusion of the certification hearing, the hearing officer shall, after consideration of all evidence of record, issue a recommended order disposing of the application no later than 50 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings.

(b) In the event the hearing officer fails to issue a recommended order within 50 days after the filing of the hearing transcript, the hearing officer shall submit a report to the board with a copy to all parties within 50 days after the filing of the hearing transcript to advise the board of the reason for the delay in the issuance of the recommended order and of the date by which the recommended order will be issued.

(4)(a) Parties to the proceeding shall be:

1. The applicant.
2. The department.

3. The commission.
4. The Department of Community Affairs.
5. The Department of Natural Resources.
6. The Game and Fresh Water Fish Commission.
7. Each water management district in the jurisdiction of which the proposed transmission line or corridor is to be located.
8. Any local government.
9. Regional planning councils.

(b) Any party listed in paragraph (a) may waive its right to participate in these proceedings. If any listed party fails to file a notice of its intent to be a party on or before the 30th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party unless its participation would not prejudice the rights of any party to the proceeding.

(c) Notwithstanding the provisions of chapter 120 to the contrary, upon the filing with the hearing officer of a notice of intent to be a party by an agency or corporation or association described in subparagraphs 1. and 2. or a petition for intervention by a person described in subparagraph 3. no later than 30 days prior to the date set for the certification hearing, the following shall also be parties to the proceeding:

1. Any state agency not listed in paragraph (a) as to matters within its jurisdiction.
2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation of natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote orderly development of the area in which the proposed transmission line or corridor is to be located.
3. Any person whose substantial interests are affected and being determined by the proceeding.

(d) Any agency whose properties or works may be affected shall be made a party upon the request of the agency or any party to this proceeding.

(5)(a) No later than 50 days prior to the certification hearing, any party may propose alternate transmission line corridor routes for consideration pursuant to the provisions of this act by filing a notice of a proposed alternate corridor with the hearing officer, all parties, and any local governments in whose jurisdiction the alternate is proposed. Such filing shall include the most recent United States Geological Survey 1:24000 quadrangle maps specifically delineating the corridor boundaries, a description of the proposed corridor, and a statement of the reasons the proposed alternate should be certified.

(b) Within 5 working days of receipt of such notice, the applicant and the department shall file with the hearing officer and all parties a notice of acceptance or rejection of a proposed alternate corridor for consideration. If the alternate corridor is rejected either by the applicant or the department, the certification hearing and the public hearings shall be held as scheduled. If both the applicant and the department accept a proposed alternate corridor for consideration, the certification hearing and the public hearings shall be rescheduled, if necessary.

(c) If rescheduled, the certification hearing shall be held no more than 80 days from the previously scheduled certification hearing, to provide sufficient time:

1. For the publication of notice pursuant to paragraphs (1)(b) and (c);
2. For the agencies listed in s. 403.526 to file supplementary reports addressing the proposed alternate corridors at least 30 days prior to the certification hearing; and
3. For agencies to submit supplementary notice pursuant to s. 403.531(2) at least 30 days prior to the certification hearing.

(d) Each party proposing an alternate corridor shall have the burden of providing data to the agencies listed in s. 403.526 necessary for the preparation of a supplementary report on the proposed alternate corridor within a time period established by the department and shall have the burden of proof on the certifiability of the alternate corridor at the certification hearing pursuant to s. 403.529(3). Nothing in this act shall be construed as requiring the applicant or agencies not proposing the alternate to submit data in support of such alternate corridor.

(e) Notwithstanding the rejection of a proposed alternate corridor by the applicant or the department, any party may present evidence at the certification hearing to show that a corridor proper for certification does not satisfy the criteria listed in s. 403.529 or that a rejected alternate corridor would meet the criteria set forth in s. 403.529. No evidence shall be admitted at the certification hearing on any alternate corridor, unless the alternate corridor was proposed by the filing of a notice at least 50 days prior to the certification hearing pursuant to this subsection. Rejected alternate corridors shall be considered by the board as provided in s. 403.529(3) and (4).

(f) If an alternate corridor is accepted by the applicant and the department pursuant to a notice of acceptance as provided in this subsection and such corridor is ultimately determined to be the corridor that would meet the criteria set forth in s. 403.529(3) and (4), the board shall certify that corridor.

(6) When appropriate, any person may be given an opportunity to present oral or written communications to the hearing officer. If the hearing officer proposes to consider such communications, all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(7) The hearing officer shall have all powers and duties granted to hearing officers by chapter 120 and by the laws and rules of the department, including the authority to resolve disputes over the completeness or sufficiency of an application for certification.

History.—s. 1, ch. 80-65; s. 40, ch. 81-167; s. 42, ch. 83-55; s. 8, ch. 83-222.

[1]Note.—The word "determining" was inserted by the editors.

[1]Note.—The words "the jurisdiction of" were inserted by the editors.

403.5272 Local governments; informational public meetings.—

(1) Local governments may hold informational public meetings in addition to the hearings specifically authorized by this act on any matter associated with the transmission line proceeding. Such informational public meetings should be held no later than

80 days after the application is filed. The purpose of an informational public meeting is for the local government to further inform the general public about the transmission line proposed, obtain comments from the public, and formulate its recommendation with respect to the proposed transmission line.

(2) Informational public meetings shall be held solely at the option of each local government. It is the legislative intent that local governments attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party shall be required to attend such informational public hearings.

(3) The failure to hold an informational public meeting or the procedure used for the informational public meeting shall not be grounds for the alteration of any time limitation in this act pursuant to s. 403.528 or grounds to deny or condition certification.

History.—s. 9, ch. 83-222.

403.5275 Amendment to the application.—

(1) Any amendment made to the application shall be sent by the applicant to the hearing officer and to all parties to the proceeding. No additional fee shall be required for the submittal of an amendment to the application if no corridor alignment change is proposed by the amendment. However, if a corridor alignment change is proposed by the applicant, an additional fee of a minimum of $2,000 and $750 per mile shall be submitted to the department for use in accordance with s. 403.522. Amendments that are required to address issues, including alternate corridors pursuant to s. 403.5275(5), raised by the department or other parties do not require additional fees.

(2) Any amendment to the application made prior to certification shall be disposed of as part of the original certification proceeding. Amendment of the application may be considered "good cause" for alteration of time limits pursuant to s. 403.528.

History.—s. 1, ch. 80-65; s. 10, ch. 83-222.

403.528 Alteration of time limits.—Any time limitation in this act may be altered by the hearing officer upon stipulation between the department and the applicant unless objected to by any party within 5 days after notice or for good cause shown by any party.

History.—s. 1, ch. 80-65; s. 11, ch. 83-222.

403.529 Final disposition of application.—

(1) Within 30 days after receipt of the hearing officer's recommended order, the board shall act upon the application by written order, approving in whole, approving with such modification and conditions as the board deems appropriate, or denying the certification and stating the reasons for issuance or denial.

(2) If certification is denied, the board shall set forth in writing the action the applicant would have to take to secure the approval of the application by the board.

(3) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board shall consider whether, and the extent to which, the location of the transmission line corridor and the construction and maintenance of the transmission line will:

(a) Ensure electric power system reliability and integrity;

(b) Meet the electrical energy needs of the state in an orderly and timely fashion;

(c) Comply with nonprocedural requirements of agencies;

(d) Be consistent with applicable local government comprehensive plans; and

(e) Effect a reasonable balance between the need for the transmission line as a means of providing abundant low-cost electrical energy and the impact upon the public and the environment resulting from the location of the transmission line corridor and maintenance of the transmission lines.

(4)(a) Any transmission line corridor certified by the board shall meet the criteria of this section. When more than one transmission line corridor is proper for certification pursuant to s. 403.522(9) and meets the criteria of this section, the board shall certify the transmission line corridor that has the least adverse impact regarding the criteria in subsection (3), including costs.

(b) If the board finds that an alternate corridor rejected pursuant to s. 403.5275(5) meets the criteria of subsection (3) and has the least adverse impact regarding the criteria in subsection (3), including cost, of all corridors that meet the criteria of subsection (3), then the board shall deny certification or shall allow the applicant to submit an amended application to include such corridor.

(c) If the board finds that two or more of the corridors that comply with the provisions of subsection (3) have the least adverse impacts regarding the criteria in subsection (3), including costs, and that such corridors are substantially equal in adverse impacts regarding the criteria in subsection (3), including costs, then the board shall certify the corridor preferred by the applicant if the corridor is one proper for certification pursuant to s. 403.522(9).

(5) The issuance or denial of the certification by the board shall be the final administrative action required as to that application.

History.—s. 1, ch. 80-65; s. 12, ch. 83-222.

403.531 Effect of certification.—

(1) Subject to the conditions set forth therein, certification shall constitute the sole license of the state and any agency as to the approval of the location of transmission line corridors and the construction and maintenance of transmission lines. The certification shall be valid for the life of the transmission line, provided that construction on, or condemnation or acquisition of, the right-of-way is commenced within 5 years of the date of certification or such later date as may be authorized by the board.

(2) The certification shall authorize the applicant to locate the transmission line corridor and to construct and maintain the transmission lines subject only to the conditions of certification set forth in such certification. The certification may include conditions which constitute variances and exemptions, otherwise allowed by law, from nonprocedural standards or regulations of the department or any other agency, which were expressly considered during the proceeding unless waived by the agency as provided below and which otherwise would be applicable to

the location of the proposed transmission line corridor or the construction and maintenance of the transmission lines. Each party shall notify the applicant and other parties at least 60 days prior to the certification hearing of any nonprocedural requirements not specifically listed in the application from which a variance or exception is necessary in order for the board to certify any corridor proposed for certification. Failure of such notification shall be treated as a waiver, variance, or exception, otherwise allowed by law, from nonprocedural standards or regulations of the department or any other agency.

(3) The certification shall be in lieu of any license, permit, certificate, or similar document required by any agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 253, chapter 258, chapter 298, chapter 370, chapter 373, chapter 380, chapter 381, chapter 387, chapter 403, chapter 404, the Florida Transportation Code, or 33 U.S.C. s. 1341. On certification, any license, easement, or other interest in state lands, except those the title of which is vested in the Board of Trustees of the Internal Improvement Trust Fund, shall be issued by the appropriate agency as a ministerial act. The applicant shall be required to seek any necessary interest in state lands the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund from the board of trustees before, during, or after the certification proceeding, and certification may be made contingent upon issuance of the appropriate interest in realty. However, neither the applicant nor any party to the certification proceeding may directly or indirectly raise or relitigate any matter which was or could have been an issue in the certification proceeding in any proceeding before the Board of Trustees of the Internal Improvement Trust Fund wherein the applicant is seeking a necessary interest in state lands, but the information presented in the certification proceeding shall be available for review by the board of trustees and its staff.

(4) This part shall not in any way affect the rate-making powers of the commission under chapter 366. This part shall also not in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with the National Electrical Safety Code, as prescribed by the commission.

(5) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings.

History.—s. 1, ch. 80-65; s. 266, ch. 81-259; s. 13, ch. 83-222.

403.5312 Recording of notice of certified corridor route.—Within 60 days after certification of a directly associated transmission line pursuant to ss. 403.501-403.517 or a transmission line corridor pursuant to ss. 403.52-403.536, the applicant shall file, in accordance with s. 28.222, with the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route. The notice shall consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within such county, whichever is sooner. The recording of this notice shall not constitute a lien, cloud, or encumbrance on real property.

History.—s. 12, ch. 81-131.

403.5315 Modification of certification.—A certification may be modified after issuance in any one of the following ways:

(1) The board may delegate to the department the authority to modify specific conditions in the certification.

(2) The department may modify the terms and conditions of the certification if no party objects in writing to such modification within 45 days after notice by mail to the last address of record in the certification proceeding, and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice.

(3) If the parties to the certification proceeding are unable to reach a mutual written agreement on modification of the terms and conditions of the certification, the applicant may file a petition for modification with the department setting forth:

(a) The proposed modification;

(b) The factual reasons asserted for the modification; and

(c) The anticipated additional environmental effects of the proposed modification.

(4) Petitions filed pursuant to subsection (3) shall be disposed of in the same manner as an application but with shortened time periods commensurate with the significance of the modification requested.

History.—s. 1, ch. 80-65; s. 15, ch. 83-222.

403.532 Revocation or suspension of certification.—Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the board's refusal to recommend a certification in the first instance.

(2) For failure to comply with the terms or conditions of the certification.

(3) For violation of the provisions of this act or rules or orders issued hereunder.

History.—s. 1, ch. 80-65.

403.533 Enforcement of compliance.—Failure to obtain a certification, or to comply with the conditions thereof, or to comply with this part shall constitute a violation of chapter 403.

History.—s. 1, ch. 80-65.

403.536 Superseded laws, regulations, and certification power.—

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction which is now in effect under any law of this state or any ordinance of a local government, political subdivision, or *municipality, or any rule or regulation adopted there*under, this act shall control.

(2) The state hereby preempts the certification of transmission lines and transmission line corridors.

(3) The board shall have the power to adopt reasonable procedural rules to carry out its duties under this act and to give effect to the legislative intent that this act provide an efficient, centrally coordinated, one-stop permitting process.

History.—s. 1, ch. 80-65.

403.537 Determination of need for transmission line; powers and duties.—

(1)(a) Upon request by an electric utility or upon its own motion, the Florida Public Service Commission shall schedule a public hearing, after notice, to determine the need for a transmission line regulated by the Transmission Line Siting Act, ss. 403.52-403.536. Such notice shall be published at least 20 days before the date set for the hearing and shall be published in newspapers of general circulation, in the Florida Administrative Weekly, by giving notice to counties and regional planning councils in whose jurisdiction the transmission line could be placed, and by giving notice to any persons who have requested to be placed on the mailing list of the commission for this purpose. Within 21 days after receipt of a request for determination by an applicant, the commission shall set a date for the hearing. The hearing shall be held pursuant to s. 350.01 within 45 days after the filing of the request, and a decision shall be rendered within 60 days after such filing.

(b) In the determination of need, the commission shall take into account the need for electric system *reliability and integrity, the need for abundant,* low-cost electrical energy to assure the economic well-being of the citizens of this state, the appropriate starting and ending point of the line, and other matters within its jurisdiction deemed relevant to the determination of need.

(c) The determination by the commission of the need for the transmission line, as defined in s. 403.522(15), is binding on all parties to any certification proceeding pursuant to the Transmission Line Siting Act and is a condition precedent to the conduct of the certification hearing prescribed therein. An order entered pursuant to this section constitutes final agency action.

(2) The commission shall have the following powers and duties:

(a) To adopt or amend reasonable procedural *rules to implement the provisions of this section.*

(b) To prescribe the form, content, and necessary supporting documentation and the required studies for the determination of need.

(3) Any time limitation in this section may be altered by the commission upon stipulation between the commission and the applicant or for good cause shown by any party.

History.—s. 1, ch. 80-65; s. 13, ch. 81-131; s. 19, ch. 83-222.

403.539 Certification admissible in eminent domain proceedings; attorney's fees and costs.—

(1) Certification pursuant to ss. 403.52-403.536 shall be admissible as evidence of public need and *necessity in proceedings under chapter 73 or chapter* 74.

(2) No party may rely on this section or any provision of chapter 73 or chapter 74 to request the award of attorney's fees or costs incurred as a result of participation in the certification proceeding.

History.—s. 2, ch. 80-65; s. 20, ch. 83-222.

PART III

INTERSTATE ENVIRONMENTAL CONTROL COMPACT

403.60 Environmental Control Compact; execution *authorized.*

403.60 Environmental Control Compact; execution authorized.—The Governor on behalf of this state is hereby authorized to execute a compact, in substantially the following form, with any one or more of the states of the United States, and the Legislature hereby signifies in advance its approval and ratification of such compact:

MEMBER JURISDICTION.—The environmental *compact is entered into with all jurisdictions legally* joining therein and enacted into law in the following form:

INTERSTATE ENVIRONMENTAL COMPACT

ARTICLE I

FINDINGS, PURPOSES AND RESERVATIONS OF POWERS.—

A. *Findings.—Signatory states hereby find and* declare:

1. The environment of every state is affected with local, state, regional and national interests and its protection, under appropriate arrangements for intergovernmental cooperation, is a public purpose of the respective signatories.

2. Certain environmental pollution problems transcend state boundaries and thereby become common to adjacent states requiring cooperative efforts.

3. The environment of each state is subject to the effective control of the signatories, and coordinated, cooperative or joint exercise of control measures is in their common interests.

B. Purposes.—The purposes of the signatories in enacting this compact are:

1. To assist and participate in the national envi*ronment protection programs as set forth in federal* legislation; to promote intergovernmental cooperation for multistate action relating to environmental protection through interstate agreements; and to encourage cooperative and coordinated environmental protection by the signatories and the Federal Government;

2. To preserve and utilize the functions, powers and duties of existing state agencies of government to the maximum extent possible consistent with the purposes of the compact.

C. Powers of the United States.—

1. Nothing contained in this compact shall impair, affect or extend the constitutional authority of the United States.

2. The signatories hereby recognize the power and right of the Congress of the United States at any time by any statute expressly enacted for that purpose to revise the terms and conditions of its consent.

D. Powers of the states.—Nothing contained in this compact shall impair or extend the constitutional authority of any signatory state, nor shall the po*lice powers of any signatory state be affected except* as expressly provided in a supplementary agreement under Article IV.

ARTICLE II

SHORT TITLE, DEFINITIONS, PURPOSES AND LIMITATIONS.—

A. Short title.—This compact shall be known and may be cited as the "Interstate Environmental Compact."

B. Definitions.—For the purpose of this compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:

1. "State" shall mean any one of the 50 states of the United States of America, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, but shall not include the District of Columbia.

2. "Interstate environment pollution" shall mean *any pollution of a stream or body of water crossing or* marking a state boundary, interstate air quality control region designated by an appropriate federal agency or solid waste collection and disposal district or program involving the jurisdiction or territories of more than one state.

3. "Government" shall mean the governments of the United States and the signatory states.

4. "Federal Government" shall mean the government of the United States of America and any appropriate department, instrumentality, agency, commission, bureau, division, branch or other unit thereof, as the case may be, but shall not include the District of Columbia.

5. "Signator" shall mean any state which enters into this compact and is a party thereto.

ARTICLE III

INTERGOVERNMENTAL COOPERATION.—

Agreements with the Federal Government and other agencies.—Signatory states are hereby authorized jointly to participate in cooperative or joint undertakings for the protection of the interstate environment with the Federal Government or with any intergovernmental or interstate agencies.

ARTICLE IV

SUPPLEMENTARY AGREEMENTS, JURISDICTION AND ENFORCEMENT.—

A. Signatories may enter into agreements for the purpose of controlling interstate environmental problems in accordance with applicable federal legislation and under terms and conditions as deemed appropriate by the agreeing states under Paragraph F. and Paragraph H. of this Article.

B. Recognition of existing nonenvironmental intergovernmental arrangements.—The signatories agree that existing federal-state, interstate or intergovernmental arrangements which are not primarily directed to environmental protection purposes as defined herein are not affected by this compact.

C. Recognition of existing intergovernmental agreements directed to environmental objectives.—*All existing interstate compacts directly relat*ing to environmental protection are hereby expressly recognized and nothing in this compact shall be construed to diminish or supersede the powers and functions of such existing intergovernmental agreements and the organizations created by them.

D. Modification of existing commissions and compacts.—Recognition herein of multistate commissions and compacts shall not be construed to limit directly or indirectly the creation of additional multistate organizations or interstate compacts, nor to prevent termination, modification, extension, or supplementation of such multistate organizations and interstate compacts recognized herein by the Federal Government or states party thereto.

E. Recognition of future multistate commissions and interstate compacts.—Nothing in this compact *shall be construed to prevent signatories from enter*ing into multistate organizations or other interstate compacts which do not conflict with their obligations under this compact.

F. Supplementary agreements.—Any two or more signatories may enter into supplementary agreements for joint, coordinated or mutual environmental management activities relating to interstate pollution problems common to the territories of such states and for the establishment of common or joint regulation, management, services, agencies or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agreement shall be valid to the extent that it conflicts with the purposes of this compact and the creation of a joint agency by supplementary agreement shall not affect the privileges, powers, re*sponsibilities or duties under this compact of signato*ries participating therein as embodied in this compact.

G. Execution of supplementary agreements and effective date.—The Governor is authorized to enter into supplementary agreements for the state and his official signature shall render the agreement immediately binding upon the state; provided that:

1. The legislature of any signatory entering into such a supplementary agreement shall at its next legislative session by concurrent resolution bring the supplementary agreement before it and by appropriate legislative action approve, reverse, modify or condition the agreement of that state.

2. Nothing in this agreement shall be construed to limit the right of Congress by act of law expressly enacted for that purpose to disapprove or condition *such a supplementary agreement.*

H. Special supplementary agreements.—Signatories may enter into special supplementary agreements with the District of Columbia or

foreign nations for the same purposes and with the same powers as under Paragraph F., Article IV, upon the condition that such nonsignatory party accept the general obligations of signatories under this compact. Provided, that such special supplementary agreements shall become effective only after being consented to by the Congress.

I. Jurisdiction of signatories reserved.—Nothing in this compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction, except as specifically limited by this compact or a supplementary agreement.

J. Complementary legislation by signatories.—Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this compact and supplementary agreements recognized or entered into under the terms of this Article.

K. Legal rights of signatories.—Nothing in this compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this nation.

ARTICLE V

CONSTRUCTION, AMENDMENT AND EFFECTIVE DATE.—

A. Construction.—It is the intent of the signatories that no provision of this compact or supplementary agreement entered into hereunder shall be construed as invalidating any provision of law of any signatory and that nothing in this compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction and not inconsistent with any provision of this compact or a supplementary agreement entered into pursuant hereto.

B. Severability.—The provisions of this compact or of agreements hereunder shall be severable and if any phrase, clause, sentence or provisions of this compact, or such an agreement is declared to be contrary to the constitution of any signatory or of the United States or is held invalid, the constitutionality of the remainder of this compact or of any agreement and the applicability thereof to any participating jurisdiction, agency, person or circumstance shall not be affected thereby and shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the signatory affected as to all severable matters. It is the intent of the signatories that the provisions of this compact shall be reasonably and liberally construed in the context of its purposes.

C. Amendments.—Amendments to this compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by Congress.

D. Effective date.—This compact shall become binding on a state when enacted by it into law and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein.

E. Withdrawal from the compact.—A state may withdraw from this compact by authority of an act of its legislature 1 year after it notifies all signatories in writing of an intention to withdraw from the compact. Provided, withdrawal from the compact affects obligations of a signatory imposed on it by supplementary agreements to which it may be a party only to the extent and in accordance with the terms of such supplementary agreements.

History.—s. 1, ch. 74-79.

PART IV

RESOURCE RECOVERY AND MANAGEMENT

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403.701 Short title.—Sections 403.701-403.73 shall be known and may be cited as the "Florida Resource Recovery and Management Act."

History.—s. 1, ch. 74-342; s. 2, ch. 80-302.

403.702 Legislative findings; public purpose.

(1) In order to enhance the beauty and quality of our environment; conserve and recycle our natural resources; prevent the spread of disease and creation of nuisances; protect the public health, safety, and welfare; and provide a coordinated statewide resource recovery and management program, the Legislature finds that:

(a) Inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse effect on land values, and create public nuisances.

(b) Problems of solid-waste management have become a matter statewide in scope and necessitate state action to assist local government in improving methods and processes to promote more efficient methods of solid-waste collection and disposal.

(c) The continuing technological progress and improvements in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase of the mass of material discarded by the purchasers of such products, thereby necessitating a statewide approach which will avoid varied and uncoordinated solutions by local governments around the state.

(d) The economic and population growth of our state and the improvements in the standard of living enjoyed by our population have required increased industrial production together with related commercial and agricultural operations to meet our needs, which have resulted in a rising tide of unwanted and discarded materials.

(e) The failure or inability to economically recover material and energy resources from solid waste results in the unnecessary waste and depletion of our natural resources, and, therefore, maximum resource recovery from solid waste and maximum recycling and reuse of such resources must be considered goals of the state.

(f) Certain solid waste, due to its quantity, concentration, or physical, chemical, biological, or infectious characteristics, is exceptionally hazardous to human health, safety, and welfare and to the environment, and exceptional attention to the transportation, disposal, storage, and treatment of such waste is necessary to protect human health, safety, and welfare and the environment.

(g) This act should be integrated with other acts such that nonhazardous waste discharges currently regulated under chapter 403, water or solid waste construction, modification, or operating permits, air emissions, special wastes, and other activities regulated under other more appropriate acts remain in full force and effect and are not preempted by the requirements of this act.

(2) It is declared to be the purpose of this act to:

(a) Plan for and regulate the storage, collection, transport, separation, processing, recycling, and disposal of solid waste in order to protect the public safety, health, and welfare; enhance the environment for the people of the state; and recover resources which have the potential for further usefulness.

(b) Establish and maintain a cooperative state program of planning and technical assistance for resource recovery and management.

(c) Provide the authority, and require counties and municipalities, to adequately plan and provide efficient, environmentally acceptable resource recovery and management and require counties to plan for proper hazardous waste management.

(d) Require review of the design, and issue permits for the operation, of resource recovery and management facilities.

(e) Promote the application of resource recovery systems which preserve and enhance the quality of air, water, and land resources.

(f) Ensure that exceptionally hazardous solid waste is transported, disposed of, stored, and treated in a manner adequate to protect human health, safety, and welfare and the environment.

(g) Promote the recycling, reuse, or treatment of solid waste, specifically including hazardous waste, in lieu of disposal of such wastes.

(h) Promote the application of methods and technology for the treatment, disposal, and transportation of hazardous wastes which are practical, cost-effective, and economically feasible.

History.—s. 1, ch. 74-342; s. 3, ch. 80-302; s. 20, ch. 83-310.

403.703 Definitions.—As used in this act:

(1) "Department" means the Department of Environmental Regulation or any successor agency performing a like function.

(2) "County or municipality," or any like term, includes political subdivisions engaged in resource recovery and management.

(3) "Person" means any and all persons, natural or artificial, including any individual, firm, or association; any municipal or private corporation organized or existing under the laws of this state or any other state; any county of this state; and any governmental agency of this state or the Federal Government.

(4) "Recycling" means the reuse of solid waste in manufacturing, agriculture, power production, or other processes.

(5) "Resource management" means the process by which solid waste is collected, transported, stored, separated, processed, or disposed of in any other way, according to an orderly, purposeful, and planned program.

(6) "Resource recovery" means the process by which materials, excluding those under control of the Atomic Energy Commission, which still have useful physical or chemical properties after serving a specific purpose are reused or recycled for the same or other purposes, including use as an energy source.

(7) "Resource recovery and management facility" means any solid waste disposal area, volume reduction plant, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste.

(8) "Resource recovery equipment" means equipment or machinery exclusively and integrally used in the actual process of recovering material or energy resources from solid waste.

(9) "Solid waste" means sludge from a waste treatment works, water supply treatment plant, or air pollution control facility or garbage, rubbish, refuse, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

(10) "Volume reduction plant" includes, but is not limited to, incinerators, pulverizers, compactors, shredding and baling plants, transfer stations, composting plants, and other plants which accept and process solid waste for recycling or disposal.

(11) "Yard trash" means vegetative matter resulting from landscaping maintenance and land-clearing operations.

(12) "Trash landfills" means combinations of yard trash and construction and demolition debris along with paper, cardboard, cloth, glass, white goods, street sweepings, vehicle tires, and other like matter.

(13) "Construction and demolition debris" means material generally considered to be not water soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, or asphalt roofing material.

(14) "Class I solid waste disposal area" means a disposal facility which receives an average of 20 tons or more per day, if scales are available, or 50 cubic yards or more per day of solid waste, as measured in place after covering, and which receives an initial cover daily.

(15) "Class II solid waste disposal area" means a disposal facility which receives an average of less than 50 cubic yards per day of solid waste, as measured in place after covering, and which receives an initial cover at least once every 4 days.

(16) "Initial cover" means a 6-inch layer of compacted earth, or other suitable material as approved by the department, used to enclose a volume of solid waste prior to intermediate or final cover.

(17) "Monitoring well" means a strategically located well from which water samples are drawn for water quality analysis.

(18) "Closure" means the cessation of operation of a resource recovery and management facility and the act of securing such facility so that it will pose no significant threat to human health or the environment.

(19) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or upon any land or water so that such solid waste or hazardous waste or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including ground waters, or otherwise enter the environment.

(20) "Generation" means the act or process of producing hazardous waste.

(21) "Hazardous waste" means solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.

(22) "Hazardous waste facility" means any building, site, structure, or equipment at or by which hazardous waste is disposed of, stored, or treated.

(23) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(24) "Manifest" means the method used for identifying the concentration, quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, storage, or treatment.

(25) "Operation," with respect to any resource recovery and management facility, means the disposal, storage, or treatment of solid waste at and by the facility.

(26) "Storage" means the containment or holding of a hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(27) "Transport" means the movement of hazardous waste from the point of generation or point of entry into the state to any offsite intermediate points, and to the point of offsite ultimate disposal, storage, treatment, or exit from the state.

(28) "Treatment," when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize it or render it nonhazardous, safe for transport, amenable to recovery, amenable to storage or disposal, or reduced in volume or concentration. The term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

History.—s. 1, ch. 74-342; s. 2, ch. 75-322; s. 1, ch. 78-387; s. 84, ch. 79-65; s. 4, ch. 80-302; s. 1, ch. 81-45; s. 287, ch. 81-259; s. 31, ch. 83-310.

403.704 Powers and duties of the department.—The department shall have responsibility for the implementation and enforcement of the provisions of this act. In addition to other powers and duties, the department shall:

(1) Adopt by rule for the state a resource recovery and management program, as defined in s. 403.705, by July 1, 1976. In developing the state resource recovery and management program, the department shall hold public hearings around the state in accordance with chapter 120 and shall give notice of such public hearings to all local governments and regional planning agencies.

(2) Provide technical assistance to counties, municipalities, and other persons, and cooperate with appropriate federal agencies and private organizations in carrying out the provisions of this act.

(3) Promote the planning and application of recycling and resource recovery systems which preserve and enhance the quality of the air, water, and other natural resources of the state.

(4) Serve as the official state representative for all purposes of the Federal Solid Waste Disposal Act, as amended by Pub. L. No. 91-512, or as subsequently amended.

(5) Utilize private industry through contractual arrangements for implementation of some or all of the requirements of the state resource recovery and management program and for such other activities as may be considered necessary, desirable, or convenient.

(6) Encourage recycling and resource recovery as an energy source.

(7) Assist in and encourage, as much as possible, the development within the state of industries and commercial enterprises which are based upon resource recovery, recycling, and reuse of solid waste.

(8) Charge reasonable fees for any services it performs pursuant to this act, provided user fees shall apply uniformly within each municipality or county to all users who are provided with resource recovery and management services.

(9) Acquire, at its discretion, personal or real property or any interest therein by gift, lease, or purchase for the purpose of providing sites for resource recovery and management facilities.

(10) Acquire, construct, reconstruct, improve, maintain, equip, furnish, and operate, at its discretion, such resource recovery and management facilities as are called for by the state resource recovery and management program.

(11) Receive funds or revenues from the sale of products, materials, fuels, or energy in any form derived from processing of solid waste by state-owned or state-operated facilities, which funds or revenues shall be deposited into the General Revenue Fund.

(12) Determine by rule the facilities, equipment, personnel, and number of monitoring wells to be provided at each Class I solid waste disposal area.

(13) Encourage, but not require, as part of a Class II solid waste disposal area, a potable water supply, an employee shelter, handwashing and toilet facilities, equipment washout facilities, electric service for operations and repairs, equipment shelter for maintenance and storage of parts, equipment and tools, scales for weighing solid waste received at the disposal area, a trained equipment operator in full-time attendance during operating hours, and communication facilities for use in emergencies. The department may require an attendant at a Class II solid waste disposal area during the hours of operation if the department affirmatively demonstrates that such a requirement is necessary to prevent unlawful fires, unauthorized dumping, or littering of nearby property.

(14) Require a Class II solid waste disposal area to have at least one monitoring well which shall be placed adjacent to the site in the direction of ground water flow unless otherwise exempted by the department. The department may require additional monitoring wells not farther than 1 mile from the site if it is affirmatively demonstrated by the department that a significant change in the initial quality of the water has occurred in the downstream monitoring well which adversely affects the beneficial uses of the water. These wells may be public or private water supply wells if they are suitable for use in determining background water quality levels.

(15) Promulgate rules for solid waste disposal areas limited exclusively to yard trash, for solid waste disposal areas limited exclusively to construction and demolition debris, and for solid waste disposal areas limited exclusively to trash. Such rules shall take into account the reduced environmental threat caused by the segregated disposal of these solid wastes. Reduced requirements for engineering, location, covering, monitoring wells, or forced draft burning may be allowed for such solid waste disposal areas, providing the requirements will not allow a threat to the public health or environment to exist and providing the requirements are consistent with all other state or local laws, ordinances, rules, regulations, or orders.

(16) Adopt, repeal, or amend rules to implement, administer, and enforce this act. Whenever the department adopts any rule stricter or more stringent than one which has been set by the United States Environmental Protection Agency, the procedures set forth in s. 403.804(2) shall be followed. The department shall not, however, adopt hazardous waste rules for solid waste for which special studies are required under the Resource Conservation and Recovery Act, as amended, until the studies are completed by the United States Environmental Protection Agency and the information is available to the department for consideration in adopting its own rule.

(17) Issue or modify permits on such conditions as are necessary to effect the intent and purposes of this act, and may deny or revoke permits.

(18) Establish an account and deposit to the Hazardous Waste Management Trust Fund and control and administer moneys it may withdraw from the fund.

(19) Budget and receive appropriated funds and accept, receive, and administer grants or other funds or gifts from public or private agencies, including the state and the Federal Government, for the purpose of carrying out the provisions of this act.

(20) Delegate its powers, enter into contracts, or take such other actions as may be necessary to implement this act.

(21) Receive and administer funds appropriated for county hazardous waste management assessments.

(22) Provide technical assistance to local governments and regional agencies to ensure consistency between county hazardous waste management assessments; coordinate the development of such assessments with the assistance of the appropriate regional planning councils; and review and make recommendations to the Legislature relative to the sufficiency of the assessments to meet state hazardous waste management needs.

(23) Promote public awareness of hazardous waste issues and proper methods of management.

(24) Assist the hazardous waste storage, treatment, or disposal industry by providing to the industry any data produced on the types and quantities of hazardous waste generated.

(25) Institute a hazardous waste emergency response program which would include emergency telecommunication capabilities and coordination with appropriate agencies.

History.—s. 1, ch. 74-342; s. 1, ch. 75-54; s. 2, ch. 78-[illegible]; s. 4, ch. 80-302; ss. 21, 32, ch. 83-310.

403.7045 Application of act and integration with other acts.—

(3) The following wastes or activities shall not be regulated pursuant to this act:

(a) Byproduct material, source material, and special nuclear material, the generation, transportation, disposal, storage, or treatment of which is regulated under chapter 404 or under the federal Atomic Energy Act of 1954, Chapter 1073, 68 Stat. 923, as amended;

(b) Suspended solids and dissolved materials in domestic sewage effluent or irrigation return flows or other discharges which are point sources subject to permits pursuant to provisions of chapter 403 or pursuant to s. 402 of the Clean Water Act; Pub. L. No. 95-217;

(c) Emissions to the air from a stationary installation or source regulated under provisions of chapter 403 or under the Clean Air Act; Pub. L. No. 95-95;

(d) Drilling fluids, produced waters, and other wastes associated with the exploration for, or development and production of, crude oil or natural gas which are regulated under chapter 377; or

(e) Activities which are regulated pursuant to the Florida Hazardous Substances Law, ss. 501.061-501.121.

(2) Except as provided in s. 403.704(16), the following wastes shall not be regulated as a hazardous waste, including a special waste, pursuant to this act, except when determined by the United States Environmental Protection Agency to be a hazardous waste, including a special waste:

(a) Ashes and scrubber sludges generated from the burning of boiler fuel for generation of electricity or steam.

(b) Agricultural and silvicultural byproduct material and agricultural and silvicultural process waste from normal farming or processing.

(c) Discarded material generated by the mining and beneficiation and chemical or thermal processing of phosphate rock; and precipitates resulting from neutralization of phosphate chemical plant process and nonprocess waters.

(3) The following wastes or activities shall be regulated pursuant to this act in the following manner:

(a) Dredge spoil or fill material shall be disposed of pursuant to a dredge and fill permit; but whenever hazardous components are disposed of within the dredge or fill material, the dredge and fill permits shall specify the specific hazardous wastes contained and the concentration of each such waste. The department may then limit or restrict the sale or use of the dredge and fill material and may specify such other conditions relative to this material as are reasonably necessary to protect the public from the potential hazards.

(b) Hazardous wastes which are contained in artificial recharge waters or other waters intentionally introduced into any underground formation and which are permitted pursuant to s. 373.106 shall also be handled in compliance with the requirements and standards for disposal, storage, and treatment of hazardous waste under this act.

(c) Solid waste or hazardous waste facilities which are operated as a part of the normal operation of a power generating facility and which are licensed by certification pursuant to the Florida Electrical Power Plant Siting Act, ss. 403.501-403.517, shall undergo such certification subject to the substantive provisions of this act.

(d) Infectious waste as defined in s. 395.002(13) which emanates from a hospital or ambulatory surgical center as defined in s. 395.002 shall be disposed of by any means authorized by the department, including land disposal after sterilization or incineration. Any person who unknowingly disposes into a sanitary landfill any such waste which has not been properly segregated or separated from other solid wastes by the generating facility is not guilty of a violation under this act. Nothing in this paragraph shall be construed to prohibit the department from seeking injunctive relief pursuant to s. 403.131 to prohibit the unauthorized disposal of infectious waste.

History.—s. 6, ch. 80-302; s. 3, ch. 82-125; s. 28, ch. 83-115; s. 62, ch. 83-218.

403.705 State resource recovery and management program.—

(1) The state resource recovery and management program shall provide guidelines for the orderly collection, transportation, storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state; encourage coordinated local activity within a common geographical area; and investigate the present status of solid waste management in the state with positive proposals for local action to correct deficiencies in present resource recovery and management processes.

(2) The program shall be developed by the department and adopted by rule by July 1, 1976. The department shall consult with and obtain the approval of the Resource Recovery Council, established pursuant to s. 403.710, prior to adoption by rule of the program.

(3) The state resource recovery and management program shall encourage cooperative efforts by counties and municipalities in common geographic areas and shall, to the maximum extent possible, include provision for the continuation of existing regional resource recovery, recycling, and management facilities and programs. In order to encourage such cooperative efforts, the state program shall provide for a pilot resource recovery and management program, as recommended by the Resource Recovery Council and approved by the Legislature according to s. 403.711.

History.—s. 1, ch. 74-342; s. 2, ch. 75-54.

403.706 Local resource recovery and management programs.—

(1) Within 3 years after the department adopts the state resource recovery and management program, there shall be established, by special act of the Legislature or interlocal agreement between counties, between municipalities, or between municipalities and counties, in those areas designated under the rule adopted pursuant to s. 403.705, a local resource recovery and management program which shall be approved by the department and which shall implement the provisions of the state program by adequately providing for the receiving in bulk, storage, separation, processing, recovery, recycling, or disposal of solid waste generated or existing within the boundaries of the county or incorporated limits of the municipality or in the area served thereby.

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(2)(a) Each local resource recovery and management program established pursuant to this section shall include an implementation schedule which provides a timetable indicating when the total program, as well as its component parts, will be carried out. The implementation schedules shall:

1. Be mutually agreed upon by the local governments participating in the development of the program plan and the department.

2. Expedite and accomplish, within reason and practicality, the provisions of the program plan.

3. Be adhered to by each local program.

4. Be monitored by the department to assure compliance.

5. Be modified only upon approval by the department of a request of a local program, showing sufficient evidence and justification for a modification.

(b) It is the policy of the state that a county and its municipalities may jointly determine, through an interlocal agreement pursuant to s. 163.01 or by requesting the passage of special legislation, which local governmental agency shall administer the local resource recovery and management program. If, on December 1, 1978, no interlocal agreement has been effectuated and no special act has become law, the board of county commissioners shall administer and be responsible for the local resource recovery program, except sludge from a waste treatment works, air pollution control facility, or water supply treatment plant or other liquid, semisolid, or contained gaseous material, for the entire county.

(c) Each local resource recovery and management program shall be reviewed at least once in every 3 years. Each county and its municipalities shall be responsible for updating their local program in a manner consistent with the rules adopted by the department.

(d) The department shall review, at least once in every 3 years, those counties or municipalities not required to plan for resource recovery under the provisions of subsection (4) to determine if sufficient solid waste is generated to make it economically practical to plan for, and engage in, resource recovery and management programs.

(3) Nothing in this act shall be construed to prevent the governing body of any county or municipality from providing by ordinance or regulation for resource recovery and management requirements which are stricter or more extensive than those imposed by the state resource recovery and management program and rules, regulations, and orders issued thereunder.

(4) Nothing in this act or in any rule adopted by any agency shall be construed to require any county or municipality to participate in any resource recovery program until the governing body of such county or municipality has determined that participation in such a program is economically feasible for that county or municipality. Nothing in this act or in any special or local act or in any rule adopted by any agency shall be construed to limit the authority of a municipality to regulate the disposal of solid waste within its boundaries or generated within its boundaries so long as any such disposal facility has been approved by the department unless the municipality is included within a resource recovery program created by interlocal agreement or special or local act. If, on December 1, 1978, bonds had been issued to finance a resource recovery or management program in reliance on state law granting to said county the responsibility for the resource recovery or management program, nothing herein shall permit any governmental agency to withdraw from said program if said agency's participation is necessary for the financial feasibility of the project, so long as said bonds are outstanding.

(5) The time limit set out in subsection (1) shall be extended by the department upon application to the department by the local unit of government involved and on due cause shown that good faith efforts to meet the requirements of this act have been and are being made.

(6) Nothing in this chapter or in any rule adopted by any state agency hereunder shall require any person to subscribe to any private solid waste collection service.

History.—s. 1, ch. 74-342; s. 142, ch. 77-104; s. 1, ch. 77-466; s. 3, ch. 78-329; s. 1, ch. 78-118; s. 7, ch. 80-302.

403.7065 Procurement of recovered materials.—Any state agency or agency of a political subdivision of the state which is using state funds, or any person contracting with any such agency with respect to work performed under contract, is required to procure recovered materials when those materials are available at reasonable prices. A decision not to procure such items must be based on a determination that such procurement:

(1) Is not reasonably available within a reasonable period of time;

(2) Fails to meet the performance standards set forth in the applicable specifications or fails to meet the reasonable performance standards of the agency; or

(3) Is only available at an unreasonable price.

History.—s. 2, ch. 81-293.

403.707 Permits.—

(1) No resource recovery and management facility or site may be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the department.

(2) Except as provided in s. 403.722(6), no permit under this section is required for the following activities provided no public nuisance or any condition adversely affecting the environment or public health is created and the activity does not violate other state or local laws, ordinances, rules, regulations, or orders:

(a) Disposal by persons of solid waste resulting from their own activities on their own property. However, the department may by rule require any such person to file a written notification to the department of the type of solid waste being disposed of, the location of disposal, and methods of solid waste management being performed.

(b) Normal farming operations.

(c) Solid waste disposal areas limited solely to the disposal of construction and demolition debris.

(3) All applicable provisions of ss. 403.087 and 403.088, relating to permits and temporary operation permits, shall be construed to include the control of resource recovery and management facilities. Howev-

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er, a temporary operation permit may not be issued for more than a 3-year period.

(4) When application for a permit for a Class I or Class II solid waste disposal area is made, it shall be the duty of the department to provide a copy of the application, within 7 days after filing, to the water management district having jurisdiction where the area is to be located. The water management district shall prepare a report as to the impact on water resources. This report shall be submitted to the department no later than 30 days prior to the deadline for final agency action by the department.

(5) The department may not issue a construction permit pursuant to this part for a new sanitary landfill within 3,000 feet of Class I surface waters.

History.—s. 1, ch. 74-342; s. 3, ch. 78-397; s. 14, ch. 82-101; s. 63, ch. 83-218; s. 12, ch. 83-310.

403.7072 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. 8, ch. 79-183.

403.7075 Submission of plans for certain solid waste disposal areas; conditions.—All plans and applications for a permit to construct and operate a solid waste disposal area as provided in s. 403.707 may be prepared and submitted by any person acting as a public officer employed by a county or a municipality when said public officer states therein that the construction of the solid waste disposal area is estimated to cost less than $10,000. Any law to the contrary notwithstanding, the construction cost of a solid waste disposal area, for the purposes of this section, shall not include land acquisition cost or the cost of equipment used to construct and maintain same.

History.—s. 4, ch. 78-397.

403.708 Prohibition; penalty.—

(1) No person shall:

(a) Place or deposit any solid waste in or on the land or waters located within the state except in a manner approved by the department and consistent with applicable approved programs of counties or municipalities. However, nothing in this act shall be construed to prohibit the disposal of solid waste without a permit as provided in s. 403.707(2).

(b) Burn solid waste except in a manner prescribed by the department and consistent with applicable approved programs of counties or municipalities.

(c) Construct, alter, modify, or operate a resource recovery and management facility or site without first having obtained a valid permit from the department as provided in s. 403.707.

(2) The packaging of products manufactured or sold in the state may not be controlled by governmental rule, regulation, or ordinance adopted after March 1, 1974.

(3) Violations of the state resource recovery and management program or rules, regulations, permits, or orders issued thereunder by the department, and violations of approved local programs of counties or municipalities, or rules, regulations, or orders issued thereunder, shall be punishable by a civil penalty as provided in s. 403.141.

(4) The department or any county or municipality may also seek to enjoin the violation of, or enforce compliance with, this act or any program adopted hereunder as provided in s. 403.131.

History.—s. 1, ch. 74-342.

403.709 Resource recovery and management grant fund.—

(1) The department may assist counties and municipalities in complying with this act by providing grants to pay a portion of the cost, in no case to exceed 50 percent of the total planning and project costs, for planning and implementing local resource recovery and management programs as required by s. 403.706. Implementation costs may include the cost of acquiring equipment, but not land, in accordance with an approved local program.

(2) Such grants are to be based on a formula of $5,000 per county or municipality plus 25 cents per capita for each user of resource recovery and management services being provided by a county or municipality. To the extent funds are available, the department shall allocate such funds to counties and municipalities in accordance with the formula provided in this subsection.

(3) Prior to the adoption by the department of the state resource recovery and management program, and to the extent funds are available, grants may be made by the department to counties and municipalities according to the formula in subsection (2) to pay a portion of the cost, in no case to exceed 50 percent of the total cost for operation and implementation, of local resource recovery and management programs existing on July 1, 1974.

History.—s. 1, ch. 74-342.

403.712 Revenue bonds.—

(1) Revenue bonds payable from funds which result from the revenues derived from the operation of such solid waste recycling facilities and from any revenues which may be pledged under s. 14, Art. VII, State Const., and s. 403.1834, including, without limiting the generality of the foregoing, any legally available revenues derived from public or private sources, may be issued by the Division of Bond Finance of the Department of General Services on behalf of the state or any county or municipality in the manner provided by the State Bond Act, ss. 215.57 et seq., except as otherwise provided herein, and the Revenue Bond Act of 1953, as amended, part I, chapter 159. Such bonds shall be issued only to finance the cost of construction, maintenance, or operation of resource recovery and management facilities, which cost may include the acquisition of real property and easements therein for such purposes.

(2) Upon a determination by the Division of Bond Finance of the Department of General Services that a public competitive sale is not feasible or that it would not be desirable to award such revenue bonds

solely on the basis of the lowest net interest cost bid, the Division of Bond Finance may negotiate the sale of any such revenue bonds after the receipt of one or more proposals, taking into consideration the lowest total cost and such other factors as may be deemed appropriate.

History.—s. 1, ch. 74-342; s. 5, ch. 79-84.

403.713 Transport of solid waste.—Nothing in this act or in any local act or ordinance shall be construed to limit the free flow of solid waste across municipal or county boundaries provided such solid waste is transported or disposed of pursuant to the provisions of this part. However, any local government that undertakes resource recovery of solid waste pursuant to general law or special act may control the collection and disposal of solid waste, as defined by general law or such special act, which is generated within the territorial boundaries of such local government and other local governments which enter into interlocal agreements for the disposal of solid waste with the local government sponsoring the resource recovery facility. Any local government which undertakes resource recovery of solid waste pursuant to general law or special act may institute a flow control ordinance for the purpose of ensuring that the resource recovery facility receives an adequate quantity of solid waste from solid waste generated within its jurisdiction. Such solid waste will not include scrap, or new or used material, separated at the point of generation and held for purposes of recycling, which shall be subject to state and local public health and safety laws.

History.—s. 1, ch. 74-342; s. 1, ch. 83-293.

403.714 Duties of Department of General Services.—It shall be the duty of the Department of General Services to:

(1) Establish a program, in cooperation with the Department of Environmental Regulation, for the collection of all wastepaper materials in state offices throughout the state, which program, in addition to requiring participation by the established executive departments, shall provide for participation by the offices of the legislative and judicial branches of state government as well.

(2) Provide a program to recycle all wastepaper materials collected in accordance with the provisions of this section whenever practicable.

(3) Evaluate the amount of wastepaper material recycled by the state and make all necessary modifications to said recycling program to insure that all wastepaper materials are effectively and practicably recycled.

History.—s. 2, ch. 74-342; s. 85, ch. 79-65.

403.715 Certification of resource recovery equipment.—For purposes of implementing the tax exemption provided by s. 212.08(7)(o), the department shall establish a system for the examination and certification of resource recovery equipment. Application for certification of equipment shall be submitted to the department on forms prescribed by it which include such pertinent information as the department may require. Within 30 days of receipt of an application by the department, a representative of the department shall inspect the equipment. Within 30 days of such inspection, the department shall issue a written decision granting or denying certification.

History.—s. 4, ch. 78-329.

403.72 Identification, listing, and notification.—

(1) The department shall adopt rules which list hazardous wastes and identify their characteristics and shall establish procedures by which hazardous waste may be identified. The department may consider ignitability, corrosivity, reactiveness, toxicity, infectiousness, radioactivity, mutagenicity, carcinogenicity, teratogenicity, bioaccumulative effect, and persistence and degradability in nature and any other characteristics relevant to each particular waste material.

(2) Any generator or transporter of or any person who owns or operates a facility that disposes of, stores, or treats, hazardous waste which is identified or listed by rule of the department shall, within 90 days of the effective date of the rule, file a written notification with the department, unless previous notification was given to the United States Environmental Protection Agency pursuant to federal law. The notification shall state the location of the generator, transporter, or facility; shall generally describe the activity engaged in; and shall state the hazardous waste handled. The department shall adopt and make available to the public a notification form for this purpose.

History.—s. 8, ch. 80-302; s. 8, ch. 82-27.

403.721 Standards, requirements, and procedures for generators and transporters of hazardous waste and owners and operators of hazardous waste facilities.—

(1) Persons who generate or transport hazardous waste, or who own or operate a hazardous waste facility, shall comply with the applicable standards, requirements, and procedures of this act and the rules adopted pursuant to it.

(2) The department shall establish by rule such standards, requirements, and procedures as are needed to protect human health and the environment, which standards, requirements, and procedures shall apply to persons who generate or transport hazardous waste; to persons who own or operate hazardous waste disposal, storage, or treatment facilities; and to hazardous waste disposal facilities. The department may establish standards, requirements, and procedures which may vary based on differences in amounts of, types of, concentrations of, and methods of handling hazardous waste and on differences in the size and location of hazardous waste facilities and which may take into account standards, requirements, and procedures imposed by other laws not in conflict with this act. Solid waste determined to be special wastes by the United States Environmental Protection Agency shall be regulated pursuant to this act consistent with federal regulations for special wastes under Subtitle C of the Resource Conservation and Recovery Act.

(3) The department, with respect to generators of hazardous waste identified or listed pursuant to this act, shall adopt rules governing:

(a) Recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the method of disposal of such wastes;

(b) Labeling practices for any containers used for the disposal, storage, or transport of such hazardous waste which accurately identify such waste;

(c) The use of appropriate containers for such hazardous waste;

(d) The furnishing of information on the general elemental and chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(e) The use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in treatment, storage, or disposal facilities, other than facilities on the premises where the waste is generated, for which a permit has been issued; and

(f) Submission of reports to the department describing the quantities of hazardous waste which are identified or listed pursuant to this act and which have been generated during a particular time period and their disposition.

(4) The department, with respect to transporters of hazardous waste identified or listed pursuant to this act, shall adopt rules governing:

(a) Liability and financial responsibility for any liability which may be incurred in the transport of hazardous waste;

(b) Recordkeeping concerning the source, transport, and delivery of hazardous waste;

(c) The transportation of hazardous waste, requiring that such waste be properly labeled;

(d) Compliance with the manifest system required in paragraph (3)(e);

(e) The transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities designated by the shipper on the manifest form, which facility shall be a facility holding a permit; and

(f) The use of appropriate containers for transporting such hazardous waste.

(5) With respect to any hazardous waste and transporters of hazardous waste, which also meet the definitions and criteria for hazardous materials and transporters of hazardous materials regulated by the Hazardous Materials Transportation Act, 88 Stat. 2156, 49 U.S.C. ss. 1801 et seq., the department shall consider and adopt, as appropriate, rules which are consistent with such act and the rules adopted pursuant thereto.

(6) The department, with respect to owners and operators of hazardous waste disposal, storage, or treatment facilities, and with respect to such facilities, shall adopt rules governing:

(a) The maintenance of records concerning all hazardous wastes which are identified or listed pursuant to this act and which are treated, stored, or disposed of and the manner of treatment, storage, or disposal;

(b) Satisfactory reporting, monitoring, and inspection for compliance with the manifest system required in paragraph (3)(e);

(c) The treatment, storage, or disposal of all hazardous waste received by the facility pursuant to operating methods, techniques, and practices approved by the department;

(d) The location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(e) Contingency plans for effective action to minimize unanticipated damage resulting from any accident occurring during the treatment, storage, or disposal of any such hazardous waste;

(f) The maintenance or operation of such facilities and the requirement of such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable; and

(g) Compliance with s. 403.722.

History.—s. 8, ch. 80-302; s. 22, ch. 83-310.

403.722 Permits; hazardous waste disposal, storage, and treatment facilities.—

(1) Each person who intends to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility shall obtain a construction, operation, or closure permit from the department prior to constructing, modifying, operating, or closing the facility. By rule, the department may provide for the issuance of a single permit instead of any two or more hazardous waste facility permits.

(2) Any owner or operator of a hazardous waste facility in operation on the effective date of the department rule listing and identifying hazardous wastes shall file an application for a temporary operation permit within 6 months after the effective date of such rule. The department, upon receipt of a properly completed application, shall identify any department rules which are being violated by the facility and shall establish a compliance schedule. However, if the department determines that an imminent hazard exists, the department may take any necessary action pursuant to s. 403.726 to abate the hazard. The department shall issue a temporary operation permit to such facility within the time constraints of s. 120.60(2), upon submission of a properly completed application which is in conformance with this subsection. Temporary operation permits for such facilities shall be issued for up to 3 years only. Upon termination of the temporary operation permit and upon proper application by the facility owner or operator, the department shall issue an operation permit for such existing facilities if the applicant has corrected all of the deficiencies identified in the temporary operation permit and is in compliance with all other rules adopted pursuant to this act.

(3) Permit applicants shall provide any information which will enable the department to determine that the proposed construction, modification, operation, or closure will comply with this act and any applicable rules. In no instance shall any person construct, modify, operate, or close a facility in contravention of the standards, requirements, or criteria for a hazardous waste facility.

(4) The department may require, in a permit application, submission of information concerning matters specified in s. 403.721(6) as well as information respecting:

(a) Estimates of the composition, quantity, and concentration of any hazardous waste identified or listed under this act, or combinations of any such waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate at which such waste is proposed to be disposed of, treated, transported, or stored; and

(b) The site to which such hazardous waste or the products of treatment of such hazardous waste will be transported and at which it will be disposed of, treated, or stored.

(5) A permit issued pursuant to this section is not a vested right. The department may revoke or modify any such permit.

(a) Permits may be revoked for failure of the holder to comply with the provisions of this act, the terms of the permit, the standards, requirements, or criteria adopted pursuant to this act, or an order of the department; for refusal by the holder to allow lawful inspection; or for submission by the holder of false or inaccurate information in the permit application.

(b) Permits may be modified, upon request of the permittee, if such modification is not in violation of this act or department rules or if the department finds the modification necessary to enable the facility to remain in compliance with this act and department rules.

(6) A hazardous waste facility permit issued pursuant to this section shall satisfy the permit requirements of s. 403.707(1). The permit exemptions provided in s. 403.707(2) shall not apply to hazardous waste.

(7) The department may establish permit application procedures for hazardous waste facilities, which procedures may vary based on differences in amounts, types, and concentrations of hazardous waste and on differences in the size and location of facilities and which procedures may take into account permitting procedures of other laws not in conflict with this act.

(8) For permits required by this section, the department may require that a fee be paid and may establish, by rule, a fee schedule based on the degree of hazard and the amount and type of hazardous waste disposed of, stored, or treated at the facility; but no permit fee shall exceed $1,000.

(9) It shall not be a requirement for the issuance of such a permit that the facility complies with an adopted local government comprehensive plan, local land use ordinances, zoning ordinances or regulations, or other local ordinances. However, such a permit issued by the department shall not override adopted local government comprehensive plans, local land use ordinances, zoning ordinances or regulations, or other local ordinances.

(10) Notwithstanding ss. 120.60(2) and 403.815:

(a) The time specified by law for permit review shall be tolled by the request of the department for publication of notice of proposed agency action to issue a permit for a hazardous waste treatment, storage, or disposal facility and shall resume 45 days after receipt by the department of proof of publication. If, within 45 days after publication of the notice of the proposed agency action, the department receives written notice of opposition to the intention of the agency to issue such permit and receives a request for a hearing, the department shall provide for a hearing pursuant to s. 120.57, if requested by a substantially affected party, or an informal public meeting, if requested by any other person. The failure to request a hearing within 45 days after publication of the notice of the proposed agency action constitutes a waiver of the right to a hearing under s. 120.57. The permit review time period shall continue to be tolled until the completion of such hearing or meeting and shall resume within 15 days after conclusion of a public hearing held on the application or within 45 days after the recommended order is submitted to the agency and the parties, whichever is later.

(b) Within 60 days after receipt of an application for a hazardous waste facility permit, the department shall examine the application, notify the applicant of any apparent errors or omissions, and request any additional information the department is permitted by law to require. The failure to correct an error or omission or to supply additional information shall not be grounds for denial of the permit unless the department timely notified the applicant within the 60-day period, except that this paragraph does not prevent the department from denying an application if the department does not possess sufficient information to ensure that the facility is in compliance with applicable statutes and rules.

(c) The department shall approve or deny each hazardous waste facility permit within 135 days after receipt of the original application or after receipt of the requested additional information or correction of errors or omissions. However, the failure of the department to approve or deny within the 135-day time period does not result in the automatic approval or denial of the permit and does not prevent the inclusion of specific permit conditions which are necessary to ensure compliance with applicable statutes and rules. If the department fails to approve or deny the permit within the 135-day period, the applicant may petition for a writ of mandamus to compel the department to act consistently with applicable regulatory requirements.

History.—s. 8, ch. 80-302; s. 2, ch. 82-79; s. 4, ch. 82-122; s. 64, ch. 83-216; s. 24, ch. 83-310.

403.7222 Prohibition of hazardous waste landfills.—

(1) As used in this section, the term "hazardous waste landfill" means a disposal facility or part of a facility at which hazardous waste is placed in or on land, including an injection well, and which is not a land treatment facility.

(2) The Legislature declares that, due to the permeability of the soil and high water table in Florida, future hazardous waste landfills shall be prohibited. Therefore, the Department of Environmental Regulation may not issue a permit pursuant to s. 403.722 for a newly constructed hazardous waste landfill. However, if by executive order the Governor declares a hazardous waste management emergency, the department may issue a permit for a temporary hazardous waste landfill. Any such landfill shall be used only until such time as an appropriate alternative method of disposal can be derived and implemented. In no event shall such a permit be issued for a period

exceeding 6 months without a further declaration of the Governor.

History.—s. 38, ch. 83-310.

403.7225 Local hazardous waste management assessments.—

(1) The Legislature recognizes that there is a need for estimating the amount, type, and sources of hazardous waste generated in the state. There is also a need for facilitating proper storage, transportation, volume reduction, treatment, resource recovery, and disposal of these wastes. Proper management of these wastes is imperative in order to protect the public health, safety, and welfare and the environment.

(2) The Department of Environmental Regulation shall establish guidelines for local hazardous waste management assessments and shall specify a standard format. The local hazardous waste management assessments shall include, but not be limited to, the identification of the following:

(a) All hazardous waste generators within the county, including small quantity generators as defined pursuant to federal regulations under 40 C.F.R. pt. 261.5.

(b) The types and quantities of hazardous waste generated within the county.

(c) Current hazardous waste management practices of generators within the county.

(d) Effective waste management practices for hazardous waste generators requiring offsite services, including the identification of types of facilities needed to serve the hazardous waste generators within the county.

(e) Abandoned dump sites within the county.

(f) Operating procedures at sanitary landfills within the county.

(3) Each regional planning council shall coordinate the local hazardous waste management assessments for counties within its region and submit them to the department, according to a department-prescribed format. Each county shall prepare a local hazardous waste management assessment based on guidelines established by the department. The regional planning councils and the counties shall negotiate the proportionate share of each county of the sum appropriated to the region for this purpose. In the event that a regional planning council and a county cannot agree on such share, the secretary of the department shall settle the dispute. The share of the county shall be determined pursuant to the criteria specified in s. 27(2) of chapter 83-310, Laws of Florida. Once the allocation is made available to them, the counties shall have 30 days to decide whether or not they want to perform their own assessments. If a county declines to perform the local hazardous waste management assessment or fails to respond within the 30-day period, the regional planning council shall perform the assessment.

(4) Each county shall designate areas within the county in which a hazardous waste storage facility may be located. Counties may jointly designate areas or sites by interlocal agreement. Public hearings shall be held to determine the area locations. Each county shall amend its comprehensive plan, if necessary, in order to designate areas for storage facilities. Preference shall be given to appropriate public lands and industrial areas as designated on local comprehensive plans. However, this section does not prohibit a county from amending its comprehensive plan to designate other areas for this purpose or prohibit construction of a facility on any other locally approved or state-approved site.

(5) No county may amend its comprehensive plan or undertake rezoning actions in order to prevent areas from being designated for a hazardous waste storage facility.

(6) The regional planning councils shall:

(a) Assist with county hazardous waste management assessments and area selection procedures;

(b) Coordinate and assemble local hazardous waste management assessments, which shall then constitute a regional hazardous waste management facility needs assessment, and area selections;

(c) Provide any technical expertise needed by the counties in developing the assessments;

(d) Promote local and regional public information programs for citizens and generators of hazardous waste;

(e) Review storage facility area selections for the purpose of siting one or more regional storage facilities; and

(f) Select one or more regional storage facility sites.

(7) The selection of a regional storage facility site will not preclude the siting of a storage facility at some other site which is locally or state approved.

(8) Within 6 months after the completion of all local hazardous waste management assessments within a region, the regional planning council shall complete a regional hazardous waste management facility needs assessment utilizing procedures and guidelines developed by the department in order to ensure consistent development of these planning documents. Further, the regional planning council, in preparing the regional hazardous waste management facility needs assessment, shall utilize all data available from county hazardous waste management assessments. The regional planning council, according to a department-prescribed format, shall include in its regional hazardous waste management facility needs assessment the following:

(a) A summary of the quantities and types of hazardous waste generated within its jurisdiction.

(b) A summary of current hazardous waste management practices by generators in its jurisdiction.

(c) A profile of hazardous waste generators in its jurisdiction by industry, size, and county or city location.

(d) An assessment of the excess demand for offsite, commercial hazardous waste facilities and services.

(e) An assessment of the short-term need and the long-term need for hazardous waste management facilities in its jurisdiction.

(f) A plan to eliminate any excess demand for offsite hazardous waste management facilities or services with the local governments in its jurisdiction, with local governments in other jurisdictions, or with other regional planning councils.

(9) The department shall:

(a)1. Assemble the regional hazardous waste

management facility needs assessments and determine if the needs of hazardous waste generators will be met by regional hazardous waste storage facilities or if additional storage, treatment, or disposal facilities are needed in the state and, if needed, which regions have the greatest need; and

2. Submit its determinations to the Legislature.

(b) Prepare a progress report on the development of each regional hazardous waste management facility needs assessment and submit such report to the Legislature no later than January 1 of the year in which such plan is due.

(10) The schedule for completion of county hazardous waste management plans by region is as follows:

(a) For counties within the geographic areas of the Tampa Bay Regional Planning Council, the South Florida Regional Planning Council, the Northeast Florida Regional Planning Council, and the East Central Florida Regional Planning Council and for Volusia County; by July 1, 1984.

(b) For counties within the geographic areas of the Treasure Coast Regional Planning Council, the Southwest Florida Regional Planning Council, the West Florida Regional Planning Council, and the Central Florida Regional Planning Council; by July 1, 1985.

(c) For counties within the geographic areas of the the Apalachee Regional Planning Council, the North Central Florida Regional Planning Council, and the Withlacoochee Regional Planning Council and for Jefferson County; by July 1, 1986.

(11) The preparation of county hazardous waste management assessments, storage facility area selections, or regional storage facility site selections shall not prevent siting of storage or treatment facilities in any area of the state.

(12) Any county which undertakes and completes a hazardous waste management assessment and storage facility area selection prior to the scheduled completion dates for counties in the region shall receive a proportionate share of moneys available, determined pursuant to subsection (3), at the time it is appropriated for such purpose.

(13) Water management districts shall provide technical assistance, relative to water resources, to local and regional agencies during the selections of the local storage facility areas and regional transfer facility sites.

(14) The department and the regional planning councils shall administer any funds appropriated for the purpose of developing the local hazardous waste management assessments and storage facility area or site selections.

(15) Except as provided in this part, no local government law, ordinance, or rule pertaining to the subject of hazardous waste regulation may be more stringent than department rules adopted under the authority of this chapter.

History.—s. 25, ch. 83-310.

403.7226 Technical assistance by the department.—The Department of Environmental Regulation shall:

(1) Provide technical assistance to county governments and regional planning councils to ensure consistency in coordinating local and regional hazardous waste assessments as provided in s. 403.7225. In order to ensure that each local assessment is properly prepared and that all information gathered during the assessment is uniformly compiled and documented, each county or regional planning council shall contact the department during the preparation of the local assessment to receive technical assistance. Each county and region shall follow guidelines established by the department in order to properly prepare these assessments.

(2) Identify short-term needs and long-term needs for hazardous waste facilities and services for the state on the basis of the information gathered through the county and regional hazardous waste assessments and other information from state and federal regulatory agencies and sources. The state needs assessment shall be ongoing and updated when new data concerning waste generation and waste management technologies become available. On June 1, 1984, and annually thereafter, a copy of this assessment shall be sent to the Governor and Cabinet.

History.—s. 26, ch. 83-310.

403.723 Siting of hazardous waste facilities.—It is the intent of the Legislature to facilitate siting of proper hazardous waste storage facilities in each region and any additional storage, treatment, or disposal facilities as required. The Legislature recognizes the need for facilitating disposal of waste produced by small generators, reducing the volume of wastes generated in the state, reducing the toxicity of wastes generated in the state, and providing treatment and disposal facilities in the state.

(1) Each county shall complete a hazardous waste management assessment and designate areas within the county at which a hazardous waste storage facility could be constructed to meet a demonstrated need.

(2) After each county designates areas for storage facilities, each regional planning council shall designate one or more sites at which a regional hazardous waste storage or treatment facility could be constructed.

(3) The department, within 30 days of receipt of a complete application for a hazardous waste facility construction or modification permit, shall notify each unit of local government within 3 miles of the proposed facility that a permit application has been received and shall publish a notice in a newspaper of general circulation in the area of the proposed facility that a complete permit application has been received.

(4) Upon request by a person who has applied for a hazardous waste facility permit from the department, the local government having jurisdiction over the proposed site shall, within 90 days of such request, determine whether or not the proposed site is consistent and in compliance with adopted local government comprehensive plans, local land use ordinances, local zoning ordinances or regulations, and other local ordinances in effect at the time a hazardous waste facility construction or modification permit application is made or is an area or site designated for the purpose of such facility according to this act.

(5) If the local government determines within 90

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days of the request that construction or modification of the facility does not comply with such plans, ordinances, regulations, or area or site designations pursuant to this act, the person requesting the determination may request a variance from such plans, ordinances, regulations, or designations.

(6) If the variance requested by the applicant is denied by local government or if there is no determination made by local government pursuant to subsection (4) within 90 days of the request, or if there is no action on the variance request by the applicant within 90 days of the request for the variance, the person requesting such determination or variance may petition the Governor and Cabinet for a variance from the local ordinances, assessments, regulations, plans, or area and site designations.

(7) The Governor and Cabinet shall grant the variance from any local ordinances, assessments, area and site designations, regulations, or plans only if a hazardous waste permit has been issued by the department and if the Governor and Cabinet find, based upon competent substantial evidence that clearly and convincingly establishes, that the facility:

(a) Will not have a significant adverse impact on the environment, including ground and surface water resources, of the region; and

(b) Will not have a significant adverse impact on the economy of the region.

(8) The Governor and Cabinet shall also consider the record of the proceeding before the local government, when determining whether to grant a petition for a variance from local ordinances, regulations, or plans.

(9) The Governor and Cabinet may adopt rules of procedure that govern these proceedings.

History.—[illegible]

403.7234 Small quantity generator notification program.—

(1) Each county specified in s. 403.7225(10)(a), (b), and (c) shall send a certified letter to each small quantity generator, as defined pursuant to federal regulations in 40 C.F.R. pt. 261.5, on the January 1 preceding the date specified in such paragraphs for completion of its hazardous waste assessment. In addition, within 14 days after a county completes its hazardous waste assessment, the county shall send such certified letters to each small quantity generator not notified on the preceding January 1. Thereafter, each county shall annually send such letters on July 1. The letter shall:

(a) Detail the legal responsibilities of the small quantity generator with regard to proper waste management practices, including penalties for noncompliance.

(b) Include a list of hazardous waste management alternatives which are available to the small quantity generator.

(2) Within 30 days of receipt of the letter, each small quantity generator identified in the county assessment shall disclose its management practices and the types and quantities of waste to the county government. Annually, each county shall verify the management practices of at least 20 percent of the small quantity generators. The procedure for verification used by the county shall be developed by rule by the department within 6 months of July 1, 1983. The Department of Environmental Regulation may also verify management practices of small quantity generators in order to ensure proper management of hazardous waste.

(3) Any small quantity generator who does not comply with the requirements of subsection (2) and who has received two subsequent certified letters from the county is subject to a fine of between $25 and $100 per day for a maximum of 100 days.

History.—s. 29, ch. 83-310.

403.7236 Local government information to be sent to the department.—A summary of information gathered during the hazardous waste assessment by each county and from the small quantity generator notification program shall be sent to the Department of Environmental Regulation within 30 days of completion.

History.—s. 30, ch. 83-310.

403.724 Financial responsibility.—

(1) An owner or operator of a hazardous waste facility, as a prerequisite to the operation of a facility in the state, shall be bonded or insured to guarantee the financial responsibility of such owner or operator for any liability which may be incurred in the operation of the facility and to provide that, upon closure, abandonment, or interruption of operation of the facility, all appropriate measures are taken to prevent present and future damage to human health, safety, and welfare; the environment; and private and public property.

(2) Cash, surety bonds, or casualty insurance, or a combination thereof, may be used to satisfy the financial responsibility requirement. Any bond or insurance obtained to satisfy this requirement shall be maintained in the amount established by the department and shall be maintained until the department determines that the waste is no longer a hazard and authorizes cancellation, modification, or liquidation of the bond or insurance.

(3) The amount of financial responsibility required shall be established by the department upon each issuance, renewal, or modification of a hazardous waste facility permit. The established financial responsibility requirements shall not be altered for the duration of the permit. Such factors as inflation rates and changes in operation may be considered when establishing financial responsibility for the duration of the permit. Once such a determination is made, it shall represent the maximum financial responsibility of the owner or operators of such a facility. The Department of Insurance shall be available to assist the department in making this determination. In establishing the amount of financial responsibility, the department shall consider:

(a) The amount and type of hazardous waste involved;

(b) The probable damage to human health and the environment;

(c) The danger and probable damage to private and public property near the facility;

(d) The probable time that the hazardous waste and facility involved will endanger the public health, safety, and welfare or the environment; and

(e) The probable costs of properly closing the facility.

(4) The department may adopt rules which establish the procedures and guidelines it will use to establish or modify the amount of the bond or insurance.

(5) Hazardous waste facilities in operation on October 1, 1980, shall, within 1 year after the effective date of rules regarding financial responsibility pursuant to this act, be bonded or insured or have the requirement waived.

(6) By rule, the department may create exemptions from the financial responsibility requirement when, due to the size or magnitude of the operation, waiving the requirement will not conflict with the purposes of the requirement.

(7) A transporter of hazardous waste shall be bonded or insured to guarantee the financial responsibility of such transporter for any liability which may be incurred in the transportation of such hazardous waste and to provide that all appropriate measures are taken to prevent damage to human health, safety, and welfare, to the environment, and to private and public property. Financial guarantees specified in subsection (2) shall be used to satisfy the financial responsibility requirement.

History.—s. 6, ch. 80-302; s. 23, ch. 83-310.

403.725 Hazardous Waste Management Trust Fund.—

(1) The purpose of this section is to create a method to provide financial resources to abate or substantially reduce an imminent hazard due to hazardous waste, to maintain and monitor an area where hazardous waste has been disposed of, to prevent damage from hazardous waste, to pay for all provable property damages which are the proximate results of hazardous wastes released into the environment after the effective date of this act, and to pay for restoration of areas damaged by hazardous waste from abandoned hazardous waste sites. It shall be the responsibility of any person claiming damages from this fund to provide the department with documentation of the destruction to, or loss of, any real or personal property. The claimant shall also provide the department with documentation that the damages were the direct result of the release of hazardous waste into the environment. This section shall be liberally construed to effect the purposes set forth, such construction being especially imperative due to the danger which hazardous waste poses to human health, safety, and welfare, the environment; and private and public property.

(2) The Hazardous Waste Management Trust Fund is established and shall be used by the department for the purposes, and shall receive funds and be administered in the manner, specified in this section.

(3) Into the fund shall be deposited:

(a) Appropriations to the fund by the Legislature;

(b) Hazardous waste facility permit fees;

(c) Fines collected for violations of this act, department rules, or permit conditions;

(d) Moneys collected from reimbursement requests and actions;

(e) Grants, moneys, or gifts from public or private agencies which are specifically designated to be deposited into the fund for hazardous waste management; and

(f) Excise tax fees.

(4) Moneys in the fund not currently needed to meet the obligations of the department in the exercise of its responsibilities under this act shall be deposited with the Treasurer to the credit of the fund and may be invested in such manner as is provided by statute. Interest received on the investment shall be credited to the fund.

(5) Moneys expended from the fund, if any, shall be recoverable, jointly and severally, from the person or persons responsible for the management of the hazardous waste causing the need for the expenditure; and the moneys recovered shall be deposited in the fund. Requests for reimbursement to the fund for moneys expended, if not paid within 30 days after receipt of demand, shall be turned over to the Department of Legal Affairs. A generator or transporter of hazardous wastes who has complied with this act, and with the applicable rules and regulations promulgated under this act, and who has contracted for the disposal of hazardous wastes with a licensed hazardous waste disposal or processing facility is relieved from liability for those wastes upon receipt of a certificate of disposal from the disposal or processing facility.

(6) Moneys in the fund shall not be expended to clean up hazardous waste which is being removed from navigable waters by a federal agency in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan established pursuant to the Federal Water Pollution Control Act, Pub. L. No. 92-500, as amended, or which is being removed from any coastal waters, estuaries, tidal flats, beaches, or lands adjoining the coastline of the state by the Department of Natural Resources pursuant to chapter 376.

(7) Fund moneys which are derived from the excise tax for the privilege of generating hazardous wastes shall not be expended in a manner which is inconsistent with s. 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 94 Stat. 2767.

History.—s. 8, ch. 80-302; s. 5, ch. 82-27.
cf.—s. 377.41 [illegible]

403.726 Imminent hazard.—

(1) The Legislature finds that hazardous waste which has been improperly generated, transported, disposed of, stored, or treated may pose an imminent hazard to the public health, safety, and welfare and the environment.

(2) The department shall take any action necessary pursuant to s. 403.121 or s. 403.131 to abate or substantially reduce any imminent hazard caused by hazardous waste, including spills into the environment of hazardous substances which are included within the hazardous waste criteria or lists established pursuant to s. 403.72 and which are causing an imminent hazard. The department is authorized to use moneys from the Hazardous Waste Management Trust Fund to finance such actions, and such ex-

penditures from the fund shall be recoverable pursuant to s. 403.725(5).

(3) An imminent hazard exists if any hazardous waste creates an immediate and substantial danger to human health, safety, or welfare or to the environment. The department may institute action in its own name, using the procedures and remedies of s. 403.121 or s. 403.131, to abate an imminent hazard. However, the department is authorized to recover a civil penalty of not more than $25,000 for each day of continued violation. Whenever serious harm to human health, safety, and welfare; the environment; or private or public property may occur prior to completion of an administrative hearing or other formal proceeding which might be initiated to abate the risk of serious harm, the department may obtain, ex parte, an injunction without paying filing and service fees prior to the filing and service of process.

(4) The department may implement the provisions of chapter 386 and ss. 387.08 and 387.10 in its own name whenever hazardous waste is being generated, transported, disposed of, stored, or treated in violation of those provisions of law.

(5) The department may issue a permit requiring prompt abatement of an imminent hazard.

(6) The department may remove or dispose of any hazardous waste which has become an imminent hazard, or take any other emergency action, when the owner or operator of a hazardous waste facility or a generator or transporter of hazardous waste does not take appropriate action to abate or neutralize the hazard.

(7) Where hazardous waste is discharged into waters of the state and abatement action is taken pursuant to this section, the department may require that the affected body of water be restored to meet, but not exceed, either the standards established by department rule for that particular body of water or ambient water quality prior to the discharge, whichever is higher. However, under no circumstances would the subject water have to be restored to a more pure state than ambient water quality prior to the discharge.

History.—s. 8, ch. 80-302.

403.7264 Amnesty days for purging small quantities of hazardous wastes.—Amnesty days are authorized by the state for the purpose of purging small quantities of hazardous waste, free of charge, from the possession of homeowners, farmers, schools, state agencies, and small businesses. These entities have no appropriate economically feasible mechanism for disposing of their hazardous wastes at the present time. In order to raise public awareness on this issue, provide an educational process, accommodate those entities which have a need to dispose of small quantities of hazardous waste, and preserve the waters of the state, amnesty days shall be carried out in the following manner:

(1) The Department of Environmental Regulation shall administer and supervise amnesty days and shall contract with a department-approved, bonded waste handling company for implementation. The waste collected from the entities named in this section shall be transported out of the state for proper disposal at a federally approved facility.

(2) The department shall establish maximum amounts of hazardous waste to be accepted from any one entity during amnesty days. Amnesty days shall continue, at no cost to participants, until funds appropriated by the Legislature for this purpose have been exhausted.

(3) The state shall have 6 amnesty days. The schedule for these amnesty days is as follows:

(a) In counties specified in s. 403.7225(10)(a), amnesty days shall be held between May 1, 1984, and June 30, 1984, and between November 1, 1984, and December 31, 1984.

(b) In counties specified in s. 403.7225(10)(b), amnesty days shall be held between May 1, 1985, and June 30, 1985, and between November 1, 1985, and December 31, 1985.

(c) In counties specified in s. 403.7225(10)(c), amnesty days shall be held between May 1, 1986, and June 30, 1986, and between November 1, 1986, and December 31, 1986.

(4) Amnesty days shall be funded on a continuing basis, as needed, from the Water Quality Assurance Trust Fund. The department is authorized to use up to 5 percent of the funds appropriated for amnesty days for administrative costs and up to 5 percent of such funds for public education related to amnesty days.

History.—s. 34, ch. 83-310.

403.727 Violations; defenses, penalties, and remedies.—

(1) It is unlawful for any hazardous waste generator, transporter, or facility owner or operator to:

(a) Fail to comply with the provisions of this act or departmental rules or orders;

(b) Operate without a valid permit;

(c) Fail to comply with a permit;

(d) Cause, authorize, create, suffer, or allow an imminent hazard to occur or continue;

(e) Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to the provisions of this act;

(f) Fail to notify the department pursuant to s. 403.72(2); or

(g) Refuse lawful inspection.

(2) In addition to the "imminent hazard" provision, ss. 403.121 and 403.131 are available to the department to abate violations of this act.

(3) Violations of the provisions of this act are punishable as follows:

(a) Any person who violates the provisions of this act, the rules or orders of the department, or the conditions of a permit is liable to the state for any damages specified in s. 403.141 and for a civil penalty of not more than $50,000 for each day of continued violation, except as otherwise provided herein. The department may revoke any permit issued to the violator. In any action by the department against a small hazardous waste generator for the improper disposal of hazardous wastes, a rebuttable presumption of improper disposal shall be created if the generator was notified pursuant to 'section 24 of this act; the generator shall then have the burden of proving that the disposal was proper. If the generator was not so notified, the burden of proving improper disposal shall be placed upon the department.

(b) Any person who knowingly:

1. Transports any hazardous waste listed pursuant to this act to a facility which does not have a permit under s. 403.722;

2. Disposes of, treats, or stores hazardous waste at any place but a hazardous waste facility which has a current and valid permit pursuant to s. 403.722; or

3. Makes any false statement or representation in any hazardous waste application, label, manifest, record, report, permit, or other document required by this act

is, upon conviction, guilty of a felony of the third degree, punishable for the first such conviction by a fine of not more than $50,000 for each day of violation or imprisonment not to exceed 5 years, or both, and for any subsequent conviction by a fine of not more than $100,000 per day of violation or imprisonment of not more than 10 years, or both.

(4) In addition to any other liability under this chapter, and subject only to the defenses set forth in subsections (5), (6), and (7):

(a) The owner and operator of a facility;

(b) Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substance was disposed of;

(c) Any person who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person or by any other party or entity at any facility owned or operated by another party or entity and containing such hazardous substances; and

(d) Any person who accepts or has accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person,

is liable for all costs of removal or remedial action incurred by the department under this section and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the release or threatened release of a hazardous substance as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510.

(5) The following defenses are available to a person alleged to be in violation of this act, who shall plead and prove that the alleged violation was solely the result of any of the following or combination of the following:

(a) An act of war.

(b) An act of government, either state, federal, or local, unless the person claiming the defense is a governmental body, in which case this defense is available only by acts of other governmental bodies.

(c) An act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.

(d) An act or omission of a third party other than an employee or agent of the defendant or other than one whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the defendant, except when the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail, if the defendant establishes by a preponderance of the evidence that:

1. The defendant exercised due care with respect to the hazardous waste concerned, taking into consideration the characteristics of such hazardous waste, in light of all relevant facts and circumstances; and

2. The defendant took precautions against foreseeable acts or omissions of any such third party and against the consequences that could foreseeably result from such acts or omissions.

(6) A generator or transporter of hazardous wastes who has complied with this act and with the applicable rules promulgated under this act and who has contracted for the disposal of hazardous wastes with a licensed hazardous waste disposal or processing facility is relieved from liability for those wastes upon receipt of a certificate of disposal from the disposal or processing facility.

(7) A generator of hazardous waste who has complied with this act and with the applicable rules under this act and who has contracted for the transportation of hazardous waste to a licensed hazardous waste facility is relieved of liability to the extent that such liability is covered by the insurance or bond of the transporter obtained pursuant to this act.

History.—s. 9, ch. 80-302; s. 10, ch. 82-27; s. 35, ch. 83-310.

'Note.—As enacted, the reference to "section 24 of this act" appears erroneous; perhaps the reference intended was to s. 22, ch. 83-310, compiled as s. 403.7234, which requires that a notice detailing the legal responsibilities of a small quantity generator with respect to proper waste management practices be sent to each small quantity generator.

403.728 Qualifications of operation personnel of hazardous waste facilities.—The owner and operator of a hazardous waste facility shall employ persons who are adequately trained, or who are registered in a training program, to operate and maintain a hazardous waste facility. The department may develop and conduct onsite or classroom training programs for persons who operate or maintain hazardous waste facilities. The department may do so through its employees or by contract. The program may include training in personal and public safety, emergency measures, properties of the waste, and such other items as the department deems necessary.

History.—s. 8, ch. 80-302.

403.73 Trade secrets.—Records, reports, or information obtained from any person under this act shall be available to the public, except upon a showing satisfactory to the department by any person that records, reports, or information, or a particular part thereof, contain trade secrets. Such trade secrets, or portions thereof, shall be confidential and not available to the public. However, such trade secrets may be disclosed to officers, employees, or authorized representatives of the department or of the United States Environmental Protection Agency, or when relevant in any proceeding under this act.

History.—s. 9, ch. 80-302.

PART V

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ENVIRONMENTAL REGULATION

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403.801 Short title.—Chapter 75-22, Laws of Florida, shall be known and may be cited as the "Florida Environmental Reorganization Act of 1975."

History.—s. 1, ch. 75-22.

403.802 Declaration of policy.—Reasserting the policies of the Governmental Reorganization Act of 1969 and the Florida Environmental Reorganization Act of 1975 which recognize that structural reorganization should be a continuing process, and recognizing that many years have passed since the passage of those acts, it is the intent of the Legislature to promote more efficient, effective, and economical operation of certain environmental agencies by transferring decisionmaking authority to environmental district centers and delegating to the water management districts permitting functions related to water quality. Further, it is the intent of this act to promote proper administration of Florida's landmark environmental laws.

History.—s. 2, ch. 75-22; s. 41, ch. 83-310.

403.803 Definitions.—When used in this act, the term, phrase, or word:

(1) "Branch office" means a geographical area, the boundaries of which may be established as a part of a district.

(2) "Canal" is a manmade trench, the bottom of which is normally covered by water with the upper edges of its sides normally above water.

(3) "Channel" is a trench, the bottom of which is normally covered entirely by water, with the upper edges of its sides normally below water.

(4) "Commission" means the Environmental Regulation Commission.

(5) "Department" means the Department of Environmental Regulation.

(6) "District" or "environmental district" means one of the geographical areas, the boundaries of which are established pursuant to this act.

(7) "Drainage ditch" or "irrigation ditch" is a manmade trench dug for the purpose of draining water from the land or for transporting water for use on the land and is not built for navigational purposes.

(8) "Environmental district center" means the facilities and personnel which are centralized in each district for the purposes of carrying out the provisions of this act.

(9) "Headquarters" means the physical location of the offices of the secretary and the division directors of the department.

(10) "Manager" means the head of an environmental district or branch office who shall supervise all environmental functions of the department within such environmental district or branch office.

(11) "Secretary" means the secretary of the Department of Environmental Regulation.

(12) "Standard" means any rule of the Department of Environmental Regulation relating to air and water quality, noise, and solid-waste management. The term "standard" does not include rules of the department which relate exclusively to the internal management of the department, the procedural processing of applications, the administration of rulemaking or adjudicatory proceedings, the publication of notices, the conduct of hearings, or other procedural matters.

(13) "Swale" means a manmade trench which:

(a) Has a top width-to-depth ratio of the cross-section equal to or greater than 6:1, or side slopes equal to or greater than 3 feet horizontal to 1 foot vertical;

(b) Contains contiguous areas of standing or flowing water only following a rainfall event;

(c) Is planted with or has stabilized vegetation suitable for soil stabilization, stormwater treatment, and nutrient uptake; and

(d) Is designed to take into account the soil erodibility, soil percolation, slope, slope length, and drainage area so as to prevent erosion and reduce pollutant concentration of any discharge.

History.—s. 3, ch. 75-22; s. 97, ch. 83-310.

403.804 Environmental Regulation Commission; powers and duties.—

(1)(a) The commission shall exercise the exclusive standard-setting authority of the department, except as provided in subsection (2) and ss. 120.54(9) and 373.114. The commission may adopt procedural rules governing the conduct of its meetings and hearings.

(b) The amendment to this subsection by s. 4, chapter 80-66, Laws of Florida, shall not affect any appeals pending before the commission or any procedural rules previously adopted by the Secretary of the Department of Environmental Regulation.

(2) The commission shall direct the department to have a study conducted of the economic and environmental impact which sets forth the benefits and costs to the public of any proposed standard that would be stricter or more stringent than one which

has been set by federal agencies pursuant to federal law or regulation. The commission shall also direct the department to prepare such a study on any standard existing on July 1, 1975, which sets a stricter or more stringent standard than one which has been set by federal agencies pursuant to federal law or regulation. All such studies shall be submitted to the Governor and Cabinet no later than March 1, 1976. Such studies as are provided for in this paragraph shall be submitted to the commission, which shall initially adopt the standards. Final action shall be by the Governor and Cabinet, who shall accept, reject, modify, or remand for further proceedings the standard within 60 days from the submission. Such review shall be appellate in nature. Hearings shall be in accordance with the provisions of chapter 120.

(3) The commission shall establish priorities and have final state approval on applications for, and disbursements of, federal and state grants for the construction of wastewater or water treatment works. In establishing priorities for state grants under this act, an application shall not receive a lower priority solely because the proposed project includes reserve capacity for which the incremental costs will be paid by the applicant in accordance with s. 403.1826(2).

History.—s. 6, ch. 75-22; ss. 4, 5, ch. 80-66; s. 54, ch. 83-310.
cf.—s. 403.805 Department adoption of federal standards.

403.805 Secretary; powers and duties.—The secretary shall have the powers and duties of heads of departments set forth in chapter 20, including the power to adopt rules under chapter 253, chapter 373, and this chapter, except that the Environmental Regulation Commission shall exercise the exclusive standard-setting authority of the department pursuant to s. 403.804. The secretary shall employ legal counsel to represent the department in matters affecting the department. Except for appeals on permits specifically assigned by this act to the Governor and Cabinet, and unless otherwise prohibited by law, the secretary may delegate the authority assigned to the department by this act to the assistant secretary, division directors, and district and branch office managers and to the water management districts.

History.—s. 6, ch. 75-22; s. 6, ch. 80-66; s. 2, ch. 80-394; s. 63, ch. 83-310.

403.8055 Department adoption of federal standards.—Notwithstanding ss. 120.54 and 403.804, the secretary is empowered to adopt rules substantively identical to regulations adopted in the Federal Register by the United States Environmental Protection Agency pursuant to federal law, in accordance with the following procedures:

(1) The secretary shall publish notice of intent to adopt a rule pursuant to this section in the Florida Administrative Weekly at least 21 days prior to filing the rule with the Department of State. The secretary shall mail a copy of the notice of intent to adopt a rule to the Administrative Procedures Committee at least 21 days prior to the date of filing with the Department of State. Prior to filing the rule with the Department of State, the secretary shall consider any written comments received within 21 days after the date of publication of the notice of intent to adopt a rule. The rule shall be adopted upon filing with the Department of State. Substantive changes from the rules as noticed shall require republishing of notice as required in this section.

(2) Any rule adopted pursuant to this section shall become effective upon the date designated in the rule by the secretary; however, no such rule shall become effective earlier than the effective date of the substantively identical United States Environmental Protection Agency regulation.

(3) The secretary shall stay any terms or conditions of a permit implementing department rules adopted pursuant to this section if the substantively identical provisions of a United States Environmental Protection Agency regulation have been stayed under federal judicial review. A stay issued pursuant to this subsection shall terminate upon completion of federal judicial review.

(4) Whenever any United States Environmental Protection Agency regulation adopted as a department rule pursuant to this section is declared invalid, is withdrawn, revoked, repealed, remanded, or suspended, or is substantively revised, amended, or otherwise modified, the secretary shall, within 60 days thereafter, publish a notice of repeal of the substantively identical department rule in the Florida Administrative Weekly. Such repeal is effective upon publication of the notice. The secretary may proceed to adopt a revised or amended United States Environmental Protection Agency regulation in accordance with the procedures set forth in this section.

(5) Any domestic for-profit or nonprofit corporation or association formed, in whole or in part:

(a) To promote conservation or natural beauty;

(b) To protect the environment, personal health, or other biological values;

(c) To preserve historical sites;

(d) To promote consumer interests;

(e) To represent labor, commercial, or industrial groups; or

(f) To promote orderly development;

and any other substantially affected person may, within 14 days after the date of publication of the notice of intent to adopt a rule, file an objection to rulemaking with the Environmental Regulation Commission. The objection shall specify the portions of the proposed rule to which the person objects and the reasons for the objection. The secretary shall not have the authority under this section to adopt those portions of a proposed rule specified in such objection. Objections which are frivolous shall not be considered sufficient to prohibit the secretary from adopting rules under this section.

(6) Whenever all or part of any rule proposed for adoption by the department is substantively identical to a regulation adopted in the Federal Register by the United States Environmental Protection Agency pursuant to federal law, such rule shall be written in a manner so that the rule specifically references such regulation whenever possible.

History.—s. 7, ch. 80-66; s. 18, ch. 82-27.

403.806 Division of Administrative Services; powers and duties.—The Division of Administrative Services shall perform duties including, but not limited to, personnel, fiscal, purchasing, education, and information.

History.—s. 6, ch. 75-22.
cf.—s. 20.261 Department of Environmental Regulation.

403.807 Division of Environmental Programs; powers and duties.—

(1) The Division of Environmental Programs shall perform duties including, but not limited to:

(a) Processing construction grants for wastewater treatment projects.

(b) Coordinating water restoration programs.

(c) Coordinating the state public works program.

(d) Coordinating solid waste management programs and hazardous waste management programs.

(e) Developing water quality-based effluent limitations.

(f) Reviewing environmental impact statements.

(g) Coordinating the air pollution control program.

(h) Coordinating and overseeing department laboratory functions.

(i) Coordinating the designation of outstanding Florida waters.

(2) No permit required under chapter 253, chapter 373, or this chapter, other than one for a major air pollution source, may be processed or issued by the Division of Environmental Programs.

History.—s. 6, ch. 75-22; s. 64, ch. 83-310.

cf.—s. 20.261 Department of Environmental Regulation.

403.808 Division of Environmental Permitting; powers and duties.—The Division of Environmental Permitting shall perform duties including, but not limited to, the following:

(1) Processing applications for powerplant or transmission line site certifications pursuant to part II, which applications shall be processed at headquarters.

(2) Processing applications for variances under s. 403.201.

(3) Processing other classifications of permits, licenses, and certificates which the secretary may designate.

(4) Establishing uniform procedures and forms for the orderly determination of decisions relating to permits, licenses, certificates, and exemptions.

(5) Providing the necessary technical and legal support to carry out enforcement functions of the department.

(6) Supervising and directing all district operations.

History.—s. 6, ch. 75-22; s. 65, ch. 83-310.

cf.—s. 20.261 Department of Environmental Regulation.

403.809 Environmental districts; establishment; managers; functions.—

(1) The secretary shall establish environmental districts. The boundaries of the environmental districts shall coincide with the boundaries of the water management districts, and a water management district may be divided into more than one environmental district. The secretary has the authority to adjust the environmental district boundaries upon a determination that exceptional circumstances require such adjustment in order to more properly serve the needs of the public or the environment. The secretary may establish branch offices for the purpose of making services more accessible to the citizens of each district. In the Suwannee River Water Management District, a branch office may serve as the environmental district center. By July 1, 1984, the department shall collocate part of its permitting operations with each of the central offices of the water management districts, and the water management districts shall collocate part of their permitting operations with each of the district offices of the department.

(2) There shall be a manager for each environmental district who shall be appointed by, and serve at the pleasure of, the secretary. The district manager shall maintain his office in the environmental district center, which shall be collocated with an office of a water management district. Each branch office shall have a branch office manager who shall be appointed by, and serve at the pleasure of, the secretary. The water management districts are encouraged to collocate part of their permitting operations with the branch offices of the department to the maximum extent practicable.

(3)(a) Under the supervision of the Division of Environmental Permitting, all field services and inspections required in support of the decisions of the department relating to the issuance of permits, licenses, certificates, or exemptions shall be accomplished at the environmental district center level to the maximum extent practicable.

(b) The processing of all applications for permits, licenses, certificates, and exemptions shall be accomplished at the district center or the branch office, except for those applications specifically assigned to the Division of Environmental Permitting or to the water management districts under s. 403.812 and those applications assigned by interagency agreement as provided in this act. However, the secretary, as head of the department, may not delegate to district or subdistrict managers, water management districts, or any unit of local government the authority to act on the following types of permit applications:

1. Certification of National Pollution Discharge Elimination System permits pursuant to Pub. L. No. 92-500, s. 401.

2. Construction and operation of major air pollution sources.

3. Certifications under the Florida Electrical Power Plant Siting Act or the Transmission Line Siting Act.

History.—ss. 4, 6, ch. 75-22; s. 67, ch. 83-310.

cf.—ss. 403.501-403.517 Florida Electrical Power Plant Siting Act.

ss. 403.52-403.536 Transmission Line Siting Act.

403.812 Delegation of functions to water management districts.—

(1) By October 1, 1984, the department shall delegate, to those water management districts that it finds to be financially and technically capable of implementing the delegation, its powers and duties pertaining to the administration of its "Regulation of Stormwater Rule." However, no later than October 1, 1984, the department shall delegate such powers and duties to the South Florida Water Management District and the Southwest Florida Water Management District.

(2) In addition to any function delegated under subsection (1), when the secretary determines that a water management district has the financial and technical capability to carry out water quality and other functions of the department, those powers, duties, and functions, or parts thereof, may be contracted or delegated to such water management district. Any powers, duties, and functions so delegated shall be carried out in accordance with the rules, regulations, and standards of the department. Nothing contained in this act shall be construed to adversely affect or divest any water management district of the power to levy ad valorem taxes.

(3) A delegation pursuant to this section may be rescinded only if the secretary determines that such delegation is not being carried out in accordance with the rules of the department.

History.—s. 6, ch. 75-22; s. 68, ch. 83-310.

403.813 Permits issued at district centers; exceptions.—

(1) The secretary is authorized to adopt procedural rules providing for a short-form application for, and issuance at the district center of, permits for certain activities. These activities shall include the following and any others established by rule:

(a) Projects not exceeding 10,000 cubic yards of material placed in or removed from the navigable waters of the state;

(b) Dockage or marina facilities not exceeding 30,000 square feet of submerged lands;

(c) New seawalls or similar structures not exceeding 500 linear feet of shoreline;

(d) The installation of buoys, signs, fences, ski ramps, and fish attractors by the Florida Game and Fresh Water Fish Commission;

(e) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state carrying water, electricity, communication cables, oil, and gas, except as exempted by paragraph (m) or paragraph (n) of subsection (2); and

(f) The performance, for 10 years from the issuance of the original permit, of maintenance dredging of permitted navigation channels, port harbors, turning basins, and harbor berths. The Trustees of the Internal Improvement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material. However, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Internal Improvement Trust Fund.

(2) No permit under this chapter, chapter 373, or chapter 253, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, Laws of Florida, 1949, shall be required for activities associated with the following types of projects; however, nothing in this subsection shall relieve an applicant from any requirement to obtain permission to use or occupy lands owned by any water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(a) The installation of overhead transmission lines, with support structures which are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation and repair of mooring pilings and dolphins associated with private docking facilities and the installation of private docks, any of which docks:

1. Has 500 square feet or less of over-water surface area, or 1,000 square feet or less of over-water surface area for a dock which is not located in an area designated as outstanding Florida waters and which is used for recreational, noncommercial activities;

2. Is constructed on pilings so as not to involve filling or dredging other than that necessary to install the pilings; and

3. Shall not substantially impede the flow of water or create a navigational hazard.

(c) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists or the installation of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state, and the maintenance to design specifications of such ramps; however, the material to be removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material into the waters of the state.

(d) The replacement or repair of existing docks, except that no fill material is to be used and provided that the replacement or repaired dock is in the same location and of the same configuration and dimensions as the dock being replaced or repaired.

(e) The restoration of seawalls at their previous locations or upland of, or within 1 foot waterward of, their previous locations.

(f) The performance of maintenance dredging of existing manmade canals, channels, and intake and discharge structures where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state, provided that no more dredging is to be performed than is necessary to restore the canals, channels, and intake and discharge structures to original design specifications and provided that control devices are utilized to prevent turbidity and prevent toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed prior to April 3, 1970, and to those canals constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption shall not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters. When no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water. The Trustees of the Internal Im-

provement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material; however, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Internal Improvement Trust Fund.

(g) The maintenance of existing insect control structures, dikes, and irrigation and drainage ditches, provided that spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive, as determined by the Department of Health and Rehabilitative Services, pursuant to s. 403.0891(1), that it will inhibit proposed insect control, then existing spoil sites or dikes may be used, upon notification to the department. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications.

(h) The repair of existing pipes for the purpose of discharging storm water runoff.

(i) The construction of private docks and seawalls in artificially created waterways where such construction will not violate existing water quality standards; impede navigation, or affect flood control.

(j) The construction and maintenance of swales.

(k) The installation of aids to navigation and buoys associated with such aids, provided that the devices are marked pursuant to s. 327.40.

(l) The replacement or repair of existing open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width; provided that no more dredging or filling of submerged lands is performed other than that which is necessary to replace or repair pilings and that the structure to be replaced or repaired is the same length, the same configuration, and in the same location as the original bridge. No debris from the original bridge shall be allowed to remain in the waters of the state.

(m) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters in the state, except in Class I and Class 2 waters and aquatic preserves, provided that no dredging or filling is necessary.

(n) The replacement or repair of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state.

(o) The construction of private seawalls in waters of the state where such construction is between and adjoins at both ends existing seawalls, follows a continuous and uniform seawall construction line with the existing seawalls, is no more than 150 feet in length, and does not violate existing water quality standards, impede navigation, or affect flood control. However, this shall not affect the permitting requirements of chapter 161.

(3) The provisions of subsection (2) are superseded by general permits established pursuant to s. 403.814 which include the same activities. Until such time as general permits are established, or should general permits be suspended or repealed, the exemptions under subsection (2) shall remain or shall be reestablished in full force and effect.

History.—s. 7, ch. 73-22; s. 113, ch. 77-104; s. 4, ch. 78-94; s. 1, ch. 78-186; s. 96, ch. 79-65; s. 1, ch. 80-244; s. 8, ch. 80-66; s. 3, ch. 82-89; s. 6, ch. 82-185; s. 65, ch. 83-216; s. 89, ch. 83-219.

403.813(5) 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. 9, ch. 79-161.

403.814 General permits; delegation.—

(1) The secretary is authorized to adopt rules establishing and providing for a program of general permits under chapters 253 and 403 for projects, or categories of projects, which have, either singly or cumulatively, a minimal adverse environmental effect. Such rules shall specify design or performance criteria which, if applied, would result in compliance with appropriate standards adopted by the commission. Except as provided for in subsection (2), any person complying with the requirements of a general permit may use the permit 30 days after giving notice to the department without any agency action by the department.

(2) The department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of application for a general permit. If published, such public notice of application shall be published within 14 days after the applicant notifies the department; and, within 21 days after publication of notice, any person whose substantial interests are affected may request a hearing in accordance with s. 120.57. Failure to request a hearing within 21 days after publication of notice shall constitute a waiver of any right to a hearing under s. 120.57. If notice is published, no person shall begin work pursuant to a general permit until after the time for requesting a hearing has passed, or until after a hearing is held and a decision is rendered.

(3) The department is authorized to delegate any of its general permit authority to the district offices of the department or to water management districts.

History.—s. 9, ch. 80-66; s. 12, ch. 82-27.

403.815 Public notice; waiver of hearings.

—The department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of application for a permit submitted under this chapter or chapter 253. The notice of application shall be published within 14 days after the application is filed with the department. Notwithstanding any provision of s. 120.60, the department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of proposed agency action on any permit application submitted under this chapter or chapter 253. The notice of proposed agency action shall be published at least 14 days prior to final agency action. The 90-day time period specified in s. 120.60(2) shall be tolled by the request of the department for publication of notice of proposed agency action and shall resume 14 days after receipt by the department of proof of publication. However, if a petition is filed for a proceeding pursuant to s. 120.57, the time periods and tolling provisions of s. 120.60 shall apply. The cost of publication of notice under this section shall be paid by the applicant. The secretary may, by rule, specify the format and size of such notice. Within 14 days after publication of notice of proposed agency action, any person whose substantial interests are affected may request a hearing in accordance with s. 120.57. Failure to request a hearing within 14 days after publication of notice of proposed agency action shall constitute a waiver of any right to a hearing on the application under s. 120.57.

History.—s. 10, ch. 80-66; s. 13, ch. 82-27.

403.816 Permits for maintenance dredging of deepwater ports.—

(1) The department shall establish a permit system under this chapter and chapter 253 which provides for the performance, for up to 25 years from the issuance of the original permit, of maintenance dredging of permitted navigation channels, port harbors, turning basins, and harbor berths. No charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority except as provided in s. 403.813(1)(f).

(2) Disposal of spoil material resulting from maintenance dredging of deepwater navigation channels, port harbors, turning basins, or harbor berths shall be exempt from the requirements of s. 253.124 when spoil material is to be removed and deposited:

(a) On a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state;

(b) In a spoil disposal area permitted under ss. 403.061(24), 403.087, and 253.124; or

(c) In a federally authorized ocean disposal area beyond the territorial limits of the state.

(3) The provisions of s. 253.77 shall not apply to a permit for maintenance dredging and spoil site approval when there is no change in the size or location of the spoil disposal site and when the applicant provides documentation to the department that the appropriate lease, easement, or consent of use for the project site issued pursuant to chapter 253 is recorded in the county where the project is located.

(4) The provisions of this section shall apply only to the port waters, spoil disposal sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, and Pensacola.

History.—ss. 3, 5, ch. 81-229.

403.817 Legislative intent; determination of the natural landward extent of waters for regulatory purposes.—

(1) It is recognized that the levels of the waters of the state naturally rise and fall, depending upon tides and other hydrological, meteorological, and geological circumstances and features. The natural rise and fall of the waters is essential to good water quality, but often makes it difficult to determine the natural landward extent of the waters. Therefore, it is the intent of the Legislature that the Department of Environmental Regulation establish a method of making such determinations, based upon ecological factors which represent these fluctuations in water levels.

(2) In order to accomplish the legislative intent expressed in subsection (1), the department is authorized to establish by rule, pursuant to chapter 120, the method for determining the landward extent of the waters of the state for regulatory purposes. Such extent shall be defined by species of plants or soils which are characteristic of those areas subject to regular and periodic inundation by the waters of the state. The application of plant indicators to any areas shall be by dominant species. However, no landowner shall suffer any property loss or gain because of vegetation changes due to mosquito control activities conducted upon his property, provided these activities are or have been undertaken as part of a governmental mosquito control program. To the extent that certain lands have come within department jurisdiction pursuant to this section or chapter 253 solely due to insect control activities, these lands shall not be subject to permitting requirements for the discharge of dredge or fill material.

(3) Amendments adopted after April 5, 1977, to the rules of the department adopted before April 5, 1977, relating to dredging and filling and which involve additions or deletions of the vegetation or soil indices or the addition or deletion of exemptions 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.

(4) To the extent that any plant or soil indicators are enacted into law by the Legislature for the purpose of defining the landward extent of the waters of the state for regulatory purposes, the plant or soil indicators adopted by the department regarding areas covered by legislation shall be consistent with said legislation.

(5) The landward extent of waters as determined by the rules authorized by this section shall be for regulatory purposes only and shall have no significance with respect to sovereign ownership.

History.—ss. 1, 2, ch. 77-170; s. 5, ch. 78-98.

PART VI

DRINKING WATER

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403.850 Short title.—This act may be cited as *the "Florida Safe Drinking Water Act."*

History.—s. 1, ch. 77-337.

403.851 Declaration of policy; intent.—It is the policy of the state that the citizens of Florida shall be assured of the availability of safe drinking water. Recognizing that this policy encompasses both environmental and public health aspects, it is the intent of *the Legislature to provide a water supply program* operated jointly by the Department of Environmental Regulation, in a lead-agency role of primary responsibility for the program, and by the Department of Health and Rehabilitative Services and its units, including county health departments, in a supportive role with specific duties and responsibilities of its own. Without any relinquishment of Florida's sovereign powers and *responsibilities* to provide for the public health, public safety, and public welfare of the people of Florida, the Legislature intends:

(1) To give effect to Pub. L. No. 93-523 promulgated under the commerce clause of the United States Constitution, to the extent that interstate commerce is directly affected.

(2) To encourage cooperation between federal, state, and local agencies, not only in their enforcement role, but also in their service and assistance roles to city and county elected bodies.

(3) To provide for safe drinking water at all times throughout the state, with due regard for economic factors and efficiency in government.

History.—s. 2, ch. 77-337; s. 162, ch. 79-400.

403.852 Definitions.—As used in ss. 403.850-403.864:

(1) "Department" means the Department of Environmental Regulation, which is charged with the primary responsibility for the administration and implementation of the Florida Safe Drinking Water Act.

(2) "Public water system" means a community or noncommunity system for the provision to the public of piped water for human consumption, provided that such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. The term includes:

(a) Any collection, treatment, storage, and distribution facility or facilities under control of the operator of such system and used primarily in connection with such system.

(b) Any collection or pretreatment storage facility or facilities not under control of the operator of such system but used primarily in connection with such system.

(3) "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(4) "Noncommunity water system" means a public water system for provision to the public of piped water for human consumption, which serves at least 25 individuals daily at least 60 days out of the year, but which is not a community water system; except that a water system for a wilderness educational camp is a noncommunity water system.

(5) "Person" means an individual, public or private corporation, company, association, partnership, municipality, agency of the state, district, federal agency, or any other legal entity, or its legal representative, agent, or assigns.

(6) "Municipality" means a city, town, or other public body created by or pursuant to state law or an Indian tribal organization authorized by law.

(7) "Federal agency" means any department, agency, or instrumentality of the United States Government.

(8) "Supplier of water" means any person who owns or operates a public water system.

(9) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(10) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(11) "Federal act" means the Safe Drinking Water Act, Pub. L. No. 93-523.

(12) "Primary drinking water regulation" means a rule which:

(a) Applies to public water systems;

(b) Specifies contaminants which, in the judgment of the department, after consultation with the Department of Health and Rehabilitative Services, may have an adverse effect on the health of the public;

(c) Specifies for each such contaminant either:

1. A maximum contaminant level if, in the judgment of the department, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems; or

2. Each treatment technique known to the department which leads to a reduction in the level of the contaminant sufficient to satisfy the requirements of s. 403.853 if, in the judgment of the department, it is not economically or technologically feasible to ascertain the level of such contaminant; and

(d) Contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to assure compliance with such levels and to ensure proper operation and maintenance of the system, and which contains requirements as to:

1. The minimum quality of water which may be taken into the system; and

2. Siting for new facilities for public water systems.

(13) "Secondary drinking water regulation" means a rule which:

(a) Applies to public water systems; and

(b) Specifies the maximum contaminant levels which, in the judgment of the department after public hearings, are requisite to protect the public welfare. Such regulation may apply to any contaminant in drinking water:

1. Which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use; or

2. Which may otherwise adversely affect the public welfare.

Such regulations may vary according to geographic and other circumstances.

(14) "National primary drinking water regulations" means primary drinking water regulations promulgated by the administrator pursuant to the federal act.

(15) "National secondary drinking water regulations" means secondary drinking water regulations promulgated by the administrator pursuant to the federal act.

(16) "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.

History.—s. 3, ch. 77-337; s. 1, ch. 82-80.

403.853 Drinking water standards.—

(1) The department shall adopt and enforce:

(a)1. State primary drinking water regulations that shall be no less stringent at any given time than the complete interim or revised national primary drinking water regulations in effect at such time; and

2. State secondary drinking water regulations *patterned after the national secondary drinking water* regulations.

(b) Primary and secondary drinking water regulations for noncommunity water systems, which shall be no more stringent than the corresponding national primary or secondary drinking water regulations in effect at such time.

(2) Subject to the exceptions authorized pursuant to s. 403.854, *state primary drinking water regulations* shall apply to each public water system in the state, except that such regulations shall not apply to any public water system which meets all of the following criteria; namely, that the system:

(a) Consists of distribution and storage facilities only and does not have any collection or treatment facilities.

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such *regulations apply;*

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(3) The department shall adopt and implement adequate rules specifying procedures for the enforcement of state primary and secondary drinking water regulations, including monitoring and inspection procedures, that comply with regulations established by the administrator pursuant to the federal act.

(4) The department shall keep such records and make such reports, with respect to its activities under subsections (1) and (3), as may be required by regulations established by the administrator pursuant to the federal act. Such records and reports shall be available for public inspection.

(5) *No state primary drinking water regulation* may require the addition of any substance for preventive health care purposes unrelated to the contamination of drinking water.

(6) Upon request of the owner or operator of a noncommunity water system serving businesses, other than restaurants or other public food service establishments, and using ground water as a source of *supply, the department, or a local county health unit* designated by the department, shall perform a sanitary survey of the facility. Upon receipt of satisfactory survey results according to department criteria, the department shall reduce the requirements of said owner or operator from monitoring and reporting on a quarterly basis to performing these functions on an annual basis. Any revised monitoring and reporting schedule approved by the department under this subsection shall apply until such time as a violation of applicable state or federal primary drinking water standards is determined by the system owner or operator, by the department, or by an agency designated by the department, after a random or routine sanitary survey. Certified operators shall not be required for noncommunity water systems of the type and size covered by this subsection. Any reports required of such system shall be limited to the minimum as required by federal law. When not contrary to the provisions of federal law, the department may, upon request and by rule, waive additional provisions of state drinking water regulations for such systems.

History.—s. 4, ch. 77-337; s. 1, ch. 79-368.

403.8535 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. 10, ch. 79-16.

403.854 Variances, exemptions, and waivers.—

(1) The department may authorize variances or exemptions from the regulations issued pursuant to s. 403.853 under conditions and in such manner as it deems necessary and desirable, provided that such variances or exemptions are authorized under such conditions and in such manner as are no less stringent than the conditions under which and the manner in which variances and exemptions may be granted under the federal act.

(2)(a) The department shall exempt public water systems from any requirements respecting a maximum contaminant level or any treatment technique requirement, or both, when:

1. Due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement;

2. The public water system was in operation on the effective date of such contaminant level or treatment technique requirement; and

3. The granting of the exemption will not result in an unreasonable risk to health.

(b) Proposed additions to existing treatment plants not under contract for construction on July 1, 1977, shall not be automatically exempt.

(3)(a) When the department receives an application for exemption, it shall act upon such application within a time period under s. 1416(g) of Pub. L. No. 93-523 or the Florida Administrative Procedure Act, whichever is earlier.

(b) The department shall prescribe a compliance schedule for the exempted system and shall notify the Environmental Protection Agency Administrator personally by certified mail pursuant to Pub. L. No. 93-523, s. 1416(b) and (c).

(4)(a) The department shall, except upon a showing of good cause, waive on a case-by-case basis any chlorination requirement applicable to noncommunity water systems existing on July 18, 1980, upon an affirmative showing by the supplier of water that no hazard to health will result. This showing shall be based upon the following:

1. The completion of a satisfactory sanitary survey;

2. The history of the quality of water provided by the system and monthly monitoring tests for bacteriological contamination;

3. Evaluation of the well and the site on which it is located, including geology, depth of well, casing, grouting, and other relevant factors which have an impact on the quality of water supplied; and

4. The number of connections and size of the distribution system.

(b) The department may as a condition of waiver require a monitoring program of sufficient frequency to assure that safe drinking water standards are being met.

(5) The department shall, except upon a showing of good cause, waive on a case-by-case basis any requirement for a certified operator for a noncommunity water system having a design flow of less than 10,000 gallons per day upon an affirmative showing by the supplier of water that the system can be properly maintained without a certified operator. The department shall consider:

(a) The results of a sanitary survey if deemed necessary;

(b) The operation and maintenance records for the year preceding an application for waiver;

(c) The adequacy of monitoring procedures for maximum contaminant levels included in primary drinking water regulations;

(d) The feasibility of the supplier of water becoming a certified operator; and

(e) Any threat to public health that could result from nonattendance of the system by a certified operator.

(6) A waiver shall be granted for 3 years and shall be renewable upon application to the department pursuant to subsection (4) or subsection (5).

(7) The department may revoke any waiver to protect the public health, provided the department finds, on the basis of technical evidence, that revocation is necessary to achieve compliance with state quality standards for safe drinking water or that the supplier of water fails to comply with any conditions of the waiver. The department may proceed under s. 403.855 or s. 403.860.

(8) Neither the department nor any of its employees shall be held liable for money damages for any injury, sickness, or death sustained by any person as a result of drinking water from any noncommunity water system granted a waiver under subsection (4) or subsection (5).

History.—s. 5, ch. 77-337; s. 1, ch. 80-417.

403.855 Imminent hazards.—In coordination with the Department of Health and Rehabilitative Services, the department, upon receipt of information that a contaminant which is present in, or is likely to enter, public or private water supplies may present an imminent and substantial danger to the public health, may take such actions as it may deem necessary in order to protect the public health. Department actions shall include, but are not limited to:

(1) Adopting emergency rules pursuant to s. 120.54(9).

(2) Issuing such corrective orders as may be necessary to protect the health of persons who are or may be users of such supplies, including travelers. An order issued by the department under this section shall become effective upon service of such order on the alleged violator, notwithstanding the provisions of s. 403.860(3).

(3) Establishing a program designed to prevent contamination or to minimize the danger of contamination to potable water supplies.

(4) Contracting for clinical tests on samples of the affected population if the department determines there is a real and immediate danger to the public health.

(5) Commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

History.—s. 6, ch. 77-337; s. 143, ch. 79-400; s. 5, ch. 83-310.

403.856 Plan for emergency provision of water.—The department shall adopt an adequate plan, after consultation with the Department of Health and Rehabilitative Services, for the provision of safe drinking water under emergency circumstances. When, in the judgment of the department, emergency circumstances exist in the state with respect to a need for safe drinking water, it may issue such rule or order as it may deem necessary in order to provide such water where it would not otherwise be available.

History.—s. 7, ch. 77-337.

403.857 Notification of users and regulatory agencies.—Whenever a public water supply system:

(1) Is not in compliance with the state primary and secondary drinking water regulations;

(2) Fails to perform monitoring required by rules or regulations adopted by the department;

(3) Is subject to a variance granted for an inability to meet a maximum contaminant level requirement;

(4) Is subject to an exemption; or

(5) Fails to comply with the requirements prescribed by a variance or exemption,

the owner or operator of the system shall, as soon as practicable, notify the local public health departments, the department, and the communications media serving the area served by the system of that fact and of the extent, nature, and possible health effects of such fact. Such notice shall also be given by the owner or operator of the system by publication in a newspaper of general circulation, as determined by the department, within the area served by such water system at least once every 3 months as long as the violation, variance, or exemption continues. Such notice shall also be given with the water bills of the system as long as the violation, variance, or exemption continues, as follows: if the water bills of a public water system are issued at least as often as once every 3 months, such notice shall be included in at least one water bill of the system for each customer every 3 months; if the system issues its water bills less often than once every 3 months, such notice shall be included in each of the water bills issued by the system for each customer. However, the provisions of this section notwithstanding, the department may prescribe by rule reasonable alternative notice requirements.

History.—s. 8, ch. 77-337.

403.858 Inspections.—Any duly authorized representative of the department or of the Department of Health and Rehabilitative Services may enter, take water samples from, and inspect any property, premises, or place, except a building which is used exclusively for a private residence, on or at which a public water system is located or is being constructed or installed, at any reasonable time, for the purpose of ascertaining the state of compliance with the law or with rules or orders of the department.

History.—s. 9, ch. 77-337.

403.859 Prohibited acts.—The following acts and the causing thereof are prohibited and are violations of this act:

(1) Failure by a supplier of water to comply with the requirements of s. 403.857 or dissemination by such supplier of any false or misleading information with respect to notices required pursuant to s. 403.857 or with respect to remedial actions being undertaken to achieve compliance with state primary and secondary drinking water regulations.

(2) Failure by a supplier of water to comply with regulations adopted pursuant to s. 403.853, with any rule adopted by the department pursuant to this act, or with conditions for variances or exemptions authorized under s. 403.854.

(3) Failure by any person to comply with any order issued by the department pursuant to this act.

(4) Failure by a supplier of water to allow any duly authorized representative of the department or of the Department of Health and Rehabilitative Services to conduct inspections pursuant to s. 403.858.

(5) Submission by any person of any false statement or representation in any application, record, report, plan, or other document filed, or required to be filed by this act or rules adopted by the department pursuant to its lawful authority.

(6) Failure by a supplier of water to comply with any approved plans and specifications or condition to the approval of plans and specifications issued by the department pursuant to this act.

(7) The artificial recharge by the direct pumping of treated or untreated waste into any geologic formation of the Floridan Aquifer or the Biscayne Aquifer containing total dissolved solids of 500 milligrams per liter or less, except such injection from wastewater reuse facilities presently being considered and conceptually approved by the department before June 1, 1983, on the following conditions:

(a) There will be a minimum 2-year operational test period during which no other such project will be permitted.

(b) During the test period, no effluent will be injected into the Floridan Aquifer or the Biscayne Aquifer.

(c) The effluent quality must meet the water quality standards established by the Department of Environmental Regulation as part of the permit to construct the treatment facility.

(d) By January 1, 1984, the Department of Environmental Regulation shall promulgate by rule effluent standards for any project proposing wastewater reuse by injection into the Floridan Aquifer or Biscayne Aquifer.

(e) At the end of the 2-year operational test, there will be a peer review of data. The review shall be broadly distributed to competent, impartial, and experienced national authorities such as the United States Environmental Protection Agency and the National Academy of Sciences. The decision by the department to permit injection shall take into consideration the reports of the review.

(f) In the event a facility does not receive an operation permit which assures compliance with department rules promulgated pursuant to this subsection, the treated or untreated waste shall be returned to the sewage treatment plant from which the wastewater was diverted during the 2-year period or another legally acceptable alternative.

The provisions of this subsection do not apply to treated or untreated waste currently discharging into the Floridan Aquifer or Biscayne Aquifer on June 22, 1983.

History.—s. 10, ch. 77-337; s. 164, ch. 79-400; s. 1, ch. 83-161.

403.860 Penalties and remedies.—

(1) A fine, not to exceed $5,000 for each day in which a violation occurs, may be imposed by a court of competent jurisdiction on any person who violates s. 403.859 (1), (2), (4), (5), or (6).

(2) A fine, not to exceed $5,000 for each day in which such violation occurs or failure to comply continues, may be imposed by a court of competent jurisdiction upon any person who violates, or fails or refuses to comply with, any order issued by the department pursuant to this act.

(3) The department may initiate an administrative proceeding to establish liability and require corrective action. Such proceeding shall be instituted by the department's serving a written notice of violation upon the alleged violator by certified mail. The notice shall specify the provision of law or rule of the department alleged to have been violated and the facts alleged to constitute a violation thereof. An order for corrective action may be included with the notice. However, no order shall become effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period shall constitute a waiver thereof. A department order, entered after a hearing pursuant to chapter 120 or a waiver thereof, shall be final and constitute a final adjudication of the matters alleged. Such order may require, in addition to corrective action, that the violator pay the state for its reasonable costs and expenses incurred in investigating the violation and prosecuting the administrative proceeding.

(4) The department may institute a civil action in any court of appropriate jurisdiction for injunctive relief to prevent violation of any order, rule, or regulation issued pursuant to this act, in addition to any other remedies provided under this section.

History.—s. 11, ch. 77-337.

403.861 Department; powers and duties.—The department shall have the power and the duty to carry out the provisions and purposes of this act and, for this purpose, to:

(1) Administer and enforce the provisions of this act and all rules and orders adopted, issued, or made effective hereunder.

(2) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as it deems appropriate, with other local, state, federal, or interstate agencies; municipalities; political subdivisions; educational institutions; or other organizations or persons.

(3) Receive financial and technical assistance from the Federal Government and other public or private agencies.

(4) Participate in related programs conducted by federal agencies, other states, interstate agencies, or other public or private agencies or organizations.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of, and accounting for, funds appropriated or otherwise provided for the purpose of carrying out provisions of this act.

(6) Delegate those responsibilities and duties deemed appropriate for the purpose of administering requirements of this act.

(7) Require an application fee of not more than $20 for department review and approval of public water system plans and specifications.

(8) Adopt, modify, and repeal such rules as are necessary or appropriate to carry out its functions under this act.

(9) Require department or county health department review and approval of complete plans and specifications prior to the installation, operation, alteration, or extension of any public water system.

(10) Establish and maintain laboratories for radiological, microbiological, and chemical analyses of water samples from public water systems, if the department determines that an additional laboratory capability beyond that provided by the Department of Health and Rehabilitative Services is necessary.

(11) Plan, develop, and coordinate program activities for the management and implementation of the state primary and secondary drinking water regulations, including taking sanitary surveys.

(12) Collect and disseminate information and conduct educational and training programs relating to drinking water and public water systems.

(13) Conduct data management activities to maintain essential records needed for administration of the public water system supervision program and for submission to the administrator, including the maintenance of an inventory for all public water systems.

(14) Establish and collect fees for conducting state laboratory analyses as may be necessary, to be collected and used by either the department or the Department of Health and Rehabilitative Services in conducting its public water supply laboratory functions.

(15) Require suppliers of water to collect samples of water as required by state primary drinking water regulations, to submit such samples to an appropriate laboratory for analysis, and to keep sampling records as required under the federal act and make such records available to the department upon request.

(16) Require suppliers of water to submit periodic operating reports and testing data which the department determines are reasonably necessary to ascertain the adequacy of water supply systems.

(17) Issue such orders as may be necessary to effectuate the intent and purposes of this act.

(18) Assist state and local agencies in the determination and investigation of suspected waterborne disease outbreaks, including diseases associated with chemical contaminants.

(19) Encourage public involvement and participation in the planning and implementation of the state public water system supervisory plans.

History.—s. 12, ch. 77-337; s. 155, ch. 79-400.

403.862 Department of Health and Rehabilitative Services; public water supply duties and responsibilities; coordinated budget requests with Department of Environmental Regulation.—

(1) Recognizing that supervision and control of units of the Department of Health and Rehabilitative Services is retained by the secretary of that agency, and that public health aspects of the state public water supply program require joint participation in the

program by the Department of Health and Rehabilitative Services and its units and the department, the Department of Health and Rehabilitative Services shall:

(a) Establish and maintain laboratories for the conducting of radiological, microbiological, and chemical analyses of water samples from public water systems, which are submitted to such laboratories for analysis. Copies of the reports of such analyses and quarterly summary reports shall be submitted to the appropriate department district or subdistrict office.

(b) Require each county health department to:

1. Collect such water samples for analysis as may be required by the terms of this act, from public water systems within its jurisdiction. The duty to collect such samples may be shared with the appropriate department district or subdistrict office and shall be coordinated by field personnel involved.

2. Submit the collected water samples to the appropriate laboratory for analysis.

3. Maintain reports of analyses for its own records.

4. Conduct complaint investigation of public water systems to determine compliance with federal, state, and local standards and permit compliance.

5. Notify the appropriate department district or subdistrict office of potential violations of federal, state, and local standards and permit conditions by public water systems and assist the department in enforcement actions with respect to such violations to the maximum extent practicable.

6. Review and evaluate laboratory analyses of water samples from private water systems.

(c) Require those county health departments designated by the Department of Health and Rehabilitative Services and approved by the department as having qualified sanitary engineering staffs, in addition to the duties prescribed in paragraph (1)(b), to:

1. Review and evaluate each application for the construction, modification, or expansion of a public water system to determine compliance with federal, state, and local requirements. Upon completion of such review and evaluation, the application shall be forwarded to the appropriate department district or subdistrict office for final action.

2. Review, evaluate, and approve or disapprove applications for the expansion of distribution systems. Written notification of action taken on such applications shall be forwarded to the appropriate department district or subdistrict office.

3. Maintain inventory, operational, and bacteriological records and carry out monitoring, surveillance, and sanitary surveys of public water systems to ensure compliance with federal, state, and local regulations.

4. Participate in educational and training programs relating to drinking water and public water systems.

(d) Require those county health departments designated by the Department of Health and Rehabilitative Services as having the capability of performing bacteriological analyses, in addition to the duties prescribed in paragraph (1)(b), to:

1. Perform bacteriological analyses of water samples submitted for analysis.

2. Submit copies of the reports of such analyses to the appropriate department district or subdistrict office.

(e) Make available to the central and branch laboratories funds sufficient, to the maximum extent possible, to carry out the public water supply functions and responsibilities required of such laboratories as provided in this section.

(f) Have general supervision and control over all private water systems and all public water systems not covered or included in this act.

(g) Assist state and local agencies in the determination and investigation of suspected waterborne disease outbreaks, including diseases associated with chemical contaminants.

(h) Upon request, consult with and advise any county or municipal authority as to water supply activities.

(2) Funds appropriated to support activities of county health departments of the Department of Health and Rehabilitative Services pursuant to this act shall be deposited to the County Health Department Trust Fund and used exclusively for the purposes of this act.

(3) The Department of Health and Rehabilitative Services and the department shall coordinate their respective budget requests for the fiscal year 1978-1979 and for subsequent fiscal years to ensure that sufficient funding is provided to the Department of Health and Rehabilitative Services in order that it may carry out its public water supply functions and responsibilities as provided in this section. In the event the Department of Health and Rehabilitative Services lacks sufficient funds in any fiscal year to the extent that it is unable adequately to carry out its public water supply duties, an interagency agreement may be entered into between the two departments in order to remedy administratively, either through the transfer of funds or of services, the lack of sufficient public water supply funds within the Department of Health and Rehabilitative Services.

(4) If the department determines that a county health department or other unit of the Department of Health and Rehabilitative Services is not performing its public water supply responsibilities satisfactorily, the secretary of the department shall certify such determination in writing to the Secretary of Health and Rehabilitative Services. The Secretary of Health and Rehabilitative Services shall evaluate the determination of the department and shall inform the secretary of the department of his evaluation. Upon concurrence, the Secretary of Health and Rehabilitative Services shall take immediate corrective action.

(5) Nothing in this section shall serve to negate the powers, duties, and responsibilities of the Secretary of Health and Rehabilitative Services relating to the protection of the public from the spread of communicable disease, epidemics, and plagues.

History.—s. 13, ch. 77-337; s. 156, ch. 79-400.

403.863 State public water supply laboratory certification program.—

(1) Within 120 days of the effective date of this act, the department and the Department of Health and Rehabilitative Services shall jointly develop a

state program, and the Department of Health and Rehabilitative Services shall adopt rules for the evaluation and certification of all laboratories in the state, other than the principal state laboratory, which perform or make application to perform analyses pursuant to the Florida Safe Drinking Water Act. Such joint development shall be funded in part through the use of a portion of the State Public Water Systems Supervision Program grants received by the department from the Federal Government in order to implement the federal act.

(2) The Department of Health and Rehabilitative Services shall have the responsibility for the operation and implementation of the state laboratory certification program, except that, upon completion of the evaluation and review of the laboratory certification application, the evaluation shall be forwarded, along with recommendations, to the department for review and comment, prior to final approval or disapproval.

(3) Any federal grant funds received by the department for the operation and implementation of the state laboratory certification program shall be transferred to the Department of Health and Rehabilitative Services by interagency agreement between the two departments. Such agreement shall require the Department of Health and Rehabilitative Services to provide the department with a quarterly accounting of the funds transferred.

(4) Within 60 days of the effective date of the rules adopted pursuant to this section, no laboratory in the state, except the principal state laboratory, shall perform analyses pursuant to the Florida Safe Drinking Water Act without having applied for and received certification under the state certification program to perform such analyses.

(5) For the purposes of this section, the term "principal state laboratory" means the central laboratory of the Department of Health and Rehabilitative Services.

(6) For the purposes of this section, the term "certification" means regulatory recognition given to a laboratory that performs analyses pursuant to the Florida Safe Drinking Water Act, that it meets minimum analytical performance standards.

History.—s. 14, ch. 77-147; s. 147, ch. 79-400.

403.864 Public water supply accounting program.—

(1) It is the intent of the Legislature to require a yearly accounting of funds, overhead, personnel, and property used by the department and the Department of Health and Rehabilitative Services and its units, including each of the county health departments, in conducting their respective responsibilities for the state public water supply program. Such accounting shall be presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives by the department and the Department of Health and Rehabilitative Services no later than February 1 of each year. The first accounting shall be due by February 1, 1979, and shall cover the state fiscal year 1978-1979.

(2) In furtherance of this intent, the Department of Health and Rehabilitative Services, the department, and the Auditor General shall jointly develop an accounting program for use by the department and the Department of Health and Rehabilitative Services and its units, including the county health departments, to determine the funds, overhead, personnel, and property used by each of the departments in conducting its respective public water supply functions and responsibilities for each fiscal year. The accounting program shall provide information sufficient to satisfy state auditing and federal grant and aid reporting requirements and shall include provisions requiring the Department of Health and Rehabilitative Services to:

(a) Segregate, from an accounting standpoint, funds distributed to county health departments for public water supply functions from other county health department trust funds.

(b) Segregate, from an accounting standpoint, funds distributed to the central and branch laboratories of the Department of Health and Rehabilitative Services for public water supply functions from other laboratory funds.

(c) Require each county health department, the central and each branch laboratory of the Department of Health and Rehabilitative Services, and any other entity of the Department of Health and Rehabilitative Services involved in and carrying out public water supply functions to account to the Department of Health and Rehabilitative Services on a semiannual basis for the funds received, from whatever source, and used for public water supply functions.

(d) Require each county health department, the central and each branch laboratory of the Department of Health and Rehabilitative Services, and any other entity of the Department of Health and Rehabilitative Services involved in carrying out public water supply functions either wholly or partially with funds, either federal or state, received from the department through an interagency agreement or other means to account to the department on a semiannual basis for such funds received and used for public water supply functions.

History.—s. 15, ch. 77-147; s. 100, ch. 79-164.

PART VII

MISCELLANEOUS

403.90 Judicial review relating to permits and licenses.

403.90 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.—s. 1, 2, 3, 4, 5, 6, ch. 79-85.

CHAPTER 582

SOIL AND WATER CONSERVATION

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582.01 Definitions.—Wherever used or referred to in this chapter unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" or "soil and water conservation district" means a governmental subdivision of this state, and a body corporate and politic, organized in accordance with the provisions of this chapter, for the purpose, with the powers, and subject to the provisions set forth in this chapter. The term "district" or "soil conservation district," when used in this chapter, means and includes a "soil and water conservation district." All districts heretofore or hereafter organized under this chapter shall be known as soil and water conservation districts and shall have all the powers set out herein.

(2) "Supervisor" means one of the members of the governing body of a district, elected in accordance with the provisions of this chapter.

(3)(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Council" means the Soil and Water Conservation Council.

(c) "Commissioner" means Commissioner of Agriculture.

(4) "Landowner" or "owner of land" includes any person who shall hold legal or equitable title to any lands lying within a district organized under the provisions of this chapter.

(5) "Land occupier" or "occupier of land" includes any person, other than the owner, who shall be in possession of any lands lying within a district organized under the provisions of this chapter, whether as lessee, renter, tenant, or otherwise.

(6) "Qualified elector" includes any person qualified to vote in general elections under the constitution and statutes of this state.

(7) "Due notice," in addition to notice required pursuant to the provisions of chapter 120, means notice published at least twice, with an interval of at least 7 days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if no such publication of general circulation be available, by posting at a

reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

History.—s. 3, ch. 18144, 1937; s. 1, ch. 19473, 1939; CGL 1940 Supp. 4151(474); s. 1, ch. 65-334; s. 1, ch. 67-207; s. 1, ch. 70-392; s. 1, ch. 74-53; s. 5, ch. 78-95; s. 4, ch. 78-323; ss. 2, 3, ch. 81-129; s. 1, ch. 82-46; s. 2, ch. 83-263.

[1]Note.—Repealed effective October 1, 1987, by s. 3, ch. 81-129, and by s. 1, ch. 82-46, as amended by s. 1, ch. 83-263, and scheduled for review pursuant to s. 11.611 in advance of that date.

582.02 Lands a basic asset of state.—The farm, forest and grazing lands of the state are among the basic assets of the state and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; improper land use practices have caused and have contributed to, and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by fire, wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the top soil is being burned, washed and blown out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by fire, wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any landowner or occupier to conserve the soil and control erosion upon his lands causes destruction by burning, washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control erosion of such other lands difficult or impossible.

History.—s. 2, ch. 18144, 1937; CGL 1940 Supp. 4151(473).

582.03 Consequence of soil erosion.—The consequences of such soil erosion in the form of soil washing and soil blowing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash or poor subsoil material, sand; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failure; and increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, drainage facilities, irrigation developments, farming and grazing.

History.—s. 2, ch. 18144, 1937; CGL 1940 Supp. 4151(473); s. 1, ch. 65-334.

582.04 Appropriate corrective methods.—To control or prevent soil erosion and prevent floodwater and sediment damages, and further the conservation, development and utilization of soil and water resources and the disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land use practices and works of improvement for flood prevention or the conservation, development and utilization of soil and water resources and the disposal of water be adopted and carried out; among the works of improvement and procedures necessary for widespread adoption, are the carrying on of engineering operations, such as the construction of terraces, terrace outlets, check-dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip-cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation, seeding and planting of waste, sloping, abandoned, or eroded lands to water conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments, manurial materials and fertilizers for the correction of soil deficiencies or for the promotion of increased growth of soil protecting crops; retardation of runoff by increasing absorption of rainfall; retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded; fish and wildlife or recreational developments; and control of artesian wells.

History.—s. 2, ch. 18144, 1937; CGL 1940 Supp. 4151(473); s. 1, ch. 65-334; s. 1, ch. 69-235.

582.05 Legislative policy for conservation.—It is the policy of the Legislature to provide for control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development and utilization of soil and water resources, and the disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this state.

History.—s. 2, ch. 18144, 1937; CGL 1940 Supp. 4151(473); s. 1, ch. 65-334; s. 2, ch. 69-235.

582.055 Powers and duties of the Department of Agriculture and Consumer Services; rules.—

(1) The provisions of this chapter shall be administered by the Department of Agriculture and Consumer Services.

(2) The department is authorized to adopt rules to implement, make specific, and interpret the provisions of this chapter.

(3) The department is authorized to receive gifts, appropriations, materials, equipment, lands, and facilities and to manage, operate, and disburse them for the use and benefit of the soil and water conservation districts of the state.

(4) The department shall provide for the execution of surety bonds for all employees who are entrusted with funds or property, and it shall provide for an annual audit of the accounts of receipts and disbursements.

(5) The department may furnish information and call upon any state or local agencies for cooperation in carrying out the provisions of this chapter.

History.—s. 2, ch. 70-392.

[1]582.06 Soil and Water Conservation Council; powers and duties.—

(1) The Soil and Water Conservation Council in the Department of Agriculture and Consumer Services is hereby created.

(2) The council shall be composed of nine members from among farmers of at least 5 years' continuous practice of farming at time of appointment who have been practicing soil conservation and who shall be appointed by the department. No two members shall be appointed from the same congressional district. Terms of the members of the council shall be for 4 years, except that for the initial terms of the four new members appointed after June 14, 1978, one member shall be appointed for a term of 1 year, one member for a term of 2 years, one member for a term of 3 years, and one member for a term of 4 years. The chairman of the council shall be selected by the members of the council at a meeting to be called immediately upon appointment of the original members of the council and annually thereafter. The secretary of the council shall be the administrative officer of soil and water conservation.

(3) The advisory council shall meet at the call of its chairman, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by its rules.

(4) A majority of the members of the council shall constitute a quorum for all purposes, and an act by a majority of such quorum at any meeting shall constitute an official act of the council.

(5) The members of the council shall receive no compensation for their services, except that they shall receive per diem as provided in s. 112.061 and their legal traveling expenses when actually engaged in the business of the council.

(6) The powers and duties of the council shall be as follows:

(a) To consider and study the entire field of soil and water conservation;

(b) To advise, counsel, and consult with the department and the administrative officer upon request in connection with the promulgation, administration, and enforcement of all laws, rules, and regulations relating to soil and water conservation;

(c) To consider all matters submitted to it by the department or the administrative officer;

(d) To offer suggestions and recommendations to the department and the administrative officer on its own initiative in regard to changes in the laws, rules, and regulations relating to soil and water conservation as may be deemed advisable to secure the effective administration and enforcement of said laws, rules, and regulations relating to the work of the department in soil and water conservation; and

(e) To keep a complete record of all its proceedings showing the names of the members present at each meeting and any action taken by the council and to file and maintain such records in the department as public records.

History.—s. 4, ch. 18144, 1937; s. 2, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 1, ch. 28094, 1953; s. 24, ch. 67-1; s. 19, ch. 63-400; s. 2, ch. 67-207; ss. 14, 35, ch. 69-106; s. 3, ch. 69-235; s. 3, ch. 70-392; s. 1, ch. 70-439; s. 16, ch. 77-108; s. 6, ch. 78-95; s. 1, ch. 78-261; s. 4, ch. 78-323; ss. 1, 2, 3, ch. 81-129; s. 1, ch. 82-46; s. 2, ch. 83-265.

[1]Note.—Expires October 1, 1987, pursuant to s. 3, ch. 81-129, and is scheduled for review pursuant to s. 11.611 in advance of that date. Repealed effective October 1, 1987, by s. 1, ch. 82-46, as amended by s. 2, ch. 83-265, and scheduled for review pursuant to s. 11.611 in advance of that date.

Note.—Former s. 582.07.

582.08 Additional powers of department.—The Department of Agriculture and Consumer Services shall have the following additional duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided in s. 582.10, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other such districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil and water conservation districts so organized so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies and counties of this state, in the work of such districts, including the receipt and expenditure of state, federal, and other funds or other contributions.

(5) To disseminate information throughout the state concerning the activities and programs of the soil and water conservation districts so organized and to encourage the formation of such districts in areas where their organization is desirable.

History.—s. 4, ch. 18144, 1937; s. 2, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 3, ch. 67-207; s. 4, ch. 69-235; s. 4, ch. 70-392.

582.09 Administrative officer of soil and water conservation.—The department may employ an administrative officer of soil and water conservation, and such technical experts and such other employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation.

History.—s. 4, ch. 18144, 1937; s. 2, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 3, ch. 67-207; s. 5, ch. 70-392.

582.10 Creation of soil and water conservation districts.—

(1) Any 25 owners of land lying within the limits

of the territory proposed to be organized into a district may file a petition with the Department of Agriculture and Consumer Services, asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(a) The proposed name of said district.

(b) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition.

(c) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(d) A request that the department duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory; and that the department determine that such a district be created.

(2) Where more than one petition is filed covering parts of the same territory the department may consolidate all or any petitions.

History.—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

582.11 Hearing upon question of creation; notice, etc.—Within 30 days after such a petition has been filed with the Department of Agriculture and Consumer Services, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this chapter, and upon all questions relevant to such inquiries. All owners and occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district and such further hearing held. After such hearing, if the department shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the department shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in this chapter. The territory to be included within such boundaries need not be contiguous. If the department shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After 6 months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

History.—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

582.12 Referendum for creation.—After the Department of Agriculture and Consumer Services has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this chapter is administratively practicable and feasible. To assist the department in the determination of such administrative practicability and feasibility, the department, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, shall hold a referendum within the proposed district upon the proposition of the creation of the district, and cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the County (ies) of ____, ____, (and) ____" and "Against creation of a soil and water conservation district of the lands below described and lying in the County (ies) of ____ (and) ____" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the department. All owners of lands lying within the boundaries of the territory, as determined by the department, shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote.

History.—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 4151(476); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

582.13 Expenses of referendum.—The De-

partment of Agriculture and Consumer Services shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as provided in s. 582.12, and said referendum shall have been fairly conducted.

History.—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 415I(476); ss. 14, 35, ch. 69-106.

582.14 Results of referendum; publication, etc.—The Department of Agriculture and Consumer Services shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the department shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the department shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the department shall give due regard and weight to the attitude of the owners and occupiers of lands lying within the defined boundaries, the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the landowners and occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination having due regard to the legislative determinations set forth in this chapter; provided, however, that the department shall not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

History.—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 415I(476); ss. 14, 35, ch. 69-106.

582.15 Organization of district, etc.—

(1) If the Department of Agriculture and Consumer Services shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, any five of the petitioners who signed the petition for the creation of the proposed district may present to the Department of State an application signed by them which shall set forth (and such application need contain no details other than the mere recitals):

(a) That a petition for the creation of the district was filed with the Department of Agriculture and Consumer Services pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district under this chapter;

(b) The name which is proposed for the district; and

(c) The location selected by the department to be the principal office of the supervisors of the district.

The application shall be accompanied by a statement by the Department of Agriculture and Consumer Services, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the department did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof, that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the department did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the department.

(2) The Department of State shall examine the application and statement and, if it finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this state or so nearly similar as to lead to confusion or uncertainty, it shall receive and file them and shall record them in an appropriate book of record in its office. If the Department of State shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, it shall certify such fact to the Department of Agriculture and Consumer Services and to the five petitioners and the petitioners shall thereupon submit to the Department of State a new name for the said district not subject to such defects. Upon receipt of such new name, free of such defects, the Department of State shall record the application and statement, with the name so modified, in an appropriate book of record in its office. The Department of State shall make and issue a certificate under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the Department of Agriculture and Consumer Services.

(3) After 6 months shall have expired from the date of entry of a determination by the Department of Agriculture and Consumer Services that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

History.—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 415I(476); s. 7, ch. 22858, 1945; s. 1, ch. 25407, 1949; s. 3, ch. 67-207; ss. 10, 14, 35, ch. 69-106.

cf.—s. 582.17 Presumption as to establishment.
s. 582.30 Discontinuance of districts.
s. 582.31 Certification of results of referendum; dissolution.

582.16 Addition of territory to district or removal of territory therefrom.—Petitions for including additional territory or removing territory within an existing district may be filed with the Department of Agriculture and Consumer Services, and the proceedings provided for in this chapter in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion or removal. The department shall prescribe the form for such petition, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. If the petition is signed by a majority of the landowners of such area, no referendum need be held. In referenda upon petitions for such inclusions or removals, all owners of land lying within the proposed area to be added or removed shall be eligible to vote.

History.—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 415I(476); s. 2, ch. 25407, 1949; s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

582.17 Presumption as to establishment.—In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the Department of State. A copy of such certificate duly certified by the Department of State shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof.

History.—s. 5, ch. 18144, 1937; s. 3, ch. 19473, 1939; CGL 1940 Supp. 415I(476); ss. 10, 35, ch. 69-106.

582.18 Election of supervisors of each district.—

(1) The election of supervisors for each soil and water conservation district shall be held every 2 years. The elections shall be held at the time of the second primary election provided for by s. 100.091. The office of the supervisor of soil and water conservation district is a nonpartisan office and candidates for such office are prohibited from campaigning or qualifying for election based on party affiliation. Candidates for supervisor for each district shall be nominated by nominating petition subscribed by 25 or more qualified electors of such district. Candidates shall obtain signatures on petition forms prescribed by the Department of State and furnished by the appropriate qualifying officer. In multicounty districts the appropriate qualifying officer is the Secretary of State; in single-county districts the appropriate qualifying officer is the supervisor of elections. Such forms may be obtained at any time after the first Tuesday after the first Monday in January preceding the election, but prior to the 92nd day prior to the date of the first primary. Each petition shall be submitted, prior to noon of the 92nd day preceding the first primary election, to the supervisor of elections of the county for which such petition was circulated. The supervisor of elections shall check the signatures on the petition to verify their status as electors in the district. Prior to the first date for qualifying, the supervisor of elections shall determine whether the required single-county signatures have been obtained and shall so notify the candidate. In the case of a multicounty candidate, the supervisor of elections shall check the signatures on petitions and shall, prior to the first date for qualifying for office, certify to the Department of State the number shown as registered electors of the district. The Department of State shall determine if the required number of signatures has been obtained for multicounty candidates and shall so notify the candidate. If the required number of signatures has been obtained for the name of the candidate to be placed on the ballot, the candidate shall, during the time prescribed for qualifying for office in s. 99.061, submit a copy of the notice to, and file his qualification papers with, the qualifying officer and take the oath prescribed in s. 99.021. Nominees who collect or expend campaign contributions shall conduct their campaigns for supervisor of soil and water conservation districts in accordance with the provisions of chapter 106. Candidates who neither receive contributions nor make expenditures, other than expenditures for verification of signatures on petitions, are exempt from the provisions of chapter 106 requiring establishment of bank accounts and appointment of a campaign treasurer, but shall file periodic reports as required by s. 106.07. The names of all nominees on behalf of whom such nominating petitions have been filed shall appear upon ballots in accordance with the general election laws. All qualified electors residing within the district shall be eligible to vote in such election. The candidates who shall receive the largest number of the votes cast from each group of candidates, as provided in s. 100.071, in such election shall be the elected supervisors from such group for such district. In the case of a newly created district participating in a regular election for the first time, three groups of candidates shall be elected for terms of 4 years and two groups shall be elected for initial terms of 2 years. Those elected shall assume office on the first Tuesday after the first Monday in January following the election.

(2) After the issuance of a certificate of organization of a soil and water conservation district by the Department of State, or in the event of a vacancy resulting from death, resignation, removal, or otherwise, all vacancies shall be filled by appointment by the remaining supervisors of the district until the next regular election.

History.—s. 6, ch. 18144, 1937; s. 4, ch. 19473, 1939; CGL 1940 Supp. 415I(477); s. 2, ch. 29094, 1953; s. 3, ch. 67-207; ss. 10, 14, 35, ch. 69-106; s. 1, ch. 72-114; s. 2, ch. 74-53; s. 1, ch. 78-291.

582.19 Qualifications and tenure of supervisors.—

(1) The governing body of the district shall consist of five supervisors, elected as provided hereinabove.

(2) The supervisors shall designate a chairman and may, from time to time, change such designation by majority vote. The term of office of each supervisor shall be 4 years, except that two supervisors shall be elected to serve for initial terms of 2 years, respectively, from the date of their election as provided in this chapter. A supervisor shall hold office until his

successor has been elected and qualified. The selection of successors to fill an unexpired term shall be in accordance with s. 582.18(2). Selection for a full term in a newly created district shall be by election of the qualified electors of the district. A majority of the supervisors shall constitute a quorum and the concurrence of a majority of the supervisors in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall, with approval of the supervisors of the district, be reimbursed for traveling expenses as provided in s. 112.061.

(3) The supervisors may utilize the services of the county agricultural agents and the facilities of the county agricultural agents' offices insofar as practicable and feasible and may employ such additional employees and agents, permanent and temporary, as they may require, and determine their qualifications, duties and compensation. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Department of Agriculture and Consumer Services, upon request, copies of such rules, regulations, orders, contracts, forms and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

(4) The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and others issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisors may be removed by the Governor of this state upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

(5) The supervisors may invite the legislative body of any municipality or county located within or near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interest of such municipality or county.

History.—s. 7, ch. 18144, 1937; s. 5, ch. 19472, 1939; CGL 1940 Supp. 4151(479); s. 2, ch. 28084, 1955; s. 19, ch. 63-400; s. 2, ch. 67-307; ss. 14, 35, ch. 69-106; s. 3, ch. 74-53.
cf.—s. 112.07 Bonds of officials.

582.20 Powers of districts and supervisors.—A soil and water conservation district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this chapter:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and floodwater and sediment damages, to the conservation, development and utilization of soil and water resources and the disposal of water, and to the preventive and control measures and works of improvement needed; to publish the results of such surveys, investigations, or research; and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupiers of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled, and works of improvement for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water may be carried out;

(3) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in s. 582.04 on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and the occupiers of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion control or prevention operations and works of improvement for flood prevention or the conservation, development and utilization, of soil and water resources and the disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this chapter;

(6) To make available, on such terms as it shall prescribe, to landowners and occupiers within the district, agricultural and engineering machinery and equipment; fertilizer, seeds and seedlings, and such other material or equipment, as will assist such landowners and occupiers to carry on operations upon

their lands for the conservation of soil resources and for the prevention or control of soil erosion and for flood prevention or the conservation, development and utilization, of soil and water resources and the disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

(8) To develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development and utilization of soil and water resources, and the disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; control of artesian wells; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, erosion-control, erosion-prevention project, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage as agent of the United States or any of its agencies, or of the state or any of its agencies, any soil-conservation, erosion-control, erosion-prevention, or any project for flood-prevention or for the conservation, development, and utilization of soil and water resources, and the disposal of water within its boundaries; to act as agent for the United States, or any of its agencies, or for the state or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil-conservation, erosion-control, erosion-prevention, or any project for flood-prevention or for the conservation, development and utilization of soil and water resources, and the disposal of water within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from others, and to use or expend such moneys, services, materials or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as provided in this chapter; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; upon a majority vote of the supervisors of the district, to borrow money and to execute promissory notes and other evidences of indebtedness in connection therewith, and to pledge, mortgage, and assign the income of the district and its personal property as security therefor, the notes and other evidences of indebtedness to be general obligations only of the district and in no event to constitute an indebtedness for which the faith and credit of the state or any of its revenues are pledged; to make, amend, and repeal rules and regulations not inconsistent with this chapter to carry into effect its purposes and powers.

(11) As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners and occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by public bodies of this state shall be applicable to a district organized hereunder unless the Legislature shall specifically so state. The property and property rights of every kind and nature acquired by any district organized under the provisions of this chapter shall be exempt from state, county, and other taxation.

History.—s. 8, ch. 18144, 1937; CGL 1940 Supp. 4151(479); s. 7, ch. 22858, 1945; s. 2, ch. 65-334; s. 3, ch. 67-307; s. 5, ch. 69-238.

582.21 Adoption of land use regulations.—

(1) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources, and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to adopt such land use regulations until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands lying within the boundaries of the district, for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. Copies of such proposed regulations shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed regulations, or shall state where copies of such proposed regulations may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed land use regulations for the conservation of soil and prevention of erosion" and "Against approval of proposed land use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed regulations. The supervisors shall supervise such referendum; shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All owners of lands within the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in

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any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(2) The supervisors shall not adopt such proposed regulations unless at least a majority of the votes cast in such referendum shall have been cast for approval of the said proposed regulations. The approval of the proposed regulations by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to adopt such proposed regulations. Land use regulations adopted pursuant to the provisions of this section by the supervisors of any district shall be binding and obligatory upon all owners and occupiers of land within such districts.

(3) Land use regulations adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land use regulations. Referenda of adoption, amendment, supplementation, or repeal of land use regulations shall not be held more often than once in 6 months.

History.—s. 9, ch. 18144, 1937; CGL 1940 Supp. 4151(480); s. 6, ch. 78-98.

582.22 Regulations; contents.—The regulations to be adopted by the supervisors under the provisions of this chapter may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

(2) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, changes in cropping systems, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation;

(3) Specifications of cropping programs and tillage practices to be observed;

(4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(5) Provisions for such other means, measures, operations and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in this chapter.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land use regulations adopted under the provisions of this chapter shall be printed and made available to all owners and occupiers of lands lying within the district.

History.—s. 9, ch. 18144, 1937; CGL 1940 Supp. 4151(480).

582.23 Performance of work under the regulations by the supervisors.—

(1) The supervisors may go upon any lands within the district to determine whether land use regulations adopted are being observed. Where the supervisors of any district shall find that any of the provisions of land use regulations adopted are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the circuit court for the county or counties within which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the land use regulations, the failure of the defendant landowner or occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the owner of such land. Upon the presentation of such petition the court shall cause process to be issued against the defendant, and shall hear the case. If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a special master to take such evidence as it may direct and report the same to the court within his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(2) The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations, or otherwise bring the conditions of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of 5 percent per annum, from the owner of such lands.

(3) The court shall retain the jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of 5 percent per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History.—s. 10, ch. 18144, 1937; CGL 1940 Supp. 4151(481); s. 26, ch. 73-334.

582.24 Board of adjustment.—Where the supervisors of any district organized under the provisions of this chapter shall adopt an ordinance prescribing land use regulations, said supervisors shall constitute, and be ex officio members of, a board of adjustment to hear and consider petitions which may be submitted to such board by any landowner in the district praying for relief from any of the provisions of the said land use regulations.

History.—s. 11, ch. 18144, 1937; s. 6, ch. 19473, 1939; CGL 1940 Supp. 4151(482).

582.25 Rules of procedure of board.—The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this chapter and with the provisions of any ordinance adopted pursuant to this chapter. The board shall designate a chairman from among its members, and may, from time to time, change such designation. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any three members of the board shall constitute a quorum. The chairman, or in his absence such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings and of all documents filed in its office, which shall be a public record.

History.—s. 11, ch. 18144, 1937; s. 6, ch. 19473, 1939; CGL 1940 Supp. 4151(482).

582.26 Petition to board to vary from regulations.—Any landowner or occupier may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land use regulations prescribed by ordinance approved by the supervisors and praying the board to authorize a variance from the terms of the land use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be filed by the petitioner with the Department of Agriculture and Consumer Services. The Department of Agriculture and Consumer Services shall have the right to appear and be heard at such hearing. Any owner or occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. If the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, it shall have power by order to authorize such variance from the terms of the land use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

History.—s. 11, ch. 18144, 1937; s. 6, ch. 19473, 1939; CGL 1940 Supp. 4151(482); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106; s. 6, ch. 78-95.

582.28 Cooperation between districts.—The supervisors of any two or more districts organized under the provisions of this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

History.—s. 12, ch. 18144, 1937; CGL 1940 Supp. 4151(483).

582.29 State agencies to cooperate.—Agencies of this state which shall have jurisdiction over, or be charged with, the administration of any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized under this chapter, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this chapter. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted shall be in all respects observed by the agencies administering such publicly owned lands.

History.—s. 13, ch. 18144, 1937; CGL 1940 Supp. 4151(484).

582.30 Discontinuance of districts; referendum.—

(1) Any time after 5 years from the organization of a district under the provisions of this chapter, any 25 owners of land lying within the boundaries of such district may file a petition with the Department of Agriculture and Consumer Services praying that the operations of the district be terminated and the existence of the district discontinued. The department may conduct such public meetings and public hearings upon petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the department it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ____ (Name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the ____ (Name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(2) If two-thirds or more of the qualified voters in such referendum shall have voted for the discontinuance of the district, the department shall certify to the supervisors of the district the result of such referendum and that the continued operation of the district is not administratively practicable and feasible.

History.—s. 14, ch. 18144, 1937; s. 7, ch. 19473, 1939; CGL 1940 Supp. 4151(485); s. 3, ch. 67-207; ss. 14, 35, ch. 69-106.

582.31 Certification of results of referendum; dissolution.—Upon receipt from the Department of Agriculture and Consumer Services of a certification that the department has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this chapter, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be converted into the State Treasury, which amount shall be placed to the credit of the department for the purpose of liquidating any legal obligations said district may have at the time of its discontinuance. The supervisors shall thereupon file an application, duly verified, with the Department of State for the discontinuance of such district, and shall transmit with such application the certificate of the Department of Agriculture and Consumer Services setting forth the determination of the department that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Department of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in its office.

History.—s. 14, ch. 18144, 1937; s. 7, ch. 19473, 1939; CGL 1940 Supp. 4151(085); s. 3, ch. 67-207; ss. 10, 14, 25, ch. 69-106.

582.32 Continuance of existing contracts, etc.—

(1) Upon issuance of a certificate of dissolution all land use regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Department of Agriculture and Consumer Services shall be substituted for the district or supervisors as party to such contracts. The department shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of this chapter, nor the pendency of any action instituted under the provisions of this chapter, and the department shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

(2) The department shall not be required to entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in 5 years.

History.—s. 14, ch. 18144, 1937; s. 7, ch. 19473, 1939; CGL 1940 Supp. 4151(085); s. 3, ch. 67-207; ss. 14, 25, ch. 69-106.

582.331 Establishment of watershed improvement districts within soil and water conservation districts authorized.—Watershed improvement districts may be formed as subdistricts of soil and water conservation districts, in accordance with the provisions of this chapter, for the development and execution of plans and projects for works of improvement for the control and prevention of soil erosion, flood prevention, conservation, development, and utilization of soil and water resources, disposal of water, fish and wildlife or recreational development, preservation and protection of land and water resources, and protection and promotion of the health, safety, and general welfare of the people of this state.

History.—s. 6, ch. 69-235.

582.34 Petition for establishment; provisions.—

(1) The owners of the major portion of land lying within the limits of a proposed watershed improvement district may file a petition with the supervisors of the soil and water conservation district in which the proposed watershed improvement district is situated asking that a watershed improvement district be organized to function in the area described in the petition.

(2) The petition shall set forth:

(a) The proposed name of the watershed improvement district.

(b) That there is need, in the interest of the public health, safety, and welfare for a watershed improvement district to function in the area described in the petition.

(c) A description of the area proposed to be organized as a watershed improvement district, which description shall be deemed sufficient if generally accurate.

(d) That the land within the area described in the petition is contiguous and is situated in the same watershed.

(e) The maximum millage rate, including not more than 1 mill for maintenance, expressed in mills on each dollar of assessed valuation at which taxes may be levied for any 1 fiscal year for the purposes of the watershed improvement district or to amortize indebtedness or bonds.

(f) A request that the area described in the petition be established as a watershed improvement district.

(3) Land lying within the limits of one watershed improvement district shall not be included in another watershed improvement district.

History.—s. 6, ch. 69-235.

582.35 Notice and hearing on petition; determination of need for district; boundaries.—Within 60 days after a petition has been filed with the supervisors of the soil and water conservation district, the supervisors shall cause due notice to be given of a public hearing upon the practicability and feasibility of creating the proposed watershed improvement district. All owners of land within the proposed district and all other interested parties shall have the right to attend such a hearing and to be heard. If the supervisors determine from the hearing that there is need, in the interest of public health, safety, and welfare, for the organization of the proposed district, they shall record such determination and shall define

the boundaries of the watershed improvement district.

History.—s. 6, ch. 69-235.

582.36 Determination of feasibility of proposed district; referendum.—After the supervisors have determined that a need for the proposed watershed improvement district exists, have defined the boundaries of the proposed district, and have obtained the approval of the Department of Agriculture and Consumer Services for the formation of the proposed district, the supervisors shall consider the question of whether the operation of the proposed district is administratively practicable and feasible. To assist the supervisors in determining such question, a referendum shall be held by the supervisors upon the proposition of the creation of the proposed district. Due notice of such referendum shall be given by the supervisors, and ballots therefor shall be in substantially the form set forth in s. 582.12, but the proposed district and name thereof shall be substituted for the soil and water conservation district, and the millage rate to be approved by the electors who are owners of freeholds within the proposed district not wholly exempt from taxation shall be included. At such referendum each owner of land lying within the proposed district shall be entitled to cast one vote, in person or by proxy, for each acre or fractional part thereof of land within the proposed district belonging to such owner, except that only one vote may be cast for each such acre or fractional part thereof regardless of whether the legal title thereto is held in single or multiple ownership. The supervisors may prescribe such rules and regulations governing the conduct of the hearing and referendum as they deem necessary.

History.—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

582.37 Consideration of results of referendum; declaration of organization of district.—The results of the referendum shall be considered by the supervisors in determining whether the operation of the proposed watershed improvement district is administratively practicable and feasible. If the supervisors determine that the operation of the proposed district is not administratively practicable and feasible, they shall record such determination and deny the petition. If the supervisors determine that the operation of the proposed district is administratively practicable and feasible, they shall record such determination in the manner hereinafter provided; provided, however, that the supervisors shall not be authorized to determine that the operation of the proposed district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum, representing not less than a majority of the land area within the proposed district, shall have been cast in favor of the creation of the watershed improvement district.

History.—s. 6, ch. 69-235.

582.38 Organization of district; certification to clerks of circuit courts; limitation on tax rate.—If the supervisors determine that the operation of the proposed watershed improvement district is administratively practicable and feasible, they shall declare the watershed improvement district to be duly organized and shall record such fact in their official minutes. Following such entry in their official minutes, the supervisors shall certify the fact of the creation of the district to the Department of Agriculture and Consumer Services, and shall furnish a copy of such certification to the clerk of the circuit court of each county in which any portion of the watershed improvement district is situated for recordation in the public land records of each such county. The watershed improvement district shall thereupon constitute a governmental subdivision of this state and a public body corporate and politic. The rate at which taxes for any one fiscal year may be levied for the purposes of the watershed improvement district shall be subject to the limitations set forth in s. 582.44.

History.—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

582.39 Establishment of watershed improvement district situated in more than one soil and water conservation district.—If a proposed watershed improvement district is situated in more than one soil and water conservation district, copies of the petition for the establishment of such district shall be presented to the board of supervisors of each of the soil and water conservation districts in which the proposed district is situated, and the supervisors of all such soil and water conservation districts affected shall act jointly as a board of supervisors with respect to all matters concerning the watershed improvement district, including its creation. Such watershed improvement district shall be organized in like manner and shall have the same powers and duties as a watershed improvement district situated entirely in one soil and water conservation district.

History.—s. 6, ch. 69-235.

582.40 Change of district boundaries; additions, detachments, transfers of land from one district to another; change of district name.—

(1) Any one or more owners of land may petition the board of supervisors of the soil and water conservation district in which a watershed improvement district is situated to have their lands added to the watershed improvement district. The petition shall also be signed by the owners of a majority of the land area within the watershed improvement district, and shall be subject to approval by the board of directors of the watershed improvement district. The petition shall describe the land desired to be annexed and state the number of acres of land involved and other information pertinent to such proposal.

(2) Within 30 days after such petition is filed, the board shall cause due notice to be given of a hearing on the petition. All interested parties shall have a right to attend the hearing and be heard. The board shall determine whether the lands described in the petition or any portion thereof shall be included in the watershed improvement district. If it is determined that such land should be added, the board shall certify this fact to the Department of Agriculture and Consumer Services and furnish a copy of such certification to the clerk of the circuit court of each county in which any portion of the added lands

is situated for recordation in the public land records of each such county.

(3) The owner or owners of land which is not benefited by its inclusion in a watershed improvement district may petition the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated to have such land excluded from the district. The petition shall describe the land and state the reasons why it should be excluded. A hearing shall be held within 60 days after the petition is received. Due notice of the hearing shall be given by the board. If it is determined by the board that such land is not benefited by its inclusion in the watershed improvement district, such land shall be excluded from the district. The board shall certify such determination to the Department of Agriculture and Consumer Services and shall furnish a copy of such certification to the clerk of the circuit court of each county in which any portion of such excluded land is situated for recordation in the public land records of each such county.

(4) Landowners desiring a transfer of their land from one watershed improvement district to another may file a petition for such transfer with the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated. The board of supervisors may hold such hearings as it deems appropriate to enable it to make a determination as to the desirability of the proposed transfer of land. If the board makes a determination in favor of such transfer of land, it shall certify such determination, setting out the new boundaries of the watershed improvement districts involved, to the Department of Agriculture and Consumer Services, and shall furnish a copy of such certification to the clerk of the circuit court of each county in which the affected watershed improvement districts are situated for recordation in the public land records of each such county.

(5) Landowners within a watershed improvement district desiring a change of name of such district may file a petition for such change of name with the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated. If the board approves the change of name, it shall certify the fact of such change of name to the Department of Agriculture and Consumer Services, and shall furnish a copy of such certification to the clerk of the circuit court of the county or counties in which the watershed improvement district is situated for recordation in the public land records of each such county.

History.—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

582.41 Board of directors of district.—

(1) Petitions to nominate candidates for directors of the watershed improvement district may be filed with the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated. No such nominating petition shall be accepted by the board unless it is signed by at least 10 owners of land lying within the watershed improvement district or by a majority of such owners if there be less than 10. Such owners may sign more than one nominating petition to nominate more than one candidate for director. No person shall be eligible to be a director unless he is an owner of land within the watershed improvement district in which he seeks election.

(2) Within 30 days after a watershed improvement district is established, the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated, or the joint board if more than one district is affected, shall cause an election to be held for the election of a board of three directors of the watershed improvement district. Due notice of such election shall be given by the board to supervisors. At such election each owner of land lying within the watershed improvement district shall be entitled to cast one vote, in person or by proxy, for each acre or fractional part thereof of land within the watershed improvement district belonging to such owner, except that only one vote may be cast for each such acre or fractional part thereof regardless of whether the legal title thereto is held in single or multiple ownership. The three persons receiving the highest number of votes shall be declared elected as directors. The first board of directors shall determine by lot from among its membership one member to serve a term of 3 years, one member to serve a term of 2 years, and one member to serve a term of 1 year; thereafter, as these initial terms expire, the members of the board of directors shall be elected for terms of 3 years. Vacancies occurring before the expiration of a term shall be filled for the unexpired term by appointment by the remaining members of the board of directors with the approval of the board of supervisors. The board of directors shall, under the supervision of the board of supervisors, be the governing body of the watershed improvement district. The board of directors shall annually elect from its membership a chairman and vice chairman.

(3) A director shall receive compensation for his service at the rate of $10 per day for those days on which he renders services pursuant to this chapter. A director shall also be entitled to expenses in the same amount and extent as provided for public officers and employees of the state in s. 112.061.

History.—s. 6, ch. 69-235.

582.42 Officers, agents, and employees; surety bonds; annual audit.—The board of directors may, with the approval of the board of supervisors of the soil and water conservation district in which the watershed improvement district is situated, or the joint board if more than one district is affected, employ such officers, agents, and other employees as they may require, and shall determine their qualifications, duties, and compensation. The board of directors shall provide for the execution of surety bonds for such officers, agents, and employees as shall be entrusted with funds or property of the watershed improvement district, and for the making and publication of an annual audit of the accounts of the district.

History.—s. 6, ch. 69-235.

582.43 Status and general powers of districts; power to levy tax; power to construct, operate, improve and maintain works of improvement; power to obtain necessary lands or interests therein.—A watershed improvement district organized under the provisions of this chapter shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers. Such district shall exercise its powers and duties under the supervision of the board of supervisors of the soil and water conservation district in which it is situated, or the joint board if more than one district is affected. The watershed improvement district shall have all of the powers of such soil and water conservation district, and in addition thereto shall have authority to levy a tax, as hereinafter provided, to be used for the purposes of the watershed improvement district; to acquire by purchase, gift, grant, bequest, devise, or other legal means, including by eminent domain proceedings in accordance with chapter 73, such lands or interests therein as are necessary for the exercise of any authorized function of the district, including needed or necessary real property outside of the district needed in connection with the administration of this law; to borrow money and issue bonds as hereinafter provided; and to construct, improve, operate, and maintain such structures and works as may be necessary for the performance and carrying on of any function authorized by this law.

History.—s. 6, ch. 69-235.

582.44 Levy of taxes; procedure, etc.—The board of directors of a district is authorized to levy annually a uniform ad valorem tax on all taxable property in the district as determined for county taxing purposes, not to exceed the amount necessary to provide the funds necessary for the purpose of maintaining, operating, and administering such district and obtaining necessary rights-of-way for the works of the district; however, such tax shall not exceed the rate of 3 mills on the dollar of the assessed value of such property or such rate approved by the qualified electors of the district pursuant to s. 582.36. The district shall be deemed a district within the purview of former ss. 193.03 and 193.031, whether within the purview and intention of such sections or not, for the purposes of the assessment, collection, and distribution of the taxes herein provided for. Upon the equalization of the county tax rolls, the governing board of the district shall be furnished with the same information furnished by the property appraiser to the taxing authorities of the county and taxing districts for use in determining the millages to be imposed by them. Upon the determination by the board of the taxing district of the millages to be imposed by it, it shall forthwith notify the boards of county commissioners of the counties wherein the district lies, who shall include such millages in their directives to the property appraisers. Upon receipt of these millages, the property appraisers shall impose and assess such taxes in the usual manner, to be collected and distributed in the usual manner. For purposes of taxation, the district shall be treated as a taxing district. Such district tax assessments shall be liens against the properties assessed as is provided for in s. 197.0151. The taxes of the district, when distributed in the usual manner, shall be paid into the depository of the district to the credit of the district to be expended in the usual manner for like district. Expenditures from such funds shall be made with the approval of the board of supervisors of the soil and water conservation district or districts in which the watershed improvement district is situated on requisition by the chairman or vice chairman of the board of directors of the watershed improvement district.

History.—s. 6, ch. 69-235; s. 1, ch. 77-102; s. 201, ch. 77-104; s. 36, ch. 82-226.

582.45 Fiscal powers of governing body; bonds, etc.—The board of directors of any watershed improvement district shall have power, subject to the conditions and limitations of this chapter, to incur indebtedness and issue bonds of the watershed improvement district; however, such bonds shall be issued in full conformity with s. 12, Art. VII, of the Revised State Constitution, and chapter 100 insofar as said chapter relates to bond elections under said s. 12, Art. VII of the Constitution.

History.—s. 6, ch. 69-235.

582.46 Additional powers and authority.—The authority and powers herein granted watershed improvement districts shall be additional to those of the soil and water conservation district in which the watershed improvement district is situated. The soil and water conservation district shall be authorized, notwithstanding the creation of the watershed improvement district, to continue to exercise its authority within the boundaries of the watershed improvement district.

History.—s. 6, ch. 69-235.

582.47 Watershed improvement district to coordinate work with flood control districts.—The board of directors of any watershed improvement district located within the Southwest Florida Water Management District created by chapter 61-691, Laws of Florida, or the Central and Southern Florida Flood Control District created by chapter 25270, Laws of Florida, 1949, shall consult and advise with the boards of such districts in order to coordinate the work of the districts involved.

History.—s. 6, ch. 69-235.

582.48 Discontinuance of watershed improvement district.—

(1) At any time after 5 years from the organization of a watershed improvement district, the owners of not less than 25 percent of the land area within such district may file a petition with the board of supervisors of the soil and water conservation district or districts in which the watershed improvement district is situated requesting that the existence of the watershed improvement district be discontinued. The petition shall state the reasons for discontinuance, and that all maintenance and operation assurances and other obligations of the district have been met. A copy of such petition shall be furnished to the Department of Agriculture and Consumer Services.

(2) After giving due notice of a hearing on such petition, the board of supervisors may conduct such hearing on the petition as may be necessary to assist it in making a determination.

(3) Within 60 days after the petition is filed, a referendum shall be held by the board of supervisors substantially as provided for in ss. 582.36 and 582.37. No informalities in the conduct of the referendum or

in any matters relating to the referendum shall invalidate it or its results if due notice of the referendum has been given.

(4) If a majority of the votes cast in such referendum, representing a majority of the land area within the watershed improvement district, shall have been cast in favor of the discontinuance of the watershed improvement district, and the board of supervisors determines that all maintenance and operation assurances and other obligations of the district have been met, the watershed improvement district shall be discontinued. A copy of such determination and discontinuance shall be certified to the Department of Agriculture and Consumer Services and to the clerk of the circuit court of each county in which any portion of the watershed improvement district is situated for recordation in the public land records of such county.

History.—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

582.49 Discontinuance of soil and water conservation district.—If any soil and water conservation district in which a watershed improvement district is situated is discontinued, the Department of Agriculture and Consumer Services shall thereafter serve in the same supervising capacity over the watershed improvement district as was theretofore served by the board of supervisors of such soil and water conservation district.

History.—s. 6, ch. 69-235; ss. 14, 35, ch. 69-106.

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