Select Year: 2018 Go

# The 2018 Florida Statutes

Title XXIX
PUBLIC HEALTH

Chapter 403
ENVIRONMENTAL CONTROL

View Entire Chapter

**CHAPTER 403**
**ENVIRONMENTAL CONTROL**

**PART I**
**POLLUTION CONTROL**
**(ss. 403.011-403.42)**

**PART II**
**ELECTRICAL POWER PLANT AND TRANSMISSION LINE SITING**
**(ss. 403.501-403.539)**

**PART III**
**INTERSTATE ENVIRONMENTAL CONTROL COMPACT**
**(s. 403.60)**

**PART IV**
**RESOURCE RECOVERY AND MANAGEMENT**
**(ss. 403.702-403.7721)**

**PART V**
**ENVIRONMENTAL REGULATION**
**(ss. 403.801-403.8163)**

**PART VI**
**WATER SUPPLY; WATER TREATMENT PLANTS**
**(ss. 403.850-403.891)**

**PART VII**
**MISCELLANEOUS PROVISIONS**
**(ss. 403.90-403.9338)**

**PART VIII**
**NATURAL GAS TRANSMISSION PIPELINE SITING**
**(ss. 403.9401-403.9425)**

**PART IX**
**EXPEDITED PERMITTING**
**(s. 403.973)**

## PART I
## POLLUTION CONTROL

**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 and 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 and 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. In accordance with the public policy established herein, the Legislature further declares that the citizens of this state should be afforded reasonable protection from the dangers inherent in the release of toxic or otherwise hazardous vapors, gases, or highly volatile liquids into the environment.

(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 ensure conservation of natural resources; to ensure a continued safe environment; to ensure purity of air and water; to ensure domestic water supplies; to ensure protection and preservation of the public health, safety, welfare, and economic well-being; to ensure and provide for recreational and wildlife needs as the population increases and the economy expands; and to ensure 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 water depths consistent with port master plans developed pursuant to s. 163.3178(2)(k) is an ongoing, continuous, beneficial, and necessary activity that is in the public interest; and it shall develop a regulatory process that shall enable the ports of this state to conduct such activities in an environmentally sound, safe, expeditious, and cost-efficient manner. It is the further intent of the Legislature that the permitting and enforcement of dredging, dredged-material management, and other related activities for Florida's deepwater ports pursuant to this chapter and chapters 161, 253, and 373 shall be consolidated within the department's Division of Water Resource Management and, with the concurrence of the affected deepwater port or ports, may be administered by a district office of the department or delegated to an approved local environmental program.

(b) The provisions of paragraph (a) apply only to the port waters, dredged-material management 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, St. Petersburg, Pensacola, Fernandina, and Key West.

(10) It is the policy of the state to ensure that the existing and potential drinking water resources of the state remain free from harmful quantities of contaminants. The department, as the state water quality protection agency, shall compile, correlate, and disseminate available information on any contaminant which endangers or may endanger existing or potential drinking water resources. It shall also coordinate its regulatory program with the regulatory programs of other agencies to assure adequate protection of the drinking water resources of the state.

(11) It is the intent of the Legislature that water quality standards be reasonably established and applied to take into account the variability occurring in nature. The department shall recognize the statistical variability inherent in sampling and testing procedures that are used to express water quality standards. The department shall also recognize that some deviations from water quality standards occur as the result of natural background conditions. The department shall not consider deviations from water quality standards to be violations when the discharger can demonstrate that the deviations would occur in the absence of any human-induced discharges or alterations to the water body.

**History.**—s. 3, ch. 67-436; s. 1, ch. 78-98; ss. 1, 5, ch. 81-228; s. 4, ch. 84-79; s. 46, ch. 84-338; s. 11, ch. 85-269; s. 1, ch. 85-277; s. 8, ch. 86-186; s. 3, ch. 86-213; s. 143, ch. 96-320; s. 1004, ch. 97-103; s. 4, ch. 99-353.

**403.031 Definitions.**—In construing this chapter, or rules and regulations adopted pursuant hereto, the following words, phrases, or terms, unless the context otherwise indicates, have the following meanings:

(1) "Contaminant" is any substance which is harmful to plant, animal, or human life.

(2) "Department" means the Department of Environmental Protection.

(3) “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.

(4) “Installation” is any structure, equipment, or facility, or appurtenances thereto, or operation which may emit air or water contaminants in quantities prohibited by rules of the department.

(5) “Person” means the state or any agency or institution thereof, the United States or any agency or institution thereof, or any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity and includes any officer or governing or managing body of the state, the United States, any agency, any municipality, political subdivision, or public or private corporation.

(6) “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.

(7) “Pollution” is the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or manmade or human-induced impairment of air or waters or 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 which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.

(8) “Pollution prevention” means the steps taken by a potential generator of contamination or pollution to eliminate or reduce the contamination or pollution before it is discharged into the environment. The term includes nonmandatory steps taken to use alternative forms of energy, conserve or reduce the use of energy, substitute nontoxic materials for toxic materials, conserve or reduce the use of toxic materials and raw materials, reformulate products, modify manufacturing or other processes, improve in-plant maintenance and operations, implement environmental planning before expanding a facility, and recycle toxic or other raw materials.

(9) “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.

(10) “Source” is any and all points of origin of the item defined in subsection (1), whether privately or publicly owned or operated.

(11) “Treatment works” and “disposal systems” mean any plant or other works used for the purpose of treating, stabilizing, or holding wastes.

(12) “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.

(13) “Waters” include, but are not limited to, rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters. 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. Solely for purposes of s. 403.0885, waters of the state also include navigable waters or waters of the contiguous zone as used in s. 502 of the Clean Water Act, as amended, 33 U.S.C. ss. 1251 et seq., as in existence on January 1, 1993, except for those navigable waters seaward of the boundaries of the state set forth in s. 1, Art. II of the State Constitution. Solely for purposes of this chapter, waters of the state also include the area bounded by the following:

(a) Commence at the intersection of State Road (SRD) 5 (U.S. 1) and the county line dividing Miami-Dade and Monroe Counties, said point also being the mean high-water line of Florida Bay, located in section 4, township 60 south, range 39 east of the Tallahassee Meridian for the point of beginning. From said point of beginning, thence run northwesterly along said SRD 5 to an intersection with the north line of section 18, township 58 south, range 39 east; thence run westerly to a point marking the southeast corner of section 12, township 58 south, range 37 east, said point also lying on the east boundary of the Everglades National Park; thence run north along the east boundary of the aforementioned Everglades National Park to a point marking the northeast corner of section 1, township 58 south, range 37 east; thence run west along said park to a point marking the northwest corner of said

section 1; thence run northerly along said park to a point marking the northwest corner of section 24, township 57 south, range 37 east; thence run westerly along the south lines of sections 14, 15, and 16 to the southwest corner of section 16; thence leaving the Everglades National Park boundary run northerly along the west line of section 16 to the northwest corner of section 16; thence east along the northerly line of section 16 to a point at the intersection of the east one-half and west one-half of section 9; thence northerly along the line separating the east one-half and the west one-half of sections 9, 4, 33, and 28; thence run easterly along the north line of section 28 to the northeast corner of section 28; thence run northerly along the west line of section 22 to the northwest corner of section 22; thence easterly along the north line of section 22 to a point at the intersection of the east one-half and west one-half of section 15; thence run northerly along said line to the point of intersection with the north line of section 15; thence easterly along the north line of section 15 to the northeast corner of section 15; thence run northerly along the west lines of sections 11 and 2 to the northwest corner of section 2; thence run easterly along the north lines of sections 2 and 1 to the northeast corner of section 1, township 56 south, range 37 east; thence run north along the east line of section 36, township 55 south, range 37 east to the northeast corner of section 36; thence run west along the north line of section 36 to the northwest corner of section 36; thence run north along the west line of section 25 to the northwest corner of section 25; thence run west along the north line of section 26 to the northwest corner of section 26; thence run north along the west line of section 23 to the northwest corner of section 23; thence run easterly along the north line of section 23 to the northeast corner of section 23; thence run north along the west line of section 13 to the northwest corner of section 13; thence run east along the north line of section 13 to a point of intersection with the west line of the southeast one-quarter of section 12; thence run north along the west line of the southeast one-quarter of section 12 to the northwest corner of the southeast one-quarter of section 12; thence run east along the north line of the southeast one-quarter of section 12 to the point of intersection with the east line of section 12; thence run east along the south line of the northwest one-quarter of section 7 to the southeast corner of the northwest one-quarter of section 7; thence run north along the east line of the northwest one-quarter of section 7 to the point of intersection with the north line of section 7; thence run northerly along the west line of the southeast one-quarter of section 6 to the northwest corner of the southeast one-quarter of section 6; thence run east along the north lines of the southeast one-quarter of section 6 and the southwest one-quarter of section 5 to the northeast corner of the southwest one-quarter of section 5; thence run northerly along the east line of the northwest one-quarter of section 5 to the point of intersection with the north line of section 5; thence run northerly along the line dividing the east one-half and the west one-half of Lot 5 to a point intersecting the north line of Lot 5; thence run east along the north line of Lot 5 to the northeast corner of Lot 5, township 54 1/2 south, range 38 east; thence run north along the west line of section 33, township 54 south, range 38 east to a point intersecting the northwest corner of the southwest one-quarter of section 33; thence run easterly along the north line of the southwest one-quarter of section 33 to the northeast corner of the southwest one-quarter of section 33; thence run north along the west line of the northeast one-quarter of section 33 to a point intersecting the north line of section 33; thence run easterly along the north line of section 33 to the northeast corner of section 33; thence run northerly along the west line of section 27 to a point intersecting the northwest corner of the southwest one-quarter of section 27; thence run easterly to the northeast corner of the southwest one-quarter of section 27; thence run northerly along the west line of the northeast one-quarter of section 27 to a point intersecting the north line of section 27; thence run west along the north line of section 27 to the northwest corner of section 27; thence run north along the west lines of sections 22 and 15 to the northwest corner of section 15; thence run easterly along the north lines of sections 15 and 14 to the point of intersection with the L-31N Levee, said intersection located near the southeast corner of section 11, township 54 south, range 38 east; thence run northerly along Levee L-31N crossing SRD 90 (U.S. 41 Tamiami Trail) to an intersection common to Levees L-31N, L-29, and L-30, said intersection located near the southeast corner of section 2, township 54 south, range 38 east; thence run northeasterly, northerly, and northeasterly along Levee L-30 to a point of intersection with the Miami-Dade/Broward Levee, said intersection located near the northeast corner of section 17, township 52 south, range 39 east; thence run due east to a point of intersection with SRD 27 (Krome Ave.); thence run northeasterly along SRD 27 to an intersection with SRD 25 (U.S. 27), said intersection located in section 3, township 52 south, range 39 east; thence run northerly along said SRD 25, entering into

Broward County, to an intersection with SRD 84 at Andytown; thence run southeasterly along the aforementioned SRD 84 to an intersection with the southwesterly prolongation of Levee L-35A, said intersection being located in the northeast one-quarter of section 5, township 50 south, range 40 east; thence run northeasterly along Levee L-35A to an intersection of Levee L-36, said intersection located near the southeast corner of section 12, township 49 south, range 40 east; thence run northerly along Levee L-36, entering into Palm Beach County, to an intersection common to said Levees L-36, L-39, and L-40, said intersection located near the west quarter corner of section 19, township 47 south, range 41 east; thence run northeasterly, easterly, and northerly along Levee L-40, said Levee L-40 being the easterly boundary of the Loxahatchee National Wildlife Refuge, to an intersection with SRD 80 (U.S. 441), said intersection located near the southeast corner of section 32, township 43 south, range 40 east; thence run westerly along the aforementioned SRD 80 to a point marking the intersection of said road and the northeasterly prolongation of Levee L-7, said Levee L-7 being the westerly boundary of the Loxahatchee National Wildlife Refuge; thence run southwesterly and southerly along said Levee L-7 to an intersection common to Levees L-7, L-15 (Hillsborough Canal), and L-6; thence run southwesterly along Levee L-6 to an intersection common to Levee L-6, SRD 25 (U.S. 27), and Levee L-5, said intersection being located near the northwest corner of section 27, township 47 south, range 38 east; thence run westerly along the aforementioned Levee L-5 to a point intersecting the east line of range 36 east; thence run northerly along said range line to a point marking the northeast corner of section 1, township 47 south, range 36 east; thence run westerly along the north line of township 47 south, to an intersection with Levee L-23/24 (Miami Canal); thence run northwesterly along the Miami Canal Levee to a point intersecting the north line of section 22, township 46 south, range 35 east; thence run westerly to a point marking the northwest corner of section 21, township 46 south, range 35 east; thence run southerly to the southwest corner of said section 21; thence run westerly to a point marking the northwest corner of section 30, township 46 south, range 35 east, said point also being on the line dividing Palm Beach and Hendry Counties; from said point, thence run southerly along said county line to a point marking the intersection of Broward, Hendry, and Collier Counties, said point also being the northeast corner of section 1, township 49 south, range 34 east; thence run westerly along the line dividing Hendry and Collier Counties and continuing along the prolongation thereof to a point marking the southwest corner of section 36, township 48 south, range 29 east; thence run southerly to a point marking the southwest corner of section 12, township 49 south, range 29 east; thence run westerly to a point marking the southwest corner of section 10, township 49 south, range 29 east; thence run southerly to a point marking the southwest corner of section 15, township 49 south, range 29 east; thence run westerly to a point marking the northwest corner of section 24, township 49 south, range 28 east, said point lying on the west boundary of the Big Cypress Area of Critical State Concern as described in rule 28-25.001, Florida Administrative Code; thence run southerly along said boundary crossing SRD 84 (Alligator Alley) to a point marking the southwest corner of section 24, township 50 south, range 28 east; thence leaving the aforementioned west boundary of the Big Cypress Area of Critical State Concern run easterly to a point marking the northeast corner of section 25, township 50 south, range 28 east; thence run southerly along the east line of range 28 east to a point lying approximately 0.15 miles south of the northeast corner of section 1, township 52 south, range 28 east; thence run southwesterly 2.4 miles more or less to an intersection with SRD 90 (U.S. 41 Tamiami Trail), said intersection lying 1.1 miles more or less west of the east line of range 28 east; thence run northwesterly and westerly along SRD 90 to an intersection with the west line of section 10, township 52 south, range 28 east; thence leaving SRD 90 run southerly to a point marking the southwest corner of section 15, township 52 south, range 28 east; thence run westerly crossing the Faka Union Canal 0.6 miles more or less to a point; thence run southerly and parallel to the Faka Union Canal to a point located on the mean high-water line of Faka Union Bay; thence run southeasterly along the mean high-water line of the various bays, rivers, inlets, and streams to the point of beginning.

(b) The area bounded by the line described in paragraph (a) generally includes those waters to be known as waters of the state. The landward extent of these waters shall be determined by the delineation methodology ratified in s. 373.4211. Any waters which are outside the general boundary line described in paragraph (a) but which are contiguous thereto by virtue of the presence of a wetland, watercourse, or other surface water, as determined by the delineation methodology ratified in s. 373.4211, shall be a part of this water body. Any areas

within the line described in paragraph (a) which are neither a wetland nor surface water, as determined by the delineation methodology ratified in s. 373.4211, shall be excluded therefrom. If the Florida Environmental Regulation Commission designates the waters within the boundaries an Outstanding Florida Water, waters outside the boundaries shall not be included as part of such designation unless a hearing is held pursuant to notice in each appropriate county and the boundaries of such lands are specifically considered and described for such designation.

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

(15) "Stormwater management program" means the institutional strategy for stormwater management, including urban, agricultural, and other stormwater.

(16) "Stormwater management system" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system.

(17) "Stormwater utility" means the funding of a stormwater management program by assessing the cost of the program to the beneficiaries based on their relative contribution to its need. It is operated as a typical utility which bills services regularly, similar to water and wastewater services.

(18) "Watershed" means the land area which contributes to the flow of water into a receiving body of water.

(19) "Regulated air pollutant" means any pollutant regulated under the federal Clean Air Act.

(20) "Electrical power plant" means, for purposes of this part of this chapter, any electrical generating facility that uses any process or fuel and that is owned or operated by an electric utility, as defined in s. 403.503(14), and includes any associated facility that directly supports the operation of the electrical power plant.

(21) "Total maximum daily load" is defined as the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or water segment can assimilate from all sources without exceeding water quality standards must first be calculated.

**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; s. 13, ch. 84-79; s. 1, ch. 89-143; s. 30, ch. 89-279; s. 22, ch. 91-305; s. 1, ch. 92-132; s. 1, ch. 93-94; ss. 35, 69, ch. 93-213; ss. 12, 13, ch. 94-122; s. 355, ch. 94-356; s. 7, ch. 96-370; s. 1005, ch. 97-103; s. 24, ch. 97-160; s. 2, ch. 99-223; s. 9, ch. 99-353; s. 42, ch. 2001-62; s. 105, ch. 2008-4; s. 15, ch. 2008-150; s. 64, ch. 2008-227.

**403.051 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, permitting, 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. 6, 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; s. 70, ch. 93-213.

**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 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 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, by contract, or otherwise. All state agencies, upon direction of the department, shall make these services and facilities available.

(5) Accept state appropriations and 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 rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act. Any rule 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. No county, municipality, or political subdivision shall adopt or enforce any local ordinance, special law, or local regulation requiring the installation of Stage II vapor recovery systems, as currently defined by department rule, unless such county, municipality, or political subdivision is or has been in the past designated by federal regulation as a moderate, serious, or severe ozone nonattainment area. Rules adopted pursuant to this act shall not require dischargers of waste into waters of the state to improve natural background conditions. Discharges from steam electric generating plants existing or licensed under this chapter on July 1, 1984, shall not be required to be treated to a greater extent than may be necessary to assure that the quality of nonthermal components of discharges from nonrecirculated cooling water systems is as high as the quality of the makeup waters; that the quality of nonthermal components of discharges from recirculated cooling water systems is no lower than is allowed for blowdown from such systems; or that the quality of noncooling system discharges which receive makeup water from a receiving body of water which does not meet applicable department water quality standards is as high as the quality of the receiving body of water. The department may not adopt standards more stringent than federal regulations, except as provided in s. 403.804.

(8) Issue such orders as are 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 modification 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. For existing installations as defined by rule 62-520.200(10), Florida Administrative Code, effective July 12, 2009, zones of discharge to groundwater are authorized horizontally to a facility's or owner's property boundary and extending vertically to the base of a specifically designated aquifer or aquifers. Such zones of discharge may be modified in accordance with procedures specified in department rules. Exceedance of primary and secondary groundwater standards that occur within a zone of discharge does not create liability pursuant to this chapter or chapter 376 for site cleanup, and the exceedance of soil cleanup target levels is not a basis for enforcement or site cleanup.

(a) When a receiving body of water fails to meet a water quality standard for pollutants set forth in department rules, a steam electric generating plant discharge of pollutants that is existing or licensed under this chapter on July 1, 1984, may nevertheless be granted a mixing zone, provided that:

1. The standard would not be met in the water body in the absence of the discharge;

2. The discharge is in compliance with all applicable technology-based effluent limitations;

3. The discharge does not cause a measurable increase in the degree of noncompliance with the standard at the boundary of the mixing zone; and

4. The discharge otherwise complies with the mixing zone provisions specified in department rules.

(b) Mixing zones for point source discharges are not permitted in Outstanding Florida Waters except for:

1. Sources that have received permits from the department prior to April 1, 1982, or the date of designation, whichever is later;

2. Blowdown from new power plants certified pursuant to the Florida Electrical Power Plant Siting Act;

3. 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; and

4. The discharge of demineralization concentrate which has been determined permittable under s. 403.0882 and which meets the specific provisions of s. 403.0882(4)(a) and (b), if the proposed discharge is clearly in the public interest.

(c) The department, by rule, shall establish water quality criteria for wetlands which criteria give appropriate recognition to the water quality of such wetlands in their natural state.

This act may not 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 may authorize, by rule, the Department of Transportation to perform any activity requiring a permit from the department 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 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, 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 to assure future compliance with this chapter and applicable department rules. The failure of the Department of Transportation to comply with any provision of the written acceptance shall constitute grounds for its revocation by the department.

(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. If a proceeding is conducted pursuant to ss. 120.569 and 120.57, the department may intervene as a party. Should an administrative law judge of the Division of Administrative Hearings of the Department of Management Services submit a recommended order pursuant to ss. 120.569 and 120.57, the

department 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 jurisdictions 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. However, the secretary of the department shall not enter into any interstate agreement relating to the transport of ozone precursor pollutants, nor modify its rules based upon a recommendation from the Ozone Transport Assessment Group or any other such organization that is not an official subdivision of the United States Environmental Protection Agency but which studies issues related to the transport of ozone precursor pollutants, without prior review and specific legislative approval.

(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 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 is 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. 403.1835(2)(c), or mosquito control districts as defined in s. 388.011(5), 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 applies 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 does 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) 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, St. Petersburg, Port Bartow, Florida Power Corporation's Crystal River Canal, Boca Grande, Green Cove Springs, 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 rule 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)(a) Adopt by rule special criteria to protect Class II and Class III shellfish harvesting waters. Such rules may include special criteria for approving docking facilities that have 10 or fewer slips if the construction and operation of such facilities will not result in the closure of shellfish waters.

(b) Adopt by rule a specific surface water classification to protect surface waters used for treated potable water supply. These designated surface waters shall have the same water quality criteria protections as waters designated for fish consumption, recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife, and shall be free from discharged substances at a concentration that, alone or in combination with other discharged substances, would require significant alteration of permitted treatment processes at the permitted treatment facility or that would otherwise prevent compliance with applicable state drinking water standards in the treated water. Notwithstanding this classification or the inclusion of treated water supply as a designated use of a surface water, a surface water used for treated potable water supply may be reclassified to the potable water supply classification.

(30) Establish requirements by rule that reasonably protect the public health and welfare from electric and magnetic fields associated with existing 230 kV or greater electrical transmission lines, new 230 kV and greater electrical transmission lines for which an application for certification under the Florida Electric Transmission Line Siting Act, ss. 403.52-403.5365, is not filed, new or existing electrical transmission or distribution lines with voltage less than 230 kV, and substation facilities. Notwithstanding any other provision in this chapter or any other law of this state or political subdivision thereof, the department shall have exclusive jurisdiction in the regulation of electric and magnetic fields associated with all electrical transmission and distribution lines and substation facilities. However, nothing herein shall be construed as superseding or repealing the provisions of s. 403.523(1) and (10).

(31) Adopt rules necessary to obtain approval from the United States Environmental Protection Agency to administer the Federal National Pollution Discharge Elimination System (NPDES) permitting program in Florida under ss. 318, 402, and 405 of the federal Clean Water Act, Pub. L. No. 92-500, as amended. This authority shall be implemented consistent with the provisions of part II, which shall be applicable to facilities certified thereunder. The department shall establish all rules, standards, and requirements that regulate the discharge of pollutants into waters of the United States as defined by and in a manner consistent with federal regulations; provided, however, that the department may adopt a standard that is stricter or more stringent than one set by the United States Environmental Protection Agency if approved by the Governor and Cabinet in accordance with the procedures of s. 403.804(2).

(32) Coordinate the state's stormwater program.

(33) Establish and administer programs providing appropriate incentives that have the following goals, in order of importance:

(a) Preventing and reducing pollution at its source.

(b) Recycling contaminants that have the potential to pollute.

(c) Treating and neutralizing contaminants that are difficult to recycle.

(d) Disposing of contaminants only after other options have been used to the greatest extent practicable.

(34) Adopt rules which may include stricter permitting and enforcement provisions within Outstanding Florida Waters, aquatic preserves, areas of critical state concern, and areas subject to chapter 380 resource management plans adopted by rule by the Administration Commission, when the plans for an area include waters that are particularly identified as needing additional protection, which provisions are not inconsistent with the applicable rules adopted for the management of such areas by the department and the Governor and Cabinet.

(35) Exercise the duties, powers, and responsibilities required of the state under the federal Clean Air Act, 42 U.S.C. ss. 7401 et seq. The department shall implement the programs required under that act in conjunction with its other powers and duties. Nothing in this subsection shall be construed to repeal or supersede any of the department's existing rules.

(36) Establish statewide standards for persons engaged in determining visible air emissions and to require these persons to obtain training to meet such standards.

(37) Provide a supplemental permitting process for the issuance of a joint coastal permit pursuant to s. 161.055 or environmental resource permit pursuant to part IV of chapter 373, to a port listed in s. 311.09(1), for maintenance dredging and the management of dredged materials from maintenance dredging of all navigation channels, port harbors, turning basins, and harbor berths. Such permit shall be issued for a period of 5 years and shall be annually extended for an additional year if the port is in compliance with all permit conditions at the time of extension. The department is authorized to adopt rules to implement this subsection.

(38) Provide a supplemental permitting process for the issuance of a conceptual joint coastal permit pursuant to s. 161.055 or environmental resource permit pursuant to part IV of chapter 373, to a port listed in s. 311.09(1), for dredging and the management of materials from dredging and for other related activities necessary for development, including the expansion of navigation channels, port harbors, turning basins, harbor berths, and associated facilities. Such permit shall be issued for a period of up to 15 years. The department is authorized to adopt rules to implement this subsection.

(39) Enter into a memorandum of agreement with the Florida Inland Navigation District and the West Coast Inland Navigation District, or their successor agencies, to provide a supplemental process for issuance of joint coastal permits pursuant to s. 161.055 or environmental resource permits pursuant to part IV of chapter 373 for regional waterway management activities, including, but not limited to, maintenance dredging, spoil disposal, public recreation, inlet management, beach nourishment, and environmental protection directly related to public navigation and the construction, maintenance, and operation of Florida's inland waterways. The department is authorized to adopt rules to implement this subsection.

(40) Maintain a list of projects or activities, including mitigation banks, which applicants may consider when developing proposals in order to meet the mitigation or public interest requirements of this chapter, chapter 253, or chapter 373. The contents of such list are not a rule as defined in chapter 120, and listing a specific project or activity does not imply department approval for such project or activity. Each county government is encouraged to develop an inventory of projects or activities for inclusion on the list by obtaining input from local stakeholders in the public, private, and nonprofit sectors, including local governments, port authorities, marine contractors, other representatives of the marine construction industry, environmental or conservation organizations, and other interested parties. A county may establish dedicated trust funds for depositing public interest donations to be used for future public interest projects, including improving on-water law enforcement capabilities.

[1](41) Expand the use of online self-certification for appropriate exemptions and general permits issued by the department or the water management districts if such expansion is economically feasible. Notwithstanding any other provision of law, a local government may not specify the method or form for documenting that a project

qualifies for an exemption or meets the requirements for a permit under chapter 161, chapter 253, chapter 373, or this chapter. This limitation of local government authority extends to Internet-based department programs that provide for self-certification.

(42) Serve as the state's single point of contact for performing the responsibilities described in Presidential Executive Order 12372, including administration and operation of the Florida State Clearinghouse. The Florida State Clearinghouse shall be responsible for coordinating interagency reviews of the following: federal activities and actions subject to the federal consistency requirements of s. 307 of the Coastal Zone Management Act; documents prepared pursuant to the National Environmental Policy Act, 42 U.S.C. ss. 4321 et seq., and the Outer Continental Shelf Lands Act, 43 U.S.C. ss. 1331 et seq.; applications for federal funding pursuant to s. 216.212; and other notices and information regarding federal activities in the state, as appropriate. The Florida State Clearinghouse shall ensure that state agency comments and recommendations on the environmental, social, and economic impact of proposed federal actions are communicated to federal agencies, applicants, local governments, and interested parties.

(43)(a) Implement ss. 403.067 and 403.088 in flowing waters consistent with the attainment and maintenance of:

1. The narrative criterion for nutrients and any in-stream numeric interpretation of the narrative water quality criterion for nutrients adopted by the department in streams, canals, and other conveyances; and

2. Nutrient water quality standards applicable to downstream waters.

(b) The loading of nutrients to downstream waters from a stream, canal, or other conveyance shall be limited to provide for the attainment and maintenance of nutrient water quality standards in the downstream waters.

1. If the downstream water does not have a total maximum daily load adopted under s. 403.067 and has not been verified as impaired by nutrient loadings, then the department shall implement its authority in a manner that prevents impairment of the downstream water due to loadings from the upstream water.

2. If the downstream water does not have a total maximum daily load adopted under s. 403.067 but has been verified as impaired by nutrient loadings, then the department shall adopt a total maximum daily load under s. 403.067.

3. If the downstream water has a total maximum daily load adopted under s. 403.067 that interprets the narrative water quality criterion for nutrients, then allocations shall be set for upstream water bodies in accordance with s. 403.067(6), and if applicable, the basin management action plan established under s. 403.067(7).

(c) Compliance with an allocation calculated under s. 403.067(6) or, if applicable, the basin management action plan established under s. 403.067(7) for the downstream water shall constitute reasonable assurance that a discharge does not cause or contribute to the violation of the downstream nutrient water quality standards.

(44) Adopt rules requiring or incentivizing the electronic submission of forms, documents, fees, or reports required under chapter 161, chapter 253, chapter 373, chapter 376, chapter 377, or this chapter. The rules must reasonably accommodate technological or financial hardship and provide procedures for obtaining an exemption due to such hardship.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

**History.**—s. 7, ch. 67-436; ss. 19, 26, 35, ch. 69-106; s. 1, ch. 71-35; s. 2, ch. 71-36; s. 3, ch. 72-39; s. 1, ch. 72-53; s. 113, ch. 73-333; s. 3, ch. 74-133; s. 1, ch. 77-21; s. 137, ch. 77-104; s. 268, ch. 77-147; s. 2, ch. 77-369; 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. 80-66; ss. 2, 5, ch. 81-228; s. 5, ch. 82-27; s. 1, ch. 82-79; s. 2, ch. 82-80; s. 66, ch. 83-310; s. 5, ch. 84-79; s. 1, ch. 84-338; s. 1, ch. 85-296; s. 5, ch. 85-345; s. 5, ch. 86-173; s. 52, ch. 86-186; s. 22, ch. 88-393; s. 31, ch. 89-279; s. 54, ch. 90-331; s. 24, ch. 91-305; s. 23, ch. 92-203; s. 127, ch. 92-279; s. 55, ch. 92-326; s. 36, ch. 93-213; s. 5, ch. 94-311; s. 1, ch. 94-321; s. 356, ch. 94-356; s. 55, ch. 95-144; s. 144, ch. 96-320; s. 8, ch. 96-370; s. 129, ch. 96-410; s. 26, ch. 97-160; s. 100, ch. 98-200; s. 3, ch. 98-326; s. 155, ch. 99-8; s. 2, ch. 2001-188; s. 1, ch. 2001-224; s. 8, ch. 2002-275; s. 68, ch. 2006-230; s. 42, ch. 2010-147; s. 4, ch. 2010-201; s. 2, ch. 2010-208; s. 12, ch. 2012-205; s. 1, ch. 2013-71; s. 17, ch. 2013-92; s. 94, ch. 2014-17; s. 30, ch. 2016-1; s. 47, ch. 2018-110.

[1]**Note.**—As enacted by s. 42, ch. 2010-147. For a description of multiple acts in the same session affecting a statutory provision, *see* preface to the *Florida Statutes*, "Statutory Construction." Subsection (41) was also added by s. 2, ch. 2010-208, and that version reads:

(41) Expand the use of online self-certification and other forms of online authorization for appropriate exemptions, general permits, and individual permits by the department and the water management districts if such expansion is economically feasible. The department shall report on the progress of these activities to the President of the Senate, the Speaker of the House of Representatives, and the Legislative Committee on Intergovernmental Relations by February 15, 2011. Notwithstanding any other provision of law, a local government may not specify the method or form for documenting that a project meets the requirements for authorization under chapter 161, chapter 253, chapter 373, or this chapter. This includes Internet-based department programs that provide for self-certification.

**403.0611 Alternative methods of regulatory permitting; department duties.**—The Department of Environmental Protection is directed to explore alternatives to traditional methods of regulatory permitting, provided that such alternative methods will not allow a material increase in pollution emissions or discharges. Working with industry, business associations, other government agencies, and interested parties, the department is directed to consider specific limited pilot projects to test new compliance measures. These measures should include, but not be limited to, reducing transaction costs for business and government and providing economic incentives for emissions reductions. The department shall report to the Legislature prior to implementation of a pilot project initiated pursuant to this section.

**History.**—s. 12, ch. 2000-304.

**403.0615 Water resources restoration and preservation.**—

(1) This section may be cited as the "Water Resources Restoration and Preservation Act."

(2) Subject to specific legislative appropriation, the department 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.

(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) 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; s. 25, ch. 93-120; s. 357, ch. 94-356; s. 59, ch. 96-321; s. 69, ch. 2015-229.

**403.0617 Innovative nutrient and sediment reduction and conservation pilot project program.**—

(1) Contingent upon a specific appropriation in the General Appropriation Act, the department may fund innovative nutrient and sediment reduction and conservation pilot projects selected pursuant to this section. These pilot projects are intended to test the effectiveness of innovative or existing nutrient reduction or water conservation technologies, programs, or practices designed to minimize nutrient pollution or restore flows in the water bodies of the state.

(2) By October 1, 2016, the department shall initiate rulemaking to establish criteria by which the department will evaluate and rank pilot projects for funding. The criteria must include a determination by the department that the pilot project will not be harmful to the ecological resources in the study area. The criteria must give preference to projects that will result in the greatest improvement to water quality and water quantity for the dollars to be expended for the project. At a minimum, the department shall consider all of the following:

(a) The level of nutrient impairment of the water body, watershed, or water segment in which the project is located.

(b) The quantity of nutrients the project is estimated to remove from a water body, watershed, or water segment with a nutrient total maximum daily load.

(c) The potential for the project to provide a cost-effective solution to pollution, including pollution caused by onsite sewage treatment and disposal systems.

(d) The anticipated impact the project will have on restoring or increasing flow or water level.

(e) The amount of matching funds for the project which will be provided by the entities responsible for implementing the project.

(f) Whether the project is located in a rural area of opportunity, as defined in s. 288.0656, with preference given to the local government responsible for implementing the project.

(g) For multiple-year projects, whether the project has funding sources that are identified and assured through the expected completion date of the project.

(h) The cost of the project and the length of time it will take to complete relative to its expected benefits.

(i) Whether the entities responsible for implementing the project have used their own funds for projects to improve water quality or conserve water use with preference given to those entities that have expended such funds.

**History.**—s. 31, ch. 2016-1.

**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. 29834, 1955; ss. 26, 35, ch. 69-106.

**Note.**—Former s. 381.43; s. 381.251.

**403.0623 Environmental data; quality assurance.**—

(1) The department must establish, by rule, appropriate quality assurance requirements for environmental data submitted to the department and the criteria by which environmental data may be rejected by the department. The department may adopt and enforce rules to establish data quality objectives and specify requirements for training of laboratory and field staff, sample collection methodology, proficiency testing, and audits of laboratory and field sampling activities. Such rules may be in addition to any laboratory certification provisions under ss. 403.0625 and 403.863.

(2)(a) The department, in coordination with the water management districts, regional water supply authorities, and the Department of Agriculture and Consumer Services, shall establish standards for the collection and analysis of water quantity, water quality, and related data to ensure quality, reliability, and validity of the data and testing results.

(b) To the extent practicable, the department shall coordinate with federal agencies to ensure that its collection and analysis of water quality, water quantity, and related data, which may be used by any state agency, water management district, or local government, is consistent with this subsection.

(c) To receive state funds for the acquisition of land or the financing of a water resource project, state agencies and water management districts must show that they followed the department's collection and analysis standards, if available, as a prerequisite for any such request for funding.

(d) The department and the water management districts may adopt rules to implement this subsection.

**History.**—s. 1, ch. 98-43; s. 16, ch. 2008-150; s. 32, ch. 2016-1.

**403.0625 Environmental laboratory certification; water quality tests conducted by a certified laboratory.**—

(1) To assure the acceptable quality, reliability, and validity of testing results, the department and the Department of Health shall jointly establish criteria for certification of laboratories that perform analyses of

environmental samples that are not covered by the provisions in s. 403.863. The Department of Health shall have the responsibility for the operation and implementation of such laboratory certification. The Department of Health may charge and collect fees for the certification of such laboratories. The fee schedule shall be based on the number of analytical functions for which certification is sought. Such fees shall be sufficient to meet the costs incurred by the Department of Health in administering this program in coordination with the department. All fees collected pursuant to this section shall be deposited in a trust fund to be administered by the Department of Health and shall be used only for the purposes of this section.

(2) An environmental water quality test to determine the quality of the effluent of a domestic wastewater facility must be conducted by a laboratory certified under this section if such test results are to be submitted to the department or a local pollution control program pursuant to s. 403.182.

(3) The Department of Health may adopt and enforce rules to administer this section, including, but not limited to, definitions of terms, certified laboratory personnel requirements, sample collection methodology and proficiency testing, the format and frequency of reports, onsite inspections of laboratories, and quality assurance.

(4) The following acts constitute grounds for which the disciplinary actions specified in subsection (5) may be taken:

(a) Making false statements on an application or on any document associated with certification.

(b) Making consistent errors in analyses or erroneous reporting.

(c) Permitting personnel who are not qualified, as required by rules of the Department of Health, to perform analyses.

(d) Falsifying the results of analyses.

(e) Failing to employ approved laboratory methods in performing analyses as outlined in rules of the Department of Health.

(f) Failing to properly maintain facilities and equipment according to the laboratory's quality assurance plan.

(g) Failing to report analytical test results or maintain required records of test results as outlined in rules of the Department of Health.

(h) Failing to participate successfully in a performance evaluation program approved by the Department of Health.

(i) Violating any provision of this section or of the rules adopted under this section.

(j) Falsely advertising services or credentials.

(k) Failing to pay fees for initial certification or renewal certification or to pay inspection expenses incurred by the Department of Health.

(l) Failing to report any change of an item included in the initial or renewal certification application.

(m) Refusing to allow representatives of the department or the Department of Health to inspect a laboratory and its records during normal business hours.

(5) When the Department of Health finds any applicant or certificateholder guilty of any of the grounds set forth in subsection (4), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for certification.

(b) Revocation or suspension of certification.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the certification on probation for a period of time and subject to such conditions as the Department of Health specifies.

(f) Restricting the authorized scope of the certification.

(6) The certification program shall be governed by chapter 120.

**History.**—s. 7, ch. 85-269; s. 3, ch. 88-89; s. 358, ch. 94-356; s. 22, ch. 98-151.

**403.063 Groundwater quality monitoring.**—

(1) The department, in cooperation with other state and federal agencies, water management districts, and local governments, shall establish a groundwater quality monitoring network designed to detect or predict

contamination of the groundwater resources of the state.

(2) The department may by rule determine the priority of sites to be monitored within such groundwater 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 groundwater pursuant to the provisions of this section may be conducted by local and regional agencies.

**History.**—s. 3, ch. 83-310.

**403.064 Reuse of reclaimed water.**—

(1) The encouragement and promotion of water conservation, and reuse of reclaimed water, as defined by the department, are state objectives and are considered to be in the public interest. The Legislature finds that the reuse of reclaimed water is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. The Legislature further finds that for those wastewater treatment plants permitted and operated under an approved reuse program by the department, the reclaimed water shall be considered environmentally acceptable and not a threat to public health and safety. The Legislature encourages the development of incentive-based programs for reuse implementation.

(2) All applicants for permits to construct or operate a domestic wastewater treatment facility located within, serving a population located within, or discharging within a water resource caution area shall prepare a reuse feasibility study as part of their application for the permit. Reuse feasibility studies shall be prepared in accordance with department guidelines adopted by rule and shall include, but are not limited to:

(a) Evaluation of monetary costs and benefits for several levels and types of reuse.

(b) Evaluation of water savings if reuse is implemented.

(c) Evaluation of rates and fees necessary to implement reuse.

(d) Evaluation of environmental and water resource benefits associated with reuse.

(e) Evaluation of economic, environmental, and technical constraints.

(f) A schedule for implementation of reuse. The schedule shall consider phased implementation.

(3) The permit applicant shall prepare a plan of study for the reuse feasibility study consistent with the reuse feasibility study guidelines adopted by department rule. The plan of study shall include detailed descriptions of applicable treatment and water supply alternatives to be evaluated and the methods of analysis to be used. The plan of study shall be submitted to the department for review and approval.

(4) The study required under subsection (2) shall be performed by the applicant, and, if the study shows that the reuse is feasible, the applicant must give significant consideration to its implementation if the study complies with the requirements of subsections (2) and (3).

(5) A reuse feasibility study is not required if:

(a) The domestic wastewater treatment facility has an existing or proposed permitted or design capacity less than 0.1 million gallons per day; or

(b) The permitted reuse capacity equals or exceeds the total permitted capacity of the domestic wastewater treatment facility.

(6) A reuse feasibility study prepared under subsection (2) satisfies a water management district requirement to conduct a reuse feasibility study imposed on a local government or utility that has responsibility for wastewater management. The data included in the study and the conclusions of the study must be given significant consideration by the applicant and the appropriate water management district in an analysis of the economic, environmental, and technical feasibility of providing reclaimed water for reuse under part II of chapter 373 and must be presumed relevant to the determination of feasibility. A water management district may not require a separate study when a reuse feasibility study has been completed under subsection (2).

(7) Local governments may allow the use of reclaimed water for inside activities, including, but not limited to, toilet flushing, fire protection, and decorative water features, as well as for outdoor uses, provided the reclaimed water is from domestic wastewater treatment facilities which are permitted, constructed, and operated in accordance with department rules.

(8) Permits issued by the department for domestic wastewater treatment facilities shall be consistent with requirements for reuse included in applicable consumptive use permits issued by the water management district, if such requirements are consistent with department rules governing reuse of reclaimed water. This subsection applies only to domestic wastewater treatment facilities which are located within, or serve a population located within, or discharge within water resource caution areas and are owned, operated, or controlled by a local government or utility which has responsibility for water supply and wastewater management.

(9) Local governments may and are encouraged to implement programs for the reuse of reclaimed water. Nothing in this chapter shall be construed to prohibit or preempt such local reuse programs.

(10) A local government that implements a reuse program under this section shall be allowed to allocate the costs in a reasonable manner.

(11) Pursuant to chapter 367, the Florida Public Service Commission shall allow entities under its jurisdiction which conduct studies or implement reuse projects, including, but not limited to, any study required by subsection (2) or facilities used for reliability purposes for a reclaimed water reuse system, to recover the full, prudently incurred cost of such studies and facilities through their rate structure.

(12) In issuing consumptive use permits, the permitting agency shall consider the local reuse program.

(13) A local government shall require a developer, as a condition for obtaining a development order, to comply with the local reuse program.

(14) After conducting a feasibility study under subsection (2), domestic wastewater treatment facilities that dispose of effluent by Class I deep well injection, as defined in 40 C.F.R. s. 144.6(a), must implement reuse to the degree that reuse is feasible, based upon the applicant’s reuse feasibility study. Applicable permits issued by the department shall be consistent with the requirements of this subsection.

(a) This subsection does not limit the use of a Class I deep well injection facility as backup for a reclaimed water reuse system.

(b) This subsection applies only to domestic wastewater treatment facilities located within, serving a population located within, or discharging within a water resource caution area.

(15) After conducting a feasibility study under subsection (2), domestic wastewater treatment facilities that dispose of effluent by surface water discharges or by land application methods must implement reuse to the degree that reuse is feasible, based upon the applicant’s reuse feasibility study. This subsection does not apply to surface water discharges or land application systems which are currently categorized as reuse under department rules. Applicable permits issued by the department shall be consistent with the requirements of this subsection.

(a) This subsection does not limit the use of a surface water discharge or land application facility as backup for a reclaimed water reuse system.

(b) This subsection applies only to domestic wastewater treatment facilities located within, serving a population located within, or discharging within a water resource caution area.

(16) Utilities implementing reuse projects are encouraged, except in the case of use by electric utilities as defined in s. 366.02(2), to meter use of reclaimed water by all end users and to charge for the use of reclaimed water based on the actual volume used when such metering and charges can be shown to encourage water conservation. Metering and the use of volume-based rates are effective water management tools for the following reuse activities: residential irrigation, agricultural irrigation, industrial uses, landscape irrigation, irrigation of other public access areas, commercial and institutional uses such as toilet flushing, and transfers to other reclaimed water utilities. Each domestic wastewater utility that provides reclaimed water for the reuse activities listed in this section shall include a summary of its metering and rate structure as part of its annual reuse report to the department.

**History.**—s. 7, ch. 89-324; s. 3, ch. 94-243; s. 8, ch. 95-323; s. 37, ch. 2002-296; s. 13, ch. 2004-381; s. 48, ch. 2018-110.

**403.0645 Reclaimed water use at state facilities.**—

(1) The encouragement and promotion of reuse of reclaimed water has been established as a state objective in ss. 373.250 and 403.064. Reuse has become an integral part of water and wastewater management in Florida, and Florida is recognized as a national leader in water reuse.

(2) The state and various state agencies and water management districts should take a leadership role in using reclaimed water in lieu of other water sources. The use of reclaimed water by state agencies and facilities will conserve potable water and will serve an important public education function.

(3) Each state agency and water management district shall use reclaimed water to the greatest extent practicable for landscape irrigation, toilet flushing, aesthetic features such as decorative ponds and fountains, cooling water, and other useful purposes allowed by department rules at state facilities, including, but not limited to, parks, rest areas, visitor welcome centers, buildings, college campuses, and other facilities.

(4) Each state agency and water management district shall submit to the Secretary of Environmental Protection by February 1 of each year a summary of activities designed to utilize reclaimed water at its facilities along with a summary of the amounts of reclaimed water actually used for beneficial purposes.

**History.**—s. 14, ch. 2004-381.

**403.067 Establishment and implementation of total maximum daily loads.**—

(1) LEGISLATIVE FINDINGS AND INTENT.—In furtherance of public policy established in s. 403.021, the Legislature declares that the waters of the state are among its most basic resources and that the development of a total maximum daily load program for state waters as required by s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. will promote improvements in water quality throughout the state through the coordinated control of point and nonpoint sources of pollution. The Legislature finds that, while point and nonpoint sources of pollution have been managed through numerous programs, better coordination among these efforts and additional management measures may be needed in order to achieve the restoration of impaired water bodies. The scientifically based total maximum daily load program is necessary to fairly and equitably allocate pollution loads to both nonpoint and point sources. Implementation of the allocation shall include consideration of a cost-effective approach coordinated between contributing point and nonpoint sources of pollution for impaired water bodies or water body segments and may include the opportunity to implement the allocation through nonregulatory and incentive-based programs. The Legislature further declares that the Department of Environmental Protection shall be the lead agency in administering this program and shall coordinate with local governments, water management districts, the Department of Agriculture and Consumer Services, local soil and water conservation districts, environmental groups, regulated interests, other appropriate state agencies, and affected pollution sources in developing and executing the total maximum daily load program.

(2) LIST OF SURFACE WATERS OR SEGMENTS.—In accordance with s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq., the department must submit periodically to the United States Environmental Protection Agency a list of surface waters or segments for which total maximum daily load assessments will be conducted. The assessments shall evaluate the water quality conditions of the listed waters and, if such waters are determined not to meet water quality standards, total maximum daily loads shall be established, subject to the provisions of subsection (4). The department shall establish a priority ranking and schedule for analyzing such waters.

(a) The list, priority ranking, and schedule cannot be used in the administration or implementation of any regulatory program. However, this paragraph does not prohibit any agency from employing the data or other information used to establish the list, priority ranking, or schedule in administering any program.

(b) The list, priority ranking, and schedule prepared under this subsection shall be made available for public comment, but shall not be subject to challenge under chapter 120.

(c) The provisions of this subsection are applicable to all lists prepared by the department and submitted to the United States Environmental Protection Agency pursuant to s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq., including those submitted prior to the effective date of this act, except as provided in subsection (4).

(d) If the department proposes to implement total maximum daily load calculations or allocations established prior to the effective date of this act, the department shall adopt those calculations and allocations by rule by the secretary pursuant to ss. 120.536(1) and 120.54 and paragraph (6)(c).

(3) ASSESSMENT.—

(a) Based on the priority ranking and schedule for a particular listed water body or water body segment, the department shall conduct a total maximum daily load assessment of the basin in which the water body or water body segment is located using the methodology developed pursuant to paragraph (b). In conducting this assessment, the department shall coordinate with the local water management district, the Department of Agriculture and Consumer Services, other appropriate state agencies, soil and water conservation districts, environmental groups, regulated interests, and other interested parties.

(b) The department shall adopt by rule a methodology for determining those waters which are impaired. The rule shall provide for consideration as to whether water quality standards codified in chapter 62-302, Florida Administrative Code, are being exceeded, based on objective and credible data, studies and reports, including surface water improvement and management plans approved by water management districts and pollutant load reduction goals developed according to department rule. Such rule also shall set forth:

1. Water quality sample collection and analysis requirements, accounting for ambient background conditions, seasonal and other natural variations;

2. Approved methodologies;

3. Quality assurance and quality control protocols;

4. Data modeling; and

5. Other appropriate water quality assessment measures.

(c) If the department has adopted a rule establishing a numerical criterion for a particular pollutant, a narrative or biological criterion may not be the basis for determining an impairment in connection with that pollutant unless the department identifies specific factors as to why the numerical criterion is not adequate to protect water quality. If water quality nonattainment is based on narrative or biological criteria, the specific factors concerning particular pollutants shall be identified prior to a total maximum daily load being developed for those criteria for that surface water or surface water segment.

(4) APPROVED LIST.—If the department determines, based on the total maximum daily load assessment methodology described in subsection (3), that water quality standards are not being achieved and that technology-based effluent limitations and other pollution control programs under local, state, or federal authority, including Everglades restoration activities pursuant to s. 373.4592 and the National Estuary Program, which are designed to restore such waters for the pollutant of concern are not sufficient to result in attainment of applicable surface water quality standards, it shall confirm that determination by issuing a subsequent, updated list of those water bodies or segments for which total maximum daily loads will be calculated. In association with this updated list, the department shall establish priority rankings and schedules by which water bodies or segments will be subjected to total maximum daily load calculations. If a surface water or water segment is to be listed under this subsection, the department must specify the particular pollutants causing the impairment and the concentration of those pollutants causing the impairment relative to the water quality standard. This updated list shall be approved and amended by order of the department subsequent to completion of an assessment of each water body or water body segment, and submitted to the United States Environmental Protection Agency. Each order shall be subject to challenge under ss. 120.569 and 120.57.

(5) REMOVAL FROM LIST.—At any time throughout the total maximum daily load process, surface waters or segments evaluated or listed under this section shall be removed from the lists described in subsection (2) or subsection (4) upon demonstration that water quality criteria are being attained, based on data equivalent to that required by rule under subsection (3).

(6) CALCULATION AND ALLOCATION.—

(a) Calculation of total maximum daily load.

1. Prior to developing a total maximum daily load calculation for each water body or water body segment on the list specified in subsection (4), the department shall coordinate with applicable local governments, water

management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources to determine the information required, accepted methods of data collection and analysis, and quality control/quality assurance requirements. The analysis may include mathematical water quality modeling using approved procedures and methods.

2. The department shall develop total maximum daily load calculations for each water body or water body segment on the list described in subsection (4) according to the priority ranking and schedule unless the impairment of such waters is due solely to activities other than point and nonpoint sources of pollution. For waters determined to be impaired due solely to factors other than point and nonpoint sources of pollution, no total maximum daily load will be required. A total maximum daily load may be required for those waters that are impaired predominantly due to activities other than point and nonpoint sources. The total maximum daily load calculation shall establish the amount of a pollutant that a water body or water body segment may receive from all sources without exceeding water quality standards, and shall account for seasonal variations and include a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. The total maximum daily load may be based on a pollutant load reduction goal developed by a water management district, provided that such pollutant load reduction goal is promulgated by the department in accordance with the procedural and substantive requirements of this subsection.

(b) Allocation of total maximum daily loads. The total maximum daily loads shall include establishment of reasonable and equitable allocations of the total maximum daily load between or among point and nonpoint sources that will alone, or in conjunction with other management and restoration activities, provide for the attainment of the pollutant reductions established pursuant to paragraph (a) to achieve water quality standards for the pollutant causing impairment. The allocations may establish the maximum amount of the water pollutant that may be discharged or released into the water body or water body segment in combination with other discharges or releases. Allocations may also be made to individual basins and sources or as a whole to all basins and sources or categories of sources of inflow to the water body or water body segments. An initial allocation of allowable pollutant loads among point and nonpoint sources may be developed as part of the total maximum daily load. However, in such cases, the detailed allocation to specific point sources and specific categories of nonpoint sources shall be established in the basin management action plan pursuant to subsection (7). The initial and detailed allocations shall be designed to attain the pollutant reductions established pursuant to paragraph (a) and shall be based on consideration of the following:

1. Existing treatment levels and management practices;
2. Best management practices established and implemented pursuant to paragraph (7)(c);
3. Enforceable treatment levels established pursuant to state or local law or permit;
4. Differing impacts pollutant sources and forms of pollutant may have on water quality;
5. The availability of treatment technologies, management practices, or other pollutant reduction measures;
6. Environmental, economic, and technological feasibility of achieving the allocation;
7. The cost benefit associated with achieving the allocation;
8. Reasonable timeframes for implementation;
9. Potential applicability of any moderating provisions such as variances, exemptions, and mixing zones; and
10. The extent to which nonattainment of water quality standards is caused by pollution sources outside of Florida, discharges that have ceased, or alterations to water bodies prior to the date of this act.

(c) Adoption of rules. The total maximum daily load calculations and allocations established under this subsection for each water body or water body segment shall be adopted by rule by the secretary pursuant to ss. 120.536(1), 120.54, and 403.805. Where additional data collection and analysis are needed to increase the scientific precision and accuracy of the total maximum daily load, the department is authorized to adopt phased total maximum daily loads that are subject to change as additional data becomes available. Where phased total maximum daily loads are proposed, the department shall, in the detailed statement of facts and circumstances justifying the rule, explain why the data are inadequate so as to justify a phased total maximum daily load. The rules adopted pursuant to this paragraph are not subject to approval by the Environmental Regulation Commission

and are not subject to the provisions of s. 120.541(3). As part of the rule development process, the department shall hold at least one public workshop in the vicinity of the water body or water body segment for which the total maximum daily load is being developed. Notice of the public workshop shall be published not less than 5 days nor more than 15 days before the public workshop in a newspaper of general circulation in the county or counties containing the water bodies or water body segments for which the total maximum daily load calculation and allocation are being developed.

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(a) *Basin management action plans.*—

1. In developing and implementing the total maximum daily load for a water body, the department, or the department in conjunction with a water management district, may develop a basin management action plan that addresses some or all of the watersheds and basins tributary to the water body. Such plan must integrate the appropriate management strategies available to the state through existing water quality protection programs to achieve the total maximum daily loads and may provide for phased implementation of these management strategies to promote timely, cost-effective actions as provided for in s. 403.151. The plan must establish a schedule implementing the management strategies, establish a basis for evaluating the plan's effectiveness, and identify feasible funding strategies for implementing the plan's management strategies. The management strategies may include regional treatment systems or other public works, where appropriate, and voluntary trading of water quality credits to achieve the needed pollutant load reductions.

2. A basin management action plan must equitably allocate, pursuant to paragraph (6)(b), pollutant reductions to individual basins, as a whole to all basins, or to each identified point source or category of nonpoint sources, as appropriate. For nonpoint sources for which best management practices have been adopted, the initial requirement specified by the plan must be those practices developed pursuant to paragraph (c). Where appropriate, the plan may take into account the benefits of pollutant load reduction achieved by point or nonpoint sources that have implemented management strategies to reduce pollutant loads, including best management practices, before the development of the basin management action plan. The plan must also identify the mechanisms that will address potential future increases in pollutant loading.

3. The basin management action planning process is intended to involve the broadest possible range of interested parties, with the objective of encouraging the greatest amount of cooperation and consensus possible. In developing a basin management action plan, the department shall assure that key stakeholders, including, but not limited to, applicable local governments, water management districts, the Department of Agriculture and Consumer Services, other appropriate state agencies, local soil and water conservation districts, environmental groups, regulated interests, and affected pollution sources, are invited to participate in the process. The department shall hold at least one public meeting in the vicinity of the watershed or basin to discuss and receive comments during the planning process and shall otherwise encourage public participation to the greatest practicable extent. Notice of the public meeting must be published in a newspaper of general circulation in each county in which the watershed or basin lies not less than 5 days nor more than 15 days before the public meeting. A basin management action plan does not supplant or otherwise alter any assessment made under subsection (3) or subsection (4) or any calculation or initial allocation.

4. Each new or revised basin management action plan shall include:

a. The appropriate management strategies available through existing water quality protection programs to achieve total maximum daily loads, which may provide for phased implementation to promote timely, cost-effective actions as provided for in s. 403.151;

b. A description of best management practices adopted by rule;

c. A list of projects in priority ranking with a planning-level cost estimate and estimated date of completion for each listed project;

d. The source and amount of financial assistance to be made available by the department, a water management district, or other entity for each listed project, if applicable; and

e. A planning-level estimate of each listed project's expected load reduction, if applicable.

5. The department shall adopt all or any part of a basin management action plan and any amendment to such plan by secretarial order pursuant to chapter 120 to implement the provisions of this section.

6. The basin management action plan must include milestones for implementation and water quality improvement, and an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones shall be conducted every 5 years, and revisions to the plan shall be made as appropriate. Revisions to the basin management action plan shall be made by the department in cooperation with basin stakeholders. Revisions to the management strategies required for nonpoint sources must follow the procedures set forth in subparagraph (c)4. Revised basin management action plans must be adopted pursuant to subparagraph 5.

7. In accordance with procedures adopted by rule under paragraph (9)(c), basin management action plans, and other pollution control programs under local, state, or federal authority as provided in subsection (4), may allow point or nonpoint sources that will achieve greater pollutant reductions than required by an adopted total maximum daily load or wasteload allocation to generate, register, and trade water quality credits for the excess reductions to enable other sources to achieve their allocation; however, the generation of water quality credits does not remove the obligation of a source or activity to meet applicable technology requirements or adopted best management practices. Such plans must allow trading between NPDES permittees, and trading that may or may not involve NPDES permittees, where the generation or use of the credits involve an entity or activity not subject to department water discharge permits whose owner voluntarily elects to obtain department authorization for the generation and sale of credits.

8. The provisions of the department's rule relating to the equitable abatement of pollutants into surface waters do not apply to water bodies or water body segments for which a basin management plan that takes into account future new or expanded activities or discharges has been adopted under this section.

(b) *Total maximum daily load implementation.*—

1. The department shall be the lead agency in coordinating the implementation of the total maximum daily loads through existing water quality protection programs. Application of a total maximum daily load by a water management district must be consistent with this section and does not require the issuance of an order or a separate action pursuant to s. 120.536(1) or s. 120.54 for the adoption of the calculation and allocation previously established by the department. Such programs may include, but are not limited to:

a. Permitting and other existing regulatory programs, including water-quality-based effluent limitations;

b. Nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, agreements established pursuant to s. 403.061(21), and public education;

c. Other water quality management and restoration activities, for example surface water improvement and management plans approved by water management districts or basin management action plans developed pursuant to this subsection;

d. Trading of water quality credits or other equitable economically based agreements;

e. Public works including capital facilities; or

f. Land acquisition.

2. For a basin management action plan adopted pursuant to paragraph (a), any management strategies and pollutant reduction requirements associated with a pollutant of concern for which a total maximum daily load has been developed, including effluent limits set forth for a discharger subject to NPDES permitting, if any, must be included in a timely manner in subsequent NPDES permits or permit modifications for that discharger. The department may not impose limits or conditions implementing an adopted total maximum daily load in an NPDES permit until the permit expires, the discharge is modified, or the permit is reopened pursuant to an adopted basin management action plan.

a. Absent a detailed allocation, total maximum daily loads must be implemented through NPDES permit conditions that provide for a compliance schedule. In such instances, a facility's NPDES permit must allow time for the issuance of an order adopting the basin management action plan. The time allowed for the issuance of an order adopting the plan may not exceed 5 years. Upon issuance of an order adopting the plan, the permit must be reopened or renewed, as necessary, and permit conditions consistent with the plan must be established.

Notwithstanding the other provisions of this subparagraph, upon request by an NPDES permittee, the department as part of a permit issuance, renewal, or modification may establish individual allocations before the adoption of a basin management action plan.

b. For holders of NPDES municipal separate storm sewer system permits and other stormwater sources, implementation of a total maximum daily load or basin management action plan must be achieved, to the maximum extent practicable, through the use of best management practices or other management measures.

c. The basin management action plan does not relieve the discharger from any requirement to obtain, renew, or modify an NPDES permit or to abide by other requirements of the permit.

d. Management strategies set forth in a basin management action plan to be implemented by a discharger subject to permitting by the department must be completed pursuant to the schedule set forth in the basin management action plan. This implementation schedule may extend beyond the 5-year term of an NPDES permit.

e. Management strategies and pollution reduction requirements set forth in a basin management action plan for a specific pollutant of concern are not subject to challenge under chapter 120 at the time they are incorporated, in an identical form, into a subsequent NPDES permit or permit modification.

f. For nonagricultural pollutant sources not subject to NPDES permitting but permitted pursuant to other state, regional, or local water quality programs, the pollutant reduction actions adopted in a basin management action plan must be implemented to the maximum extent practicable as part of those permitting programs.

g. A nonpoint source discharger included in a basin management action plan must demonstrate compliance with the pollutant reductions established under subsection (6) by implementing the appropriate best management practices established pursuant to paragraph (c) or conducting water quality monitoring prescribed by the department or a water management district. A nonpoint source discharger may, in accordance with department rules, supplement the implementation of best management practices with water quality credit trades in order to demonstrate compliance with the pollutant reductions established under subsection (6).

h. A nonpoint source discharger included in a basin management action plan may be subject to enforcement action by the department or a water management district based upon a failure to implement the responsibilities set forth in sub-subparagraph g.

i. A landowner, discharger, or other responsible person who is implementing applicable management strategies specified in an adopted basin management action plan may not be required by permit, enforcement action, or otherwise to implement additional management strategies, including water quality credit trading, to reduce pollutant loads to attain the pollutant reductions established pursuant to subsection (6) and shall be deemed to be in compliance with this section. This subparagraph does not limit the authority of the department to amend a basin management action plan as specified in subparagraph (a)6.

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate

provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. Where interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12)(b) must be verified at representative sites by the department. The department shall use best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, where applicable, must notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from the provisions of s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the Department of Agriculture and Consumer Services pursuant to subparagraphs 3. and 4. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

6. The provisions of subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

(d) *Enforcement and verification of basin management action plans and management strategies.*—

1. Basin management action plans are enforceable pursuant to this section and ss. 403.121, 403.141, and 403.161. Management strategies, including best management practices and water quality monitoring, are enforceable under this chapter.

2. No later than January 1, 2017:

a. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of water quality monitoring required in lieu of implementation of best management practices or other measures pursuant to sub-subparagraph (b)2.g.;

b. The department, in consultation with the water management districts and the Department of Agriculture and Consumer Services, shall initiate rulemaking to adopt procedures to verify implementation of nonagricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph (c)1.; and

c. The Department of Agriculture and Consumer Services, in consultation with the water management districts and the department, shall initiate rulemaking to adopt procedures to verify implementation of agricultural interim measures, best management practices, or other measures adopted by rule pursuant to subparagraph(c)2.

The rules required under this subparagraph shall include enforcement procedures applicable to the landowner, discharger, or other responsible person required to implement applicable management strategies, including best management practices or water quality monitoring as a result of noncompliance.

(8) WATER QUALITY CREDIT TRADING.—

(a) Water quality credit trading must be consistent with federal law and regulation.

(b) Water quality credit trading must be implemented through permits, including water quality credit trading permits, other authorizations, or other legally binding agreements as established by department rule.

(c) The department shall establish the pollutant load reduction value of water quality credits and is responsible for authorizing their use.

(d) A person who acquires water quality credits (“buyer”) shall timely submit to the department an affidavit, signed by the buyer and the credit generator (“seller”), disclosing the term of acquisition, number of credits, unit credit price paid, and any state funding received for the facilities or activities that generate the credits. The department may not participate in the establishment of credit prices.

(e) Sellers of water quality credits are responsible for achieving the load reductions on which the credits are based and complying with the terms of the department authorization and any trading agreements into which they may have entered.

(f) Buyers of water quality credits are responsible for complying with the terms of the department water discharge permit.

(g) The department shall take appropriate action to address the failure of a credit seller to fulfill its obligations, including, as necessary, deeming the seller’s credits invalid if the seller cannot achieve the load reductions on which the credits were based in a reasonable time. If the department determines duly acquired water quality credits to be invalid, in whole or in part, thereby causing the credit buyer to be unable to timely meet its pollutant reduction obligations under this section, the department shall issue an order establishing the actions required of the buyer to meet its obligations by alternative means and a reasonable schedule for completing the actions. The invalidation of credits does not, in and of itself, constitute a violation of the buyer’s water discharge permit.

(h) The department may authorize water quality credit trading in adopted basin management action plans. Participation in water quality credit trading is entirely voluntary. Entities that participate in water quality credit trades shall timely report to the department the prices for credits, how the prices were determined, and any state funding received for the facilities or activities that generated the credits. The department may not participate in the establishment of credit prices.

(i) Land set-asides and land use modifications not otherwise required by state law or a permit, including constructed wetlands or other water quality improvement projects, that reduce nutrient loads into nutrient impaired surface waters may be used under this subsection.

(9) RULES.—The department may adopt rules for:

(a) Delisting water bodies or water body segments from the list developed under subsection (4) pursuant to the guidance under subsection (5).

(b) Administering of funds to implement the total maximum daily load and basin management action planning programs.

(c) Water quality credit trading among the pollutant sources to a water body or water body segment. The rules must provide for the following:

1. The process to be used to determine how credits are generated, quantified, and validated.

2. A publicly accessible water quality credit trading registry that tracks water quality credits, trading activities, and prices paid for credits.

3. Limitations on the availability and use of water quality credits, including a list of eligible pollutants or parameters and minimum water quality requirements and, where appropriate, adjustments to reflect best management practice performance uncertainties and water-segment-specific location factors.

4. The timing and duration of credits and allowance for credit transferability.

5. Mechanisms for determining and ensuring compliance with trading procedures, including recordkeeping, monitoring, reporting, and inspections.

At the time of publication of the draft rules on water quality credit trading, the department shall submit a copy to the United States Environmental Protection Agency for review.

(d) The total maximum daily load calculation in accordance with paragraph (6)(a) immediately upon the effective date of this act, for those eight water segments within Lake Okeechobee proper as submitted to the United States Environmental Protection Agency pursuant to subsection (2).

(e) Implementation of other specific provisions.

(10) APPLICATION.—The provisions of this section are intended to supplement existing law, and may not be construed as altering any applicable state water quality standards or as restricting the authority otherwise granted to the department or a water management district under this chapter or chapter 373. The exclusive means of state implementation of s. 303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq. shall be in accordance with the identification, assessment, calculation and allocation, and implementation provisions of this section.

(11) CONSTRUCTION.—This section does not limit the applicability or consideration of any mixing zone, variance, exemption, site specific alternative criteria, or other moderating provision.

(12) IMPLEMENTATION OF ADDITIONAL PROGRAMS.—

(a) The department may not implement, without prior legislative approval, any additional regulatory authority pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part 130, if such implementation would result in water quality discharge regulation of activities not currently subject to regulation.

(b) Interim measures, best management practices, or other measures may be developed and voluntarily implemented pursuant to paragraph (7)(c) for any water body or segment for which a total maximum daily load or allocation has not been established. The implementation of such pollution control programs may be considered by the department in the determination made pursuant to subsection (4).

(13) RULE CHALLENGES.—In order to provide adequate due process while ensuring timely development of total maximum daily loads, proposed rules and orders authorized by this act are ineffective pending resolution of a s. 120.54(3), s. 120.56, s. 120.569, or s. 120.57 administrative proceeding. However, the department may go forward prior to resolution of such administrative proceedings with subsequent agency actions authorized by subsections (2)-(6) if the department can support and substantiate those actions using the underlying bases for the rules or orders without the benefit of any legal presumption favoring, or in deference to, the challenged rules or orders.

**History.**—s. 3, ch. 99-223; s. 10, ch. 99-353; s. 3, ch. 2000-130; s. 1, ch. 2001-74; s. 1, ch. 2002-165; s. 17, ch. 2002-295; s. 10, ch. 2003-265; s. 6, ch. 2005-166; s. 13, ch. 2005-291; s. 1, ch. 2006-76; s. 10, ch. 2006-289; s. 1, ch. 2008-189; s. 1, ch. 2013-70; s. 2, ch. 2013-146; s. 44, ch. 2015-2; s. 33, ch. 2016-1; s. 4, ch. 2016-130.

**403.0675 Progress reports.**—On or before July 1 of each year, beginning in 2018:

(1) The department, in conjunction with the water management districts, shall post on its website and submit electronically an annual progress report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of each total maximum daily load, basin management action plan, minimum flow

or minimum water level, and recovery or prevention strategy adopted pursuant to s. 403.067 or parts I and VIII of chapter 373. The report must include the status of each project identified to achieve a total maximum daily load or an adopted minimum flow or minimum water level, as applicable. If a report indicates that any of the 5-year, 10-year, or 15-year milestones, or the 20-year target date, if applicable, for achieving a total maximum daily load or a minimum flow or minimum water level will not be met, the report must include an explanation of the possible causes and potential solutions. If applicable, the report must include project descriptions, estimated costs, proposed priority ranking for project implementation, and funding needed to achieve the total maximum daily load or the minimum flow or minimum water level by the target date. Each water management district shall post the department's report on its website.

(2) The Department of Agriculture and Consumer Services shall post on its website and submit electronically an annual progress report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the implementation of the agricultural nonpoint source best management practices, including an implementation assurance report summarizing survey responses and response rates, site inspections, and other methods used to verify implementation of and compliance with best management practices pursuant to basin management action plans.

**History.**—s. 34, ch. 2016-1.

**403.072 Pollution Prevention Act.**—Sections 403.072-403.074 may be cited as the "Pollution Prevention Act."

**History.**—s. 25, ch. 91-305.

**403.073 Pollution prevention; state goal; agency programs; public education.**—

(1) It is a goal of the state that all its agencies, the State University System, community colleges, and all municipalities, counties, regional agencies, and special districts develop and implement strategies to prevent pollution, including public information programs and education programs.

(2) It is the policy of the state that pollution prevention is necessary for all materials and waste management activities.

**History.**—s. 26, ch. 91-305; s. 1, ch. 95-144; s. 48, ch. 2007-217.

**403.074 Technical assistance by the department.**—

(1) To help develop effective programs to eliminate or reduce the use of materials that are toxic to humans, plants, or animals and to prevent pollution at its source, the department shall implement and administer a program of technical assistance in pollution prevention to business, industry, agriculture, and state and local government.

(2) The program shall include onsite, nonregulatory technical assistance and shall promote and sponsor conferences on pollution prevention techniques. The program may be conducted in cooperation with trade associations, trade schools, the State University System, community colleges, or other appropriate entities.

(3) Proprietary information obtained by the department during a visit to provide onsite technical assistance requested under ss. 403.072-403.074 shall be treated in accordance with the provisions of s. 403.111, unless such confidentiality is waived by the party who requested the assistance.

**History.**—s. 27, ch. 91-305; s. 1, ch. 95-366; s. 49, ch. 2007-217.

**403.075 Legislative findings.**—In addition to the declarations contained in s. 403.021, the Legislature finds that:

(1) Ecosystem management is a concept that includes coordinating the planning activities of state and other governmental units, land management, environmental permitting and regulatory programs, and voluntary programs, together with the needs of the business community, private landowners, and the public, as partners in a streamlined and effective program for the protection of the environment. It is particularly in the interest of persons residing and doing business within the boundaries of a particular ecosystem to share in the responsibility of ecosystem restoration or maintenance. The proper stewardship of an ecosystem by its affected residents will, in general, enhance the economic and social welfare of all Floridians by maintaining the natural beauty and functions

of that ecosystem, which will, in turn, contribute to the beauty and function of larger inclusive ecosystems and add immeasurably to the quality of life and the economy of all Florida counties dependent on those ecosystems, thus serving a public purpose.

(2) Most ecosystems are subject to multiple governmental jurisdictions. Therefore, there is a need for a unified and stable mechanism to plan for restoration and continued long-term maintenance of ecosystems.

(3) It is in the public interest and serves a public purpose that the Department of Environmental Protection take a leading role among the agencies of the state in developing and implementing comprehensive ecosystem management solutions, in cooperation with both public and private regulated entities, which improves the integration between land use planning and regulation, and which achieves positive environmental results in an efficient and cost-effective manner.

**History.**—s. 26, ch. 97-164.

**403.0752 Ecosystem management agreements.**—

(1) Upon the request of an applicant, the secretary of the department is authorized to enter into an ecosystem management agreement regarding any environmental impacts with regulated entities to better coordinate the legal requirements and timelines applicable to a regulated activity, which may include permit processing, project construction, operations monitoring, enforcement actions, proprietary approvals, and compliance with development orders and regional and local comprehensive plans. Entering into an ecosystem management agreement shall be voluntary for both the regulated entity and the department.

(2) An ecosystem management agreement may be entered into by the department and regulated entities when the department determines that:

(a) Implementation of such agreement meets all applicable standards and criteria so that there is a net ecosystem benefit to the subject ecosystem more favorable than operation under applicable rules;

(b) Entry into such agreement will not interfere with the department's obligations under any federally delegated or approved program;

(c) Implementation of the agreement will result in a reduction in overall risks to human health and the environment compared to activities conducted in the absence of the agreement; and

(d) Each regulated entity has certified to the department that it has in place internal environmental management systems or alternative internal controls sufficient to implement the agreement.

(3)(a) An ecosystem management agreement shall include provision for the department to terminate the agreement by written notice to all other parties to the agreement when the department demonstrates that:

1. There has been a material change in conditions from the original agreement such that the intended net ecosystem benefit is not being, and may not reasonably be expected to be, achieved through continuation of the agreement;

2. Continuation of the agreement will result in economic hardship or competitive disadvantage; or

3. A party has violated the terms of the agreement.

(b) Termination of an ecosystem management agreement by the department shall be subject to the requirements of ss. 120.569 and 120.57.

(c) The applicant for an ecosystem management agreement may terminate such agreement at any time. Governmental parties, other than the department, may withdraw in accordance with the terms of the agreement at any time, but may not terminate the agreement.

(4) An ecosystem management agreement may include incentives for participation and implementation by a regulated entity, including, but not limited to, any or all of the following:

(a) Coordinated regulatory contact per facility.

(b) Permitting process flexibility.

(c) Expedited permit processing.

(d) Alternative monitoring and reporting requirements.

(e) Coordinated permitting and inspections.

(f) Cooperative inspections that provide opportunity for informal resolution of compliance issues before enforcement action is initiated.

(g) Alternative means of environmental protection which provide for equivalent or reduced overall risk to human health and the environment and which are available under existing law such as variances, waivers, or other relief mechanisms.

(5) The Executive Director of the Department of Economic Opportunity, the Secretary of Transportation, the Commissioner of Agriculture, the Executive Director of the Fish and Wildlife Conservation Commission, and the executive directors of the water management districts are authorized to participate in the development of ecosystem management agreements with regulated entities and other governmental agencies as necessary to effectuate the provisions of this section. Local governments are encouraged to participate in ecosystem management agreements.

(6) The secretary of the department may form ecosystem management advisory teams for consultation and participation in the preparation of an ecosystem management agreement. The secretary shall request the participation of at least the state and regional and local government entities having regulatory authority over the activities to be subject to the ecosystem management agreement. Such teams may also include representatives of other participating or advisory government agencies, which may include regional planning councils, private landowners, public landowners and managers, public and private utilities, corporations, and environmental interests. Team members shall be selected in a manner that ensures adequate representation of the diverse interests and perspectives within the designated ecosystem. Participation by any department of state government is at the discretion of that agency.

(7) An application for a binding ecosystem management agreement shall include:

(a) The name and address of the applicant;

(b) The location and a description of the project; and

(c) All application materials required for any requested permit, license, approval, variance, or waiver under all applicable statutes and rules.

(8)(a) An applicant for a binding ecosystem management agreement shall, at the applicant’s own expense, publish a notice of its request to enter into the agreement in a newspaper of general circulation in the county in which the activity that is the subject of the agreement will be located or take place. Proof of publication shall be provided to the department by the applicant. Actual mailed notice of the application shall also be provided to owners of property adjacent to the activity that is the subject of the agreement and to any other person whose interest is known to the department or the applicant.

(b) A binding ecosystem management agreement is subject to the following requirements:

1. Notice of intent to enter into the agreement shall be published by the regulated entity in a newspaper of general circulation in each county where the ecosystem management area is located. The notice shall specifically identify any standards, rules, or other legal or regulatory requirements proposed to be subject to variance or waiver under the agreement and any permit, license, or approval to be granted. The notice shall include the opportunity to request a hearing on the agreement under the provisions of ss. 120.569 and 120.57.

2. Substantially affected persons may challenge the terms of the agreement and the proposed issuance of any permit, license, approval, variance, or waiver contained in the agreement pursuant to ss. 120.569 and 120.57.

3. A substantially affected person may challenge the subsequent issuance of any permit, license, approval, variance, or waiver pursuant to the agreement, but which is not contained in the agreement, pursuant to ss. 120.569 and 120.57. In any such proceeding, any relevant and material elements of the agreement shall be admissible.

4. Any substantial modification or amendment to the agreement shall be subject to the same processes as the original agreement.

(c) The parties to an ecosystem management agreement may elect to enter into a nonbinding agreement that does not constitute agency action. Such agreements shall be considered advisory in nature and are not binding on any party to the agreement. If such election is made, any permit, license, approval, waiver, or variance subsequently issued by an agency shall be subject to the provisions of chapter 120.

(d) Waivers and variances available under applicable statutes and rules may be granted as a part of a binding ecosystem management agreement.

(e) A person who requests a binding ecosystem management agreement and as a part of that request seeks a permit, license, approval, variance, or waiver that is subject to a statutory application review time limit waives her or his right to a default permit, license, approval, variance, or waiver.

(9) Implementation of this section by the department must be consistent with federally delegated programs and federal law.

**History.**—s. 27, ch. 97-164; s. 15, ch. 99-7; s. 203, ch. 99-245; s. 285, ch. 2011-142.

**403.076 Short title.**—Sections 403.076-403.078 may be cited as the "Public Notice of Pollution Act."

**History.**—s. 1, ch. 2017-95.

**403.077 Public notification of pollution.**—

(1) DEFINITION.—As used in this section, the term "reportable pollution release" means the release or discharge of a substance from an installation to the air, land, or waters of the state which is discovered by the owner or operator of the installation, which is not authorized by law, and which is reportable to the State Watch Office within the Division of Emergency Management pursuant to any department rule, permit, order, or variance.

(2) OWNER AND OPERATOR RESPONSIBILITIES.—

(a) In the event of a reportable pollution release, an owner or operator of the installation at which the reportable pollution release occurs must provide to the department information reported to the State Watch Office within the Division of Emergency Management pursuant to any department rule, permit, order, or variance, within 24 hours after the owner's or operator's discovery of such reportable pollution release.

(b) If multiple parties are subject to the notification requirements based on a single reportable pollution release, a single notification made by one party in accordance with this section constitutes compliance on behalf of all parties subject to the requirement. However, if the notification is not made in accordance with this section, the department may pursue enforcement against all parties subject to the requirement.

(c) If, after providing notice pursuant to paragraph (a), the owner or operator of the installation determines that a reportable pollution release did not occur or that an amendment to the notice is warranted, the owner or operator may submit a letter to the department documenting such determination.

(d) If, after providing notice pursuant to paragraph (a), the installation owner or operator discovers that a reportable pollution release has migrated outside the property boundaries of the installation, the owner or operator must provide an additional notice to the department that the release has migrated outside the property boundaries within 24 hours after its discovery of the migration outside of the property boundaries.

(3) DEPARTMENT RESPONSIBILITIES.—

(a) The department shall publish on a website accessible to the public all notices submitted by an owner or operator pursuant to subsection (2) within 24 hours after receipt.

(b) The department shall create an electronic mailing list for such notices and allow the public, including local governments, health departments, news media, and other interested persons, to subscribe to and receive periodic direct announcement of any notices submitted pursuant to subsection (2). The department shall establish regional electronic mailing lists, such as by county or district boundaries, to allow subscribers to determine the notices they wish to receive by geographic area.

(c) The department shall establish an e-mail address and an online form as options for owners and operators to provide the notice specified in subsection (2). The online form may not require the submission of information in addition to what is required for submission pursuant to paragraph (2)(a).

(d) The department shall adopt rules necessary to implement the requirements of this subsection.

(4) ADMISSION OF LIABILITY OR HARM.—Providing notice under subsection (2) does not constitute an admission of liability or harm.

(5) VIOLATIONS.—Failure to provide the notification required by subsection (2) shall subject the owner or operator to the civil penalties specified in s. 403.121.

**History.**—s. 2, ch. 2017-95.

**403.078 Effect on other law.**—The Public Notice of Pollution Act does not alter or affect the emergency management responsibilities of the Governor, the Division of Emergency Management, or the governing body of any political subdivision of the state pursuant to chapter 252.

**History.**—s. 3, ch. 2017-95.

**403.081 Performance by other state agencies.**—All state agencies, including the Department of Health, shall be available to the department to perform, at its direction, the duties required of the department under this act.

**History.**—s. 9, ch. 67-436; ss. 19, 26, 35, ch. 69-106; s. 269, ch. 77-147; s. 359, ch. 94-356; s. 156, ch. 99-8.

**403.085 Sanitary sewage disposal units; advanced and secondary waste treatment; industrial waste treatment.**—

(1) Neither the Department of Health nor any other state agency, county, special district, or municipality shall approve construction of any 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.

(2) Sanitary sewage disposal treatment plants which discharge effluent through disposal wells shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental Protection. Failure to conform 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 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.

(4) Industrial plants or facilities which discharge industrial waste of any kind through ocean outfalls, inland outfalls, or disposal wells shall provide for secondary waste treatment or such other waste treatment as deemed necessary and ordered by the former Department of Environmental Regulation. Failure to conform 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; s. 360, ch. 94-356; s. 157, ch. 99-8; s. 11, ch. 2000-211; s. 5, ch. 2008-232.

**403.086 Sewage disposal facilities; advanced and secondary waste treatment.**—

(1)(a) Neither the Department of Health nor any other state agency, county, special district, or municipality shall approve construction of any facilities for sanitary sewage disposal which do not provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the department.

(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 to protect adequately the beneficial use of the receiving waters.

(c) Notwithstanding any other provisions of this chapter or chapter 373, facilities for sanitary sewage disposal may not dispose of any wastes into Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, or Charlotte Harbor Bay, or into any river, stream, channel, canal, bay, bayou, sound, or other water tributary thereto, without providing advanced waste treatment, as defined in subsection (4), approved by the department. This paragraph shall not apply to facilities which were permitted by February 1, 1987, and which discharge secondary treated effluent, followed by water hyacinth treatment, to tributaries of tributaries of the named waters; or to facilities permitted to discharge to the nontidally influenced portions of the Peace River.

(2) Any facilities for sanitary sewage disposal shall provide for secondary waste treatment and, in addition thereto, advanced waste treatment as deemed necessary and ordered by the Department of Environmental

Protection. Failure to conform 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.

(4) For purposes of this section, the term “advanced waste treatment” means that treatment which will provide a reclaimed water product that:

(a) Contains not more, on a permitted annual average basis, than the following concentrations:

1. Biochemical Oxygen Demand (CBOD5). . . . . 5mg/l
2. Suspended Solids. . . . . 5mg/l
3. Total Nitrogen, expressed as N. . . . . 3mg/l
4. Total Phosphorus, expressed as P. . . . . 1mg/l

(b) Has received high level disinfection, as defined by rule of the department.

In those waters where the concentrations of phosphorus have been shown not to be a limiting nutrient or a contaminant, the department may waive or alter the compliance levels for phosphorus until there is a demonstration that phosphorus is a limiting nutrient or a contaminant.

(5)(a) Notwithstanding any other provisions of this chapter or chapter 373, when a reclaimed water product has been established to be in compliance with the standards set forth in subsection (4), that water shall be presumed to be allowable, and its discharge shall be permitted in the waters described in paragraph (1)(c) at a reasonably accessible point where such discharge results in minimal negative impact. This presumption may be overcome only by a demonstration that one or more of the following would occur:

1. That the discharge of reclaimed water that meets the standards set forth in subsection (4) will be, by itself, a cause of considerable degradation to an Outstanding Florida Water or to other waters and is not clearly in the public interest.
2. That the reclaimed water discharge will have a substantial negative impact on an approved shellfish harvesting area or a water used as a public domestic water supply.
3. That the increased volume of fresh water contributed by the reclaimed water product will seriously alter the natural fresh-salt water balance of the receiving water after reasonable opportunity for mixing.

(b) If one or more of the conditions described in subparagraphs (a)1.-3. have been demonstrated, remedies may include, but are not limited to, the following:

1. Require more stringent effluent limitations;
2. Order the point or method of discharge changed;
3. Limit the duration or volume of the discharge; or
4. Prohibit the discharge only if no other alternative is in the public interest.

(6) Any facility covered in paragraph (1)(c) shall be permitted to discharge if it meets the standards set forth in subsections (4) and (5). All of the facilities covered in paragraph (1)(c) shall be required to meet the standards set forth in subsections (4) and (5).

(7)(a) The department shall allow backup discharges pursuant to permit only. The backup discharge shall be limited to 30 percent of the permitted reuse capacity on an annual basis. For purposes of this subsection, a “backup discharge” is a surface water discharge that occurs as part of a functioning reuse system which has been permitted under department rules and which provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or for industrial cooling or other acceptable reuse purposes. Backup discharges may occur during periods of reduced demand for reclaimed water in the reuse system.

(b) Notwithstanding any other provisions of this chapter or chapter 373, backup discharges of reclaimed water meeting the standards as set forth in subsection (4) shall be presumed to be allowable and shall be permitted in all waters in the state at a reasonably accessible point where such discharge results in minimal negative impact. Wet weather discharges as provided in s. 2(3)(c), chapter 90-262, Laws of Florida, shall include backup discharges as

provided in this section. The presumption of the allowability of a backup discharge may be overcome only by a demonstration that one or more of the following conditions is present:

1. The discharge will be to an Outstanding Florida Water, except as provided in chapter 90-262, Laws of Florida;

2. The discharge will be to Class I or Class II waters;

3. The increased volume of fresh water contributed by a backup discharge will seriously alter the natural freshwater to saltwater balance of receiving waters after reasonable opportunity for mixing;

4. The discharge will be to a water body having a pollutant load reduction goal established by a water management district or the department, and the discharge will cause or contribute to a violation of the established goal;

5. The discharge fails to meet the requirements of the antidegradation policy contained in department rules; or

6. The discharge will be to waters that the department determines require more stringent nutrient limits than those set forth in subsection (4).

(c) Any backup discharge shall be subject to the provisions of the antidegradation policy contained in department rules.

(d) If one or more of the conditions described in paragraph (b) have been demonstrated, a backup discharge may still be allowed in conjunction with one or more of the remedies provided in paragraph (5)(b) or other suitable measures.

(e) The department shall allow lower levels of treatment of reclaimed water if the applicant affirmatively demonstrates that water quality standards will be met during periods of backup discharge and if all other requirements of this subsection are met.

(8) The department may require backflow prevention devices on potable water lines within reclaimed water service areas to protect public health and safety. The department shall establish rules that determine when backflow prevention devices on potable water lines are necessary and when such devices are not necessary.

(9) The Legislature finds that the discharge of domestic wastewater through ocean outfalls wastes valuable water supplies that should be reclaimed for beneficial purposes to meet public and natural systems demands. The Legislature also finds that discharge of domestic wastewater through ocean outfalls compromises the coastal environment, quality of life, and local economies that depend on those resources. The Legislature declares that more stringent treatment and management requirements for such domestic wastewater and the subsequent, timely elimination of ocean outfalls as a primary means of domestic wastewater discharge are in the public interest.

(a) The construction of new ocean outfalls for domestic wastewater discharge and the expansion of existing ocean outfalls for this purpose, along with associated pumping and piping systems, are prohibited. Each domestic wastewater ocean outfall shall be limited to the discharge capacity specified in the department permit authorizing the outfall in effect on July 1, 2008, which discharge capacity shall not be increased. Maintenance of existing, department-authorized domestic wastewater ocean outfalls and associated pumping and piping systems is allowed, subject to the requirements of this section. The department is directed to work with the United States Environmental Protection Agency to ensure that the requirements of this subsection are implemented consistently for all domestic wastewater facilities in the state which discharge through ocean outfalls.

(b) The discharge of domestic wastewater through ocean outfalls must meet advanced wastewater treatment and management requirements by December 31, 2018. For purposes of this subsection, the term “advanced wastewater treatment and management requirements” means the advanced waste treatment requirements set forth in subsection (4), a reduction in outfall baseline loadings of total nitrogen and total phosphorus which is equivalent to that which would be achieved by the advanced waste treatment requirements in subsection (4), or a reduction in cumulative outfall loadings of total nitrogen and total phosphorus occurring between December 31, 2008, and December 31, 2025, which is equivalent to that which would be achieved if the advanced waste treatment requirements in subsection (4) were fully implemented beginning December 31, 2018, and continued through December 31, 2025. The department shall establish the average baseline loadings of total nitrogen and total phosphorus for each outfall using monitoring data available for calendar years 2003 through 2007 and

establish required loading reductions based on this baseline. The baseline loadings and required loading reductions of total nitrogen and total phosphorus shall be expressed as an average annual daily loading value. The advanced wastewater treatment and management requirements of this paragraph are deemed met for any domestic wastewater facility discharging through an ocean outfall on July 1, 2008, which has installed by December 31, 2018, a fully operational reuse system comprising 100 percent of the facility's baseline flow on an annual basis for reuse activities authorized by the department.

(c)1. Each utility that had a permit for a domestic wastewater facility that discharged through an ocean outfall on July 1, 2008, must install, or cause to be installed, a functioning reuse system within the utility's service area or, by contract with another utility, within Miami-Dade County, Broward County, or Palm Beach County by December 31, 2025. For purposes of this subsection, a "functioning reuse system" means an environmentally, economically, and technically feasible system that provides a minimum of 60 percent of a facility's baseline flow on an annual basis for irrigation of public access areas, residential properties, or agricultural crops; aquifer recharge; groundwater recharge; industrial cooling; or other acceptable reuse purposes authorized by the department. For purposes of this subsection, the term "baseline flow" means the annual average flow of domestic wastewater discharging through the facility's ocean outfall, as determined by the department, using monitoring data available for calendar years 2003 through 2007.

2. Flows diverted from facilities to other facilities that provide 100 percent reuse of the diverted flows before December 31, 2025, are considered to contribute to meeting the reuse requirement. For utilities operating more than one outfall, the reuse requirement may be apportioned between the facilities served by the outfalls, including flows diverted to other facilities for 100 percent reuse before December 31, 2025. Utilities that shared a common ocean outfall for the discharge of domestic wastewater on July 1, 2008, regardless of which utility operates the ocean outfall, are individually responsible for meeting the reuse requirement and may enter into binding agreements to share or transfer such responsibility among the utilities. If treatment in addition to the advanced wastewater treatment and management requirements described in paragraph (b) is needed to support a functioning reuse system, the treatment must be fully operational by December 31, 2025.

3. If a facility that discharges through an ocean outfall contracts with another utility to install a functioning reuse system, the department must approve any apportionment of the reuse generated from the new or expanded reuse system that is intended to satisfy all or a portion of the reuse requirements pursuant to subparagraph 1. If a contract is between two utilities that have reuse requirements pursuant to subparagraph 1., the reuse apportioned to each utility's requirement may not exceed the total reuse generated by the new or expanded reuse system. A utility shall provide the department a copy of any contract with another utility that reflects an agreement between the utilities which is subject to the requirements of this subparagraph.

(d) The discharge of domestic wastewater through ocean outfalls is prohibited after December 31, 2025, except as a backup discharge that is part of a functioning reuse system or other wastewater management system authorized by the department. Except as otherwise provided in this subsection, a backup discharge may occur only during periods of reduced demand for reclaimed water in the reuse system, such as periods of wet weather, or as the result of peak flows from other wastewater management systems, and must comply with the advanced wastewater treatment and management requirements of paragraph (b). Peak flow backup discharges from other wastewater management systems may not cumulatively exceed 5 percent of a facility's baseline flow, measured as a 5-year rolling average, and are subject to applicable secondary waste treatment and water-quality-based effluent limitations specified in department rules. If peak flow backup discharges are in compliance with the effluent limitations, the discharges are deemed to meet the advanced wastewater treatment and management requirements of this subsection.

(e) The holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, shall submit the following to the secretary of the department:

1. A detailed plan to meet the requirements of this subsection, including the identification of the technical, environmental, and economic feasibility of various reuse options; the identification of each land acquisition and facility necessary to provide for reuse of the domestic wastewater; an analysis of the costs to meet the requirements, including the level of treatment necessary to satisfy state water quality requirements and local

water quality considerations and a cost comparison of reuse using flows from ocean outfalls and flows from other domestic wastewater sources; and a financing plan for meeting the requirements, including identifying any actions necessary to implement the financing plan, such as bond issuance or other borrowing, assessments, rate increases, fees, other charges, or other financing mechanisms. The plan must evaluate reuse demand in the context of future regional water supply demands, the availability of traditional water supplies, the need for development of alternative water supplies, the degree to which various reuse options offset potable water supplies, and other factors considered in the Lower East Coast Regional Water Supply Plan of the South Florida Water Management District. The plan must include a detailed schedule for the completion of all necessary actions and be accompanied by supporting data and other documentation. The plan must be submitted by July 1, 2013.

2. By July 1, 2016, an update of the plan required in subparagraph 1. documenting any refinements or changes in the costs, actions, or financing necessary to eliminate the ocean outfall discharge in accordance with this subsection or a written statement that the plan is current and accurate.

(f) By December 31, 2009, and by December 31 every 5 years thereafter, the holder of a department permit authorizing the discharge of domestic wastewater through an ocean outfall shall submit to the secretary of the department a report summarizing the actions accomplished to date and the actions remaining and proposed to meet the requirements of this subsection, including progress toward meeting the specific deadlines set forth in paragraphs (b) through (e). The report shall include the detailed schedule for and status of the evaluation of reuse and disposal options, preparation of preliminary design reports, preparation and submittal of permit applications, construction initiation, construction progress milestones, construction completion, initiation of operation, and continuing operation and maintenance.

(g) By July 1, 2010, and by July 1 every 5 years thereafter, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the implementation of this subsection. In the report, the department shall summarize progress to date, including the increased amount of reclaimed water provided and potable water offsets achieved, and identify any obstacles to continued progress, including all instances of substantial noncompliance.

(h) The renewal of each permit that authorizes the discharge of domestic wastewater through an ocean outfall as of July 1, 2008, must be accompanied by an order in accordance with s. 403.088(2)(e) and (f) which establishes an enforceable compliance schedule consistent with the requirements of this subsection.

(i) An entity that diverts wastewater flow from a receiving facility that discharges domestic wastewater through an ocean outfall must meet the reuse requirement of paragraph (c). Reuse by the diverting entity of the diverted flows shall be credited to the diverting entity. The diverted flow shall also be correspondingly deducted from the receiving facility's baseline flow from which the required reuse is calculated pursuant to paragraph (c), and the receiving facility's reuse requirement shall be recalculated accordingly.

The department, the South Florida Water Management District, and the affected utilities must consider the information in the detailed plan in paragraph (e) for the purpose of adjusting, as necessary, the reuse requirements of this subsection. The department shall submit a report to the Legislature by February 15, 2015, containing recommendations for any changes necessary to the requirements of this subsection.

(10) The Legislature finds that the discharge of inadequately treated and managed domestic wastewater from dozens of small wastewater facilities and thousands of septic tanks and other onsite systems in the Florida Keys compromises the quality of the coastal environment, including nearshore and offshore waters, and threatens the quality of life and local economies that depend on those resources. The Legislature also finds that the only practical and cost-effective way to fundamentally improve wastewater management in the Florida Keys is for the local governments in Monroe County, including those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage, to timely complete the wastewater or sewage treatment and disposal facilities initiated under the work program of Administration Commission rule 28-20, Florida Administrative Code, and the Monroe County Sanitary Master Wastewater Plan, dated June 2000. The Legislature therefore declares that the construction and operation of comprehensive central wastewater systems in accordance with this subsection is in the public interest. To give effect to those findings, the requirements of this

subsection apply to all domestic wastewater facilities in Monroe County, including privately owned facilities, unless otherwise provided under this subsection.

(a) The discharge of domestic wastewater into surface waters is prohibited.

(b) Monroe County, each municipality, and those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage in Monroe County shall complete the wastewater collection, treatment, and disposal facilities within its jurisdiction designated as hot spots in the Monroe County Sanitary Master Wastewater Plan, dated June 2000, specifically listed in Exhibits 6-1 through 6-3 of Chapter 6 of the plan and mapped in Exhibit F-1 of Appendix F of the plan. The required facilities and connections, and any additional facilities or other adjustments required by rules adopted by the Administration Commission under s. 380.0552, must be completed by December 31, 2015, pursuant to specific schedules established by the commission. Domestic wastewater facilities located outside local government and special district service areas must meet the treatment and disposal requirements of this subsection by December 31, 2015.

(c) After December 31, 2015, all new or expanded domestic wastewater discharges must comply with the treatment and disposal requirements of this subsection and department rules.

(d) Wastewater treatment facilities having design capacities:

1. Greater than or equal to 100,000 gallons per day must provide basic disinfection as defined by department rule and the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 5 mg/l.

b. Suspended Solids of 5 mg/l.

c. Total Nitrogen, expressed as N, of 3 mg/l.

d. Total Phosphorus, expressed as P, of 1 mg/l.

2. Less than 100,000 gallons per day must provide basic disinfection as defined by department rule and the level of treatment which, on a permitted annual average basis, produces an effluent that contains no more than the following concentrations:

a. Biochemical Oxygen Demand (CBOD5) of 10 mg/l.

b. Suspended Solids of 10 mg/l.

c. Total Nitrogen, expressed as N, of 10 mg/l.

d. Total Phosphorus, expressed as P, of 1 mg/l.

(e) Class V injection wells, as defined by department or Department of Health rule, must meet the following requirements and otherwise comply with department or Department of Health rules, as applicable:

1. If the design capacity of the facility is less than 1 million gallons per day, the injection well must be at least 90 feet deep and cased to a minimum depth of 60 feet or to such greater cased depth and total well depth as may be required by department rule.

2. Except as provided in subparagraph 3. for backup wells, if the design capacity of the facility is equal to or greater than 1 million gallons per day, each primary injection well must be cased to a minimum depth of 2,000 feet or to such greater depth as may be required by department rule.

3. If an injection well is used as a backup to a primary injection well, the following conditions apply:

a. The backup well may be used only when the primary injection well is out of service because of equipment failure, power failure, or the need for mechanical integrity testing or repair;

b. The backup well may not be used for more than a total of 500 hours during any 5-year period unless specifically authorized in writing by the department;

c. The backup well must be at least 90 feet deep and cased to a minimum depth of 60 feet, or to such greater cased depth and total well depth as may be required by department rule; and

d. Fluid injected into the backup well must meet the requirements of paragraph (d).

(f) The requirements of paragraphs (d) and (e) do not apply to:

1. Class I injection wells as defined by department rule, including any authorized mechanical integrity tests;

2. Authorized mechanical integrity tests associated with Class V wells as defined by department rule; or

3. The following types of reuse systems authorized by department rule:

a. Slow-rate land application systems;

b. Industrial uses of reclaimed water; and

c. Use of reclaimed water for toilet flushing, fire protection, vehicle washing, construction dust control, and decorative water features.

However, disposal systems serving as backups to reuse systems must comply with the other provisions of this subsection.

(g) For wastewater treatment facilities in operation as of July 1, 2010, which are located within areas to be served by Monroe County, municipalities in Monroe County, or those special districts established for the purpose of collection, transmission, treatment, or disposal of sewage but which are owned by other entities, the requirements of paragraphs (d) and (e) do not apply until January 1, 2016. Wastewater operating permits issued pursuant to this chapter and in effect for these facilities as of June 30, 2010, are extended until December 31, 2015, or until the facility is connected to a local government central wastewater system, whichever occurs first. Wastewater treatment facilities in operation after December 31, 2015, must comply with the treatment and disposal requirements of this subsection and department rules.

(h) If it is demonstrated that a discharge, even if the discharge is otherwise in compliance with this subsection, will cause or contribute to a violation of state water quality standards, the department shall:

1. Require more stringent effluent limitations;

2. Order the point or method of discharge changed;

3. Limit the duration or volume of the discharge; or

4. Prohibit the discharge.

(i) All sewage treatment facilities must monitor effluent for total nitrogen and total phosphorus concentration as required by department rule.

(j) The department shall require the levels of operator certification and staffing necessary to ensure proper operation and maintenance of sewage facilities.

(k) The department may adopt rules necessary to carry out this subsection.

(l) The authority of a local government, including a special district, to mandate connection of a wastewater facility, as defined by department rule, is governed by s. 4, chapter 99-395, Laws of Florida.

**History.**—ss. 1, 2, 3, ch. 71-259; s. 2, ch. 71-137; s. 1, ch. 72-58; s. 271, ch. 77-147; s. 1, ch. 78-206; s. 75, ch. 79-65; s. 1, ch. 80-371; s. 1, ch. 81-246; s. 262, ch. 81-259; s. 2, ch. 86-173; s. 1, ch. 87-303; s. 71, ch. 93-213; s. 2, ch. 94-153; s. 361, ch. 94-356; s. 158, ch. 99-8; s. 25, ch. 2000-153; s. 12, ch. 2000-211; s. 6, ch. 2008-232; s. 38, ch. 2010-205; s. 73, ch. 2013-15; s. 1, ch. 2013-31.

**403.08601 Leah Schad Memorial Ocean Outfall Program.**—The Legislature declares that as funds become available the state may assist the local governments and agencies responsible for implementing the Leah Schad Memorial Ocean Outfall Program pursuant to s. 403.086(9). Funds received from other sources provided for in law, the General Appropriations Act, from gifts designated for implementation of the plan from individuals, corporations, or other entities, or federal funds appropriated by Congress for implementation of the plan, may be deposited into an account of the Water Quality Assurance Trust Fund.

**History.**—s. 7, ch. 2008-232; s. 70, ch. 2015-229.

**403.0862 Discharge of waste from state groundwater cleanup operations to publicly owned treatment works.**—

(1) Upon agreement between a local governmental agency and the department, treated waste resulting from the department's cleanup or restoration of contaminated groundwater may be discharged to a publicly owned treatment works under the jurisdiction of the local governmental agency.

(2) Upon a demonstration by the local government that it incurred damages and costs, including attorney's fees, as a result of the discharge from the department's cleanup operations, the department shall pay for all actual damages and costs, including, but not limited to, the cost of bringing the facility into compliance with any state or federal requirements.

(3) Should the discharge from the department's cleanup operations exceed agreed upon pretreatment limits, the department shall pay the local government an agreed upon sum for each occasion that the discharge exceeds pretreatment limits without proof of damages as required by subsection (2).

(4) The limitation on damages provided by s. 768.28(5) shall not apply to any obligation or payment which may become due under this section.

**History.**—s. 10, ch. 86-186.

**403.087 Permits; general issuance; denial; revocation; prohibition; penalty.**—

(1) A stationary installation that is reasonably expected to be a source of air or water pollution must not 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 issued for a term of more than 10 years, nor may an operation permit issued after July 1, 1992, for a major source of air pollution have a fixed term of more than 5 years. However, upon expiration, a new permit may be issued by the department in accordance with this chapter and the rules of the department.

(2) The department shall adopt, and may amend or repeal, rules for the issuance, denial, modification, and revocation of permits under this section.

(3) A renewal of an operation permit for a domestic wastewater treatment facility other than a facility regulated under the National Pollutant Discharge Elimination System (NPDES) Program under s. 403.0885 must be issued upon request for a term of up to 10 years, for the same fee and under the same conditions as a 5-year permit, in order to provide the owner or operator with a financial incentive, if:

(a) The waters from the treatment facility are not discharged to Class I municipal injection wells or the treatment facility is not required to comply with the federal standards under the Underground Injection Control Program under chapter 62-528 of the Florida Administrative Code;

(b) The treatment facility is not operating under a temporary operating permit or a permit with an accompanying administrative order and does not have any enforcement action pending against it by the United States Environmental Protection Agency, the department, or a local program approved under s. 403.182;

(c) The treatment facility has operated under an operation permit for 5 years and, for at least the preceding 2 years, has generally operated in conformance with the limits of permitted flows and other conditions specified in the permit;

(d) The department has reviewed the discharge-monitoring reports required under department rule and is satisfied that the reports are accurate;

(e) The treatment facility has generally met water quality standards in the preceding 2 years, except for violations attributable to events beyond the control of the treatment plant or its operator, such as destruction of equipment by fire, wind, or other abnormal events that could not reasonably be expected to occur; and

(f) The department, or a local program approved under s. 403.182, has conducted, in the preceding 12 months, an inspection of the facility and has verified in writing to the operator of the facility that it is not exceeding the permitted capacity and is in substantial compliance.

The department shall keep records of the number of 10-year permits applied for and the number and duration of permits issued for longer than 5 years.

(4) The department shall issue permits on such conditions as are necessary to effect the intent and purposes of this section.

(5) 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 adopted by the department, except as provided in s. 403.088 or s. 403.0872. However, separate construction permits shall not be required for installations permitted under s. 403.0885, except that the department may require an owner or operator proposing to construct, expand, or modify such an installation to submit for department review, as part of application for permit or permit modification, engineering

plans, preliminary design reports, or other information 90 days prior to commencing construction. The department may also require the engineer of record or another registered professional engineer, within 30 days after construction is complete, to certify that the construction was completed in accordance with the plans submitted to the department, noting minor deviations which were necessary because of site-specific conditions.

(6)(a) The department shall require a processing fee in an amount sufficient, to the greatest extent possible, to cover the costs of reviewing and acting upon any application for a permit or request for site-specific alternative criteria or for an exemption from water quality criteria and to cover the costs of surveillance and other field services and related support activities associated with any permit or plan approval issued pursuant to this chapter. The department shall review the fees authorized under this chapter at least once every 5 years and shall adjust the fees upward, as necessary, within the fee caps established in this paragraph to reflect changes in the Consumer Price Index or similar inflation indicator. The department shall establish by rule the inflation index to be used for this purpose. In the event of deflation, the department shall consult with the Executive Office of the Governor and the Legislature to determine whether downward fee adjustments are appropriate based on the current budget and appropriation considerations. However, when an application is received without the required fee, the department shall acknowledge receipt of the application and shall immediately return the unprocessed application to the applicant and shall take no further action until the application is received with the appropriate fee. The department shall adopt a schedule of fees by rule, subject to the following limitations:

1. The fee for any of the following may not exceed $32,500:

a. Hazardous waste, construction permit.

b. Hazardous waste, operation permit.

c. Hazardous waste, postclosure permit, or clean closure plan approval.

d. Hazardous waste, corrective action permit.

2. The permit fee for a drinking water construction or operation permit, not including the operation license fee required under s. 403.861(7), shall be at least $500 and may not exceed $15,000.

3. The permit fee for a Class I injection well construction permit may not exceed $12,500.

4. The permit fee for any of the following permits may not exceed $10,000:

a. Solid waste, construction permit.

b. Solid waste, operation permit.

c. Class I injection well, operation permit.

5. The permit fee for any of the following permits may not exceed $7,500:

a. Air pollution, construction permit.

b. Solid waste, closure permit.

c. Domestic waste residuals, construction or operation permit.

d. Industrial waste, operation permit.

e. Industrial waste, construction permit.

6. The permit fee for any of the following permits may not exceed $5,000:

a. Domestic waste, operation permit.

b. Domestic waste, construction permit.

7. The permit fee for any of the following permits may not exceed $4,000:

a. Wetlands resource management—(dredge and fill and mangrove alteration).

b. Hazardous waste, research and development permit.

c. Air pollution, operation permit, for sources not subject to s. 403.0872.

d. Class III injection well, construction, operation, or abandonment permits.

8. The permit fee for a drinking water distribution system permit, including a general permit, shall be at least $500 and may not exceed $1,000.

9. The permit fee for Class V injection wells, construction, operation, and abandonment permits may not exceed $750.

10. The permit fee for domestic waste collection system permits may not exceed $500.

11. The permit fee for stormwater operation permits may not exceed $100.

12. Except as provided in subparagraph 8., the general permit fees for permits that require certification by a registered professional engineer or professional geologist may not exceed $500, and the general permit fee for other permit types may not exceed $100.

13. The fee for a permit issued pursuant to s. 403.816 is $5,000, and the fee for any modification of such permit requested by the applicant is $1,000.

14. The regulatory program and surveillance fees for facilities permitted pursuant to s. 403.088 or s. 403.0885, or for facilities permitted pursuant to s. 402 of the Clean Water Act, as amended, 33 U.S.C. ss. 1251 et seq., and for which the department has been granted administrative authority, shall be limited as follows:

a. The fees for domestic wastewater facilities shall not exceed $7,500 annually. The department shall establish a sliding scale of fees based on the permitted capacity and shall ensure smaller domestic waste dischargers do not bear an inordinate share of costs of the program.

b. The annual fees for industrial waste facilities shall not exceed $11,500. The department shall establish a sliding scale of fees based upon the volume, concentration, or nature of the industrial waste discharge and shall ensure smaller industrial waste dischargers do not bear an inordinate share of costs of the program.

c. The department may establish a fee, not to exceed the amounts in subparagraphs 5. and 6., to cover additional costs of review required for permit modification or construction engineering plans.

(b) If substantially similar air pollution sources are to be constructed or modified at the same facility, the applicant may submit a single application and permit fee for construction or modification of the sources at that facility. If substantially similar air pollution sources located at the same facility do not constitute a major source of air pollution subject to permitting under s. 403.0872, the applicant may submit a single application and permit fee for the operation of those sources. The department may develop, by rule, criteria for determining what constitutes substantially similar sources.

(c) The fee schedule shall be adopted by rule. The amount of each fee shall be reasonably related to the costs of permitting, field services, and related support activities for the particular permitting activity taking into consideration consistently applied standard cost-accounting principles and economies of scale. 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.

(d) Nothing in this subsection authorizes the construction or expansion of any stationary installation except to the extent specifically authorized by department permit or rule.

(e) For all domestic waste collection system permits and drinking water distribution system permits, the department shall adopt a fee schedule, by rule, based on a sliding scale relating to pipe diameter, length of the proposed main, or equivalent dwelling units, or any combination of these factors. The department shall require a separate permit application and fee for each noncontiguous project within the system.

(7) A permit issued pursuant to this section does not become a vested right in the permittee. The department may revoke any permit issued by it if it finds that the permitholder has:

(a) Submitted false or inaccurate information in the application for the permit;

(b) Violated law, department orders, rules, or conditions which directly relate to the permit;

(c) Failed to submit operational reports or other information required by department rule which directly relate to the permit and has refused to correct or cure such violations when requested to do so; or

(d) Refused lawful inspection under s. 403.091 at the facility authorized by the permit.

(8) 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.

(9) A violation of this section is punishable as provided in this chapter.

(10) Effective July 1, 2008, the minimum fee amounts shall be the minimum fees prescribed in this section, and such fee amounts shall remain in effect until the effective date of fees adopted by rule by the department.

**History.**—s. 1, ch. 71-203; s. 4, ch. 74-133; 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; s. 24, ch. 84-338; s. 11, ch. 86-186; s. 2, ch. 87-125; s. 17, ch. 88-393; s. 29, ch. 91-305; s. 2, ch. 92-132; s. 72, ch. 93-213; s. 1, ch. 97-103; s. 20, ch. 97-236; s. 4, ch. 2000-304; s. 5, ch. 2003-173; s. 19, ch. 2008-150; s. 46, ch. 2009-21; s. 13, ch. 2012-205.

**403.0871 Florida Permit Fee Trust Fund.**—There is established within the department a nonlapsing trust fund to be known as the "Florida Permit Fee Trust Fund." All funds received from applicants for permits pursuant to ss. 161.041, 161.053, 161.0535, 403.087(6), and 403.861(7)(a) 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 161. 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; s. 12, ch. 86-186; s. 30, ch. 91-305; s. 362, ch. 94-356; s. 60, ch. 96-321; s. 21, ch. 97-236; s. 47, ch. 2009-21.

**403.0872 Operation permits for major sources of air pollution; annual operation license fee.**—Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received from the United States Environmental Protection Agency, beginning January 2, 1995, each major source of air pollution, including electrical power plants certified under s. 403.511, must obtain from the department an operation permit for a major source of air pollution under this section. This operation permit is the only department operation permit for a major source of air pollution required for such source; provided, at the applicant's request, the department shall issue a separate acid rain permit for a major source of air pollution that is an affected source within the meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air pollution, except general permits issued pursuant to s. 403.814, must be issued in accordance with the procedures contained in this section and in accordance with chapter 120; however, to the extent that chapter 120 is inconsistent with the provisions of this section, the procedures contained in this section prevail.

(1) For purposes of this section, a major source of air pollution means a stationary source of air pollution, or any group of stationary sources within a contiguous area and under common control, which emits any regulated air pollutant and which is:

(a) A major source within the meaning of 42 U.S.C. s. 7412(a)(1);

(b) A major stationary source or major emitting facility within the meaning of 42 U.S.C. s. 7602(j) or 42 U.S.C. subchapter I, part C or part D;

(c) An affected source within the meaning of 42 U.S.C. s. 7651a(1);

(d) An air pollution source subject to standards or regulations under 42 U.S.C. s. 7411 or s. 7412; provided that a source is not a major source solely because of its regulation under 42 U.S.C. s. 7412(r); or

(e) A stationary air pollution source belonging to a category designated as a 40 C.F.R. part 70 source by regulations adopted by the administrator of the United States Environmental Protection Agency under 42 U.S.C. ss. 7661 et seq. The department shall exempt those facilities that are subject to this section solely because they are subject to requirements under 42 U.S.C. s. 7411 or s. 7412 or solely because they are subject to reporting requirements under 42 U.S.C. s. 7412 for as long as the exemption is available under federal law.

(2) An application for an operation permit for a major source of air pollution must be submitted in accordance with rules of the department governing permit applications. The department shall adopt rules defining the timing, content, and distribution of an application for a permit under this section. A permit application processing fee is not required. The department may issue an operation permit for a major source of air pollution only when it has reasonable assurance that the source applies pollution control technology, including fuel or raw material selection, necessary to enable it to comply with the standards or rules adopted by the department or an approved compliance plan for that source. If two or more major air pollution sources that belong to the same Major Group as described in the Standard Industrial Classification Manual, 1987, are operated at a single site, the owner may elect to receive a single operation permit covering all such sources at the site.

(a) An application for a permit under this section is timely and complete if it is submitted in accordance with department rules governing the timing of applications and substantially addresses the information specified in

completeness criteria determined by department rule in accordance with applicable regulations of the United States Environmental Protection Agency governing the contents of applications for permits under 42 U.S.C. s. 7661b(d). Unless the department requests additional information or otherwise notifies the applicant of incompleteness within 60 days after receipt of an application, the application is complete.

(b) Any permitted air pollution source that submits a timely and complete application for a permit under this section is entitled to operate in compliance with its existing air permit pending the conclusion of proceedings associated with its application. Notwithstanding the timing requirements of paragraph (c) and subsection (3), the department may process applications received during the first year of permit processing under this section, in a manner consistent with 42 U.S.C. s. 7661b(c).

(c) The department may request additional information necessary to process a permit application subsequent to a determination of completeness in accordance with s. 403.0876(1).

(3) Within 90 days after the date on which the department receives all information necessary to process an application for a permit under this section, the department shall issue a draft permit or a determination that the requested permit should be denied. A draft permit must contain all conditions that the department finds necessary to ensure that operation of the source will be in compliance with applicable law, rules, or compliance plans. If the department proposes to deny the permit application, the department's determination must provide an explanation for the denial. The department shall furnish a copy of each draft permit to the United States Environmental Protection Agency and to any contiguous state whose air quality could be affected or which is within 50 miles of the source pursuant to procedures established by department rule.

(4) The department shall require the applicant to publish notice of any draft permit in accordance with department rule. The department must accept public comment with respect to a draft permit for 30 days following the date of notice publication. The notice must be published in a newspaper of general circulation as defined in s. 403.5115(2). If comments received during this period result in a change in the draft permit, the department must issue a revised draft permit, which shall be supplied to the United States Environmental Protection Agency and to any contiguous state whose air quality could be affected or which is within 50 miles of the source.

(5) Any person whose substantial interests are affected by a draft permit or the denial determination may request an administrative hearing under ss. 120.569 and 120.57, in accordance with the rules of the department. A draft permit must notify the permit applicant of any review process applicable to the permit decision of the department. The department shall prescribe, by rule, a suitable standard format for such notification.

(6) If a hearing is not requested under ss. 120.569 and 120.57, the draft permit will become the department's proposed permit but does not become final until the time for federal review of the proposed permit has elapsed. The department shall furnish the United States Environmental Protection Agency a copy of each proposed permit and its written response to any comments regarding the permit submitted by contiguous states. If no objection to the proposed permit is made by the United States Environmental Protection Agency within the time established by 42 U.S.C. s. 7661d, the proposed permit must become final no later than 55 days after the date on which the proposed permit was mailed to the United States Environmental Protection Agency. The department shall issue a conformed copy of the final permit as soon as is practicable thereafter.

(7) If a draft permit is the subject of an administrative hearing under ss. 120.569 and 120.57, a proposed permit containing changes, if any, resulting from the hearing process, after the conclusion of the hearing, must be issued and a copy must be provided to the applicant, to the United States Environmental Protection Agency, and to any contiguous state whose air quality could be affected or which is within 50 miles of the source, as soon as practicable. The proposed permit shall not become final until the time for review, by the United States Environmental Protection Agency, of the proposed permit has elapsed. If comments from a contiguous state regarding the permit are received, the department must provide a written response to the applicant, to the state, and to the United States Environmental Protection Agency. If no objection to the proposed permit is made by the United States Environmental Protection Agency within the time established by 42 U.S.C. s. 7661d, the proposed permit must become final no later than 55 days after the date on which the proposed permit was mailed to the United States Environmental Protection Agency. The department shall issue a conformed copy of the final permit as soon as is practicable thereafter.

(8) If the administrator of the United States Environmental Protection Agency timely objects to a proposed permit under this section, the department must not issue a final permit until the objection is resolved or withdrawn. A copy of the written objection of the administrator must be provided to the permit applicant as soon as practicable after the department receives it. Within 45 days after the date on which the department serves the applicant with a copy of an objection by the United States Environmental Protection Agency to a proposed permit, the applicant may file a written reply to the objection. The written reply must include any supporting materials that the applicant desires to include in the record relevant to the issues raised by the objection. The written reply must be considered by the department in issuing a final permit to resolve the objection of the administrator. A final permit issued by the department to resolve an objection of the administrator is not subject to ss. 120.569 and 120.57.

(9) A final permit issued under this section is subject to judicial review under s. 120.68. If judicial review of a final permit results in material changes to the conditions of the permit, the department shall notify the United States Environmental Protection Agency and any state that is contiguous to this state whose air quality could be affected or that is within 50 miles of the source, pursuant to rules of the department.

(10) If the department is notified by the administrator of the United States Environmental Protection Agency that cause exists to terminate, modify, or revoke and reissue a permit under this section, the department shall, within 90 days after receipt of such notification, furnish to the administrator and the permittee a proposed determination of termination, modification, or revocation and reissuance as appropriate. Within 45 days after the date on which the department notifies the permittee that the United States Environmental Protection Agency proposes action regarding its permit, the permittee may file a written response concerning the proposed action. The written response must include any supporting materials that the permittee desires to include in the record relevant to the issues raised by the proposed action. The permittee’s written response must be considered by the department in formulating its proposed determination under this subsection.

(11) Each major source of air pollution permitted to operate in this state must pay between January 15 and April 1 of each year, upon written notice from the department, an annual operation license fee in an amount determined by department rule. The annual operation license fee shall be terminated immediately in the event the United States Environmental Protection Agency imposes annual fees solely to implement and administer the major source air-operation permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source’s previous year’s emissions and must be calculated by multiplying the applicable annual operation license fee factor times the tons of each regulated air pollutant actually emitted, as calculated in accordance with the department’s emissions computation and reporting rules. The annual fee shall only apply to those regulated pollutants,except carbon monoxide and greenhouse gases, for which an allowable numeric emission limiting standard is specified in the source’s most recent construction or operation permit; provided, however, that:

1. The license fee factor is $25 or another amount determined by department rule which ensures that the revenue provided by each year’s operation license fees is sufficient to cover all reasonable direct and indirect costs of the major stationary source air-operation permit program established by this section. The license fee factor may be increased beyond $25 only if the secretary of the department affirmatively finds that a shortage of revenue for support of the major stationary source air-operation permit program will occur in the absence of a fee factor adjustment. The annual license fee factor may never exceed $35.

2. The amount of each regulated air pollutant in excess of 4,000 tons per year emitted by any source, or group of sources belonging to the same Major Group as described in the Standard Industrial Classification Manual, 1987, may not be included in the calculation of the fee. Any source, or group of sources, which does not emit any regulated air pollutant in excess of 4,000 tons per year, is allowed a one-time credit not to exceed 25 percent of the first annual licensing fee for the prorated portion of existing air-operation permit application fees remaining upon commencement of the annual licensing fees.

3. If the department has not received the fee by March 1 of the calendar year, the permittee must be sent a written warning of the consequences for failing to pay the fee by April 1. If the fee is not postmarked by April 1 of the calendar year, the department shall impose, in addition to the fee, a penalty of 50 percent of the amount of

the fee, plus interest on such amount computed in accordance with s. 220.807. The department may not impose such penalty or interest on any amount underpaid, provided that the permittee has timely remitted payment of at least 90 percent of the amount determined to be due and remits full payment within 60 days after receipt of notice of the amount underpaid. The department may waive the collection of underpayment and shall not be required to refund overpayment of the fee, if the amount due is less than 1 percent of the fee, up to $50. The department may revoke any major air pollution source operation permit if it finds that the permitholder has failed to timely pay any required annual operation license fee, penalty, or interest.

4. Notwithstanding the computational provisions of this subsection, the annual operation license fee for any source subject to this section shall not be less than $250, except that the annual operation license fee for sources permitted solely through general permits issued under s. 403.814 shall not exceed $50 per year.

5. Notwithstanding the provisions of s. 403.087(6)(a)5.a., authorizing air pollution construction permit fees, the department may not require such fees for changes or additions to a major source of air pollution permitted pursuant to this section, unless the activity triggers permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a. Costs to issue and administer such permits shall be considered direct and indirect costs of the major stationary source air-operation permit program under s. 403.0873. The department shall, however, require fees pursuant to the provisions of s. 403.087(6)(a)5.a. for the construction of a new major source of air pollution that will be subject to the permitting requirements of this section once constructed and for activities triggering permitting requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

(b) Annual operation license fees collected by the department must be sufficient to cover all reasonable direct and indirect costs required to develop and administer the major stationary source air-operation permit program, which shall consist of the following elements to the extent that they are reasonably related to the regulation of major stationary air pollution sources, in accordance with United States Environmental Protection Agency regulations and guidelines:

1. Reviewing and acting upon any application for such a permit.

2. Implementing and enforcing the terms and conditions of any such permit, excluding court costs or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking emissions.

7. Implementing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

8. Any audits conducted under paragraph (c).

(c) An audit of the major stationary source air-operation permit program must be conducted 2 years after the United States Environmental Protection Agency has given full approval of the program to ascertain whether the annual operation license fees collected by the department are used solely to support any reasonable direct and indirect costs as listed in paragraph (b). A program audit must be performed biennially after the first audit.

(12) Permits issued under this section must allow changes within a permitted facility without requiring a permit revision, if the changes are not physical changes in, or changes in the method of operation of, the facility which increase the amount of any air pollutant emitted by the facility or which result in the emission of any air pollutant not previously emitted by the facility, and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions), provided that the facility provides the administrator and the department with 30 days' written, advance notice of the proposed changes. The department shall adopt rules implementing this flexibility requirement.

(13)(a) In order to ensure statewide consistency in the implementation of the national Acid Deposition Control Allowance Transfer System, a department district office or local pollution control program may not issue or administer permits under this section for any electrical power plant or any source that participates in the allowance transfer system.

(b) For emission units that are subject to continuous monitoring requirements under 42 U.S.C. ss. 7661-7661f or 40 C.F.R. part 75, compliance with nitrogen oxides emission limits shall be demonstrated based on a 30-day rolling average, except as specifically provided by 40 C.F.R. part 60 or part 76.

(14) In order to ensure statewide consistency in the permitting of major sources, a local pollution control program may not issue permits under this section for sources that belong to Major Group 26, Paper and Allied Products; for sources that belong to Major Group 28, Chemicals and Allied Products; or for sources that belong to Industry Number 2061, Cane Sugar, Except Refining, as defined in the Standard Industrial Classification Manual, 1987.

(15) Any permittee that operates in compliance with an air-operation permit issued under this section is deemed to be in compliance with applicable permit requirements of the Clean Air Act and all implementing state, local, and federal air pollution control rules and regulations and all provisions of this chapter, relating to air pollution, and rules adopted thereunder.

(16) The department shall adopt a rule to provide for a procedure for notice to the appropriate approved local pollution control programs, pursuant to s. 403.182, of any draft permits, amended draft permits, or final permits issued by the department.

(17) The administrator of the United States Environmental Protection Agency may intervene as a matter of right in any administrative or judicial proceeding relating to an operation permit for a major source of air pollution required under this section.

(18) The department shall require certification of all applications, submittals, and reports by a responsible official of a major source of air pollution and shall require the inclusion of those specific federal requirements listed at 42 U.S.C. s. 7661a(f)(1), (2), and (3) in all permits to which such terms apply.

**History.**—s. 3, ch. 92-132; s. 3, ch. 93-94; s. 2, ch. 94-321; s. 1, ch. 95-223; s. 3, ch. 95-292; s. 10, ch. 96-370; s. 130, ch. 96-410; s. 8, ch. 97-222; s. 22, ch. 97-236; s. 18, ch. 97-277; s. 26, ch. 2000-153; s. 59, ch. 2000-158; s. 13, ch. 2000-211; s. 13, ch. 2000-304; s. 17, ch. 2008-150; s. 85, ch. 2010-5; s. 18, ch. 2013-92.

**403.0873 Florida Air-Operation License Fee Account.**—The "Florida Air-Operation License Fee Account" is established as a nonlapsing account within the Department of Environmental Protection's Air Pollution Control Trust Fund. All license fees paid pursuant to s. 403.0872(11) shall be deposited in such account and must be used solely by the department and approved local programs under the advice and consent of the Legislature to pay the direct and indirect costs required to develop and administer the major stationary source air-operation permit program. Any approved local pollution control program that accepts funds from the department as reimbursement for services it performs in the implementation of the major source air-operation permit program, receives delegation from the department or the United States Environmental Protection Agency for implementation of the major source air-operation permit program, or performs functions, duties, or activities substantially similar to or duplicative of the services performed by the department or the United States Environmental Protection Agency in the implementation of the major source air-operation permit program is prohibited from collecting additional fees attributable to such services from any source permitted under s. 403.0872.

**History.**—s. 5, ch. 92-132; s. 3, ch. 94-321; s. 363, ch. 94-356.

**403.08735 Air emissions trading.**—

(1) GENERIC AIR EMISSIONS BUBBLE RULE.—The department shall promulgate by July 1, 1996, a generic air emissions bubble rule to the fullest extent consistent with federal law that includes all elements necessary to obtain approval from the United States Environmental Protection Agency to administer the program. The generic air emissions bubble rule shall eliminate the need for case-by-case federal determinations on individual emissions trades within a single facility as individual State Implementation Plan revisions. For purposes of promulgating a generic air emissions bubble rule:

(a) The term "bubble" shall mean an air pollution control strategy which allows multiunit aggregate emission limits to be established within a facility, in lieu of unit-specific emission limits, on a pollutant-specific basis at the request of the facility owner or operator. The application of a bubble to a facility would allow emissions at one or more emissions points or units to fluctuate within a facility as long as the multiunit limit is not exceeded. Multiunit

limits shall be established by aggregating unit-specific limits for all new or existing units being included in the bubble. The bubble shall also allow the department to establish, at the request of the owner or operator of a facility, alternative emission limits for individual units as long as the aggregated emissions limit for all involved units is not increased.

(b) The term "facility" shall mean all emissions units that are located on one or more contiguous or adjacent properties that are under common control of the same person or persons. For purposes of this section, the terms "plantwide" and "facilitywide" are used interchangeably.

(2) VOLUNTARY LIMITS ON AIR EMISSIONS.—The department shall adopt rules to allow facilities to voluntarily limit their emissions to avoid otherwise applicable requirements.

**History.**—s. 1, ch. 95-292; s. 36, ch. 99-5.

**403.0874 Air Pollution Control Trust Fund.**—

(1) The Air Pollution Control Trust Fund is established in and administered by the Department of Environmental Protection.

(2) Funds to be credited to and uses of the trust fund shall be administered in accordance with ss. 320.03, 376.60, 403.0872, and 403.0873.

(3) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of a fiscal year shall remain in the trust fund and shall be available for carrying out the purposes of the trust fund.

**History.**—s. 3, ch. 2015-8.

**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.**—

(1) 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 ss. 120.569 and 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.

(2)(a) A permit shall be approved or denied within 90 days after receipt of the original application, the last item of timely requested additional material, or the applicant's written request to begin processing the permit application.

(b) The failure of the department to approve or deny a permit for an underground injection well, within the 90-day time period shall not result in the automatic approval or denial of the permit and shall 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 such a permit within the 90-day period, the applicant may petition for a writ of mandamus to compel the department to act consistently with applicable regulatory requirements.

(c) The failure of the department to approve or deny an application for an operation permit for a major source of air pollution, as defined in s. 403.0872, within the 90-day time period shall not result in the automatic approval or denial of the permit and shall 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 an operation permit for a major source of air pollution within the 90-day period specified in s. 403.0872, the applicant or a

party who participated in the public comment process may petition for a writ of mandamus to compel the department to act.

(d) Permits issued pursuant to s. 403.088 or s. 403.0885 shall be processed in accordance with s. 403.0885(3).

(3)(a) The department shall establish a special unit for permit coordination and processing to provide expeditious processing of department permits which the district offices are unable to process expeditiously and to provide accelerated processing of certain permits or renewals for economic and operating stability. The ability of the department to process applications under this subsection in a more timely manner than allowed by subsections (1) and (2) is dependent upon the timely exchange of information between the applicant and the department and the intervention of outside parties as allowed by law. An applicant may request the processing of its permit application by the special unit if the application is from an area of high unemployment or low per capita income, is from a business or industry that is the primary employer within an area's labor market, or is in an industry with respect to which the complexities involved in the review of the application require special skills uniquely available in the headquarters office. The department may require the applicant to waive the 90-day time limitation for department issuance or denial of the permit once for a period not to exceed 90 days. The department may require a special fee to cover the direct cost of processing special applications in addition to normal permit fees and costs. The special fee may not exceed $10,000 per permit required. Applications for renewal permits, but not applications for initial permits, required for facilities pursuant to the Electrical Power Plant Siting Act or the Florida Electric Transmission Line Siting Act may be processed under this subsection. Personnel staffing the special unit shall have lengthy experience in permit processing.

(b) At the applicant's discretion and notwithstanding any other provisions of chapter 120, a permit processed under this subsection is subject to an expedited administrative hearing pursuant to ss. 120.569 and 120.57. To request such hearing, the applicant must notify the Division of Administrative Hearings, the department, and all other parties in writing within 15 days after his or her receipt of notice of assignment of an administrative law judge from the division. The division shall conduct a hearing within 45 days after receipt of the request for such expedited hearing.

**History.**—s. 2, ch. 80-66; s. 25, ch. 84-338; s. 13, ch. 86-186; s. 14, ch. 88-393; s. 6, ch. 92-132; s. 4, ch. 93-94; s. 73, ch. 93-213; s. 364, ch. 94-356; s. 131, ch. 96-410; s. 1006, ch. 97-103; s. 69, ch. 2006-230.

**403.0877 Certification by professionals regulated by the Department of Business and Professional Regulation.**—

(1) Nothing in this section shall be construed as specific authority for a water management district or the department to require certification by a professional engineer licensed under chapter 471, a professional landscape architect licensed under part II of chapter 481, a professional geologist licensed under chapter 492, or a professional surveyor and mapper licensed under chapter 472, for an activity that is not within the definition or scope of practice of the regulated profession.

(2) If an application for a permit or license to conduct an activity regulated under this chapter, chapter 373, chapter 376, or any permitting program delegated to a water management district by a state agency, or to undertake corrective action of such activity or program ordered by the department or a water management district, requires the services of a professional as enumerated in subsection (1), the department or governing board of a water management district may require, by rule, in conjunction with such an application or any submittals required as a condition of granting a permit or license, or in conjunction with the order of corrective action, such certification by the professional as is necessary to ensure that the proposed activity or corrective action is designed, constructed, operated, and maintained in accordance with applicable law and rules of the department or district and in conformity with proper and sound design principles, or other such certification by the professional as may be necessary to ensure compliance with applicable law or rules of the department or district. The department or governing board of a water management district may further require as a condition of granting a permit or license, or in conjunction with ordering corrective action that the professional certify upon completion of the permitted or licensed activity or corrective action that such activity or corrective action has, to the best of

his or her knowledge, been completed in substantial conformance with the plans and specifications approved by the department or board.

(3) The cost of such certifications by the professional shall be borne by the permittee or the person ordered to correct the permitted activity.

(4) A permitted or licensed activity or corrective action that is required to be so certified upon completion of the activity or action may not be placed into use or operation until the professional's certificate is filed with the department or board.

**History.**—s. 9, ch. 89-324; s. 31, ch. 91-305; s. 115, ch. 94-119; s. 53, ch. 94-218; s. 2, ch. 97-103.

**403.088 Water pollution operation permits; conditions.**—

(1) Without the written authorization of the department, a person may not discharge any waste into the waters of the state which, by itself or in combination with the wastes of other sources, reduces the quality of the receiving waters below the classification established for such waters. However, this section does not prohibit the application of pesticides to such waters for the control of insects, aquatic weeds, algae, or other pests if the application is performed in accordance with this section.

(a) Upon execution of the agreement required in s. 487.163(3), the department may develop a permit or other authorization as required by 33 U.S.C. s. 1342 for the application of pesticides. A person must obtain such permit or other authorization before applying pesticides to the waters of the state.

(b) In consultation with the Department of Agriculture and Consumer Services and the Fish and Wildlife Conservation Commission, the department shall also develop a general permit under s. 403.0885(2), for the application of pesticides.

(c) The department shall also enter into agreements with the Department of Agriculture and Consumer Services in the case of insect or other pest control, and with the Fish and Wildlife Conservation Commission in the case of aquatic weed, other aquatic pests, or algae control. Such agreements must provide for public health, welfare, and safety, as well as environmental factors, and must ensure that pesticides applied to waters of the state are regulated uniformly, including provisions for the coordination of agency staff and resources, through the implementation of permitting, compliance, and enforcement activities under s. 403.0885 and this section. Pesticides that are approved for a particular use by the United States Environmental Protection Agency or by the Department of Agriculture and Consumer Services and applied in accordance with registered label instructions, state standards for such application, including any permit or other authorization required by this subsection, and the Florida Pesticide Law, part I of chapter 487, are allowed a temporary deviation from the acute toxicity provisions of the department's rule establishing surface water quality standards, not to exceed the time necessary to control the target pests and only if the application does not reduce the quality of the receiving waters below the classification for such waters and is not likely to adversely affect any threatened or endangered species.

(2)(a) Any person intending to discharge wastes into waters of the state shall make application to the department for any appropriate permit required by this chapter. Application shall be made on a form prescribed by the department and shall contain such information as the department requires.

(b)1. 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. The department may not use the results from a field procedure or laboratory method to make such a finding or determine facility compliance unless the field procedure or laboratory method has been adopted by rule or noticed and approved by department order pursuant to department rule. Field procedures and laboratory methods must satisfy the quality assurance requirements of department rule and must produce data of known and verifiable quality. The results of field procedures and laboratory methods shall be evaluated for sources of uncertainty to assure suitability for the intended purposes as properly documented with each procedure or method.

2. 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;

4. Be valid for the period of time specified therein; and

5. Constitute the state National Pollutant Discharge Elimination System permit when issued pursuant to the authority in s. 403.0885.

(d) An operation permit may be renewed upon application to the department if the discharge complies with permit conditions and applicable statutes and rules. No operation permit shall be renewed or issued if the department finds that the discharge will not comply with permit conditions or applicable statutes and rules.

(e) However, if the discharge will not meet permit conditions or applicable statutes and rules, the department may issue, renew, revise, or reissue the operation permit if:

1. The applicant is constructing, installing, or placing into operation, or has submitted plans and a reasonable schedule for constructing, installing, or placing into operation, an approved pollution abatement facility or alternative waste disposal system;

2. 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 alternative waste disposal system;

3. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;

4. The granting of an operation permit will be in the public interest;

5. The discharge will not be unreasonably destructive to the quality of the receiving waters; or

6. A water quality credit trade that meets the requirements of s. 403.067.

(f) A permit issued, renewed, or reissued pursuant to paragraph (e) shall be accompanied by an order establishing a schedule for achieving compliance with all permit conditions. Such permit may require compliance with the accompanying order.

(g) The Legislature finds that the restoration of the South Florida ecosystem is in the public interest. Accordingly, whenever a facility to be constructed, operated, or maintained in accordance with s. 373.1501, s. 373.1502, s. 373.4595, or s. 373.4592 is subjected to permitting requirements pursuant to chapter 373 or this chapter, and the issuance of the initial permit for a new source, a new discharger, or a recommencing discharger is subjected to a request for hearing pursuant to s. 120.569, the administrative law judge may, upon motion by the permittee, issue a recommended order to the secretary who, within 5 days, shall issue an order authorizing the interim construction, operation, and maintenance of the facility if it complies with all uncontested conditions of the proposed permit and all other conditions recommended by the administrative law judge during the period until the final agency action on the permit.

1. An order authorizing such interim construction, operation, and maintenance shall be granted if requested by motion and no party opposes it.

2. If a party to the administrative hearing pursuant to ss. 120.569 and 120.57 opposes the motion, the administrative law judge shall issue a recommended order granting the motion if the administrative law judge finds that:

a. The facility is likely to receive the permit; and

b. The environment will not be irreparably harmed by the construction, operation, or maintenance of the facility pending final agency action on the permit.

3. Prior to granting a contested motion for interim construction, operation, or maintenance of a facility regulated or otherwise permitted by s. 373.1501, s. 373.1502, s. 373.4595, or s. 373.4592, the administrative law judge shall conduct a hearing using the summary hearing process defined in s. 120.574, which shall be mandatory for motions made pursuant to this paragraph. Notwithstanding the provisions of s. 120.574(1), summary hearing proceedings for these facilities shall begin within 30 days of the motion made by the permittee. Within 15 days of

the conclusion of the summary proceeding, the administrative law judge shall issue a recommended order either denying or approving interim construction, operation, or maintenance of the facility, which shall be submitted to the secretary who shall within 5 days thereafter, enter an order granting or denying interim construction operation or maintenance of the facility. The order shall remain in effect until final agency action is taken on the permit.

(3)(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.

(4) Notwithstanding any act to the contrary, if the discharge from any sewage disposal or treatment plant is permitted pursuant to this chapter and by a local pollution control program, the discharge shall be deemed lawful. Further, any person, firm, corporation, or public body that constructs, reconstructs, extends, or increases the capacity or volume of any sewage disposal or treatment plant pursuant to permits or authorizations under this chapter and through any local pollution control program shall not be subject to an action by the state attorney to restrain, enjoin, or otherwise prevent such construction, reconstruction, extension, or increase.

**History.**—ss. 2, 3, 5, ch. 71-203; s. 1, ch. 73-360; s. 5, ch. 74-133; s. 2, ch. 76-112; s. 1, ch. 77-174; s. 14, ch. 78-95; s. 2, ch. 78-98; s. 97, ch. 79-164; s. 60, ch. 83-218; s. 14, ch. 86-186; s. 74, ch. 93-213; s. 365, ch. 94-356; s. 1, ch. 97-98; s. 159, ch. 99-8; s. 1, ch. 99-11; s. 27, ch. 2000-153; s. 8, ch. 2001-172; s. 5, ch. 2004-64; s. 2, ch. 2008-189; s. 47, ch. 2009-86; ss. 4, 11, ch. 2010-277; HJR 5-A, Special Session A; s. 19, ch. 2013-92; s. 3, ch. 2013-146.

**403.0881 Wastewater or reuse or disposal systems or water treatment works; construction permits.**—The department may issue construction permits under s. 403.087 for wastewater systems, treatment works, or reuse or disposal systems based upon review of a preliminary design report, application forms, and other required information, all of which shall be formulated by department rule. Detailed construction plans and specifications shall not be required prior to issuance of a permit or a modification to a permit required under s. 403.087 or an operation permit required under s. 403.0885 unless such plans and specifications are required to secure federal funding and the project is expected to receive federal funding. Upon a demonstration that a system constructed in accordance with a construction permit issued pursuant to s. 403.087 operates as designed, the department shall issue a permit for operation of the system. However, an operation permit may be issued prior to the initiation of discharge, provided the department has reasonable assurance, based on the system design, that the provisions of s. 403.088 will be met.

**History.**—s. 3, ch. 87-125; s. 75, ch. 93-213.

**403.0882 Discharge of demineralization concentrate.**—

(1) The Legislature finds and declares that it is in the public interest to conserve and protect water resources, provide adequate water supplies and provide for natural systems, and promote brackish water demineralization as an alternative to withdrawals of freshwater groundwater and surface water by removing institutional barriers to demineralization and, through research, including demonstration projects, to advance water and water byproduct treatment technology, sound waste byproduct disposal methods, and regional solutions to water resources issues. In order to promote the state objective of alternative water supply development, including the use of demineralization technologies, and to encourage the conservation and protection of the state's natural resources, the concentrate resulting from demineralization must be classified as potable water byproduct regardless of flow quantity and must be appropriately treated and discharged or reused.

(2) For the purposes of this section, the term:

(a) "Demineralization concentrate" means the concentrated byproduct water, brine, or reject water produced by ion exchange or membrane separation technologies such as reverse osmosis, membrane softening, ultrafiltration, membrane filtration, electrodialysis, and electrodialysis reversal used for desalination, softening, or reducing total dissolved solids during water treatment for public water supply purposes.

(b) "Small water utility business" means any facility that distributes potable water to two or more customers with a concentrate discharge of less than 50,000 gallons per day.

(3) The department shall initiate rulemaking no later than October 1, 2001, to address facilities that discharge demineralization concentrate. The department shall convene a technical advisory committee to assist in the development of the rules, which committee shall include one representative each from the demineralization industry, local government, water and wastewater utilities, the engineering profession, business, and environmental organizations. The technical advisory committee shall also include one member representing the five water management districts and one representative from the Fish and Wildlife Research Institute. In convening the technical advisory committee, consideration must be given to geographical balance. The rules must address, at a minimum:

(a) Permit application forms for concentrate disposal;

(b) Specific options and requirements for demineralization concentrate disposal, including a standardized list of effluent and monitoring parameters, which may be adjusted or expanded by the department as necessary to protect water quality;

(c) Specific requirements and accepted methods for evaluating mixing of effluent in receiving waters; and

(d) Specific toxicity provisions.

(4)(a) For facilities that discharge demineralization concentrate, the failure of whole effluent toxicity tests predominantly due to the presence of constituents naturally occurring in the source water, limited to calcium, potassium, sodium, magnesium, chloride, bromide, and other constituents designated by the department, may not be the basis for denial of a permit, denial of a permit renewal, revocation of a permit, or other enforcement action by the department as long as the volume of water necessary to achieve water quality standards is available within a distance not in excess of two times the natural water depth at the point of discharge under all flow conditions.

(b) If failure of whole effluent toxicity tests is due predominately to the presence of the naturally occurring constituents identified in paragraph (a), the department shall issue a permit for the demineralization concentrate discharge if:

1. The volume of water necessary to achieve water quality standards is available within a distance not in excess of two times the natural water depth at the point of discharge under all flow conditions; and

2. All other permitting requirements are met.

A variance for toxicity under the circumstance described in this paragraph is not required.

(c) Facilities that fail to meet the requirements of this subsection may be permitted in accordance with department rule, including all applicable moderating provisions such as variances, exemptions, and mixing zones.

(5) Blending of demineralization concentrate with reclaimed water shall be allowed in accordance with the department's reuse rules.

(6) This subsection applies only to small water utility businesses.

(a) The discharge of demineralization concentrate from small water utility businesses is presumed to be allowable and permittable in all waters in the state if:

1. The discharge meets the effluent limitations in s. 403.086(4), except that high level disinfection is not required unless the presence of fecal coliforms in the source water will result in the discharge not meeting applicable water quality standards;

2. The discharge of demineralization concentrate achieves a minimum of 4-to-1 dilution within a distance not in excess of two times the natural water depth at the point of discharge under all flow conditions; and

3. The point of discharge is located at a reasonably accessible point that minimizes water quality impacts to the greatest extent possible.

(b) The presumption in paragraph (a) may be overcome only by a demonstration that one or more of the following conditions is present:

1. The discharge will be made directly into an Outstanding Florida Water, except as provided in chapter 90-262, Laws of Florida;

2. The discharge will be made directly to Class I or Class II waters;

3. The discharge will be made to a water body having a total maximum daily load established by the department and the discharge will cause or contribute to a violation of the established load;

4. The discharge fails to meet the requirements of the antidegradation policy contained in the department rules;

5. The discharge will be made to a sole-source aquifer;

6. The discharge fails to meet applicable surface water and groundwater quality standards; or

7. The results of any toxicity test performed by the applicant under paragraph (d) or by the department indicate that the discharge does not meet toxicity requirements at the boundary of the mixing zone under subparagraph (a)2.

(c) If one or more of the conditions in paragraph (b) has been demonstrated, the department may:

1. Require more stringent effluent limitations;

2. Require relocation of the discharge point or a change in the method of discharge;

3. Limit the duration or volume of the discharge; or

4. Prohibit the discharge if there is no alternative that meets the conditions of subparagraphs 1.-3.

(d) For facilities owned by small water utility businesses, the department may not:

1. Require those businesses to perform toxicity testing at other than the time of permit application, permit renewal, or any requested permit modification, unless the initial toxicity test or any subsequent toxicity test performed by the department does not meet toxicity requirements.

2. Require those businesses to obtain a water-quality-based effluent limitation determination.

(7) The department may adopt additional rules for the regulation of demineralization and to administer this section and s. 403.061(11)(b).

**History.**—s. 43, ch. 97-160; s. 1, ch. 2001-188; s. 12, ch. 2004-264.

**403.0885 Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) Program.**—

(1) The Legislature finds and declares that it is in the public interest to promote effective and efficient regulation of the discharge of pollutants into waters of the state and eliminate duplication of permitting programs by the United States Environmental Protection Agency under s. 402 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and the department under this chapter. It is further found that state implementation of the federal NPDES program, with sufficient time for legislative revision prior to the implementation of the state NPDES permit program by the department, would promote the orderly establishment of a state-administered NPDES program. It is the specific intent of the Legislature that permit fees charged by the department for processing of federally approved NPDES permits be adequate to cover the entire cost to the department of program management, for reviewing and acting upon any permit application, and to cover the cost of surveillance and other field services of any permits issued pursuant to this section.

(2) The department is empowered to establish a state NPDES program in accordance with s. 402 of the Clean Water Act, as amended. The department shall have the power and authority to assume the NPDES permitting program from the United States Environmental Protection Agency and to implement the program, including the general permitting program under 40 C.F.R. s. 122.28 and the pretreatment program under 40 C.F.R. part 403, in accordance with s. 402(b) of the Clean Water Act, as amended, and 40 C.F.R. part 123. Variance, thermal variance, and provisions for relief from criteria set forth in the Clean Water Act, as amended, and corresponding United States Environmental Protection Agency regulations shall be part of the assumed NPDES permitting program. The department may not accept authorization to administer a state NPDES program for municipal stormwater for a period of 4 years following federal approval of the state NPDES program. The provisions governing upset and bypass conditions contained in 40 C.F.R. s. 122.41 shall apply to the state National Pollutant Discharge Elimination System Program. The state NPDES permit shall be the sole permit issued by the state under this chapter regulating the discharge of pollutants or wastes into surface waters within the state for discharges covered by the United States Environmental Protection Agency approved state NPDES program. This legislative authority is intended to be sufficient to enable the department to qualify for delegation of the federal NPDES program to the state and

operate such program in accordance with federal law. Only that portion of the facility permit which authorizes a discharge pursuant to s. 402 of the Clean Water Act, as amended, shall be submitted to the United States Environmental Protection Agency for review under that section. To the extent other sections of this chapter apply and do not conflict with federal requirements, the application of such sections to discharges regulated under this section is not prohibited.

(3) An application for an NPDES permit and other approvals from the state relating to the permitted activity shall be granted or denied by the department within the time allowed for permit review under 40 C.F.R. part 124, subpart A. Other than for stormwater discharge permitting, the decision on issuance or denial of such permit may not be delegated to another agency or governmental authority. The department is specifically exempted from the time limitations provided in ss. 120.60 and 403.0876; provided that upon timely application for renewal, a permit issued under this section shall not expire until the application has been finally acted upon or until the last day for seeking judicial review of the agency order or a later date fixed by order of the reviewing court. However, if the department fails to render a permitting decision within the time allowed by 40 C.F.R. part 124, subpart A, or a memorandum of agreement executed by the department and the United States Environmental Protection Agency, whichever is shorter, the applicant may apply for an order from the circuit court requiring the department to render a decision within a specified time.

(4) The department shall respond, in writing, to any written comments on a pending application for a state NPDES permit which the department receives from the executive director, or his or her designee, of the Fish and Wildlife Conservation Commission on matters within the commenting agency's jurisdiction. The department's response shall not constitute agency action for purposes of ss. 120.569 and 120.57 or other provisions of chapter 120.

(5) Certified aquaculture activities under s. 597.004 that have individual production units whose annual production and water discharge are less than the parameters established by the NPDES program are exempt from wastewater management regulations. For purposes herein, the term "individual production units" shall be determined by rule of the Department of Agriculture and Consumer Services.

**History.**—s. 23, ch. 88-393; s. 16, ch. 92-132; s. 76, ch. 93-213; s. 366, ch. 94-356; s. 132, ch. 96-410; s. 1007, ch. 97-103; s. 16, ch. 98-203; s. 22, ch. 98-333; s. 204, ch. 99-245.

**403.08852 Clarification of requirements under rule 62-302.520(2), F.A.C.**—For purposes of rule 62-302.520(2), Florida Administrative Code, new sources of heated water discharges shall include an expansion, modification, alteration, replacement, or repair of an existing source only if that charge increases the potential thermal loading to surface waters of the state by 10 percent or more compared to the potential thermal loading from that source as of August 1972.

**History.**—s. 6, ch. 95-215.

**403.0891 State, regional, and local stormwater management plans and programs.**—The department, the water management districts, and local governments shall have the responsibility for the development of mutually compatible stormwater management programs.

(1) The department shall include goals in the water resource implementation rule for the proper management of stormwater.

(2) Each water management district to which the state's stormwater management program is delegated shall establish district and, where appropriate, watershed or drainage basin stormwater management goals which are consistent with the goals adopted by the state and with plans adopted pursuant to ss. 373.451-373.4595, the Surface Water Improvement and Management Act.

(3)(a) Each local government required by chapter 163 to submit a comprehensive plan, whose plan is submitted after July 1, 1992, and the others when updated after July 1, 1992, in the development of its stormwater management program described by elements within its comprehensive plan shall consider the water resource implementation rule, district stormwater management goals, plans approved pursuant to the Surface Water Improvement and Management Act, ss. 373.451-373.4595, and technical assistance information provided by the water management districts pursuant to s. 373.711.

(b) Local governments are encouraged to consult with the water management districts, the Department of Transportation, and the department before adopting or updating their local government comprehensive plan or public facilities report as required by s. 189.08, whichever is applicable.

(4) The department, in coordination and cooperation with water management districts and local governments, shall conduct a continuing review of the costs of stormwater management systems and the effect on water quality and quantity, and fish and wildlife values. The department, the water management districts, and local governments shall use the review for planning purposes and to establish priorities for watersheds and stormwater management systems which require better management and treatment of stormwater with emphasis on the costs and benefits of needed improvements to stormwater management systems to better meet needs for flood protection and protection of water quality, and fish and wildlife values.

(5) The results of the review shall be maintained by the department and the water management districts and shall be provided to appropriate local governments or other parties on request. The results also shall be used in the development of the goals developed pursuant to subsections (1) and (2).

(6) The department and the Department of Economic Opportunity, in cooperation with local governments in the coastal zone, shall develop a model stormwater management program that could be adopted by local governments. The model program shall contain dedicated funding options, including a stormwater utility fee system based upon an equitable unit cost approach. Funding options shall be designed to generate capital to retrofit existing stormwater management systems, build new treatment systems, operate facilities, and maintain and service debt.

**History.**—s. 15, ch. 86-186; s. 32, ch. 89-279; s. 73, ch. 93-206; s. 367, ch. 94-356; s. 25, ch. 97-160; s. 23, ch. 2010-205; s. 62, ch. 2012-96; s. 86, ch. 2014-22.

**403.0893 Stormwater funding; dedicated funds for stormwater management.**—In addition to any other funding mechanism legally available to local government to construct, operate, or maintain stormwater systems, a county or municipality may:

(1) Create one or more stormwater utilities and adopt stormwater utility fees sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3);

(2) Establish and set aside, as a continuing source of revenue, other funds sufficient to plan, construct, operate, and maintain stormwater management systems set out in the local program required pursuant to s. 403.0891(3); or

(3) Create, alone or in cooperation with counties, municipalities, and special districts pursuant to the Interlocal Cooperation Act, s. 163.01, one or more stormwater management system benefit areas. All property owners within said area may be assessed a per acreage fee to fund the planning, construction, operation, maintenance, and administration of a public stormwater management system for the benefited area. Any benefit area containing different land uses which receive substantially different levels of stormwater benefits shall include stormwater management system benefit subareas which shall be assessed different per acreage fees from subarea to subarea based upon a reasonable relationship to benefits received. The fees shall be calculated to generate sufficient funds to plan, construct, operate, and maintain stormwater management systems called for in the local program required pursuant to s. 403.0891(3). For fees assessed pursuant to this section, counties or municipalities may use the non-ad valorem levy, collection, and enforcement method as provided for in chapter 197.

**History.**—s. 16, ch. 86-186; s. 34, ch. 89-279.

**403.0896 Training and assistance for stormwater management system personnel.**—The Stormwater Management Assistance Consortium of the State University System, working in cooperation with the community colleges in the state, interested accredited private colleges and universities, the department, the water management districts, and local governments, shall develop training and assistance programs for persons responsible for designing, building, inspecting, or operating and maintaining stormwater management systems.

**History.**—s. 33, ch. 89-279.

**403.091 Inspections.**—

(1)(a) Any duly authorized representative of the department may at any reasonable time enter and inspect, 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:

1. A hazardous waste generator, transporter, or facility or other air or water contaminant source;

2. A discharger, including any nondomestic discharger which introduces any pollutant into a publicly owned treatment works;

3. Any facility, as defined in s. 376.301; or

4. A resource recovery and management facility

is located or is being constructed or installed or where records which are required under this chapter, ss. 376.30-376.317, or department rule are kept.

(b) Any duly authorized representative may at reasonable times have access to and copy any records required under this chapter or ss. 376.30-376.317; inspect any monitoring equipment or method; sample for any pollutants as defined in s. 376.301, effluents, or wastes which the owner or operator of such source may be discharging or which may otherwise be located on or underlying the owner's or operator's property; and obtain any other information necessary to determine compliance with permit conditions or other requirements of this chapter, ss. 376.30-376.317, or department rules.

(c) No person shall refuse reasonable 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.

(2) An inspection pursuant to subsection (1) may be conducted only after:

(a) Consent for the inspection is received from the owner, operator, or person in charge; or

(b) The appropriate inspection warrant as provided in this section is obtained.

(3)(a) An inspection warrant as authorized by this chapter may be issued by a judge of any county court or circuit court of this state which has jurisdiction of the place or thing to be searched.

(b) Upon proper affidavit being made, an inspection warrant may be issued under the provisions of this chapter or ss. 376.30-376.317:

1. When it appears that the properties to be inspected may be connected with or contain evidence of the violation of any of the provisions of this chapter or ss. 376.30-376.317 or any rule properly promulgated thereunder; or

2. When the inspection sought is an integral part of a larger scheme of systematic routine inspections which are necessary to, and consistent with, the continuing efforts of the department to ensure compliance with the provisions of this chapter or ss. 376.30-376.317 and any rules adopted thereunder.

(c) The judge shall, before issuing the warrant, have the application for the warrant duly sworn to and subscribed by a representative of the department; and may receive further testimony from witnesses, supporting affidavits, or depositions in writing to support the application. The affidavit and further proof, if had or required, shall set forth the facts tending to establish the grounds specified in paragraph (b) or the reasons for believing that such grounds exist.

(d) Upon examination of the application and proofs submitted and if satisfied that cause exists for the issuing of the inspection warrant, the judge shall thereupon issue a warrant, signed by him or her with the name of his or her office, to any department representative, which warrant will authorize the representative forthwith to inspect the property described in the warrant.

**History.**—s. 10, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 80-302; s. 6, ch. 82-27; s. 26, ch. 84-338; s. 25, ch. 86-159; s. 9, ch. 89-188; s. 69, ch. 91-221; s. 3, ch. 97-103; s. 81, ch. 2007-5.

**403.092 Package sewage treatment facilities; inspection.**—The department 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; s. 368, ch. 94-356.

**403.111 Confidential records.**—

(1) Any information, other than effluent data and those records described in 42 U.S.C. s. 7661a(b)(8), relating to secret processes or secret methods of manufacture or production, or relating to costs of production, profits, or other financial information which is otherwise not public record, which may be required, ascertained, or discovered by inspection or investigation shall be exempt from the provisions of s. 119.07(1), shall not be disclosed in public hearings, and shall be kept confidential by any member, officer, or employee of the department, upon a showing satisfactory to the department that the information should be kept confidential. The person from whom the information is obtained must request that the department keep such information confidential and must inform the department of the basis for the claim of confidentiality. The department shall, subject to notice and opportunity for hearing, determine whether the information requested to be kept confidential should or should not be kept confidential. The department shall determine whether the information submitted should be kept confidential pursuant to the public purpose test as stated in [1]s. 119.14(4)(b)3.

(2) Nothing in this section shall be construed to prevent the use of such records in judicial or administrative proceedings when ordered to be produced by appropriate subpoena or by order of the court or an administrative law judge. No such subpoena or order of the court or administrative law judge 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.

(3) Information submitted by or required of permit applicants or permittees pursuant to s. 403.0885 is not subject to the provisions of this section but is subject to the provisions of 40 C.F.R. s. 122.7.

**History.**—s. 12, ch. 67-436; ss. 26, 35, ch. 69-106; s. 6, ch. 74-133; s. 1, ch. 90-74; s. 5, ch. 93-94; s. 77, ch. 93-213; s. 239, ch. 96-406; s. 133, ch. 96-410.

[1]**Note.**—Repealed by s. 1, ch. 95-217.

**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) Except as provided in paragraph (2)(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. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively in all cases in which the department seeks administrative

penalties that do not exceed $10,000 per assessment as calculated in accordance with subsections (3), (4), (5), (6), and (7). Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty assessed pursuant to subsection (3), subsection (4), or subsection (5) against a public water system serving a population of more than 10,000 shall be not less than $1,000 per day per violation. The department shall not impose administrative penalties in excess of $10,000 in a notice of violation. The department shall not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

(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. If the department is unable to effect service by certified mail, the notice of violation may be hand delivered or personally served in accordance with chapter 48. 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, penalty assessment, or damages may be included with the notice. When the department is seeking to impose an administrative penalty for any violation by issuing a notice of violation, any corrective action needed to correct the violation or damages caused by the violation must be pursued in the notice of violation or they are waived. 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, unless the respondent files a written notice with the department within this time period opting out of the administrative process initiated by the department to impose administrative penalties. Any respondent choosing to opt out of the administrative process initiated by the department in an action that seeks the imposition of administrative penalties must file a written notice with the department within 20 days after service of the notice of violation opting out of the administrative process. A respondent's decision to opt out of the administrative process does not preclude the department from initiating a state court action seeking injunctive relief, damages, and the judicial imposition of civil penalties.

(d) If a person timely files a petition challenging a notice of violation, that person will thereafter be referred to as the respondent. The hearing requested by the respondent shall be held within 180 days after the department has referred the initial petition to the Division of Administrative Hearings unless the parties agree to a later date. The department has the burden of proving with the preponderance of the evidence that the respondent is responsible for the violation. No administrative penalties should be imposed unless the department satisfies that burden. Following the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of an administrative penalty. When the department seeks to enforce that portion of a final order imposing administrative penalties pursuant to s. 120.69, the respondent shall not assert as a defense the inappropriateness of the administrative remedy. The department retains its final-order authority in all administrative actions that do not request the imposition of administrative penalties.

(e) After filing a petition requesting a formal hearing in response to a notice of violation in which the department imposes an administrative penalty, a respondent may request that a private mediator be appointed to mediate the dispute by contacting the Florida Conflict Resolution Consortium within 10 days after receipt of the initial order from the administrative law judge. The Florida Conflict Resolution Consortium shall pay all of the costs of the mediator and for up to 8 hours of the mediator's time per case at $150 per hour. Upon notice from the respondent, the Florida Conflict Resolution Consortium shall provide to the respondent a panel of possible mediators from the area in which the hearing on the petition would be heard. The respondent shall select the mediator and notify the Florida Conflict Resolution Consortium of the selection within 15 days of receipt of the proposed panel of mediators. The Florida Conflict Resolution Consortium shall provide all of the administrative support for the mediation process. The mediation must be completed at least 15 days before the final hearing date set by the administrative law judge.

(f) In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent shall be entitled to an award of

attorney's fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(e). No award of attorney's fees as provided by this subsection shall exceed $15,000.

(g) Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law. Nothing in this subsection shall limit the department's authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief. When the department exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the department must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of $10,000 for violations not specifically included in the administrative penalty schedule, or for multiple or multiday violations alleged to exceed a total of $10,000. The department also retains the authority provided in ss. 403.131, 403.141, and this section to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, either before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. Any case filed in state court because it is alleged to exceed a total of $10,000 in penalties may be settled in the court action for less than $10,000.

(h) Chapter 120 shall apply to any administrative action taken by the department or any delegated program pursuing administrative penalties in accordance with this section.

(3) Except for violations involving hazardous wastes, asbestos, or underground injection, administrative penalties must be calculated according to the following schedule:

(a) For a drinking water contamination violation, the department shall assess a penalty of $2,000 for a Maximum Containment Level (MCL) violation; plus $1,000 if the violation is for a primary inorganic, organic, or radiological Maximum Contaminant Level or it is a fecal coliform bacteria violation; plus $1,000 if the violation occurs at a community water system; and plus $1,000 if any Maximum Contaminant Level is exceeded by more than 100 percent. For failure to obtain a clearance letter prior to placing a drinking water system into service when the system would not have been eligible for clearance, the department shall assess a penalty of $3,000.

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of $1,000. For a domestic or industrial wastewater violation not involving a surface water or groundwater quality violation, the department shall assess a penalty of $2,000 for an unpermitted or unauthorized discharge or effluent-limitation exceedance. For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surface water or groundwater quality violation, the department shall assess a penalty of $5,000.

(c) For a dredge and fill or stormwater violation, the department shall assess a penalty of $1,000 for unpermitted or unauthorized dredging or filling or unauthorized construction of a stormwater management system against the person or persons responsible for the illegal dredging or filling, or unauthorized construction of a stormwater management system plus $2,000 if the dredging or filling occurs in an aquatic preserve, Outstanding Florida Water, conservation easement, or Class I or Class II surface water, plus $1,000 if the area dredged or filled is greater than one-quarter acre but less than or equal to one-half acre, and plus $1,000 if the area dredged or filled is greater than one-half acre but less than or equal to one acre. The administrative penalty schedule shall not apply to a dredge and fill violation if the area dredged or filled exceeds one acre. The department retains the authority to seek the judicial imposition of civil penalties for all dredge and fill violations involving more than one acre. The department shall assess a penalty of $3,000 for the failure to complete required mitigation, failure to record a required conservation easement, or for a water quality violation resulting from dredging or filling activities, stormwater construction activities or failure of a stormwater treatment facility. For stormwater management systems serving less than 5 acres, the department shall assess a penalty of $2,000 for the failure to properly or timely construct a stormwater management system. In addition to the penalties authorized in this subsection, the department shall assess a penalty of $5,000 per violation against the contractor or agent of the owner or tenant that conducts unpermitted or unauthorized dredging or filling. For purposes of this paragraph, the

preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer shall not make that person an agent of the owner or tenant.

(d) For mangrove trimming or alteration violations, the department shall assess a penalty of $5,000 per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit as required by s. 403.9328. For purposes of this paragraph, the preparation or signing of a permit application by a person currently licensed under chapter 471 to practice as a professional engineer shall not make that person an agent of the owner or tenant.

(e) For solid waste violations, the department shall assess a penalty of $2,000 for the unpermitted or unauthorized disposal or storage of solid waste; plus $1,000 if the solid waste is Class I or Class III (excluding yard trash) or if the solid waste is construction and demolition debris in excess of 20 cubic yards, plus $1,000 if the waste is disposed of or stored in any natural or artificial body of water or within 500 feet of a potable water well, plus $1,000 if the waste contains PCB at a concentration of 50 parts per million or greater; untreated biomedical waste; friable asbestos greater than 1 cubic meter which is not wetted, bagged, and covered; used oil greater than 25 gallons; or 10 or more lead acid batteries. The department shall assess a penalty of $3,000 for failure to properly maintain leachate control; unauthorized burning; failure to have a trained spotter on duty at the working face when accepting waste; failure to provide access control for three consecutive inspections. The department shall assess a penalty of $2,000 for failure to construct or maintain a required stormwater management system.

(f) For an air emission violation, the department shall assess a penalty of $1,000 for an unpermitted or unauthorized air emission or an air-emission-permit exceedance, plus $1,000 if the emission results in an air quality violation, plus $3,000 if the emission was from a major source and the source was major for the pollutant in violation; plus $1,000 if the emission was more than 150 percent of the allowable level.

(g) For storage tank system and petroleum contamination violations, the department shall assess a penalty of $5,000 for failure to empty a damaged storage system as necessary to ensure that a release does not occur until repairs to the storage system are completed; when a release has occurred from that storage tank system; for failure to timely recover free product; or for failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued. The department shall assess a penalty of $3,000 for failure to timely upgrade a storage tank system. The department shall assess a penalty of $2,000 for failure to conduct or maintain required release detection; failure to timely investigate a suspected release from a storage system; depositing motor fuel into an unregistered storage tank system; failure to timely assess or remediate petroleum contamination; or failure to properly install a storage tank system. The department shall assess a penalty of $1,000 for failure to properly operate, maintain, or close a storage tank system.

(4) In an administrative proceeding, in addition to the penalties that may be assessed under subsection (3), the department shall assess administrative penalties according to the following schedule:

(a) For failure to satisfy financial responsibility requirements or for violation of s. 377.371(1), $5,000.

(b) For failure to install, maintain, or use a required pollution control system or device, $4,000.

(c) For failure to obtain a required permit before construction or modification, $3,000.

(d) For failure to conduct required monitoring or testing; failure to conduct required release detection; or failure to construct in compliance with a permit, $2,000.

(e) For failure to maintain required staff to respond to emergencies; failure to conduct required training; failure to prepare, maintain, or update required contingency plans; failure to adequately respond to emergencies to bring an emergency situation under control; or failure to submit required notification to the department, $1,000.

(f) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to prepare, submit, maintain, or use required reports or other required documentation, $500.

(5) Except as provided in subsection (2) with respect to public water systems serving a population of more than 10,000, for failure to comply with any other departmental regulatory statute or rule requirement not otherwise identified in this section, the department may assess a penalty of $500.

(6) For each additional day during which a violation occurs, the administrative penalties in subsection (3), subsection (4), and subsection (5) may be assessed per day per violation.

(7) The history of noncompliance of the violator for any previous violation resulting in an executed consent order, but not including a consent order entered into without a finding of violation, or resulting in a final order or judgment after the effective date of this law involving the imposition of $2,000 or more in penalties shall be taken into consideration in the following manner:

(a) One previous such violation within 5 years prior to the filing of the notice of violation will result in a 25-percent per day increase in the scheduled administrative penalty.

(b) Two previous such violations within 5 years prior to the filing of the notice of violation will result in a 50-percent per day increase in the scheduled administrative penalty.

(c) Three or more previous such violations within 5 years prior to the filing of the notice of violation will result in a 100-percent per day increase in the scheduled administrative penalty.

(8) The direct economic benefit gained by the violator from the violation, where consideration of economic benefit is provided by Florida law or required by federal law as part of a federally delegated or approved program, shall be added to the scheduled administrative penalty. The total administrative penalty, including any economic benefit added to the scheduled administrative penalty, shall not exceed $10,000.

(9) The administrative penalties assessed for any particular violation shall not exceed $5,000 against any one violator, unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (8) exceeds $5,000, or there are multiday violations. The total administrative penalties shall not exceed $10,000 per assessment for all violations attributable to a specific person in the notice of violation.

(10) The administrative law judge may receive evidence in mitigation. The penalties identified in subsection (3), subsection (4), and subsection (5) may be reduced up to 50 percent by the administrative law judge for mitigating circumstances, including good faith efforts to comply prior to or after discovery of the violations by the department. Upon an affirmative finding that the violation was caused by circumstances beyond the reasonable control of the respondent and could not have been prevented by respondent’s due diligence, the administrative law judge may further reduce the penalty.

(11) Penalties collected pursuant to this section shall be deposited into the Water Quality Assurance Trust Fund or other trust fund designated by statute and shall be used to fund the restoration of ecosystems, or polluted areas of the state, as defined by the department, to their condition before pollution occurred. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2)(e) and to contract with private mediators for administrative penalty cases.

(12) The purpose of the administrative penalty schedule and process is to provide a more predictable and efficient manner for individuals and businesses to resolve relatively minor environmental disputes. Subsection (3), subsection (4), subsection (5), subsection (6), or subsection (7) shall not be construed as limiting a state court in the assessment of damages. The administrative penalty schedule does not apply to the judicial imposition of civil penalties in state court as provided in this section.

**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; s. 3, ch. 90-82; s. 61, ch. 96-321; s. 2, ch. 2001-258; s. 2, ch. 2002-165; ss. 43, 44, 76, ch. 2004-269; s. 15, ch. 2004-381; s. 71, ch. 2015-229.

### 403.131 Injunctive relief, 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 to recover damages and penalties in this section and s. 403.121 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; s. 3, ch. 2001-258.

### 403.135 Persons who accept wastewater for spray irrigation; civil liability.—

(1) Any person who in good faith accepts from any owner or operator of a permitted wastewater treatment or disposal plant any wastewater permitted and intended to be used for disposal through spray irrigation is not liable for any civil damages as a result of the acceptance and disposal of such wastewater through approved spray irrigation practices.

(2) Subsection (1) does not limit or otherwise affect the liability of:

(a) Any person for damages resulting from such person's negligence, gross negligence, or reckless, wanton, or intentional misconduct;

(b) Any person for the improper management and use of the wastewater after its delivery to such person by any permitted wastewater treatment or disposal plant owner or operator; or

(c) The owner or operator of the plant for damages caused as a result of the spray irrigation.

(3) Nothing in this section shall prohibit any governmental entity from taking such action within its jurisdiction as may be necessary to protect the public health, safety, or welfare or the environment.

(4) Terms used in this section have the meaning specified in this chapter and in the rules of the department under this chapter.

**History.**—s. 1, ch. 87-207; s. 369, ch. 94-356.

**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 or her 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 use tables of values established by the Department of Environmental Protection and the Fish and Wildlife Conservation 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. 26, 35, ch. 69-106; s. 1, ch. 70-141; s. 1, ch. 71-204; s. 3, ch. 72-286; s. 7, ch. 74-133; s. 1, ch. 76-112; s. 3, ch. 78-98; s. 370, ch. 94-356; s. 4, ch. 97-103; s. 24, ch. 2000-197.

**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. 26, 35, ch. 69-106.

**403.161 Prohibitions, violation, penalty, intent.**—

(1) It shall be a violation of this chapter, and it shall be prohibited for any person:

(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.

(d) For any person who owns or operates a facility to fail to report to the representative of the department, as established by department rule, within one working day of discovery of a release of hazardous substances from the facility if the owner or operator is required to report the release to the United States Environmental Protection Agency in accordance with 42 U.S.C. s. 9603.

(e) To fail to provide required notice pursuant to s. 403.077.

(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 commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree punishable as provided in ss. 775.082(3)(e) and 775.083(1)(g) by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

(4) Any person who commits a violation specified in paragraph (1)(a) due to reckless indifference or gross careless disregard is guilty of a misdemeanor of the second degree, punishable as provided in ss. 775.082(4)(b) and 775.083(1)(g) by a fine of not more than $5,000 or by 60 days in jail, or by both, for each offense.

(5) Any person who willfully commits a violation specified in paragraph (1)(b) or paragraph (1)(c) is guilty of a misdemeanor of the first degree punishable as provided in ss. 775.082(4)(a) and 775.083(1)(g) by a fine of not more than $10,000 or by 6 months in jail, or by both for each offense.

(6) It is the legislative intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance with this section.

**History.**—s. 17, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 70-356; s. 1, ch. 70-439; s. 4, ch. 72-286; s. 8, ch. 74-133; s. 139, ch. 77-104; s. 1, ch. 77-174; s. 21, ch. 88-393; s. 2, ch. 89-143; s. 8, ch. 89-324; s. 6, ch. 2014-220; s. 4, ch. 2017-95.

**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) Based upon the nature of the incident, the Water Quality Assurance Trust Fund or the Inland Protection Trust Fund, whichever is appropriate, 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; s. 26, ch. 86-159.

**403.1815 Construction of water distribution mains and sewage collection and transmission systems; local regulation.**—Notwithstanding any other provision of this chapter to the contrary, the department may, upon

request, allow any county or municipality to independently regulate the construction of water distribution mains of 12 inches or less, gravity sewage collection systems of 12 inches or less, and sewage force mains of 12 inches or less, and pump stations appurtenant to such force mains, provided the plant is owned by the county or municipality making the request for approval or, pursuant to interlocal agreement, plant capacity is provided from a plant owned by another county or municipality or by a regional water supply authority of which the county or municipality requesting approval is a member. The approval may apply to all or any part of such systems. 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 independently regulate the construction of such systems, these 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 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 pursuant to any independent regulation allowed under this section and shall, not later than July 1 of each year, submit an updated map of any water distribution system and sewage collection and transmission system independently regulated pursuant to this section, which map also shows any plant to which such system connects or interconnects. Such map shall indicate the extensions of such systems constructed for the preceding year.

**History.**—s. 1, ch. 80-394; s. 33, ch. 91-305; s. 1, ch. 94-132.

**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) may with the approval of the department establish or resume a municipal or county pollution control program which meets the requirements of subsection (1).

(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.

(8) 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 located north of the Cross Florida Greenway, permitted and under construction as of May 1, 1997. Provisions of this subsection shall not apply to any facility which primarily generates electric power.

(9) Nothing in this act shall prevent any local pollution control program from enforcing its own rules, regulations, or orders. All remedies of the department 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.

(10) 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. 73-256; s. 14, ch. 78-95; s. 76, ch. 79-65; s. 6, ch. 89-143; s. 371, ch. 94-356; s. 9, ch. 97-222.

**403.1832 Grants and Donations Trust Fund.**—The Grants and Donations Trust Fund is administered by the Department of Environmental Protection. The fund is intended to serve as the depository for grants and funds to be used for allowable grant or donor agreement activities funded by restricted contractual revenue from private and public nonfederal sources.

**History.**—s. 12, ch. 70-251; s. 1, ch. 70-439; s. 53, ch. 83-310; s. 63, ch. 96-321; s. 14, ch. 2001-270; s. 4, ch. 2015-8; s. 8, ch. 2017-4.

**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, stormwater control and treatment 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 State Board of Administration. However, the total principal amount issued shall not exceed $300 million in any state fiscal year. This limitation does not apply to bonds issued to refinance outstanding bonds that were issued pursuant to this section in a previous 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 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 and the Division of Bond Finance of the State Board of Administration 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 carry out the purposes of s. 14, Art. VII of the State Constitution and this section.

(6) The department 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. However, a leasehold interest in property of the state or the facilities thereon may not be exempted from ad valorem taxation when a nongovernmental lessee uses such property for the operation of a multipurpose hazardous waste treatment facility. 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. 70-439; s. 2, ch. 71-137; s. 4, ch. 73-256; s. 14, ch. 73-327; s. 78, ch. 79-65; s. 1, ch. 81-21; s. 61, ch. 83-218; s. 19, ch. 86-186; s. 1, ch. 87-203; s. 82, ch. 88-130; s. 303, ch. 92-279; s. 55, ch. 92-326; s. 374, ch. 94-356.

**403.1835 Water pollution control financial assistance.**—

(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 self-perpetuating program to accelerate the implementation of water pollution control projects. Projects and activities that may be funded are those eligible under s. 603 of the Federal Water Pollution Control Act (Clean Water Act), Pub. L. No. 92-500, as amended; including, but not limited to, planning, design, construction, and implementation of wastewater management systems, stormwater management systems, nonpoint source pollution management systems, and estuary conservation and management.

(2) As used in this section and s. 403.1837, the term:

(a) “Bonds” means bonds, certificates, or other obligations of indebtedness issued by the corporation under this section and s. 403.1837.

(b) “Corporation” means the Florida Water Pollution Control Financing Corporation created under s. 403.1837.

(c) “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, stormwater, or other wastes and includes a district or authority whose principal responsibility is to provide airport, industrial or research park, or port facilities to the public.

(3) The department may provide financial assistance through any program authorized under 33 U.S.C. s. 1383, as amended, including, but not limited to, making grants and loans, providing loan guarantees, purchasing loan insurance or other credit enhancements, and buying or refinancing local debt. This financial assistance must be administered in accordance with this section and applicable federal authorities.

(a) The department may make or request the corporation to make loans to local government agencies, which may pledge any revenue available to them to repay any funds borrowed.

(b) The department may make or request the corporation to make loans, grants, and deposits to other entities eligible to participate in the financial assistance programs authorized under the Federal Water Pollution Control Act, or as a result of other federal action, which may pledge any revenue available to them to repay any funds borrowed. Notwithstanding s. 17.57, the department may make deposits to financial institutions that earn less than the prevailing rate for United States Treasury securities that have corresponding maturities for the purpose of enabling such financial institutions to make below-market interest rate loans to entities qualified to receive loans under this section and the rules of the department.

(c) The department shall administer financial assistance so that at least 15 percent of the funding made available each year under this section is reserved for use by small communities during the year it is reserved.

(d) The department may make grants to financially disadvantaged small communities, as defined in s. 403.1838, using funds made available from grant allocations on loans authorized under subsection (4). The grants must be administered in accordance with s. 403.1838.

(4) The department may assess grant allocations on the loans made under this section for the purpose of making grants to financially disadvantaged small communities.

(5) The department shall prepare an annual report detailing the amount of grants, amount loaned, interest earned, grant allocations, and loans outstanding at the end of each fiscal year.

(6) Prior to approval of financial assistance, the applicant shall:

(a) Submit evidence of credit worthiness, loan security, and a loan repayment schedule in support of a request for a loan.

(b) Submit plans and specifications and evidence of permittability in support of a request for funding of construction or other activities requiring a permit from the department.

(c) Provide assurance that records will be kept using generally accepted accounting principles and that the department, the Auditor General, or their agents will have access to all records pertaining to the financial assistance provided.

(d) Provide assurance that the subject facilities, systems, or activities will be properly operated and maintained.

(e) Identify the revenues to be pledged and document their sufficiency for loan repayment and pledged revenue coverage in support of a request for a loan.

(f) Provide assurance that financial information will be provided as required by the department.

(g) Provide assurance that a project audit prepared by an independent certified public accountant upon project completion will be submitted to the department in support of a request for a grant.

(h) Submit project planning documentation demonstrating a cost comparison of alternative methods, environmental soundness, public participation, and financial feasibility for any proposed project or activity.

(7) Eligible projects must be given priority according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. The relative costs of achieving environmental and public health benefits must be taken into consideration during the department's assignment of project priorities. The department shall adopt a priority system by rule. In developing the priority system, the department shall give priority to projects that:

(a) Eliminate public health hazards;

(b) Enable compliance with laws requiring the elimination of discharges to specific water bodies, including the requirements of s. 403.086(9) regarding domestic wastewater ocean outfalls;

(c) Assist in the implementation of total maximum daily loads adopted under s. 403.067;

(d) Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;

(e) Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;

(f) Promote reclaimed water reuse;

(g) Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or

(h) Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters.

(8)(a) If a local governmental agency becomes delinquent on its loan, the department shall so certify to the Chief Financial Officer, who shall forward the amount delinquent to the department from any unobligated 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. Certification of delinquency shall not limit the department from pursuing other remedies available for default on a loan. The department may impose a penalty for delinquent loan payments in an amount not to exceed an interest rate of 18 percent per annum on the amount due in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(b) If a loan recipient, other than a local government agency, defaults under the terms of a loan, the department may pursue any remedy available to it at law or in equity. The department may impose a penalty in an amount not to exceed an interest rate of 18 percent per annum on any amount due in addition to charging the cost to handle and process the debt. Penalty interest accrues on any amount due and payable beginning on the 30th day following the date upon which the amount is due.

(9) Funds for the loans and grants authorized under this section must be managed as follows:

(a) A nonlapsing trust fund with revolving loan provisions to be known as the "Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund" is established in the State Treasury to be used as a revolving fund by the department to carry out the purpose of this section. Any funds therein which are not needed on an immediate basis for grants or loans may be invested pursuant to s. 215.49. The cost of administering the program shall be paid from federal funds, from reasonable service fees that may be imposed upon loans, and from proceeds from the sale of loans as permitted by federal law so as to enhance program perpetuity. Grants awarded by the Federal Government, state matching funds, and investment earnings thereon shall be deposited into the trust fund. Proceeds from the sale of loans must be deposited into the trust fund. All moneys available in the trust fund, including investment earnings, are hereby designated to carry out the purpose of this section. The principal and interest payments of all loans held by the trust fund shall be deposited into this trust fund.

1. The department may obligate moneys available in the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund for payment of amounts payable under any service contract entered into by the department under s. 403.1837, subject to annual appropriation by the Legislature. Amounts on deposit in the trust fund in each fiscal year shall first be applied or allocated for the payment of amounts payable by the department under this subparagraph and appropriated each year by the Legislature before making or providing for other disbursement from the trust fund.

2. Under the provisions of s. 19(f)(3), Art. III of the State Constitution, the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund is exempt from the termination provisions of s. 19(f)(2), Art. III of the State Constitution.

(b) Revenues from the loan grant allocations authorized under subsection (4), federal appropriations used for the purpose of administering this section, and service fees, and all earnings thereon, shall be deposited into the department's Federal Grants Trust Fund. Service fees and all earnings thereon must be used solely for program administration and other water quality activities specifically authorized pursuant to the Federal Water Pollution Control Act (Clean Water Act), Pub. L. No. 92-500, as amended, and set forth in 40 C.F.R. part 35, Guidance on

Fees Charged by States to Recipients of Clean Water State Revolving Fund Program Assistance. The loan grant allocation revenues and earnings thereon must be used solely for the purpose of making grants to financially disadvantaged small communities. Federal appropriations and state matching funds for grants authorized by federal statute or other federal action, and earnings thereon, must be used solely for the purposes authorized. All deposits into the department's Federal Grants Trust Fund under this section, and earnings thereon, must be accounted for separately from all other moneys deposited into the fund.

(10) The department may adopt rules regarding program administration; project eligibilities and priorities, including the development and management of project priority lists; financial assistance application requirements associated with planning, design, construction, and implementation activities, including environmental and engineering requirements; financial assistance agreement conditions; disbursement and repayment provisions; auditing provisions; program exceptions; the procedural and contractual relationship between the department and the corporation under s. 403.1837; and other provisions consistent with the purposes of this section.

(11) Any projects for reclaimed water reuse in Monroe County funded from the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund must take into account water balances and nutrient balances in order to prevent the runoff of pollutants into surface waters.

**History.**—s. 1, ch. 72-723; s. 79, ch. 79-65; s. 20, ch. 86-186; s. 37, ch. 89-279; s. 34, ch. 91-305; s. 304, ch. 92-279; s. 55, ch. 92-326; s. 12, ch. 93-51; s. 375, ch. 94-356; s. 26, ch. 97-236; s. 101, ch. 98-200; s. 1, ch. 98-316; s. 23, ch. 99-205; s. 2, ch. 99-372; s. 1, ch. 2000-271; s. 15, ch. 2001-270; s. 427, ch. 2003-261; s. 11, ch. 2003-265; s. 16, ch. 2004-381; s. 9, ch. 2008-232; s. 40, ch. 2010-205; s. 1, ch. 2011-58.

**403.1837 Florida Water Pollution Control Financing Corporation.**—

(1) The Florida Water Pollution Control Financing Corporation is created as a nonprofit public-benefit corporation for the purpose of financing or refinancing the costs of projects and activities described in ss. 403.1835 and 403.8532. The projects and activities described in those sections constitute a public governmental purpose; are necessary for the health, safety, and welfare of all residents; and include legislatively approved fixed capital outlay projects. Fulfilling the purposes of the corporation promotes the health, safety, and welfare of the people of the state and serves essential governmental functions and a paramount public purpose. The activities of the corporation are specifically limited to assisting the department in implementing financing activities to provide funding for the programs authorized in ss. 403.1835 and 403.8532. All other activities relating to the purposes for which the corporation raises funds are the responsibility of the department, including, but not limited to, development of program criteria, review of applications for financial assistance, decisions relating to the number and amount of loans or other financial assistance to be provided, and enforcement of the terms of any financial assistance agreements provided through funds raised by the corporation. The corporation shall terminate upon fulfilling the purposes of this section.

(2) The corporation shall be governed by a board of directors consisting of the Governor's Budget Director or designee, the Chief Financial Officer or designee, and the Secretary of Environmental Protection or designee. The executive director of the State Board of Administration shall be the chief executive officer of the corporation; shall direct and supervise the administrative affairs of the corporation; and shall control, direct, and supervise operation of the corporation. The corporation shall have such other officers as may be determined by the board of directors.

(3) The corporation shall have all the powers of a corporate body under the laws of the state, consistent with this section, including, but not limited to, the power to:

(a) Adopt, amend, and repeal bylaws consistent with this section.

(b) Sue and be sued.

(c) Adopt and use a common seal.

(d) Acquire, purchase, hold, lease, and convey any real and personal property as may be proper or expedient to carry out the purposes of the corporation and this section, and to sell, lease, or otherwise dispose of that property.

(e) Elect or appoint and employ such officers, agents, and employees as the corporation considers advisable to operate and manage the affairs of the corporation, who may be officers or employees of the department and the

state agencies represented on the board of directors of the corporation.

(f) Borrow money and issue notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness described in s. 403.1835 or s. 403.8532.

(g) Operate, as specifically directed by the department, any program to provide financial assistance authorized under s. 403.1835(3) or s. 403.8532(3), which may be funded from any funds received under a service contract with the department, from the proceeds of bonds issued by the corporation, or from any other funding sources obtained by the corporation.

(h) Sell all or any portion of the loans issued under s. 403.1835 or s. 403.8532 to accomplish the purposes of those sections.

(i) Make and execute any contracts, trust agreements, and other instruments and agreements necessary or convenient to accomplish the purposes of the corporation and this section.

(j) Select, retain, and employ professionals, contractors, or agents, which may include the Division of Bond Finance of the State Board of Administration, as necessary or convenient to enable or assist the corporation in carrying out its purposes and this section.

(k) Do any act or thing necessary or convenient to carry out the purposes of the corporation and this section.

(4) The corporation shall evaluate all financial and market conditions necessary and prudent for the purpose of making sound, financially responsible, and cost-effective decisions in order to secure additional funds to fulfill the purposes of this section and ss. 403.1835 and 403.8532.

(5) The corporation may enter into one or more service contracts with the department under which the corporation shall provide services to the department in connection with financing the functions, projects, and activities provided in ss. 403.1835 and 403.8532. The department may enter into one or more service contracts with the corporation and provide for payments under those contracts pursuant to s. 403.1835(9) or s. 403.8533, subject to annual appropriation by the Legislature.

(a) The service contracts may provide for the transfer of all or a portion of the funds in the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund and the Drinking Water Revolving Loan Trust Fund to the corporation for use by the corporation for costs incurred by the corporation in its operations, including, but not limited to, payment of debt service, reserves, or other costs in relation to bonds issued by the corporation, for use by the corporation at the request of the department to directly provide the types of local financial assistance provided in ss. 403.1835(3) and 403.8532(3), or for payment of the administrative costs of the corporation.

(b) The department may not transfer funds under any service contract with the corporation without a specific appropriation for such purpose in the General Appropriations Act, except for administrative expenses incurred by the State Board of Administration or other expenses necessary under documents authorizing or securing previously issued bonds of the corporation. The service contracts may also provide for the assignment or transfer to the corporation of any loans made by the department.

(c) The service contracts may establish the operating relationship between the department and the corporation and must require the department to request the corporation to issue bonds before any issuance of bonds by the corporation, to take any actions necessary to enforce the agreements entered into between the corporation and other parties, and to take all other actions necessary to assist the corporation in its operations.

(d) In compliance with s. 287.0641 and other applicable provisions of law, the obligations of the department under the service contracts do not constitute a general obligation of the state or a pledge of the faith and credit or taxing power of the state, nor may the obligations be construed as an obligation of the State Board of Administration or entities for which it invests funds, or of the department except as provided in this section as payable solely from amounts available under any service contract between the corporation and the department, subject to appropriation.

(e) In compliance with this subsection and s. 287.0582, service contracts must expressly include the following statement: “The State of Florida’s performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.”

(6) The corporation may issue and incur notes, bonds, certificates of indebtedness, or other obligations or evidences of indebtedness payable from and secured by amounts received from payment of loans and other moneys received by the corporation, including, but not limited to, amounts payable to the corporation by the department under a service contract entered into under subsection (5). The proceeds of the bonds may be used for the purpose of providing funds for projects and activities provided in subsection (1) or for refunding bonds previously issued by the corporation. The corporation may select a financing team and issue obligations through competitive bidding or negotiated contracts, whichever is most cost-effective. Such indebtedness of the corporation does not constitute a debt or obligation of the state or a pledge of the faith and credit or taxing power of the state.

(7) The corporation is exempt from taxation and assessments of any nature whatsoever upon its income and any property, assets, or revenues acquired, received, or used in the furtherance of the purposes provided in ss. 403.1835, 403.1838, and 403.8532. The obligations of the corporation incurred under subsection (6) and the interest and income on the obligations and all security agreements, letters of credit, liquidity facilities, or other obligations or instruments arising out of, entered into in connection with, or given to secure payment of the obligations are exempt from all taxation; however, the exemption does not apply to any tax imposed by chapter 220 on the interest, income, or profits on debt obligations owned by corporations.

(8) The corporation shall validate any bonds issued under this section, except refunding bonds, which may be validated at the option of the corporation, by proceedings under chapter 75. The validation complaint must be filed in the Circuit Court for Leon County. The notice required under s. 75.06 must be published in Leon County, and the complaint and order of the circuit court shall be served only on the State Attorney for the Second Judicial Circuit. Sections 75.04(2) and 75.06(2) do not apply to a validation complaint filed as authorized in this subsection. The validation of the first bonds issued under this section may be appealed to the Supreme Court, and the appeal shall be handled on an expedited basis.

(9) The corporation and the department may not take any action that materially and adversely affects the rights of holders of any obligations issued under this section as long as the obligations are outstanding.

(10) The corporation is not a special district for purposes of chapter 189 or a unit of local government for purposes of part III of chapter 218. The provisions of chapters 120 and 215, except the limitation on interest rates provided by s. 215.84, which applies to obligations of the corporation issued under this section, and part I of chapter 287, except ss. 287.0582 and 287.0641, do not apply to this section, the corporation, the service contracts entered into under this section, or debt obligations issued by the corporation as provided in this section.

(11) The benefits or earnings of the corporation may not inure to the benefit of any private person, except persons receiving grants and loans under s. 403.1835 or s. 403.8532.

(12) Upon dissolution of the corporation, title to all property owned by the corporation reverts to the department.

(13) The corporation may contract with the State Board of Administration to serve as trustee with respect to debt obligations issued by the corporation as provided by this section; to hold, administer, and invest proceeds of those debt obligations and other funds of the corporation; and to perform other services required by the corporation. The State Board of Administration may perform these services and may contract with others to provide all or a part of those services and to recover the costs and expenses of providing those services.

**History.**—s. 2, ch. 2000-271; s. 141, ch. 2001-266; s. 428, ch. 2003-261; s. 14, ch. 2003-265; s. 41, ch. 2010-205.

**403.1838 Small Community Sewer Construction Assistance Act.**—

(1) This section may be cited as the “Small Community Sewer Construction Assistance Act.”

(2) The department shall use funds specifically appropriated to award grants under this section to assist financially disadvantaged small communities with their needs for adequate sewer facilities. For purposes of this section, the term “financially disadvantaged small community” means a county, municipality, or special district that has a population of 10,000 or fewer, according to the latest decennial census, and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce. For purposes of this subsection, the term “special district” has the same meaning as provided in s. 189.012 and

includes only those special districts whose public purpose includes water and sewer services, utility systems and services, or wastewater systems and services.

(3)(a) In accordance with rules adopted by the Environmental Regulation Commission under this section, the department may provide grants, from funds specifically appropriated for this purpose, to financially disadvantaged small communities for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.

(b) The rules of the Environmental Regulation Commission must:

1. Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permittable, and implementable.

2. Require appropriate user charges, connection fees, and other charges sufficient to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant.

3. Require grant applications to be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained.

4. Establish a system to determine eligibility of grant applications.

5. Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution abatement.

6. Establish requirements for competitive procurement of engineering and construction services, materials, and equipment.

7. Provide for termination of grants when program requirements are not met.

(c) The department must perform adequate overview of each grant, including technical review, regular inspections, disbursement approvals, and auditing, to successfully implement this section.

(d) The department may use up to 2 percent of the grant funds made available each year for the costs of program administration.

(e) Any grant awarded before July 1, 1994, under this section, remains subject to the applicable department rules in existence on June 30, 1993, until all rule requirements have been met.

**History.**—s. 55, ch. 83-310; s. 29, ch. 84-338; s. 53, ch. 85-81; s. 38, ch. 89-279; s. 4, ch. 94-243; s. 376, ch. 94-356; s. 64, ch. 96-321; s. 37, ch. 2002-402; s. 10, ch. 2004-6; s. 14, ch. 2012-205; s. 1, ch. 2016-55.

**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. 20, 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) A variance may not be granted from any provision or requirement concerning discharges of waste into waters of the state or hazardous waste management which would result in the provision or requirement being less stringent than a comparable federal provision or requirement, except as provided in s. 403.70715. However, this subsection does not prohibit the issuance of moderating provisions or requirements under state law, subject to any necessary approval by the United States Environmental Protection Agency.

(3) The department shall publish notice, or shall require a petitioner for a variance to publish notice, in the Florida Administrative Register 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.

(4) The department may require by rule a processing fee for and may prescribe such time limits and other conditions to the granting of a variance as it deems appropriate.

**History.**—s. 21, ch. 67-436; ss. 26, 35, ch. 69-106; s. 1, ch. 74-170; s. 14, ch. 78-95; s. 7, ch. 82-27; s. 21, ch. 86-186; s. 78, ch. 93-213; s. 106, ch. 2008-4; s. 41, ch. 2013-14; s. 5, ch. 2016-130.

**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. 24, ch. 67-436; ss. 11, 35, 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.

**403.281 Definitions; weather modification law.**—As used in this chapter relating to weather modification:

(1) "Department" means the Department of Environmental Protection.

(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. 156, ch. 71-377; s. 80, ch. 79-65; s. 377, ch. 94-356.

**Note.**—Former s. 373.261.

**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 weather modification 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 $1,000 and proof of financial responsibility as required by s. 403.321.

**History.**—s. 4, ch. 57-128; ss. 26, 35, ch. 69-106; s. 18, ch. 88-393.

**Note.**—Former s. 373.291.

**403.321 Proof of financial responsibility.**—

(1) No license shall be issued to any person until he or she 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 or her 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; s. 5, ch. 97-103.

**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 or her application.

(b) Files proof of 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; s. 6, ch. 97-103.

**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 or her 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; s. 7, ch. 97-103.

**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 or her pursuant to his or her 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; s. 8, ch. 97-103.

**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 or her 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 or her 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; s. 9, ch. 97-103.

**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, or 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, other than an action involving a state NPDES permit authorized under s. 403.0885, the prevailing party or parties shall be entitled to costs and attorney's fees. Any award of attorney's fees in an action involving such a state NPDES permit shall be discretionary with the court. 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 or her 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. As used in this section and as it relates to citizens, the term "intervene" means to join an ongoing s. 120.569 or s. 120.57 proceeding; this section does not authorize a citizen to institute, initiate, petition for, or request a proceeding under s. 120.569 or s. 120.57. Nothing herein limits or prohibits a citizen whose substantial interests will be determined or affected by a proposed agency action from initiating a formal administrative proceeding under s. 120.569 or s. 120.57. A citizen's substantial interests will be considered to be determined or affected if the party demonstrates it may suffer an injury in fact which is of sufficient immediacy and is of the type and nature intended to be protected by this chapter. No demonstration of special injury different in kind from the general public at large is required. A sufficient demonstration of a substantial interest may be made by a petitioner who establishes that the proposed activity, conduct, or product to be licensed or permitted affects the petitioner's use or enjoyment of air, water, or natural resources protected by this chapter.

(6) Any Florida corporation not for profit which has at least 25 current members residing within the county where the activity is proposed, and which was formed for the purpose of the protection of the environment, fish and wildlife resources, and protection of air and water quality, may initiate a hearing pursuant to s. 120.569 or s. 120.57, provided that the Florida corporation not for profit was formed at least 1 year prior to the date of the filing of the application for a permit, license, or authorization that is the subject of the notice of proposed agency action.

(7) In a matter pertaining to a federally delegated or approved program, a citizen of the state may initiate an administrative proceeding under this subsection if the citizen meets the standing requirements for judicial review of a case or controversy pursuant to Article III of the United States Constitution.

(8) 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; s. 24, ch. 88-393; s. 10, ch. 97-103; s. 9, ch. 2002-261.

**403.413 Florida Litter Law.**—

(1) SHORT TITLE.—This section may be cited as the "Florida Litter Law."

(2) DEFINITIONS.—As used in this section:

(a) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly but does not include a parachute or any other device used primarily as safety equipment.

(b) "Commercial purpose" means for the purpose of economic gain.

(c) "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for a commercial purpose.

(d) "Dump" means to dump, throw, discard, place, deposit, or dispose of.

(e) "Law enforcement officer" means any officer of the Florida Highway Patrol, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, or the Fish and Wildlife Conservation 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.

(f) "Litter" means any garbage; rubbish; trash; refuse; can; bottle; box; container; paper; tobacco product; tire; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment

facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

(g) "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor, or semitrailer combination or any other vehicle that is powered by a motor.

(h) "Person" means any individual, firm, sole proprietorship, partnership, corporation, or unincorporated association.

(i) "Vessel" means a boat, barge, or airboat or any other vehicle used for transportation on water.

(3) RESPONSIBILITY OF LOCAL GOVERNING BODY OF A COUNTY OR MUNICIPALITY.—The local governing body of a county or a municipality shall determine the training and qualifications of any employee of the county or municipality or 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) DUMPING LITTER PROHIBITED.—Unless otherwise authorized by law or permit, it is unlawful for any person to dump 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, canal, or stream or tidal or coastal water of the state, including canals. 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 the dumping of such litter by such person will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or regulation.

(5) DUMPING RAW HUMAN WASTE PROHIBITED.—Unless otherwise authorized by law or permit, it is unlawful for any person to dump raw human waste from any train, aircraft, motor vehicle, or vessel upon the public or private lands or waters of the state.

(6) PENALTIES; ENFORCEMENT.—

(a) Any person who dumps litter in violation of subsection (4) in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes is guilty of a noncriminal infraction, punishable by a civil penalty of $100, from which $50 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

(b) Any person who dumps litter in violation of subsection (4) in an amount exceeding 15 pounds in weight or 27 cubic feet in volume, but not exceeding 500 pounds in weight or 100 cubic feet in volume and not for commercial purposes is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the court shall require the violator to pick up litter or perform other community service commensurate with the offense committed. Further, if the violation involves the use of a motor vehicle, upon a finding of guilt, whether or not adjudication is withheld or whether imposition of sentence is withheld, deferred, or suspended, the court shall forward a record of the finding to the Department of Highway Safety and Motor Vehicles, which shall record a penalty of three points on the violator's driver license pursuant to the point system established by s. 322.27.

(c) Any person who dumps litter in violation of subsection (4) in an amount exceeding 500 pounds in weight or 100 cubic feet in volume or in any quantity for commercial purposes, or dumps litter which is a hazardous waste as defined in s. 403.703, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. In addition, the court may order the violator to:

1. Remove or render harmless the litter that he or she dumped in violation of this section;

2. Repair or restore property damaged by, or pay damages for any damage arising out of, his or her dumping litter in violation of this section; or

3. Perform public service relating to the removal of litter dumped in violation of this section or to the restoration of an area polluted by litter dumped in violation of this section.

(d) A court may enjoin a violation of this section.

(e) A motor vehicle, vessel, aircraft, container, crane, winch, or machine used to dump litter that exceeds 500 pounds in weight or 100 cubic feet in volume is declared contraband and is subject to forfeiture in the same manner as provided in ss. 932.703 and 932.704.

(f) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or $200, whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees. A final judgment rendered in a criminal proceeding against a defendant under this section estops the defendant from asserting any issue in a subsequent civil action under this paragraph which he or she would be estopped from asserting if such judgment were rendered in the civil action unless the criminal judgment was based upon a plea of no contest or nolo contendere.

(g) For the purposes of this section, if a person dumps litter or raw human waste from a commercial vehicle, that person is presumed to have dumped the litter or raw human waste for commercial purposes.

(h) In the criminal trial of a person charged with violating this section, the state does not have the burden of proving that the person did not have the right or authority to dump the litter or raw human waste or that litter or raw human waste dumped on private property causes a public nuisance. The defendant has the burden of proving that he or she had authority to dump the litter or raw human waste and that the litter or raw human waste dumped does not cause a public nuisance.

(i) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(j) Any person who violates the provisions of subsection (5) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; provided, however, that any person who dumps more than 500 pounds or more than 100 cubic feet of raw human waste, or who dumps any quantity of such waste for commercial purposes, is guilty of a felony of the third degree, punishable as provided in paragraph (c).

(7) ENFORCEMENT BY CERTAIN COUNTY OR MUNICIPAL EMPLOYEES.—Employees of counties or municipalities whose duty it is to ensure code compliance or to enforce codes and ordinances may be designated by the governing body of the county or the municipality to enforce the provisions of this section. Designation of such employees shall not provide the employees with the authority to bear arms or to make arrests.

(8) ENFORCEMENT OF OTHER REGULATIONS.—This section does not limit the authority of any state or local agency to enforce other laws, rules, or ordinances relating to litter or solid waste management.

**History.**—ss. 1, 2, 3, 4, 4A, ch. 71-239; s. 1, ch. 75-266; s. 1, ch. 77-82; s. 1, ch. 78-202; s. 7, ch. 80-382; s. 1, ch. 82-63; s. 1, ch. 88-79; s. 56, ch. 88-130; s. 12, ch. 89-175; s. 14, ch. 89-268; s. 1, ch. 90-76; ss. 16, 17, ch. 91-286; s. 378, ch. 94-356; s. 1, ch. 95-165; s. 11, ch. 97-103; s. 205, ch. 99-245; s. 1, ch. 2005-200; s. 2, ch. 2007-184; s. 26, ch. 2012-88; s. 3, ch. 2016-174.

**403.4131 Litter control.**—

(1) The Department of Transportation shall establish an "adopt-a-highway" program to allow local organizations to be identified with specific highway cleanup and highway beautification projects authorized under s. 339.2405. The department shall monitor compliance with the provisions of the adopt-a-highway program to ensure that organizations participating in the program comply with the goals identified by the department.

(2) The Department of Transportation shall place signs discouraging litter at all off-ramps of the interstate highway system in the state. The department shall place other highway signs as necessary to discourage littering.

(3) Each county is encouraged to initiate a litter control and prevention program or to expand upon its existing program. The department shall establish a system of grants for municipalities and counties to implement litter control and prevention programs. In addition to the activities described in subsection (1), such grants shall at a minimum be used for litter cleanup, grassroots educational programs involving litter removal and prevention, and the placement of litter and recycling receptacles. Counties are encouraged to form working public private partnerships as authorized under this section to implement litter control and prevention programs at the

community level. Counties that have a population under 100,000 are encouraged to develop a regional approach to administering and coordinating their litter control and prevention programs.

**History.**—s. 55, ch. 88-130; s. 1, ch. 89-37; s. 2, ch. 89-296; s. 5, ch. 91-429; s. 39, ch. 93-207; s. 379, ch. 94-356; s. 14, ch. 98-258; s. 37, ch. 99-5; s. 3, ch. 99-294; s. 19, ch. 2000-331; s. 3, ch. 2007-184; s. 111, ch. 2010-102; s. 37, ch. 2010-225.

**403.41315 Comprehensive illegal dumping, litter, and marine debris control and prevention.**—

(1) The Legislature finds that a comprehensive illegal dumping, litter, and marine debris control and prevention program is necessary to protect the beauty and the environment of Florida. The Legislature also recognizes that a comprehensive illegal dumping, litter, and marine debris control and prevention program will have a positive effect on the state's economy. The Legislature finds that the state's rapid population growth, the ever-increasing mobility of its population, and the large number of tourists contribute to the need for a comprehensive illegal dumping, litter, and marine debris control and prevention program. The Legislature further finds that the program must be coordinated and capable of having statewide identity and grassroots community support.

(2) The comprehensive illegal dumping, litter, and marine debris control and prevention program at a minimum must include the following:

(a) A local public awareness and educational campaign to educate individuals, government, businesses, and other organizations concerning the role they must assume in preventing and controlling litter.

(b) Enforcement provisions authorized under s. 403.413.

(c) Enforcement officers whose responsibilities include grassroots education along with enforcing litter and illegal dumping violations.

(d) Local illegal dumping, litter, and marine debris control and prevention programs operated at the county level with emphasis placed on grassroots educational programs designed to prevent and remove litter and marine debris.

(e) A statewide adopt-a-highway program as authorized under s. 403.4131.

(f) The highway beautification program authorized under s. 339.2405.

(g) A statewide Adopt-a-Shore program that includes beach, river, and lake shorelines and emphasizes litter and marine debris cleanup and prevention.

(h) The prohibition of balloon releases as authorized under s. 379.233.

(i) The placement of approved identifiable litter and recycling receptacles.

(j) Other educational programs that are implemented at the grassroots level involving volunteers and community programs that clean up and prevent litter, including Youth Conservation Corps activities.

**History.**—s. 35, ch. 93-207; s. 4, ch. 2007-184; s. 201, ch. 2008-247.

**403.4132 Litter pickup and removal.**—Local governments are encouraged to initiate programs to supplement the existing litter-removal program for public places and highway systems operated by the Department of Transportation. To the extent that funds are available from the department for litter pickup and removal programs beyond those annually available to the Department of Corrections, priority shall be given to contracting with nonprofit organizations for supplemental litter-removal programs that use youth employment programs.

**History.**—s. 58, ch. 88-130; s. 16, ch. 96-423.

**403.4133 Adopt-a-Shore Program.**—

(1) The Legislature finds that litter and illegal dumping present a threat to the state's wildlife, environment, and shorelines. The Legislature further finds that public awareness and education will assist in preventing litter from being illegally deposited along the state's shorelines.

(2) The Adopt-a-Shore Program shall be created within the Department of Environmental Protection. The program shall be designed to educate the state's citizens and visitors about the importance of litter prevention and shall include approaches and techniques to remove litter from the state's shorelines.

(3) For the purposes of this section, the term "shoreline" includes, but is not limited to, beaches, rivershores, and lakeshores.

**History.**—s. 60, ch. 93-207; s. 5, ch. 2007-184.

**403.4135 Litter receptacles.**—

(1) DEFINITIONS.—As used in this section "litter" and "vessel" have the same meanings as provided in s. 403.413.

(2) RECEPTACLES REQUIRED.—All ports, terminal facilities, boatyards, marinas, and other commercial facilities which house vessels and from which vessels disembark shall provide or ensure the availability of litter receptacles of sufficient size and capacity to accommodate the litter and other waste materials generated on board the vessels using its facilities, except for large quantities of spoiled or damaged cargoes not usually discharged by a ship. The department may enforce violations of this section pursuant to ss. 403.121 and 403.131.

**History.**—s. 13, ch. 89-175; s. 18, ch. 91-286; s. 380, ch. 94-356.

**403.414 Environmental award program.**—

(1) The department shall administer an environmental award program to recognize outstanding efforts in the protection, conservation, or restoration of the air, water, or other natural resources of the state by agencies, municipalities, counties, and other governmental units; private organizations, institutions, and industries; the communications media; and individuals.

(2) Awards may be approved by the secretary in the following areas:

(a) Water resources and quality.

(b) Air quality.

(c) Solid and hazardous waste management.

(d) Communications through any media.

(3) An agency, municipality, county, or other governmental unit; a private organization, institution, or industry; the communications media; or an individual may submit a nomination for an award to the department at any time. A nomination must be submitted on a form adopted by the department and must include information required by the department to consider that nomination.

(4) The department may accept money from any public agency or other source to be used for the environmental award program.

**History.**—ss. 1, 2, 3, 4, 5, 6, ch. 74-60; s. 81, ch. 79-65; s. 264, ch. 81-259; s. 35, ch. 91-305; s. 20, ch. 2015-4.

**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, including an autocycle, as defined in s. 316.003,

and excluding a vehicle in which the operator is enclosed by a cabin unless it meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle. The term “motorcycle” does not include a tractor or a moped.

(f) “Moped” means any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground, and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(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 Protection.

(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:

| 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 |

(5) TEST PROCEDURES.—The test procedures for determining compliance with this section shall be established by regulation of the department 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.

(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 or her 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.**—ss. 1, 2, 3, ch. 74-110; ss. 1, 2, ch. 75-59; s. 1, ch. 76-289; s. 1, ch. 78-280; s. 82, ch. 79-65; s. 98, ch. 79-164; s. 1, ch. 80-338; s. 1, ch. 82-49; s. 22, ch. 87-161; s. 381, ch. 94-356; s. 12, ch. 97-103; s. 11, ch. 2018-130.

**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 s. 403.415(4)(a) or (b), 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. 2, ch. 76-289; s. 2, ch. 95-144.

**403.4154 Phosphogypsum management program.**—

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

(a) "Department" means the Department of Environmental Protection.

(b) "Existing stack" means a phosphogypsum stack, as defined in paragraph (d), that is:

1. In existence in this state on May 12, 1993; or

2. Constructed in this state after May 12, 1993, and for which the department has received a certification of completion of construction submitted by the owner of the newly constructed phosphogypsum stack.

The term "existing stack" does not include a phosphogypsum stack that has been closed pursuant to a department permit or order.

(c) "Phosphogypsum" means calcium sulfate and byproducts produced by the reaction of sulfuric acid with phosphate rock to produce phosphoric acid.

(d) "Phosphogypsum stack" means any defined geographic area associated with a phosphoric acid production facility in which phosphogypsum is disposed of or stored, other than within a fully enclosed building, container, or tank.

(e) "Phosphogypsum stack system" means the phosphogypsum stack, pile, or landfill, together with all pumps, piping, ditches, drainage conveyances, water-control structures, collection pools, cooling ponds, surge ponds, and any other collection or conveyance system associated with the transport of phosphogypsum from the plant to the phosphogypsum stack, its management at the stack, and the process-wastewater return to the phosphoric acid production or other process. This definition specifically includes toe drain systems and ditches and other leachate collection systems but does not include conveyances within the confines of the fertilizer production plant or existing areas used in emergency circumstances caused by rainfall events of high volume or duration for the temporary storage of process wastewater to avoid discharges to surface waters of the state, which process

wastewater must be removed from the temporary storage area as expeditiously as possible, but not to exceed 120 days after each emergency.

(f) "Process wastewater" means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product, along with any leachate or runoff from the phosphogypsum stack system. This term does not include contaminated nonprocess wastewater as that term is defined in 40 C.F.R. s. 418.11(c).

(2) REGULATORY PROGRAM.—

(a) It is the intent of the Legislature that the department develop a program for the sound and effective regulation of phosphogypsum stack systems in the state.

(b) The department shall adopt rules that prescribe acceptable construction designs for new or expanded phosphogypsum stack systems and that prescribe permitting criteria for operation, long-term-care requirements, and closure financial responsibility requirements for phosphogypsum stack systems.

(c) Whoever willfully, knowingly, or with reckless indifference or gross carelessness misstates or misrepresents the financial condition or closure costs of an entity engaged in managing, owning, or operating a phosphogypsum stack or stack system commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 by a fine of not more than $50,000 and by imprisonment for 5 years for each offense.

(d) If an owner or operator of a phosphogypsum stack or stack system fails to comply with department rules requiring demonstration of closure financial responsibility, no distribution may be made which would be prohibited under s. 607.06401(3) until the noncompliance is corrected. Whoever willfully, knowingly, or with reckless indifference or gross carelessness violates this prohibition commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 by a fine of not more than $50,000 or by imprisonment for 5 years for each offense.

(3) ABATEMENT OF IMMINENT HAZARD.—

(a) The department may take action to abate or substantially reduce any imminent hazard caused by the physical condition, maintenance, operation, or closure of a phosphogypsum stack system.

(b) An imminent hazard exists if the physical condition, maintenance, operation, or closure of a phosphogypsum stack system creates an immediate and substantial danger to human health, safety, or welfare or to the environment. A phosphogypsum stack system is presumed not to cause an imminent hazard if the physical condition and operation of the system are in compliance with all applicable department rules.

(c) The failure of an owner or operator of a phosphogypsum stack system to comply with department rules requiring demonstration of closure financial responsibility may be considered by the department as evidence that a phosphogypsum stack poses an imminent hazard for purposes of initiating actions authorized by paragraph (d).

(d) If the department determines that the failure of an owner or operator to comply with department rules requiring demonstration of financial responsibility or that the physical condition, maintenance, operation, or closure of a phosphogypsum stack system poses an imminent hazard, the department shall request access to the property on which such stack system is located from the owner or operator of the stack system for the purposes of taking action to abate or substantially reduce the imminent hazard. If the department, after reasonable effort, is unable to timely obtain the necessary access to abate or substantially reduce the imminent hazard, the department may institute action in its own name, using the procedures and remedies of s. 403.121 or s. 403.131, to abate or substantially reduce an imminent hazard. Whenever serious harm to human health, safety, or welfare, to the environment, or to private or public property may occur prior to completion of an administrative hearing or other formal proceeding that might be initiated to abate the risk of serious harm, the department may obtain from the court, ex parte, an injunction without paying filing and service fees prior to the filing and service of process.

(e) To abate or substantially reduce an imminent hazard, the department may take any appropriate action, including, but not limited to, using employees of the department or contracting with other state or federal agencies, with private third-party contractors, or with the owner or operator of the stack system, or financing, compensating, or funding a receiver, trustee, or owner of the stack system, to perform all or part of the work.

(f) The department shall recover from the owner or operator of the phosphogypsum stack system to the use of the Nonmandatory Land Reclamation Trust Fund all moneys expended from the fund, including funds expended

prior to the effective date of this section, to abate an imminent hazard posed by the phosphogypsum stack system plus a penalty equal to an amount calculated at 30 percent of such funds expended. This penalty shall be imposed annually, and prorated from the date of payment from the fund until the expended funds and the penalty are repaid. If the department prevails in any action to recover funds pursuant to this subsection, it may recover reasonable attorney's fees and costs incurred. Phosphogypsum may not be deposited on a stack until all moneys expended from the fund in connection with the stack have been repaid, unless the department determines that such placement is necessary to abate or avoid an imminent hazard or unless otherwise authorized by the department.

(g) The department may impose a lien on the real property on which the phosphogypsum stack system that poses an imminent hazard is located and on the real property underlying and other assets located at associated phosphate fertilizer production facilities equal in amount to the moneys expended from the Nonmandatory Land Reclamation Trust Fund pursuant to paragraph (e), including attorney's fees and court costs. The owner of any property on which such a lien is imposed is entitled to a release of the lien upon payment to the department of the lien amount. The lien imposed by this section does not take priority over any other prior perfected lien on the real property, personal property, or other assets referenced in this paragraph, including, but not limited to, the associated phosphate rock mine and reserves.

(h) Upon a declaration by the Governor of an environmental emergency concerning the abatement of an imminent hazard involving a phosphogypsum stack or stack system, the state and any agent under contract with the state for the provision of services directly related to the abatement of such hazard shall not become liable under state laws for environmental protection for any costs, damages, or penalties associated with the abatement of the imminent hazard. The Legislature finds that provision of this limited immunity is in the public interest and necessary for the abatement of the imminent hazard.

(4) REGISTRATION FEES.—

(a)1. The owner or operator of each existing phosphogypsum stack who has not provided a performance bond, letter of credit, trust fund agreement, or closure insurance to demonstrate financial responsibility for closure and long-term care shall pay to the department a fee as set forth in this paragraph. All fees shall be deposited in the Nonmandatory Land Reclamation Trust Fund.

2. The amount of the fee for each existing stack shall be $75,000 for each of the five 12-month periods following July 1, 2001.

3. The amount of the fee for any new stack for which the owner or operator has not provided a performance bond, letter of credit, trust fund agreement, or closure insurance to demonstrate financial responsibility for closure and long-term care shall be $75,000 for each of the five 12-month periods following the issuance by the department of a construction permit for that stack.

4. Within 30 days after a phosphogypsum stack has been certified as closed pursuant to rule 62-673.620(2) and (3), Florida Administrative Code, the department shall refund to the owner of the closed phosphogypsum stack an amount from the Nonmandatory Land Reclamation Trust Fund equal to the total amount of fee payments made by the owner or operator to the fund in connection with the closed phosphogypsum stack. However, a refund may not be paid until the Mulberry and Piney Point phosphogypsum stack systems have been closed and a satisfactory reserve has been established in the Nonmandatory Reclamation Lands Trust Fund.

(b) On or before August 1 of each year, the department shall provide written notice to each owner of an existing stack of any fee payable for the 12-month period commencing on the immediately preceding July 1. Each owner shall remit the fee to the department on or before August 31 of each year.

(5) CLOSURE OF ABANDONED SYSTEMS.—

(a) The department may expend money from the Nonmandatory Land Reclamation Trust Fund to take all steps necessary to close a phosphogypsum stack system and to carry out postclosure care in accordance with department rules in effect as of the date of commencement of closure activities, subject to the conditions set forth in this subsection. To accomplish such closure and postclosure care, the department may take any appropriate action, including, but not limited to, using employees of the department or by contracting with other state or federal

agencies, with private third-party contractors, or with the owner or operator of the stack system, to perform all or part of the work.

(b) The department may close a phosphogypsum stack system through agreement with the owner or by court order. In determining whether closure is appropriate, the court shall consider whether closing the stack will protect human health, safety, or welfare or the environment; the useful life of the stack; the effect of delaying closure on the stability of the fund; the likelihood that the stack will be operated again; and any other relevant factors. If the court finds that closure is appropriate, the court may appoint a receiver to oversee the closure or shall authorize department employees, agents, and contractors to enter all land owned by the owner of the phosphogypsum stack system for the performance of closure and postclosure activities.

(c) The department may impose a lien on the real property on which a closed phosphogypsum stack system is located and on the real property underlying and other assets located at its formerly associated phosphate fertilizer production facilities equal in amount to the moneys expended from the Nonmandatory Land Reclamation Trust Fund pursuant to this subsection for closure and postclosure care. The owner of any property on which such a lien is imposed is entitled to a release of the lien upon payment to the department of the lien amount and execution of an agreement to carry out postclosure care in accordance with applicable department rules. The lien imposed by this section does not take priority over any other prior perfected lien on the real property, personal property, or other assets referenced in this paragraph, including, but not limited to, the associated phosphate rock mine and reserves.

**History.**—s. 62, ch. 93-207; s. 382, ch. 94-356; s. 3, ch. 2001-134; s. 8, ch. 2003-423; s. 64, ch. 2005-2.

**403.4155 Phosphogypsum management; rulemaking authority.**—

(1) The Department of Environmental Protection shall adopt rules to amend existing chapter 62-672, Florida Administrative Code, to ensure that impoundment structures and water conveyance piping systems used in phosphogypsum management are designed and maintained to meet critical safety standards. The rules must require that any impoundment structure used in a phosphogypsum stack system, together with all pumps, piping, ditches, drainage conveyances, water control structures, collection pools, cooling ponds, surge ponds, and any other collection or conveyance system associated with phosphogypsum transport, cooling water, or the return of process wastewater, is constructed using sound engineering practices and is operated to avoid spills or discharges of materials which adversely affect surface or ground waters. The rules must require that a phosphogypsum stack system owner maintain a log detailing the owner's operating inspection schedule, results, and any corrective action taken based on the inspection results. The rules must require phosphogypsum stack owners to maintain an emergency contingency plan and demonstrate the ability to mobilize equipment and manpower to respond to emergency situations at phosphogypsum stack systems. The rules must establish a reasonable time period not to exceed 12 months for facilities to meet the provisions of the rules adopted pursuant to this section.

(2)(a) By October 1, 2004, the department shall initiate rulemaking to require that phosphogypsum stack system operation plans required by department rule be amended by adding an interim stack system management (ISSM) plan that provides written instructions for the operation of the system, assuming that no phosphoric acid would be produced at the facility for a 2-year period. The initial ISSM plan must be completed as of the first July 1 following the adoption of the rule required by this section. The ISSM plan must include:

1. A detailed description of process water management procedures that will be implemented to ensure that the stack system operates in accordance with all applicable department permit conditions and rules. The procedures must address the actual process water levels present at the facility 30 days prior to the completion of the plan and must assume that the facility will receive annual average rainfall during the 2-year planning period.
2. A detailed description of the procedures to be followed for the daily operation and routine maintenance of the stack system, including required environmental sampling and analyses, as well as for any maintenance or repairs recommended following annual inspections of the system.
3. Identification of all machinery, equipment, and materials necessary to implement the plan.
4. Identification of the sources of power or fuel necessary to implement the plan.
5. Identification of the personnel necessary to implement the plan.

(b) The ISSM plan shall be updated annually, taking into account process water levels as of June 1 of each year and the existing stack system configuration.

(c) The requirements listed in paragraphs (a) and (b) are applicable to all phosphogypsum stack systems except those that have been closed, that are undergoing closure, or for which an application for a closure permit has been submitted pursuant to department rule.

(3)(a) By October 1, 2004, the department shall initiate rulemaking to require that general plans and schedules for the closure of phosphogypsum stack systems include:

1. A description of the physical configuration of the phosphogypsum stack system anticipated at the time of closure at the end of useful life of the system.

2. A site-specific water management plan describing the procedures to be employed at the end of the useful life of the system to manage the anticipated volume of process water in an environmentally sound manner.

3. An estimate of the cost of management of the anticipated volume of process water in accordance with the site-specific water management plan.

4. A description of all construction work necessary to properly close the system in accordance with department rules.

5. An estimate of all costs associated with long-term care of the closed system, including maintenance and monitoring, in accordance with department rules.

(b) The department shall revise chapter 62-673, Florida Administrative Code, to require the owner or operator of a phosphogypsum stack management system to demonstrate financial responsibility for the costs of terminal closure of the phosphogypsum stack system in a manner that protects the public health and safety, and must include criteria to evaluate the adequacy of the demonstration of financial responsibility.

1. The costs of terminal closure shall be estimated based on the stack system configuration as of the end of its useful life as determined by the owner or operator. These costs shall be verified by an independent third party.

2. The owner or operator may demonstrate financial responsibility by use of one or more of the following methods:

a. Bond.

b. Letter of credit.

c. Cash deposit arrangement.

d. Closure insurance.

e. Financial tests.

f. Corporate guarantee.

For the purposes of this section, the term “cash deposit arrangement” means a trust fund, business or statutory trust, escrow account, or similar cash deposit entity whereby a fiduciary holds and invests funds deposited by the owner or operator, which funds shall be expended only for the purpose of directly implementing all or some portion of phosphogypsum stack system closure requirements of that particular owner or operator.

3. A trustee, escrow agent, or other fiduciary of a cash deposit arrangement authorized by this section has no liability for any damage or loss of any kind arising out of or caused by performance of duties imposed by the terms of the applicable agreement unless such damage or loss is directly caused by the gross negligence or criminal act of the trustee, escrow agent, or other fiduciary. In performing its duties pursuant to the applicable agreement, a trustee, escrow agent, or other fiduciary is entitled to rely upon information and direction received from the grantor or the department without independent verification unless such information and direction are manifestly in error.

4. To the extent that a cash deposit arrangement is used to provide proof of financial responsibility for all or a portion of closure costs, the trust, escrow, or cash arrangement deposit entity is considered to have assumed all liability for such closure costs up to the amount of the cash deposit, less any fees or costs of the trustee, escrow agent, or other fiduciary.

5. Any funds maintained in a cash deposit arrangement authorized by this section are not subject to claims of creditors of the owner or operator and are otherwise exempt from setoff, execution, levy, garnishment, and similar

writs and proceedings.

6. Any funds remaining in a trust, escrow account, or other cash deposit arrangement after the purpose of such cash deposit arrangement under this section has been accomplished shall be returned to the grantor.

(4) The department shall revise chapter 62-673, Florida Administrative Code, to require the owner or operator of a phosphogypsum stack system to demonstrate financial responsibility for the costs of terminal closure of the phosphogypsum stack system in a manner that protects the environment and the public health and safety. At a minimum, such rules must include or address the following requirements:

(a) That the cost of closure and long-term care be re-estimated by a professional engineer and adjusted for inflation on an annual basis. At a minimum, such cost data must include:

1. The cost of treatment and appropriate disposal of all process wastewater, both ponded and pore, in the system.

2. All construction work necessary to properly close the system in accordance with department rules.

3. All costs associated with long-term care of the closed system, including maintenance and monitoring, in accordance with department rules.

(b) That financial statements and financial data be prepared according to generally accepted accounting principles within the United States and submitted quarterly.

(c) That audited financial statements be provided annually along with the statement of financial assurance.

(d) That any owner or operator in default on any of its obligations report such default immediately.

**History.**—s. 1, ch. 98-117; s. 4, ch. 2001-134; s. 9, ch. 2003-423.

**403.42 Florida Clean Fuel Act.**—

(1) SHORT TITLE AND PURPOSE.—

(a) This section may be cited as the “Florida Clean Fuel Act.”

(b) The purposes of this act are to establish the Clean Fuel Florida Advisory Board under the Department of Environmental Protection to study the implementation of alternative fuel vehicles and to formulate and provide to the Secretary of Environmental Protection recommendations on expanding the use of alternative fuel vehicles in this state and make funding available for implementation.

(2) DEFINITIONS.—For purposes of this act:

(a) “Alternative fuels” include electricity, biodiesel, natural gas, propane, and any other fuel that may be deemed appropriate in the future by the Department of Environmental Protection with guidance from the Clean Fuel Florida Advisory Board.

(b) “Alternative fuel vehicles” include on-road and off-road transportation vehicles and light-duty, medium-duty, and heavy-duty vehicles that are powered by an alternative fuel or a combination of alternative fuels.

(3) CLEAN FUEL FLORIDA ADVISORY BOARD ESTABLISHED; MEMBERSHIP; DUTIES AND RESPONSIBILITIES.—

(a) The Clean Fuel Florida Advisory Board is established within the Department of Environmental Protection.

(b)1. The advisory board shall consist of the Executive Director of the Department of Economic Opportunity, the Secretary of Environmental Protection, or a designee from that department, the Commissioner of Education, or a designee from that department, the Secretary of Transportation, or a designee from that department, the Commissioner of Agriculture, or a designee from that department, the Secretary of Management Services, or a designee from that department, and a representative of each of the following, who shall be appointed by the Secretary of Environmental Protection:

a. The Florida biodiesel industry.

b. The Florida electric utility industry.

c. The Florida natural gas industry.

d. The Florida propane gas industry.

e. An automobile manufacturers’ association.

f. A Florida Clean Cities Coalition designated by the United States Department of Energy.

g. Enterprise Florida, Inc.

h. EV Ready Broward.

i. The Florida petroleum industry.

j. The Florida League of Cities.

k. The Florida Association of Counties.

l. Floridians for Better Transportation.

m. A motor vehicle manufacturer.

n. Florida Local Environment Resource Agencies.

o. Project for an Energy Efficient Florida.

p. Florida Transportation Builders Association.

2. The purpose of the advisory board is to serve as a resource for the department and to provide the Governor, the Legislature, and the Secretary of Environmental Protection with private sector and other public agency perspectives on achieving the goal of increasing the use of alternative fuel vehicles in this state.

3. Members shall be appointed to serve terms of 1 year each, with reappointment at the discretion of the Secretary of Environmental Protection. Vacancies shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

4. The board shall annually select a chairperson.

5.a. The board shall meet at least once each quarter or more often at the call of the chairperson or the Secretary of Environmental Protection.

b. Meetings are exempt from the notice requirements of chapter 120, and sufficient notice shall be given to afford interested persons reasonable notice under the circumstances.

6. Members of the board are entitled to travel expenses while engaged in the performance of board duties.

7. The board shall terminate 5 years after the effective date of this act.

(c) The board shall review the performance of the state with reference to alternative fuel vehicle implementation in complying with federal laws and maximizing available federal funding and may:

1. Advise the Governor, Legislature, and the Secretary of Environmental Protection and make recommendations regarding implementation and use of alternative fuel vehicles in this state.

2. Identify potential improvements in this act and the state's alternative fuel policies.

3. Request from all state agencies any information the board determines relevant to board duties.

4. Regularly report to the Secretary of Environmental Protection, the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the board's findings and recommendations.

(d)1. The advisory board shall make recommendations to the Department of Environmental Protection for establishing pilot programs in this state that provide experience and support the best use expansion of the alternative fuel vehicle industry in this state. No funds shall be released for a project unless there is at least a 50-percent private or local match.

2. In addition to the pilot programs, the advisory board shall assess federal, state, and local initiatives to identify incentives that encourage successful alternative fuel vehicle programs; obstacles to alternative fuel vehicle use including legislative, regulatory, and economic obstacles; and programs that educate and inform the public about alternative fuel vehicles.

3. The advisory board is charged with determining a reasonable, fair, and equitable way to address current motor fuel taxes as they apply to alternative fuels and at what threshold of market penetration.

4. Based on its findings, the advisory board shall develop recommendations to the Legislature on future alternative fuel vehicle programs and legislative changes that provide the best use of state and other resources to enhance the alternative fuel vehicle market in this state and maximize the return on that investment in terms of job creation, economic development, and emissions reduction.

(e) The advisory board, working with the Department of Environmental Protection, shall develop a budget for the department's approval, and all expenditures shall be approved by the department. At the conclusion of the first year, the department shall conduct an audit of the board and board programs.

**History.**—s. 72, ch. 99-248; s. 28, ch. 2000-153; s. 17, ch. 2004-243; s. 286, ch. 2011-142.

**PART II**

## ELECTRICAL POWER PLANT AND TRANSMISSION LINE SITING

**403.501 Short title.**—Sections 403.501-403.518 shall be known and may be cited as the "Florida Electrical Power Plant Siting Act."

**History.**—s. 1, ch. 73-33; s. 1, ch. 76-76; s. 1, ch. 90-331.

**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 and its associated facilities. The Legislature recognizes that the selection of sites and the routing of associated facilities, including 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 and will not unduly conflict with the goals established by the applicable local comprehensive plans. 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 meet the need for electrical energy as established pursuant to s. 403.519.

(4) To assure the citizens of Florida that renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

**History.**—s. 1, ch. 73-33; s. 2, ch. 90-331; s. 2, ch. 2007-117; s. 66, ch. 2008-227.

**403.503 Definitions relating to Florida Electrical Power Plant Siting Act.**—As used in this act:

(1) "Act" means the Florida Electrical Power Plant Siting Act.

(2) "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.

(3) "Alternate corridor" means an area that is proposed by the applicant or a third party within which all or part of an associated electrical transmission line right-of-way is to be located and that is different from the

preferred transmission line corridor proposed by the applicant. The width of the alternate corridor proposed for certification for an associated electrical transmission line may be the width of the proposed right-of-way or a wider boundary not to exceed a width of 1 mile. The area within the alternate corridor may be further restricted as a condition of certification. The alternate corridor may include alternate electrical substation sites if the applicant has proposed an electrical substation as part of the portion of the proposed electrical transmission line.

(4) “Amendment” means a material change in the information provided by the applicant to the application for certification made after the initial application filing.

(5) “Applicant” means any electric utility which applies for certification pursuant to the provisions of this act.

(6) “Application” means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information.

(7) “Associated facilities” means, for the purpose of certification, those onsite and offsite facilities which directly support the construction and operation of the electrical power plant such as electrical transmission lines, substations, and fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility.

(8) “Board” means the Governor and Cabinet sitting as the siting board.

(9) “Certification” means the written order of the board, or secretary when applicable, approving an application for the licensing of an electrical power plant, in whole or with such changes or conditions as the board may deem appropriate.

(10) “Completeness” means that the application has addressed all applicable sections of the prescribed application format, and that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.

(11) “Corridor” means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for certification as an associated facility, at the option of the applicant, may be the width of the right-of-way or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the right-of-way have been acquired by the licensee, the boundaries of the area certified shall narrow to only that land within the boundaries of the right-of-way. The corridors proper for certification shall be those addressed in the application, in amendments to the application filed under s. 403.5064, and in notices of acceptance of proposed alternate corridors filed by an applicant and the department pursuant to s. 403.5271 as incorporated by reference in s. 403.5064(1)(b) for which the required information for the preparation of agency supplemental reports was filed.

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

(13) “Designated administrative law judge” means the administrative law judge assigned by the Division of Administrative Hearings pursuant to chapter 120 to conduct the hearings required by this act.

(14) “Electrical power plant” means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act. This term also includes the site; all associated facilities that will be owned by the applicant that are physically connected to the site; all associated facilities that are indirectly connected to the site by other proposed associated facilities that will be owned by the applicant; and associated transmission lines that will be owned by the applicant which connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect. At the applicant’s option, this term may include any offsite associated facilities that will not be owned by the applicant; offsite associated facilities that are owned by the applicant but that are not directly connected to the site; any proposed terminal or intermediate substations or substation expansions connected to the associated transmission line; or new

transmission lines, upgrades, or improvements of an existing transmission line on any portion of the applicant's electrical transmission system necessary to support the generation injected into the system from the proposed electrical power plant.

(15) "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.

(16) "Federally delegated or approved permit program" means any environmental regulatory program approved by an agency of the Federal Government so as to authorize the department to administer and issue licenses pursuant to federal law, including, but not limited to, new source review permits, operation permits for major sources of air pollution, and prevention of significant deterioration permits under the Clean Air Act (42 U.S.C. ss. 7401 et seq.), permits under ss. 402 and 404 of the Clean Water Act (33 U.S.C. ss. 1251 et seq.), and permits under the Resource Conservation and Recovery Act (42 U.S.C. ss. 6901 et seq.).

(17) "License" means a franchise, permit, certification, registration, charter, comprehensive plan amendment, development order or permit as defined in chapters 163 and 380, or similar form of authorization required by law, including permits issued under federally delegated or approved permit programs, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(18) "Licensee" means an applicant that has obtained a certification order for the subject project.

(19) "Local government" means a municipality or county in the jurisdiction of which the electrical power plant is proposed to be located.

(20) "Modification" means any change in the certification order after issuance, including a change in the conditions of certification.

(21) "Nonprocedural requirements of agencies" means any agency's regulatory requirements established by statute, rule, ordinance, zoning ordinance, land development code, or comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of information submitted to demonstrate compliance with such regulatory requirements.

(22) "Notice of intent" means that notice which is filed with the department on behalf of an applicant prior to submission of an application pursuant to this act and which notifies the department of an intent to file an application.

(23) "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.

(24) "Preliminary statement of issues" means a listing and explanation of those issues within the agency's jurisdiction which are of major concern to the agency in relation to the proposed electrical power plant.

(25) "Public Service Commission" or "commission" means the agency created pursuant to chapter 350.

(26) "Regional planning council" means a regional planning council as defined in s. 186.503(4) in the jurisdiction of which the electrical power plant is proposed to be located.

(27) "Right-of-way" means land necessary for the construction and maintenance of a connected associated linear facility, such as a railroad line, pipeline, or transmission line as owned by or proposed to be certified by the applicant. 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.

(28) "Site" means any proposed location within which will be located an electrical power plant's generating facility and onsite support facilities, or an alteration or addition of electrical generating facilities and onsite support facilities resulting in an increase in generating capacity, including offshore sites within state jurisdiction.

(29) "State comprehensive plan" means that plan set forth in chapter 187.

(30) "Ultimate site capacity" means the maximum gross generating capacity for a site as certified by the board, unless otherwise specified as net generating capacity.

(31) "Water management district" means a water management district, created pursuant to chapter 373, in the jurisdiction of which the electrical power plant is proposed to be located.

**History.**—s. 1, ch. 73-33; s. 1, ch. 76-76; s. 1, ch. 79-76; s. 3, ch. 81-131; s. 14, ch. 86-173; s. 22, ch. 86-186; s. 3, ch. 90-331; s. 6, ch. 93-94; s. 383, ch. 94-356; s. 134, ch. 96-410; s. 20, ch. 2006-230; s. 67, ch. 2008-227.

**403.504 Department of Environmental Protection; powers and duties enumerated.**—The department shall have the following powers and duties in relation to this act:

(1) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the location, construction, and operation of electrical power plants.

(2) To prescribe the form and content of the public notices and the notice of intent and the form, content, and necessary supporting documentation and studies to be prepared by the applicant for electrical power plant certification applications.

(3) To receive applications for electrical power plant certifications and to determine the completeness and sufficiency thereof.

(4) To make, or contract for, studies of electrical power plant certification applications.

(5) To administer the processing of applications for electric power plant certifications and to ensure that the applications are processed as expeditiously as possible.

(6) To require such fees as allowed by this act.

(7) To conduct studies and prepare a project analysis under s. 403.507.

(8) 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.

(9) To determine whether an alternate corridor proposed for consideration under s. 403.5064(4) is acceptable.

(10) To act as clerk for the siting board.

(11) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the electrical power plant.

(12) To issue emergency orders on behalf of the board for facilities licensed under this act.

**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. 35, ch. 81-167; s. 35, ch. 83-55; s. 23, ch. 86-186; s. 4, ch. 90-331; s. 7, ch. 93-94; s. 384, ch. 94-356; s. 102, ch. 98-200; s. 21, ch. 2006-230; s. 68, ch. 2008-227.

**403.5055 Application for permits pursuant to s. 403.0885.**—In processing applications for permits pursuant to s. 403.0885 that are associated with applications for electrical power plant certification:

(1) The procedural requirements set forth in 40 C.F.R. s. 123.25, including public notice, public comments, and public hearings, shall be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures for NPDES permit issuance, the applicable federal requirements shall control.

(2) If available at the time the department issues its project analysis pursuant to s. 403.507(5), the department shall include in its project analysis copies of the department's proposed action pursuant to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any corresponding comments received from the United States Environmental Protection Agency, the applicant, or the general public; and the department's response to those comments.

(3) The department shall not issue or deny the permit pursuant to s. 403.0885 in advance of the issuance of the electrical power plant certification under this part unless required to do so by the provisions of federal law. When possible, any hearing on a permit issued pursuant to s. 403.0885 shall be conducted in conjunction with the certification hearing held pursuant to this act. The department's actions on an NPDES permit shall be based on the record and recommended order of the certification hearing, if the hearing on the NPDES was conducted in conjunction with the certification hearing, and of any other proceeding held in connection with the application for an NPDES permit, timely public comments received with respect to the application, and the provisions of federal law. The department's action on an NPDES permit, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved state

NPDES program. Nothing in this part shall be construed to authorize the issuance of a state NPDES permit which does not conform to the requirements of the federally approved state NPDES program.

**History.**—s. 79, ch. 93-213; s. 22, ch. 2006-230.

**403.506 Applicability, thresholds, and certification.**—

(1) The provisions of this act shall apply to any electrical power plant as defined herein, except that the provisions of this act shall not apply to any electrical power plant of less than 75 megawatts in gross capacity, including its associated facilities, unless the applicant has elected to apply for certification of such electrical power plant under this act. The provisions of this act shall not apply to capacity expansions of 75 megawatts or less, in the aggregate, of an existing exothermic reaction cogeneration electrical generating facility that was exempt from this act when it was originally built; however, this exemption shall not apply if the unit uses oil or natural gas for purposes other than unit startup. No construction of any new electrical power plant or expansion in steam generating capacity as measured by an increase in the maximum electrical generator rating 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, including increases in steam turbine efficiency, or operating conditions not in conflict with certification which increase the electrical output of a unit to no greater capacity than the maximum electrical generator rating of the existing generator shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

(3) An electric utility may obtain separate licenses, permits, and approvals for the construction of facilities necessary to construct an electrical power plant without first obtaining certification under this act if the utility intends to locate, license, and construct a proposed or expanded electrical power plant that uses nuclear materials as fuel. Such facilities may include, but are not limited to, access and onsite roads, rail lines, electrical transmission facilities to support construction, and facilities necessary for waterborne delivery of construction materials and project components. This exemption applies to such facilities regardless of whether the facilities are used for operation of the power plant. The applicant shall file with the department a statement that declares that the construction of such facilities is necessary for the timely construction of the proposed electrical power plant and identifies those facilities that the applicant intends to seek licenses for and construct prior to or separate from certification of the project. The facilities may be located within or off the site for the proposed electrical power plant. The filing of an application under this act shall not affect other applications for separate licenses which are pending at the time of filing the application. Furthermore, the filing of an application shall not prevent an electric utility from seeking separate licenses for facilities that are necessary to construct the electrical power plant. Licenses, permits, or approvals issued by any state, regional, or local agency for such facilities shall be incorporated by the department into a final certification upon completion of construction. Any facilities necessary for construction of the electrical power plant shall become part of the certified electrical power plant upon completion of the electrical power plant's construction. The exemption in this subsection shall not require or authorize agency rulemaking, and any action taken under this subsection shall not be subject to the provisions of chapter 120. This subsection shall be given retroactive effect and shall apply to applications filed after May 1, 2008.

**History.**—s. 1, ch. 73-33; s. 3, ch. 76-76; s. 2, ch. 79-76; s. 5, ch. 81-131; s. 15, ch. 86-173; s. 24, ch. 86-186; s. 5, ch. 90-331; s. 80, ch. 93-213; s. 23, ch. 2006-230; s. 69, ch. 2008-227.

**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.

**403.5064 Application; schedules.**—

(1) The formal date of filing of a certification application and commencement of the certification review process shall be when the applicant submits:

(a) Copies of the certification application in a quantity and format as prescribed by rule to the department and other agencies identified in s. 403.507(2)(a).

(b) A statement affirming that the applicant is opting to allow consideration of alternate corridors for an associated transmission line corridor. If alternate corridors are allowed, at the applicant's option, the portion of the application addressing associated transmission line corridors shall be processed under the schedule set forth in ss. 403.521-403.526, 403.527(4), and 403.5271, including the opportunity for the filing of alternate corridors by third parties; however, if such alternate corridors are filed, the certification hearing shall not be rescheduled as allowed by s. 403.5271(1)(b).

(c) The application fee specified under s. 403.518 to the department.

(2) Within 7 days after the filing of an application, the department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of any additional agencies or persons entitled to notice and copies of the application and any amendments. Copies of the application shall be distributed within 5 days by the applicant to these additional agencies. This distribution shall not be a basis for altering the schedule of dates for the certification process.

(3) 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. 403.5095.

(4) Within 7 days after the filing of an application, the department shall prepare a proposed schedule of dates for determination of completeness, submission of statements of issues, submittal of final reports, and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to s. 403.508(3). If the application includes one or more associated transmission line corridors, at the request of the applicant filed concurrently with the application, the department shall use the application processing schedule set forth in ss. 403.521-403.526, 403.527(4), and 403.5271 for the associated transmission line corridors, including the opportunity for the filing and review of alternate corridors, if a party proposes alternate transmission line corridor routes for consideration no later than 165 days before the scheduled certification hearing. Notwithstanding an applicant's option for the transmission line corridor portion of its application to be processed under the proposed schedule, only one certification hearing shall be held for the entire plant in accordance with s. 403.508(2). The proposed schedule shall be timely provided by the department to the applicant, the administrative law judge, all agencies identified pursuant to subsection (2), and all parties. Within 7 days after the filing of the proposed schedule, the administrative law judge shall issue an order establishing a schedule for the matters addressed in the department's proposed schedule and other appropriate matters, if any.

(5) Copies of changes and amendments to the application shall be timely distributed by the applicant to all agencies and parties who have received a copy of the application.

(6) Notice of the filing of the application shall be published in accordance with the requirements of s. 403.5115.

**History.**—s. 6, ch. 90-331; s. 135, ch. 96-410; s. 24, ch. 2006-230; s. 70, ch. 2008-227.

**403.5065 Appointment of administrative law judge; powers and duties.**—

(1) Within 7 days after receipt of an application, the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act. The division director shall designate an administrative law judge within 7 days after receipt of the request from the department. In designating an administrative law judge for this purpose, the division director shall, whenever practicable, assign an administrative law judge who has had prior experience or training in electrical power plant

certification proceedings. Upon being advised that an administrative law judge has been appointed, the department shall immediately file a copy of the application and all supporting documents with the designated administrative law judge, who shall docket the application.

(2) The administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120 and by the laws and rules of the department.

**History.**—s. 4, ch. 76-76; s. 1, ch. 77-174; s. 7, ch. 81-131; s. 7, ch. 90-331; s. 136, ch. 96-410; s. 25, ch. 2006-230; s. 71, ch. 2008-227.

**403.5066 Determination of completeness.**—

(1)(a) Within 30 days after the filing of an application, affected agencies shall file a statement with the department containing each agency's recommendations on the completeness of the application.

(b) Within 40 days after the filing of an application, the department shall file a statement with the Division of Administrative Hearings, with the applicant, and with all parties declaring its position with regard to the completeness of the application. The department's statement shall be based upon consultation with the affected agencies.

(2) If the department declares the application to be incomplete, the applicant, within 15 days after the filing of the statement by the department, shall file with the Division of Administrative Hearings, with the department, and all parties:

(a) A withdrawal of the application;

(b) A statement agreeing to supply the additional information necessary to make the application complete. Such additional information shall be provided within 30 days after the issuance of the department's statement on completeness of the application. The time schedules under this act shall not be tolled if the applicant makes the application complete within 30 days after the issuance of the department's statement on completeness of the application. A subsequent finding by the department that the application remains incomplete, based upon the additional information submitted by the applicant or upon the failure of the applicant to timely submit the additional information, tolls the time schedules under this act until the application is determined complete;

(c) A statement contesting the department's determination of incompleteness; or

(d) A statement agreeing with the department and requesting additional time beyond 30 days to provide the information necessary to make the application complete. If the applicant exercises this option, the time schedules under this act are tolled until the application is determined complete.

(3)(a) If the applicant contests the determination by the department that an application is incomplete, the administrative law judge shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 21 days after the filing of the statement by the department. The administrative law judge shall render a decision within 7 days after the hearing.

(b) Parties to a hearing on the issue of completeness shall include the applicant, the department, and any agency that has jurisdiction over the matter in dispute.

(c) If the administrative law judge determines that the application was not complete, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete.

(d) If the administrative law judge determines that the application was complete at the time it was declared incomplete, the time schedules referencing a complete application under this act shall commence upon such determination.

(4) If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to the department, no later than 15 days after the applicant files the additional information, a recommendation on whether the agency believes the application is complete. Within 22 days after receipt of the additional information from the applicant submitted under paragraph (2)(b), paragraph (2)(d), or paragraph (3)(c), the department shall determine whether the additional information supplied by an applicant makes the application complete. If the department finds that the application is still incomplete,

the applicant may exercise any of the options specified in subsection (2) as often as is necessary to resolve the dispute.

**History.**—s. 8, ch. 90-331; s. 137, ch. 96-410; s. 26, ch. 2006-230.

**403.50663 Informational public meetings.**—

(1) A local government within whose jurisdiction the power plant is proposed to be sited may hold one informational public meeting in addition to the hearings specifically authorized by this act on any matter associated with the electrical power plant proceeding. Such informational public meetings shall be held by the local government or by the regional planning council if the local government does not hold such meeting within 70 days after the filing of the application. The purpose of an informational public meeting is for the local government or regional planning council to further inform the public about the proposed electrical power plant or associated facilities, obtain comments from the public, and formulate its recommendation with respect to the proposed electrical power plant.

(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 other than the applicant and the department shall be required to attend such informational public meetings.

(3) A local government that intends to conduct an informational public meeting must provide notice of the meeting to all parties not less than 5 days prior to the meeting and to the general public in accordance with s. 403.5115(5). The expense for such notice is eligible for reimbursement under s. 403.518(2)(c)1.

(4) The failure to hold an informational public meeting or the procedure used for the informational public meeting is not grounds for the alteration of any time limitation in this act under s. 403.5095 or grounds to deny or condition certification.

**History.**—s. 27, ch. 2006-230; s. 72, ch. 2008-227; s. 19, ch. 2015-30.

**403.50665 Land use consistency.**—

(1) The applicant shall include in the application a statement on the consistency of the site and any associated facilities that constitute a “development,” as defined in s. 380.04, with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of such consistency. This information shall include an identification of those associated facilities that the applicant believes are exempt from the requirements of land use plans and zoning ordinances under the Community Planning Act provisions of chapter 163 and s. 380.04(3).

(2)(a) Within 45 days after the filing of the application, each local government shall file a determination with the department, the applicant, the administrative law judge, and all parties on the consistency of the site, and any associated facilities that are not exempt from the requirements of land use plans and zoning ordinances under chapter 163 and s. 380.04(3), with existing land use plans and zoning ordinances that were in effect on the date the application was filed, based on the information provided in the application. However, this requirement does not apply to any new electrical generation unit proposed to be constructed and operated on the site of a previously certified electrical power plant or on the site of a power plant that was not previously certified that will be wholly contained within the boundaries of the existing site.

(b) The local government may issue its determination up to 55 days later if the application has been determined incomplete based in whole or in part upon a local government request for additional information on land use and zoning consistency as part of the local government’s statement on completeness of the application submitted pursuant to s. 403.5066(1)(a). Incompleteness of information necessary for a local government to evaluate an application may be claimed by the local government as cause for a statement of inconsistency with existing land use plans and zoning ordinances.

(c) Notice of the consistency determination shall be published in accordance with the requirements of s. 403.5115.

(3)(a) If the local government issues a determination that the proposed site and any nonexempt associated facilities are not consistent or in compliance with local land use plans and zoning ordinances, the applicant may

apply to the local government for the necessary local approval to address the inconsistencies identified in the local government's determination.

(b) If the applicant makes such an application to the local government, the time schedules under this act shall be tolled until the local government issues its revised determination on land use and zoning or the applicant otherwise withdraws its application to the local government.

(c) If the applicant applies to the local government for necessary local land use or zoning approval, the local government shall commence a proceeding to consider the application for land use or zoning approval within 45 days after receipt of the complete request and shall issue a revised determination within 30 days following the conclusion of that local proceeding. The time schedules and notice requirements under this act shall apply to such revised determination.

(4) If any substantially affected person wishes to dispute the local government's determination, he or she shall file a petition with the designated administrative law judge within 21 days after the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1) shall apply.

(5) The dates in this section may be altered upon agreement between the applicant, the local government, and the department pursuant to s. 403.5095.

(6) If it is determined by the local government that the proposed site or nonexempt associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

(7) The issue of land use and zoning consistency for any proposed alternate intermediate electrical substation which is proposed as part of an alternate electrical transmission line corridor which is accepted by the applicant and the department under s. 403.5271(1)(b) shall be addressed in the supplementary report prepared by the local government on the proposed alternate corridor and shall be considered as an issue at any final certification hearing. If such a proposed alternate intermediate electrical substation is determined not to be consistent with local land use plans and zoning ordinances, then that alternate intermediate electrical substation shall not be certified.

**History.**—s. 28, ch. 2006-230; s. 73, ch. 2008-227; s. 62, ch. 2011-139.

**403.507 Preliminary statements of issues, reports, project analyses, and studies.**—

(1) Each affected agency identified in paragraph (2)(a) shall submit a preliminary statement of issues to the department, the applicant, and all parties no later than 40 days after the certification application has been determined complete. The failure to raise an issue in this statement shall not preclude the issue from being raised in the agency's report.

(2)(a) No later than 100 days after the certification application has been determined complete, the following agencies shall prepare reports as provided below and shall submit them to the department and the applicant, unless a final order denying the determination of need has been issued under s. 403.519:

1. The Department of Economic Opportunity shall prepare a report containing recommendations which address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable portions of the state comprehensive plan, emergency management, and other such matters within its jurisdiction. The Department of Economic Opportunity may also comment on the consistency of the proposed electrical power plant with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

2. The water management district shall prepare a report as to matters within its jurisdiction, including but not limited to, the impact of the proposed electrical power plant on water resources, regional water supply planning, and district-owned lands and works.

3. Each local government in whose jurisdiction the proposed electrical power plant is to be located shall prepare a report as to the consistency of the proposed electrical power plant with all applicable local ordinances,

regulations, standards, or criteria that apply to the proposed electrical power plant, including any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means.

4. The Fish and Wildlife Conservation Commission shall prepare a report as to matters within its jurisdiction.

5. The Department of Transportation shall address the impact of the proposed electrical power plant on matters within its jurisdiction.

(b) Any other agency, if requested by the department, shall also perform studies or prepare reports as to matters within that agency's jurisdiction which may potentially be affected by the proposed electrical power plant.

(3) Each report described in subsection (2) shall contain:

(a) A notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the proposed electrical power plant to be certified. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of that agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

(b) A recommendation for approval or denial of the application.

(c) Any proposed conditions of certification on matters within the jurisdiction of such agency. For each condition proposed by an agency in its report, the agency shall list the specific statute, rule, or ordinance which authorizes the proposed condition.

(d) The agencies shall initiate the activities required by this section no later than 15 days after the application is distributed. The agencies shall keep the applicant and the department informed as to the progress of the studies and any issues raised thereby.

(4)(a) No later than 150 days after the application is filed, the Public Service Commission shall prepare a report as to the present and future need for electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.

(b) Receipt of an affirmative determination of need by the submittal deadline under paragraph (a) shall be a condition precedent to issuance of the department's project analysis and conduct of the certification hearing.

(5) The department shall prepare a project analysis, which shall be filed with the designated administrative law judge and served on all parties no later than 130 days after the application is determined complete, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance and consistent with matters within the department's standard jurisdiction, including the rules of the department, as well as whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the nonprocedural requirements of the affected agencies.

(b) Copies of the studies and reports required by this section.

(c) The comments received by the department from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

(e) If available, the recommendation of the department regarding the issuance of any license required pursuant to a federally delegated or approved permit program.

(6) Except when good cause is shown, the failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, shall not be grounds for the alteration of any time limitation in this act. Neither the failure to submit a preliminary statement of issues or a report nor the inadequacy of the preliminary statement of issues or report are grounds to deny or condition certification.

**History.**—s. 1, ch. 73-33; s. 5, ch. 76-76; s. 133, ch. 79-190; s. 8, ch. 81-131; s. 33, ch. 81-169; s. 36, ch. 83-55; s. 25, ch. 86-186; s. 10, ch. 90-331; s. 7, ch. 92-132; s. 8, ch. 93-94; s. 385, ch. 94-356; s. 14, ch. 95-149; s. 139, ch. 96-410; s. 206, ch. 99-245; s. 30, ch. 2006-230; s. 74, ch. 2008-227; s. 287, ch. 2011-142; s. 20, ch. 2015-30.

**403.508 Land use and certification hearings, parties, participants.**—

(1)(a) Within 5 days after the filing of a petition for a hearing on land use pursuant to s. 403.50665, the designated administrative law judge shall schedule a land use hearing to be conducted in the county of the proposed site or associated facility that is not exempt from the requirements of land use plans and zoning ordinances under chapter 163 and s. 380.04(3), as applicable, as expeditiously as possible but not later than 30 days after the designated administrative law judge's receipt of the petition. The place of such hearing shall be as close as possible to the proposed site or associated facility. If a petition is filed, the hearing shall be held regardless of the status of the completeness of the application.

(b) Notice of the land use hearing shall be published in accordance with the requirements of s. 403.5115.

(c) The sole issue for determination at the land use hearing shall be whether or not the proposed site or nonexempt associated facility is consistent and in compliance with existing land use plans and zoning ordinances. If the administrative law judge concludes that the proposed site or nonexempt associated facility is not consistent or in compliance with existing land use plans and zoning ordinances, the administrative law judge shall receive at the hearing evidence on, and address in the recommended order any changes to or approvals or variances under, the applicable land use plans or zoning ordinances which will render the proposed site or nonexempt associated facility consistent and in compliance with the local land use plans and zoning ordinances.

(d) The designated administrative law judge's recommended order shall be issued within 30 days after completion of the hearing and shall be reviewed by the board within 60 days after receipt of the recommended order by the board.

(e) If it is determined by the board that the proposed site or nonexempt associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application, or as otherwise provided by this act, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed electrical power plant on the proposed site or associated facilities unless certification is subsequently denied or withdrawn.

(f) If it is determined by the board that the proposed site or nonexempt associated facility does not conform with existing land use plans and zoning ordinances, the board may, if it determines after notice and hearing and upon consideration of the recommended order on land use and zoning issues that it is in the public interest to authorize the use of the land for a site or associated facility, authorize a variance or other necessary approval to the adopted land use plan and zoning ordinances required to render the proposed site or associated facility consistent with local land use plans and zoning ordinances. The board's action shall not be controlled by any other procedural requirements of law. In the event a variance or other approval is denied by the board, it shall be the responsibility of the applicant to make the necessary application for any approvals determined by the board as required to make the proposed site or associated facility consistent and in compliance with local land use plans and zoning ordinances. No further action may be taken on the complete application until the proposed site or associated facility conforms to the adopted land use plan or zoning ordinances or the board grants relief as provided under this act.

(2)(a) A certification hearing shall be held by the designated administrative law judge no later than 265 days after the application is filed with the department. The certification hearing shall be held at a location in proximity to the proposed site.

(b) Notice of the certification hearing and notice of the deadline for filing of notice of intent to be a party shall be made in accordance with the requirements of s. 403.5115.

(3)(a) Parties to the proceeding shall include:

1. The applicant.
2. The Public Service Commission.
3. The Department of Economic Opportunity.
4. The Fish and Wildlife Conservation Commission.
5. The water management district.
6. The department.
7. The local government.

8. The Department of Transportation.

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Notwithstanding the provisions of chapter 120, upon the filing with the administrative law judge of a notice of intent to be a party no later than 75 days after the application is filed, 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 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 comprehensive planning or orderly development of the area in which the proposed electrical power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency described in subparagraph (c)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 agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) 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 administrative law judge and upon such conditions as he or she may prescribe any time prior to 30 days before the commencement of the certification hearing.

(f) Any agency, including those whose properties or works are being affected pursuant to s. 403.509(5), shall be made a party upon the request of the department or the applicant.

(4)(a) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:

1. The applicant.

2. The department.

3. State agencies.

4. Regional agencies, including water management districts.

5. Local governments.

6. Other parties.

(b) When appropriate, any person may be given an opportunity to present oral or written communications to the designated administrative law judge. If the designated administrative law judge proposes to consider such communications, then all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(5) At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 days after the filing of the hearing transcript.

(6)(a) No earlier than 29 days prior to the conduct of the certification hearing, the department or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of fact or law to be raised at the certification hearing, and if sufficient time remains for the applicant and the department to publish public notices of the cancellation of the hearing at least 3 days prior to the scheduled date of the hearing.

(b) The administrative law judge shall issue an order granting or denying the request within 5 days after receipt of the request.

(c) If the administrative law judge grants the request, the department and the applicant shall publish notices of the cancellation of the certification hearing, in accordance with s. 403.5115.

(d)1. If the administrative law judge grants the request, the department shall prepare and issue a final order in accordance with s. 403.509(1)(a).

2. Parties may submit proposed recommended orders to the department no later than 10 days after the administrative law judge issues an order relinquishing jurisdiction.

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.

(8) In issuing permits under the federally approved new source review or prevention of significant deterioration permit program, the department shall observe the procedures specified under the federally approved state implementation plan, including public notice, public comment, public hearing, and notice of applications and amendments to federal, state, and local agencies, to assure that all such permits issued in coordination with the certification of a power plant under this act are federally enforceable and are issued after opportunity for informed public participation regarding the terms and conditions thereof. When possible, any hearing on a federally approved or delegated program permit such as new source review, prevention of significant deterioration permit, or NPDES permit shall be conducted in conjunction with the certification hearing held under this act. It is the intent of the Legislature that the review, processing, and issuance of such federally delegated or approved permits be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures, the applicable federal requirements shall control.

**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. 36, ch. 81-167; s. 37, ch. 83-55; s. 26, ch. 86-186; s. 11, ch. 90-331; s. 9, ch. 93-94; s. 386, ch. 94-356; s. 140, ch. 96-410; s. 1008, ch. 97-103; s. 207, ch. 99-245; s. 31, ch. 2006-230; s. 75, ch. 2008-227; s. 288, ch. 2011-142; s. 21, ch. 2015-30.

**403.509 Final disposition of application.**—

(1)(a) If the administrative law judge has granted a request to cancel the certification hearing and has relinquished jurisdiction to the department under the provisions of s. 403.508(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act and the stipulation of the parties in requesting cancellation of the certification hearing.

(b) If the administrative law judge has not granted a request to cancel the certification hearing under the provisions of s. 403.508(6), within 60 days after receipt of the designated administrative law judge's recommended order, the board shall act upon the application by written order, approving or denying certification, in accordance with the terms of this act, and stating the reasons for issuance or denial. If certification 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) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification proceeding before the administrative law judge or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

(3) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location, construction, and operation of the electrical power plant will:

(a) Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.

(b) Comply with applicable nonprocedural requirements of agencies.

(c) Be consistent with applicable local government comprehensive plans and land development regulations.

(d) Meet the electrical energy needs of the state in an orderly, reliable, and timely fashion.

(e) Effect a reasonable balance between the need for the facility as established pursuant to s. 403.519 and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facility.

(f) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.

(g) Serve and protect the broad interests of the public.

(4)(a) Any transmission line corridor certified by the board, or secretary if applicable, shall meet the criteria of this section. When more than one transmission line corridor is proper for certification under s. 403.503(11) and meets the criteria of this section, the board, or secretary if applicable, shall certify the transmission line corridor that has the least adverse impact regarding the criteria in subsection (3), including costs.

(b) If the board, or secretary if applicable, finds that an alternate corridor rejected pursuant to s. 403.5271 as incorporated by reference in s. 403.5064(1)(b) meets the criteria of subsection (3) and has the least adverse impact regarding the criteria in subsection (3), the board, or secretary if applicable, shall deny certification or shall allow the applicant to submit an amended application to include the corridor.

(c) If the board, or secretary if applicable, finds that two or more of the corridors that comply with subsection (3) have the least adverse impacts regarding the criteria in subsection (3), including costs, and that the corridors are substantially equal in adverse impacts regarding the criteria in subsection (3), including costs, the board, or secretary if applicable, shall certify the corridor preferred by the applicant if the corridor is one proper for certification under s. 403.503(11).

(5) The department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved permit program. Nothing in this part shall be construed to authorize the issuance of a new source review or prevention of significant deterioration permit which does not conform to the requirements of the federally approved state implementation plan.

(6) For certifications issued by the board 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 to direct any such agency to execute, within 30 days after 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. For certifications issued by the department in regard to the properties and works of any agency that is a party to the proceeding, any stipulation filed pursuant to s. 403.508(6)(a) must include a stipulation regarding any issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant. Any agency stipulating to the use of, connection to, or crossing of its property must agree to execute, within 30 days after 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.

(7) The issuance or denial of the certification by the board or secretary of the department 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; s. 27, ch. 86-186; s. 12, ch. 90-331; s. 8, ch. 92-132; s. 10, ch. 93-94; s. 4, ch. 94-321; s. 141, ch. 96-410; s. 32, ch. 2006-230; s. 76, ch. 2008-227.

**403.5095 Alteration of time limits.**—Any time limitation in this act may be altered by the designated administrative law judge 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. 8, ch. 76-76; s. 13, ch. 90-331; s. 142, ch. 96-410.

**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 under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this act shall govern and control, and such law, rule, regulation, or ordinance 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 licensing process.

**History.**—s. 1, ch. 73-33; s. 9, ch. 76-76; s. 14, ch. 90-331.

**403.511 Effect of certification.—**

(1) Subject to the conditions set forth therein, any certification shall constitute the sole license of the state and any agency as to the approval of the location of the site and any associated facility and the construction and operation of the proposed electrical power plant, except for the issuance of department licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the licensee named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification, and except for the issuance of department licenses or permits required under any federally delegated or approved permit program.

(b)1. Except as provided in subsection (4), and in consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which affect the proposed electrical power plant or its site, unless waived by the agency and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order that the public interests set forth in s. 403.509(3) in certifying the electrical power plant at the site proposed by the applicant overrides the public interest protected by the statute or rule from which relief is sought.

(3) The certification and any order on land use and zoning issued under this act shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 373, chapter 376, chapter 379, chapter 380, chapter 381, chapter 403, except for permits issued pursuant to any federally delegated or approved permit program and except as provided in chapter 404 or the Florida Transportation Code, or 33 U.S.C. s. 1341.

(4) This act shall not affect in any way the Public Service Commission’s ratemaking powers or its exclusive jurisdiction to require transmission lines to be located underground under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

(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, exceptions, exemptions, or other relief have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Upon written notification to the department, 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.

(6) No term or condition of an electrical power plant certification shall be interpreted to supersede or control the provisions of a final operation permit for a major source of air pollution issued by the department pursuant to s. 403.0872 to a facility certified under this part.

(7) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state’s certification of coastal zone consistency.

**History.**—s. 1, ch. 73-33; s. 2, ch. 74-170; s. 10, ch. 76-76; s. 1, ch. 77-174; s. 83, ch. 79-65; s. 28, ch. 86-186; s. 15, ch. 90-331; s. 11, ch. 93-94; s. 81, ch. 93-213; s. 33, ch. 2006-230; s. 77, ch. 2008-227; s. 48, ch. 2009-21; s. 74, ch. 2013-15; s. 3, ch. 2018-34.

**403.5112 Filing of notice of certified corridor route.**—

(1) Within 60 days after certification of an associated linear facility pursuant to this act, the applicant shall file, in accordance with s. 28.222, with the department and the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.

(2) 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 department and 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.

**History.**—s. 34, ch. 2006-230; s. 78, ch. 2008-227.

**403.5113 Postcertification amendments and review.**—

(1) POSTCERTIFICATION AMENDMENTS.—

(a) If, subsequent to certification by the board, a licensee proposes any material change to the application and revisions or amendments thereto, as certified, the licensee shall submit a written request for amendment and a description of the proposed change to the application to the department. Within 30 days after the receipt of the request for the amendment, the department shall determine whether the proposed change to the application requires a modification of the conditions of certification.

(b) If the department concludes that the change would not require a modification of the conditions of certification, the department shall provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

(c) If the department concludes that the change would require a modification of the conditions of certification, the department shall provide written notification to the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516.

(2) POSTCERTIFICATION REVIEW.—Postcertification submittals filed by the licensee with one or more agencies are for the purpose of monitoring for compliance with the issued certification and must be reviewed by the agencies on an expedited and priority basis because each facility certified under this act is a critical infrastructure facility. In no event shall a postcertification review be completed in more than 90 days after complete information is submitted to the reviewing agencies.

**History.**—s. 35, ch. 2006-230; s. 79, ch. 2008-227.

**403.5115 Public notice.**—

(1) The following notices are to be published by the applicant for all applications:

(a) Notice of the filing of a notice of intent under s. 403.5063, which shall be published within 21 days after the filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) Notice of filing of the application, which shall include a description of the proceedings required by this act, within 21 days after the date of the application filing. Such notice shall give notice of the provisions of s. 403.511(1) and (2).

(c) If applicable, notice of the land use determination made pursuant to s. 403.50665(2) within 21 days after the deadline for the filing of the determination.

(d) If applicable, notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 days before the hearing.

(e) Notice of the certification hearing and notice of the deadline for filing notice of intent to be a party, which shall be published as specified in subsection (2), at least 65 days before the date set for the certification hearing.

If one or more alternate corridors have been accepted for consideration, the notice of the certification hearing shall include a map of all corridors proposed for certification.

(f) Notice of revised deadline for filing alternate corridors if the certification hearing is rescheduled to a date other than as published in the notice of filing of the application. This notice shall be published at least 185 days before the rescheduled certification hearing and as specified in subsection (2), except no map is required and the size of the notice shall be no smaller than 6 square inches.

(g) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days before the date of the originally scheduled certification hearing. The newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(h) Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification. The newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be published no later than 30 days before the hearing.

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed electrical power plant will be located. The newspaper notices, unless otherwise specified, shall be at least 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 the project and all associated facilities corridors. A newspaper of general circulation shall be the newspaper which 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, 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.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The department shall arrange for publication of the following notices in the manner specified by chapter 120 and provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose:

(a) Notice of the filing of the notice of intent within 15 days after receipt of the notice.

(b) Notice of the filing of the application, no later than 21 days after the application filing.

(c) Notice of the land use determination made pursuant to s. 403.50665(2) within 21 days after the determination is filed.

(d) Notice of the land use hearing before the administrative law judge, if applicable, no later than 15 days before the hearing.

(e) Notice of the land use hearing before the board, if applicable.

(f) Notice of the certification hearing at least 45 days before the date set for the certification hearing.

(g) Notice of the revised deadline for filing alternate corridors if the certification hearing is rescheduled to a date other than as published in the notice of filing of the application. This notice shall be published at least 185 days before the rescheduled certification hearing.

(h) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days prior to the date of the originally scheduled certification hearing.

(i) Notice of the hearing before the board, if applicable.

(j) Notice of stipulations, proposed agency action, or petitions for modification.

(5) A local government that proposes to conduct an informational public meeting pursuant to s. 403.50663 must publish notice of the meeting in a newspaper of general circulation within the county or counties in which the proposed electrical power plant will be located no later than 7 days prior to the meeting. A newspaper of general circulation shall be the newspaper that 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, 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.

(6)(a) A good faith effort shall be made by the applicant to provide direct written notice of the filing of an application for certification by United States mail or hand delivery no later than 45 days after filing of the application to all local landowners whose property, as noted in the most recent local government tax records, and residences are located within the following distances of the proposed project:

1. Three miles of the proposed main site boundaries of the proposed electrical power plant.

2. One-quarter mile for a transmission line corridor that only includes a transmission line as defined by s. 403.522(22).

3. One-quarter mile for all other linear associated facilities extending away from the main site boundary except for a transmission line corridor that includes a transmission line that operates below those defined by s. 403.522(22).

(b) No later than 60 days from the filing of an application for certification, the applicant shall file a list with the department's Siting Coordination Office of landowners and residences that were notified.

(7)(a) A good faith effort shall be made by the proponent of an alternate corridor that includes a transmission line, as defined by s. 403.522(22), to provide direct written notice of the filing of an alternate corridor for certification by United States mail or hand delivery of the filing no later than 30 days after filing of the alternate corridor to all local landowners whose property, as noted in the most recent local government tax records, and residences, are located within one-quarter mile of the proposed boundaries of a transmission line corridor that includes a transmission line as defined by s. 403.522(22).

(b) No later than 45 days from the filing of an alternate corridor for certification, the proponent of an alternate corridor shall file a list with the department's Siting Coordination Office of landowners and residences that were notified.

**History.**—s. 16, ch. 90-331; s. 12, ch. 93-94; s. 36, ch. 2006-230; s. 80, ch. 2008-227; s. 49, ch. 2009-21; s. 22, ch. 2015-30.

**403.5116 County and municipal authority unaffected by ch. 75-22.**—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; s. 17, ch. 90-331.

**Note.**—Former s. 403.5111.

**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 act or regulations or orders issued hereunder.

**History.**—s. 1, ch. 73-33; s. 11, ch. 76-76; s. 18, ch. 90-331.

**403.513 Review.**—Proceedings under this act shall be subject to judicial review as provided in chapter 120. When possible, separate appeals of the certification order issued by the board and of any department permit issued pursuant to a federally delegated or approved permit program may be consolidated for purposes of judicial review.

**History.**—s. 1, ch. 73-33; s. 12, ch. 76-76; s. 29, ch. 86-186; s. 19, ch. 90-331; s. 37, ch. 2006-230.

**403.514 Enforcement of compliance.**—Failure to obtain a certification, or to comply with the conditions thereof, or to comply with this act shall constitute a violation of chapter 403.

**History.**—s. 1, ch. 73-33; s. 12, ch. 76-76; s. 20, ch. 90-331.

**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.**—

(1) A certification may be modified after issuance in any one of the following ways:

(a) The board may delegate to the department the authority to modify specific conditions in the certification.

(b)1. The department may modify specific conditions of a certification which are inconsistent with the terms of any federally delegated or approved permit for the certified electrical power plant.

2. Such modification may be made without further notice if the matter has been previously noticed under the requirements for any federally delegated or approved permit program.

(c) The licensee may file a petition for modification with the department, or the department may initiate the modification upon its own initiative.

1. A petition for modification must set forth:

a. The proposed modification.

b. The factual reasons asserted for the modification.

c. The anticipated environmental effects of the proposed modification.

2. The department may modify the terms and conditions of the certification if no party to the certification hearing objects in writing to such modification within 45 days after notice by mail to such party's last address of record, 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 objections are raised or the department denies the request, the applicant or department may file a request for a hearing on the modification with the department. Such request shall be handled pursuant to chapter 120.

4. Requests referred to the Division of Administrative Hearings shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

(d) As required by s. 403.511(5).

(2) Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

**History.**—s. 13, ch. 76-76; s. 10, ch. 81-131; s. 30, ch. 86-186; s. 21, ch. 90-331; s. 9, ch. 92-132; s. 143, ch. 96-410; s. 38, ch. 2006-230; s. 81, ch. 2008-227.

**403.517 Supplemental applications for sites certified for ultimate site capacity.**—

(1)(a) Supplemental applications may be submitted 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 act. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified for that site. Such applications shall include all new associated facilities that support the construction and operation of the electrical power plant.

(b) The review shall use the same procedural steps and notices as for an initial application.

(c) The time limits for the processing of a complete supplemental application shall be designated by the department commensurate with the scope of the supplemental application, but shall not exceed any time limitation governing the review of initial applications for certification pursuant to this act, 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.

(d) Any time limitation in this section or in rules adopted pursuant to this section may be altered pursuant to s. 403.5095.

(2) The land use and zoning consistency determination of s. 403.50665 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.

**History.**—s. 14, ch. 76-76; s. 11, ch. 81-131; s. 34, ch. 81-169; s. 38, ch. 83-55; s. 22, ch. 90-331; s. 144, ch. 96-410; s. 39, ch. 2006-230; s. 82, ch. 2008-227.

**403.5175 Existing electrical power plant site certification.**—

(1) An electric utility that owns or operates an existing electrical power plant as defined in s. 403.503(14) may apply for certification of an existing power plant and its site in order to obtain all agency licenses necessary to ensure compliance with federal or state environmental laws and regulation using the centrally coordinated, one-stop licensing process established by this part. An application for certification under this section must be in the form prescribed by department rule. Applications must be reviewed and processed using the same procedural steps and notices as for an application for a new facility, except that a determination of need by the Public Service Commission is not required.

(2) An application for certification under this section must include:

(a) A description of the site and existing power plant installations and associated facilities;

(b) A description of all proposed changes or alterations to the site and all new associated facilities that are the subject of the application;

(c) A description of the environmental and other impacts caused by the existing utilization of the site and associated facilities, and the operation of the electrical power plant that is the subject of the application, and of the environmental and other benefits, if any, to be realized as a result of the proposed changes or alterations if certification is approved and such other information as is necessary for the reviewing agencies to evaluate the proposed changes and the expected impacts;

(d) The justification for the proposed changes or alterations;

(e) Copies of all existing permits, licenses, and compliance plans authorizing utilization of the site and associated facilities or operation of the electrical power plant that is the subject of the application.

(3) The land use and zoning determination requirements of s. 403.50665 do not apply to an application under this section if the applicant does not propose to expand the boundaries of the existing site or to add additional offsite associated facilities that are not exempt from the provisions of s. 403.50665. If the applicant proposes to expand the boundaries of the existing site or to add additional offsite associated facilities that are not exempt from the provisions of s. 403.50665 to accommodate portions of the electrical generating facility or associated facilities, a land use and zoning determination shall be made as specified in s. 403.50665; provided, however, that the sole issue for determination is whether the proposed site expansion or additional nonexempt associated facilities are consistent and in compliance with the existing land use plans and zoning ordinances.

(4) In considering whether an application submitted under this section should be approved in whole, approved with appropriate conditions, or denied, the board shall consider whether, and to the extent to which the proposed changes to the electrical power plant and its continued operation under certification will:

(a) Comply with the provisions of s. 403.509(3).

(b) Result in environmental or other benefits compared to current utilization of the site and operations of the electrical power plant if the proposed changes or alterations are undertaken.

(5) An applicant's failure to receive approval for certification of an existing site or an electrical power plant under this section is without prejudice to continued operation of the electrical power plant or site under existing agency licenses.

**History.**—s. 10, ch. 92-132; s. 40, ch. 2006-230; s. 82, ch. 2007-5; s. 83, ch. 2008-227.

**403.518 Fees; disposition.**—The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

(1) A fee for a notice of intent pursuant to s. 403.5063, in the amount of $2,500, to be submitted to the department at the time of filing of a notice of intent. The notice-of-intent fee shall be used and disbursed in the same manner as the application fee.

(2) An application fee, which shall not exceed $200,000. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, or increase in electrical generating capacity proposed by the application.

(a) Sixty percent of the fee shall go to the department to cover any costs associated with coordinating the review and acting upon the application, to cover any field services associated with monitoring construction and operation of the facility, and to cover the costs of the public notices published by the department.

(b) The following percentages shall be transferred to the Operating Trust Fund of the Division of Administrative Hearings of the Department of Management Services:

1. Five percent to compensate expenses from the initial exercise of duties associated with the filing of an application.

2. An additional 5 percent if a land use hearing is held pursuant to s. 403.508.

3. An additional 10 percent if a certification hearing is held pursuant to s. 403.508.

(c)1. Upon written request with proper itemized accounting within 90 days after final agency action by the board or department or withdrawal of the application, the agencies that prepared reports pursuant to s. 403.507 or participated in a hearing pursuant to s. 403.508 may submit a written request to the department for reimbursement of expenses incurred during the certification proceedings. The request shall contain an accounting of expenses incurred which may include time spent reviewing the application, preparation of any studies required of the agencies by this act, agency travel and per diem to attend any hearing held pursuant to this act, and for any local government's or regional planning council's provision of notice of public meetings required as a result of the application for certification. The department shall review the request and verify that the expenses are valid. Valid expenses shall be reimbursed; however, in the event the amount of funds available for reimbursement is insufficient to provide for full compensation to the agencies requesting reimbursement, reimbursement shall be on a prorated basis.

2. If the application review is held in abeyance for more than 1 year, the agencies may submit a request for reimbursement. This time period shall be measured from the date the applicant has provided written notification to the department that it desires to have the application review process placed on hold. The fee disbursement shall be processed in accordance with subparagraph 1.

(d) If any sums are remaining, the department shall retain them for its use in the same manner as is otherwise authorized by this act; provided, however, that if the certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after the submittal of the written notification of withdrawal.

(3)(a) A certification modification fee, which shall not exceed $30,000. The department shall establish rules for determining such a fee based on the number of agencies involved in the review, equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated facility location.

(b) The fee shall be submitted to the department with a petition for modification pursuant to s. 403.516. This fee shall be established, disbursed, and processed in the same manner as the application fee in subsection (2), except that the Division of Administrative Hearings shall not receive a portion of the fee unless the petition for certification modification is referred to the Division of Administrative Hearings for hearing. If the petition is so referred, only $10,000 of the fee shall be transferred to the Operating Trust Fund of the Division of Administrative Hearings of the Department of Management Services.

(4) A supplemental application fee, not to exceed $75,000, to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application. This fee shall be established, disbursed, and processed in the same manner as the certification application fee in subsection (2).

(5) An existing certification application fee, not to exceed $200,000, to cover all reasonable costs and expenses of the review processing and proceedings for certification of an existing power plant site under s. 403.5175. This fee must be established, disbursed, and processed in the same manner as the certification application fee in subsection (2).

(6) An application fee for an alternate corridor filed pursuant to s. 403.5064(4). The application fee shall be $750 per mile for each mile of the alternate corridor located within an existing electric transmission line right-of-way or within an existing right-of-way for a road, highway, railroad, or other aboveground linear facility, or $1,000

per mile for each mile of an electric transmission line corridor proposed to be located outside the existing right-of-way.

**History.**—s. 23, ch. 90-331; s. 11, ch. 92-132; s. 13, ch. 93-94; s. 387, ch. 94-356; s. 65, ch. 96-321; s. 208, ch. 99-245; s. 29, ch. 2000-153; s. 13, ch. 2006-79; s. 41, ch. 2006-230; s. 84, ch. 2008-227.

**403.5185 Law applicable to applications processed under ss. 403.501-403.518.**—Any application for electrical power plant certification filed pursuant to ss. 403.501-403.518 shall be processed under the provisions of the law applicable at the time the application was filed, except that the provisions relating to cancellation of the certification hearing under s. 403.508(6), the provisions relating to the final disposition of the application and issuance of the written order by the secretary under s. 403.509(1)(a), and notice of the cancellation of the certification hearing under s. 403.5115 may apply to any application for electrical power plant certification.

**History.**—s. 42, ch. 2006-230.

**403.519 Exclusive forum for determination of need.**—

(1) On request by an applicant 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.

(2) The applicant shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 21 days prior to the scheduled date for the proceeding. The commission shall publish notice of the proceeding in the manner specified by chapter 120 at least 21 days prior to the scheduled date for the proceeding.

(3) 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, the need for fuel diversity and supply reliability, whether the proposed plant is the most cost-effective alternative available, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably 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(4). An order entered pursuant to this section constitutes final agency action.

(4) In making its determination on a proposed electrical power plant using nuclear materials or synthesis gas produced by integrated gasification combined cycle power plant as fuel, the commission shall hold a hearing within 90 days after the filing of the petition to determine need and shall issue an order granting or denying the petition within 135 days after the date of the filing of the petition. The commission shall be the sole forum for the determination of this matter and the issues addressed in the petition, which accordingly shall not be reviewed in any other forum, or in the review of proceedings in such other forum. In making its determination to either grant or deny the petition, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, the need for adequate electricity at a reasonable cost, and whether renewable energy sources and technologies, as well as conservation measures, are utilized to the extent reasonably available.

(a) The applicant's petition shall include:

1. A description of the need for the generation capacity.

2. A description of how the proposed nuclear or integrated gasification combined cycle power plant will enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. A description of and a nonbinding estimate of the cost of the nuclear or integrated gasification combined cycle power plant, including any costs associated with new, expanded, or relocated electrical transmission lines or facilities of any size that are necessary to serve the nuclear power plant.

4. The annualized base revenue requirement for the first 12 months of operation of the nuclear or integrated gasification combined cycle power plant.

5. Information on whether there were any discussions with any electric utilities regarding ownership of a portion of the nuclear or integrated gasification combined cycle power plant by such electric utilities.

(b) In making its determination, the commission shall take into account matters within its jurisdiction, which it deems relevant, including whether the nuclear or integrated gasification combined cycle power plant will:

1. Provide needed base-load capacity.

2. Enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. Provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

(c) No provision of rule 25-22.082, Florida Administrative Code, shall be applicable to a nuclear or integrated gasification combined cycle power plant sited under this act, including provisions for cost recovery, and an applicant shall not otherwise be required to secure competitive proposals for power supply prior to making application under this act or receiving a determination of need from the commission.

(d) The commission's determination of need for a nuclear or integrated gasification combined cycle power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4)(a). An order entered pursuant to this section constitutes final agency action. Any petition for reconsideration of a final order on a petition for need determination shall be filed within 5 days after the date of such order. The commission's final order, including any order on reconsideration, shall be reviewable on appeal in the Florida Supreme Court. Inasmuch as delay in the determination of need will delay siting of a nuclear or integrated gasification combined cycle power plant or diminish the opportunity for savings to customers under the federal Energy Policy Act of 2005, the Supreme Court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over matters not accorded similar precedence by law.

(e) After a petition for determination of need for a nuclear or integrated gasification combined cycle power plant has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant and new, expanded, or relocated electrical transmission lines or facilities of any size that are necessary to serve the nuclear power plant, shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred. Proceeding with the construction of the nuclear or integrated gasification combined cycle power plant following an order by the commission approving the need for the nuclear or integrated gasification combined cycle power plant under this act shall not constitute or be evidence of imprudence. Imprudence shall not include any cost increases due to events beyond the utility's control. Further, a utility's right to recover costs associated with a nuclear or integrated gasification combined cycle power plant may not be raised in any other forum or in the review of proceedings in such other forum. Costs incurred prior to commercial operation shall be recovered pursuant to chapter 366.

**History.**—s. 5, ch. 80-65; s. 24, ch. 90-331; s. 43, ch. 2006-230; s. 3, ch. 2007-117; s. 85, ch. 2008-227.

**403.52 Short title.**—Sections 403.52-403.5365 may be cited as the "Florida Electric Transmission Line Siting Act."

**History.**—s. 1, ch. 80-65; s. 25, ch. 90-331; s. 45, ch. 2006-230.

**403.521 Legislative intent.**—The legislative intent of this act is to establish a centralized and coordinated licensing process for the location of electric transmission line corridors and the construction, operation, and maintenance of electric transmission lines, which are critical infrastructure facilities. This necessarily involves several broad interests of the public addressed through the subject matter jurisdiction of several agencies. The Legislature recognizes that electric transmission lines will have an effect upon the reliability of the electric power system, the environment, land use, and the welfare of the population. Recognizing the need to ensure electric

power system reliability and integrity, and in order to meet electric energy needs in an orderly and timely fashion, the centralized and coordinated licensing 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, operation, and maintenance of electric 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 reliable, economical, and efficient electric energy and the impact on the public and the environment resulting from the location of the transmission line corridor and the construction, operation, and maintenance of the transmission lines. The Legislature intends that the provisions of chapter 120 apply to this act and to proceedings under it except as otherwise expressly exempted by other provisions of this act.

**History.**—s. 1, ch. 80-65; s. 2, ch. 83-222; s. 26, ch. 90-331; s. 46, ch. 2006-230.

**403.522 Definitions relating to the Florida Electric Transmission Line Siting Act.**—As used in this act:

(1) "Act" means the Florida Electric Transmission Line Siting Act.

(2) "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 county, municipality, or other regional or local governmental entity.

(3) "Amendment" means a material change in information provided by the applicant to the application for certification made after the initial application filing.

(4) "Applicant" means any electric utility that applies for certification under this act.

(5) "Application" means the documents required by the department to be filed to initiate and support a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information. An electric utility may file a comprehensive application encompassing all or a part of one or more proposed transmission lines.

(6) "Board" means the Governor and Cabinet sitting as the siting board.

(7) "Certification" means the approval by the board of the license for a corridor proper for certification pursuant to subsection (10) and the construction, operation, and maintenance of transmission lines within the corridor with the changes or conditions as the siting board deems appropriate. Certification shall be evidenced by a written order of the board.

(8) "Commission" means the Florida Public Service Commission.

(9) "Completeness" means that the application has addressed all applicable sections of the prescribed application format and that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.526.

(10) "Corridor" means the proposed area within which a transmission line right-of-way, including maintenance and access roads, 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 a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the transmission line right-of-way and maintenance and access roads 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 under s. 403.5275, and in notices of acceptance of proposed alternate corridors filed by an applicant and the department pursuant to s. 403.5271 for which the required information for the preparation of agency supplemental reports was filed.

(11) "Department" means the Department of Environmental Protection.

(12) "Electric utility" means cities and towns, counties, public utility districts, regulated electric companies, electric cooperatives, regional transmission organizations, operators of independent transmission systems, or other

transmission organizations approved by the Federal Energy Regulatory Commission or the commission for the operation of transmission facilities, and joint operating agencies, or combinations thereof, engaged in, or authorized to engage in, the business of generating, transmitting, or distributing electric energy.

(13) "License" means a franchise, permit, certification, registration, charter, comprehensive plan amendment, development order, or permit as defined in chapters 163 and 380, 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.

(14) "Licensee" means an applicant that has obtained a certification order for the subject project.

(15) "Local government" means a municipality or county in the jurisdiction of which the project is proposed to be located.

(16) "Maintenance and access roads" means roads constructed within the transmission line right-of-way. Nothing in this act prohibits an applicant from constructing a road to support construction, operation, or maintenance of the transmission line that lies outside the transmission line right-of-way.

(17) "Modification" means any change in the certification order after issuance, including a change in the conditions of certification.

(18) "Nonprocedural requirements of agencies" means any agency's regulatory requirements established by statute, rule, ordinance, or comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of information submitted to demonstrate compliance with such regulatory requirements.

(19) "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.

(20) "Preliminary statement of issues" means a listing and explanation of those issues within the agency's jurisdiction which are of major concern to the agency in relation to the proposed electric transmission line corridor.

(21) "Regional planning council" means a regional planning council as defined in s. 186.503(4) in the jurisdiction of which the project is proposed to be located.

(22) "Transmission line" or "electric transmission line" means structures, maintenance and access roads, and all other facilities that need to be constructed, operated, or maintained for the purpose of conveying electric power 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. The transmission line may include, at the applicant's option, any proposed terminal or intermediate substations or substation expansions necessary to serve the transmission line.

(23) "Transmission line right-of-way" means land necessary for the construction, operation, 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 in documents filed with the department before construction.

(24) "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.

**History.**—s. 1, ch. 80-65; s. 3, ch. 83-222; s. 54, ch. 85-81; s. 27, ch. 90-331; s. 388, ch. 94-356; s. 47, ch. 2006-230.

**403.523 Department of Environmental Protection; powers and duties.**—The department has the following powers and duties:

(1) To adopt procedural rules pursuant to ss. 120.536(1) and 120.54 to administer this act and to adopt or amend rules to implement the provisions of subsection (10).

(2) To prescribe the form and content of the public notices and the form, content, and necessary supporting documentation, and any required studies, for certification applications. All 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 thereof.

(4) To make or contract for studies of certification applications. All 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 the agency.

(5) To administer the processing of applications for certification and ensure that the applications, including postcertification reviews, are processed on an expeditious and priority basis.

(6) To collect and process such fees as allowed by this act.

(7) To prepare a report and project analysis as required by s. 403.526.

(8) To prescribe the means for monitoring the effects arising from the location of the transmission line corridor and the construction, operation, and maintenance of the transmission lines to assure continued compliance with the terms of the certification.

(9) To make a determination of acceptability of any alternate corridor proposed for consideration under s. 403.5271.

(10) To set requirements that reasonably protect the public health and welfare from the electric and magnetic fields of transmission lines for which an application is filed under this act.

(11) To present rebuttal evidence on any issue properly raised at the certification hearing.

(12) To issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction pursuant to s. 403.527(6).

(13) To act as clerk for the siting board.

(14) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility.

(15) To issue emergency orders on behalf of the board for facilities licensed under this act.

**History.**—s. 1, ch. 80-65; s. 37, ch. 81-167; s. 265, ch. 81-259; s. 39, ch. 83-55; s. 4, ch. 83-222; s. 8, ch. 86-173; s. 55, ch. 86-186; s. 28, ch. 90-331; s. 389, ch. 94-356; s. 103, ch. 98-200; s. 48, ch. 2006-230.

**403.524 Applicability; certification; exemptions.**—

(1) This act applies to each transmission line, except a transmission line certified under the Florida Electrical Power Plant Siting Act.

(2) Except as provided in subsection (1), construction of a transmission line may not be undertaken without first obtaining certification under this act, but this act does not apply to:

(a) Transmission lines for which development approval has been obtained under chapter 380.

(b) Transmission lines that have been exempted by a binding letter of interpretation issued under s. 380.06(3), or in which the Department of Economic Opportunity 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(8).

(c) Transmission line development in which all construction is limited to established rights-of-way. Established rights-of-way include rights-of-way established at any time for roads, highways, railroads, gas, water, oil, electricity, or sewage and any other public purpose rights-of-way. If an established transmission line right-of-way is used to qualify for this exemption, the transmission line right-of-way must have been established at least 5 years before notice of the start of construction under subsection (4) of the proposed transmission line. If an established transmission line right-of-way is relocated to accommodate a public project, the date the original transmission line right-of-way was established applies to the relocated transmission line right-of-way for purposes of this exemption.

(d) Unless the applicant has applied for certification under this act, transmission lines that are less than 15 miles in length or are located in a single county within the state.

(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) An electric utility shall notify the department in writing, before the start of construction, of its intent to construct a transmission line exempted under this section. The notice is only for information purposes, and action

by the department is not required pursuant to the notice. This notice may be included in any submittal filed with the department before the start of construction demonstrating that a new transmission line complies with the applicable electric and magnetic field standards.

**History.**—s. 1, ch. 80-65; s. 14, ch. 81-131; s. 38, ch. 81-167; s. 40, ch. 83-55; s. 5, ch. 83-222; s. 49, ch. 85-55; s. 29, ch. 90-331; s. 49, ch. 2006-230; s. 289, ch. 2011-142; s. 20, ch. 2018-158.

**403.525 Administrative law judge; appointment; powers and duties.**—

(1)(a) Within 7 days after receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act.

(b) The division director shall designate an administrative law judge 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 an administrative law judge who has had prior experience or training in this type of certification proceeding.

(c) Upon being advised that an administrative law judge has been designated, the department shall immediately file a copy of the application and all supporting documents with the administrative law judge, who shall docket the application.

(2) The administrative law judge has all powers and duties granted to administrative law judges under chapter 120 and by the laws and rules of the department.

**History.**—s. 1, ch. 80-65; s. 6, ch. 83-222; s. 30, ch. 90-331; s. 145, ch. 96-410; s. 50, ch. 2006-230.

**403.5251 Application; schedules.**—

(1)(a) The formal date of the filing of the application for certification and commencement of the review process for certification is the date on which the applicant submits:

1. Copies of the application for certification in a quantity and format, electronic or otherwise as prescribed by rule, to the department and other agencies identified in s. 403.526(2).

2. The application fee as specified under s. 403.5365 to the department.

The department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of any additional agencies or persons entitled to notice and copies of the application and amendments, if any, within 7 days after receiving the application for certification and the application fees.

(b) In the application, the starting point and ending point of a transmission line must be specifically defined by the applicant.

(2) Within 15 days after the formal date of the application filing, the department shall prepare a proposed schedule of dates for determination of completeness, submission of statements of issues, submittal of final reports, and other significant dates to be followed during the certification process, including dates for filing notices of appearances to be a party under s. 403.527(2). This schedule shall be provided by the department to the applicant, the administrative law judge, and the agencies identified under subsection (1). Within 7 days after the filing of this proposed schedule, the administrative law judge shall issue an order establishing a schedule for the matters addressed in the department's proposed schedule and other appropriate matters, if any.

(3) Copies of changes and amendments to the application shall be timely distributed by the applicant to all agencies and parties who have received a copy of the application.

(4) Notice of the filing of the application shall be made in accordance with the requirements of s. 403.5363.

**History.**—s. 31, ch. 90-331; s. 146, ch. 96-410; s. 51, ch. 2006-230.

**403.5252 Determination of completeness.**—

(1)(a) Within 30 days after the filing of an application, the affected agencies shall file a statement with the department containing the recommendations of each agency concerning the completeness of the application for certification.

(b) Within 37 days after the filing of the application, the department shall file a statement with the Division of Administrative Hearings, with the applicant, and with all parties declaring its position with regard to the

completeness of the application. The statement of the department shall be based upon its consultation with the affected agencies.

(2) If the department declares the application to be incomplete, the applicant, within 14 days after the filing of the statement by the department, shall file with the Division of Administrative Hearings, with all parties, and with the department:

(a) A withdrawal of the application;

(b) Additional information necessary to make the application complete. After the department first determines the application to be incomplete, the time schedules under this act are not tolled if the applicant makes the application complete within the 14-day period. A subsequent finding by the department that the application remains incomplete tolls the time schedules under this act until the application is determined complete;

(c) A statement contesting the department's determination of incompleteness; or

(d) A statement agreeing with the department and requesting additional time to provide the information necessary to make the application complete. If the applicant exercises this option, the time schedules under this act are tolled until the application is determined complete.

(3)(a) If the applicant contests the determination by the department that an application is incomplete, the administrative law judge shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 21 days after the filing of the statement by the department. The administrative law judge shall render a decision within 7 days after the hearing.

(b) Parties to a hearing on the issue of completeness shall include the applicant, the department, and any agency that has jurisdiction over the matter in dispute. Any substantially affected person who wishes to become a party to the hearing on the issue of completeness must file a motion no later than 10 days before the date of the hearing.

(c) If the administrative law judge determines that the application was not complete, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act do not commence until the application is determined complete.

(d) If the administrative law judge determines that the application was complete at the time it was declared incomplete, the time schedules referencing a complete application under this act shall commence upon such determination.

(4) If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to the department, no later than 14 days after the applicant files the additional information, a recommendation on whether the agency believes the application is complete. Within 21 days after receipt of the additional information from the applicant submitted under paragraph (2)(b), paragraph (2)(d), or paragraph (3)(c) and considering the recommendations of the affected agencies, the department shall determine whether the additional information supplied by an applicant makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options specified in subsection (2) as often as is necessary to resolve the dispute.

**History.**—s. 32, ch. 90-331; s. 147, ch. 96-410; s. 52, ch. 2006-230; s. 86, ch. 2008-227.

**403.526 Preliminary statements of issues, reports, and project analyses; studies.**—

(1) Each affected agency that is required to file a report in accordance with this section shall submit a preliminary statement of issues to the department and all parties no later than the submittal of each agency's recommendation that the application is complete. The failure to raise an issue in this preliminary statement of issues does not preclude the issue from being raised in the agency's report.

(2)(a) No later than 90 days after the filing of the application, the following agencies shall prepare reports as provided below, unless a final order denying the determination of need has been issued under s. 403.537:

1. 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.

2. 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.

3. The Department of Economic Opportunity shall prepare a report containing recommendations which address the impact upon the public of the proposed transmission line or corridor, based on the degree to which the proposed transmission line or corridor is consistent with the applicable portions of the state comprehensive plan, emergency management, and other matters within its jurisdiction. The Department of Economic Opportunity may also comment on the consistency of the proposed transmission line or corridor with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

4. The Fish and Wildlife Conservation 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.

5. Each local government shall prepare a report as to the impact of each proposed transmission line or corridor on matters within its jurisdiction, including the consistency of the proposed transmission line or corridor with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed transmission line or corridor, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means. A change by the responsible local government or local agency in local comprehensive plans, zoning ordinances, or other regulations made after the date required for the filing of the local government's report required by this section is not applicable to the certification of the proposed transmission line or corridor unless the certification is denied or the application is withdrawn.

6. The Department of Transportation shall prepare a report as to the impact of the proposed transmission line or corridor on state roads, railroads, airports, aeronautics, seaports, and other matters within its jurisdiction.

7. The commission shall prepare a report containing its determination under s. 403.537, and the report may include the comments from the commission with respect to any other subject within its jurisdiction.

8. Any other agency, if requested by the department, shall also perform studies or prepare reports as to subjects within the jurisdiction of the agency which may potentially be affected by the proposed transmission line.

(b) Each report must contain:

1. A notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the proposed corridor to be certified. Failure to include the notice shall be treated as a waiver from the nonprocedural requirements of that agency.

2. A recommendation for approval or denial of the application.

3. The 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.

(c) Each reviewing agency shall initiate the activities required by this section no later than 15 days after the application is filed. Each agency shall keep the applicant and the department informed as to the progress of its studies and any issues raised thereby.

(d) When an agency whose agency head is a collegial body, such as a commission, board, or council, is required to submit a report pursuant to this section and is required by its own internal procedures to have the report reviewed by its agency head prior to finalization, the agency may submit to the department a draft version of the report by the deadline indicated in paragraph (a), and shall submit a final version of the report after review by the agency head, no later than 15 days after the deadline indicated in paragraph (a).

(e) Receipt of an affirmative determination of need from the commission by the submittal deadline for agency reports under paragraph (a) is a condition precedent to further processing of the application.

(3) The department shall prepare a project analysis containing a compilation of agency reports and summaries of the material contained therein which shall be filed with the administrative law judge and served on all parties no later than 115 days after the application is filed, and which shall include:

(a) A statement indicating whether the proposed electric transmission line will be in compliance with the rules of the department and affected agencies.

(b) The studies and reports required by this section and s. 403.537.

(c) Comments received from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

(4) The failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, is not grounds for the alteration of any time limitation in this act under s. 403.528. The failure to submit a preliminary statement of issues or a report, or the inadequacy of the preliminary statement of issues or report, is not 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; s. 34, ch. 90-331; s. 390, ch. 94-356; s. 15, ch. 95-149; s. 149, ch. 96-410; s. 209, ch. 99-245; s. 53, ch. 2006-230; s. 83, ch. 2007-5; s. 87, ch. 2008-227; s. 290, ch. 2011-142; s. 23, ch. 2015-30.

**403.527 Certification hearing, parties, participants.**—

(1)(a) No later than 145 days after the application is filed, the administrative law judge shall conduct a certification hearing pursuant to ss. 120.569 and 120.57 at a central location in proximity to the proposed transmission line or corridor.

(b) 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 shall be made in accordance with the requirements of s. 403.5363.

(2)(a) Parties to the proceeding shall be:

1. The applicant.
2. The department.
3. The commission.
4. The Department of Economic Opportunity.
5. The Fish and Wildlife Conservation Commission.
6. The Department of Transportation.
7. Each water management district in the jurisdiction of which the proposed transmission line or corridor is to be located.
8. The local government.

(b) Any party listed in paragraph (a), other than the department or the applicant, 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 before the certification hearing, the party is 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 administrative law judge of a notice of intent to be a party by an agency, 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 before the date set for 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 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 comprehensive planning or 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.

(3)(a) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:

1. The applicant.
2. The department.
3. State agencies.

4. Regional agencies, including water management districts.

5. Local governments.

6. Other parties.

(b) When appropriate, any person may be given an opportunity to present oral or written communications to the administrative law judge. If the administrative law judge proposes to consider such communications, all parties shall be given an opportunity to cross-examine, challenge, or rebut the communications.

(4)(a) One public hearing where members of the public who are not parties to the certification hearing may testify shall be held in conjunction with the certification hearing.

(b) Upon the request of the local government, one public hearing where members of the public who are not parties to the certification hearing and who reside within the jurisdiction of the local government may testify shall be held within the boundaries of each county in which a local government that made such a request is located.

(c) A local government shall notify the administrative law judge and all parties not later than 50 days after the filing of the application as to whether the local government wishes to have a public hearing within the boundaries of its county. The local government is responsible for providing the location of the public hearing if held separately from the certification hearing.

(d) Within 5 days after notification, the administrative law judge shall determine the date of the public hearing, which shall be held before or during the certification hearing. If two or more local governments within one county request a public hearing, the hearing shall be consolidated so that only one public hearing is held in any county. The location of a consolidated hearing shall be determined by the administrative law judge.

(e) If a local government does not request a public hearing within 50 days after the filing of the application, members of the public who are not parties to the certification hearing and who reside within the jurisdiction of the local government may testify during the hearing held under paragraph (b).

(5) At the conclusion of the certification hearing, the administrative law judge shall, after consideration of all evidence of record, issue a recommended order disposing of the application no later than 45 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings.

(6)(a) No later than 29 days before the certification hearing, the department or the applicant may request that the administrative law judge cancel the certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of material fact or law.

(b) The administrative law judge shall issue an order granting or denying the request within 5 days.

(c) If the administrative law judge grants the request, the department and the applicant shall publish notices of the cancellation of the certification hearing in accordance with s. 403.5363.

(d)1. If the administrative law judge grants the request, the department shall prepare and issue a final order in accordance with s. 403.529(1)(a).

2. Parties may submit proposed final orders to the department no later than 10 days after the administrative law judge issues an order relinquishing jurisdiction.

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearing and the recording and transcription of the proceedings.

**History.**—s. 1, ch. 80-65; s. 40, ch. 81-167; s. 42, ch. 83-55; s. 8, ch. 83-222; s. 55, ch. 85-81; s. 35, ch. 90-331; s. 391, ch. 94-356; s. 150, ch. 96-410; s. 210, ch. 99-245; s. 54, ch. 2006-230; s. 88, ch. 2008-227; s. 291, ch. 2011-142; s. 24, ch. 2015-30.

**403.5271 Alternate corridors.**—

(1) No later than 45 days before the originally scheduled certification hearing, any party may propose alternate transmission line corridor routes for consideration under the provisions of this act.

(a) A notice of a proposed alternate corridor must be filed with the administrative law judge, all parties, and any local governments in whose jurisdiction the alternate corridor is proposed. The filing must include the most recent United States Geological Survey 1:24,000 quadrangle maps specifically delineating the corridor boundaries, a description of the proposed corridor, and a statement of the reasons the proposed alternate corridor should be certified.

(b)1. Within 7 days after receipt of the notice, the applicant and the department shall file with the administrative law judge and all parties a notice of acceptance or rejection of a proposed alternate corridor for consideration. If the alternate corridor is rejected 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. If a filing for an alternate corridor is accepted for consideration by the department and the applicant, any newly affected local government must notify the administrative law judge and all parties not later than 10 days after the data concerning the alternate corridor has been determined complete as to whether the local government wishes to have such a public hearing. The local government is responsible for providing the location of the public hearing if held separately from the certification hearing. The provisions of s. 403.527(4)(b) and (c) shall apply. Notice of the local hearings shall be published in accordance with s. 403.5363.

2. If rescheduled, the certification hearing shall be held no more than 90 days after the previously scheduled certification hearing, unless the data submitted under paragraph (d) is determined to be incomplete, in which case the rescheduled certification hearing shall be held no more than 105 days after the previously scheduled certification hearing. If additional time is needed due to the alternate corridor crossing a local government jurisdiction that was not previously affected, the remainder of the schedule listed below shall be appropriately adjusted by the administrative law judge to allow that local government to prepare a report pursuant to s. 403.526(2)(a)5. Notice that the certification hearing has been deferred due to the acceptance of the alternate corridor shall be published in accordance with s. 403.5363.

(c) Notice of the filing of the alternate corridor shall be published by the alternate proponent in accordance with s. 403.5363(2). If the notice is not timely published or does not meet the notice requirements, the alternate shall be deemed withdrawn.

(d) Within 21 days after acceptance of an alternate corridor by the department and the applicant, the party proposing an alternate corridor shall have the burden of providing all data to the agencies listed in s. 403.526(2) and newly affected agencies necessary for the preparation of a supplementary report on the proposed alternate corridor.

(e)1. Reviewing agencies shall advise the department of any issues concerning completeness no later than 15 days after the submittal of the data required by paragraph (d). Within 22 days after receipt of the data, the department shall issue a determination of completeness.

2. If the department determines that the data required by paragraph (d) is not complete, the party proposing the alternate corridor must file such additional data to correct the incompleteness. This additional data must be submitted within 14 days after the determination by the department.

3. Reviewing agencies may advise the department of any issues concerning completeness of the additional data within 10 days after the filing by the party proposing the alternate corridor. If the department, within 14 days after receiving the additional data, determines that the data remains incomplete, the incompleteness of the data is deemed a withdrawal of the proposed alternate corridor. The department may make its determination based on recommendations made by other affected agencies.

(f) The agencies listed in s. 403.526(2) and any newly affected agencies shall file supplementary reports with the applicant and the department which address the proposed alternate corridors no later than 24 days after the data submitted pursuant to paragraph (d) or paragraph (e) is determined to be complete.

(g) The agency reports on alternate corridors must include all information required by s. 403.526(2).

(h) When an agency whose agency head is a collegial body, such as a commission, board, or council, is required to submit a report pursuant to this section and is required by its own internal procedures to have the report reviewed by its agency head prior to finalization, the agency may submit to the department a draft version of the report by the deadline indicated in paragraph (f), and shall submit a final version of the report after review by the agency head no later than 7 days after the deadline indicated in paragraph (f).

(i) The department shall file with the administrative law judge, the applicant, and all parties a project analysis consistent with s. 403.526(3) no more than 16 days after submittal of agency reports on the proposed alternate corridor.

(2) If the original certification hearing date is rescheduled, the rescheduling shall not provide the opportunity for parties to file additional alternate corridors to the applicant's proposed corridor or any accepted alternate corridor. However, an amendment to the application which changes the alignment of the applicant's proposed corridor shall require rescheduling of the certification hearing, if necessary, so as to allow time for a party to file alternate corridors to the realigned proposed corridor for which the application has been amended. Any alternate corridor proposal shall have the same starting and ending points as the realigned portion of the corridor proposed by the applicant's amendment, provided that the administrative law judge for good cause shown may authorize another starting or ending point in the area of the applicant's amended corridor.

(3)(a) 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. Evidence may not be admitted at the certification hearing on any alternate corridor, unless the alternate corridor was proposed by the filing of a notice at least 45 days before the originally scheduled certification hearing pursuant to this section. Rejected alternate corridors shall be considered by the board as provided in s. 403.529(4) and (5).

(b) The party proposing an alternate corridor has the burden to prove that the alternate corridor can be certified at the certification hearing. This act does not require an applicant or agency that is not proposing the alternate corridor to submit data in support of the alternate corridor.

(4) If an alternate corridor is accepted by the applicant and the department pursuant to a notice of acceptance as provided in this subsection and the corridor is ultimately determined to be the corridor that would meet the criteria set forth in s. 403.529(4) and (5), the board shall certify that corridor.

**History.**—s. 36, ch. 90-331; s. 392, ch. 94-356; s. 151, ch. 96-410; s. 55, ch. 2006-230; s. 84, ch. 2007-5; s. 89, ch. 2008-227.

**403.5272 Informational public meetings.**—

(1) A local government whose jurisdiction is to be crossed by a proposed corridor may hold one informational public meeting in addition to the hearings specifically authorized by this act on any matter associated with the transmission line proceeding. The informational public meeting may be conducted by the local government or the regional planning council and shall be held no later than 55 days after the application is filed. The purpose of an informational public meeting is for the local government or regional planning council to further inform the 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, a party other than the applicant and the department is not required to attend the informational public meetings.

(3) A local government that intends to conduct an informational public meeting must provide notice of the meeting, with notice sent to all parties listed in s. 403.527(2)(a), not less than 15 days before the meeting and to the general public in accordance with s. 403.5363(4).

(4) The failure to hold an informational public meeting or the procedure used for the informational public meeting is not grounds for the alteration of any time limitation in this act under s. 403.528 or grounds to deny or condition certification.

**History.**—s. 9, ch. 83-222; s. 56, ch. 2006-230; s. 90, ch. 2008-227; s. 25, ch. 2015-30.

**403.5275 Amendment to the application.**—

(1) Any amendment made to the application before certification shall be sent by the applicant to the administrative law judge and to all parties to the proceeding.

(2) Any amendment to the application made before 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; s. 37, ch. 90-331; s. 152, ch. 96-410; s. 57, ch. 2006-230.

**403.528 Alteration of time limits.**—

(1) Any time limitation in this act may be altered by the administrative law judge 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.

(2) A comprehensive application encompassing more than one proposed transmission line may be good cause for alteration of time limits.

**History.**—s. 1, ch. 80-65; s. 11, ch. 83-222; s. 153, ch. 96-410; s. 58, ch. 2006-230; s. 85, ch. 2007-5.

**403.529 Final disposition of application.**—

(1)(a) If the administrative law judge has granted a request to cancel the certification hearing and has relinquished jurisdiction to the department under s. 403.527(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act and state the reasons for issuance or denial.

(b) If the administrative law judge does not grant a request to cancel the certification hearing under the provisions of s. 403.527(6) within 60 days after receipt of the administrative law judge's recommended order, the board shall act upon the application by written order, approving in whole, approving with such conditions as the board deems appropriate, or denying the certification and stating the reasons for issuance or denial.

(2) The issues that may be raised in any hearing before the board shall be limited to matters raised in the certification proceeding before the administrative law judge or raised in the recommended order of the administrative law judge. All parties, or their representatives, or persons who appear before the board shall be subject to s. 120.66.

(3) If certification is denied, the board, or secretary if applicable, shall set forth in writing the action the applicant would have to take to secure the approval of the application.

(4) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location of the transmission line corridor and the construction, operation, 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, economical, and timely fashion;

(c) Comply with applicable nonprocedural requirements of agencies;

(d) Be consistent with applicable provisions of local government comprehensive plans, if any; and

(e) Effect a reasonable balance between the need for the transmission line as a means of providing reliable, economically efficient electric energy, as determined by the commission, under s. 403.537, and the impact upon the public and the environment resulting from the location of the transmission line corridor and the construction, operation, and maintenance of the transmission lines.

(5)(a) Any transmission line corridor certified by the board, or secretary if applicable, shall meet the criteria of this section. When more than one transmission line corridor is proper for certification under s. 403.522(10) and meets the criteria of this section, the board, or secretary if applicable, shall certify the transmission line corridor that has the least adverse impact regarding the criteria in subsection (4), including costs.

(b) If the board, or secretary if applicable, finds that an alternate corridor rejected pursuant to s. 403.5271 meets the criteria of subsection (4) and has the least adverse impact regarding the criteria in subsection (4), including cost, of all corridors that meet the criteria of subsection (4), the board, or secretary if applicable, shall deny certification or shall allow the applicant to submit an amended application to include the corridor.

(c) If the board, or secretary if applicable, finds that two or more of the corridors that comply with subsection (4) have the least adverse impacts regarding the criteria in subsection (4), including costs, and that the corridors are substantially equal in adverse impacts regarding the criteria in subsection (4), including costs, the board, or secretary if applicable, shall certify the corridor preferred by the applicant if the corridor is one proper for certification under s. 403.522(10).

(6) The issuance or denial of the certification is the final administrative action required as to that application.

**History.**—s. 1, ch. 80-65; s. 12, ch. 83-222; s. 38, ch. 90-331; s. 154, ch. 96-410; s. 59, ch. 2006-230.

**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, operation, and maintenance of transmission lines. The certification is valid for the life of the transmission line, if construction on, or condemnation or acquisition of, the right-of-way is commenced within 5 years after the date of certification or such later date as may be authorized by the board.

(2)(a) The certification authorizes the licensee to locate the transmission line corridor and to construct and maintain the transmission lines subject only to the conditions of certification set forth in the certification.

(b) In consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions that constitute variances and exemptions from nonprocedural standards or rules of the department or any other agency which were expressly considered during the certification review unless waived by the agency as provided in s. 403.526 and which otherwise would be applicable to the location of the proposed transmission line corridor or the construction, operation, and maintenance of the transmission lines.

(3)(a) The certification shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency under, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 258, chapter 298, chapter 373, chapter 376, chapter 379, chapter 380, chapter 381, chapter 403, chapter 404, the Florida Transportation Code, or 33 U.S.C. s. 1341.

(b) 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 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, the applicant and any party to the certification proceeding may not directly or indirectly raise or relitigate any matter that 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 act does not in any way affect the commission's ratemaking powers or its exclusive jurisdiction to require transmission lines to be located underground under chapter 366. This act does 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) A term or condition of certification may not 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; s. 39, ch. 90-331; s. 60, ch. 2006-230; s. 50, ch. 2009-21; s. 4, ch. 2018-34.

**403.5312 Filing of notice of certified corridor route.**—

(1) Within 60 days after certification of a transmission line corridor under ss. 403.52-403.5365, the applicant shall file with the department and, 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.

(2) The notice must consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and must 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 department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within the county, whichever is sooner.

(3) The recording of this notice does not constitute a lien, cloud, or encumbrance on real property.

**History.**—s. 12, ch. 81-131; s. 40, ch. 90-331; s. 61, ch. 2006-230; s. 91, ch. 2008-227.

**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 licensee may file a petition for modification with the department, or the department may initiate the modification upon its own initiative.

(a) A petition for modification must set forth:

1. The proposed modification;

2. The factual reasons asserted for the modification; and

3. The anticipated additional environmental effects of the proposed modification.

(b) The department may modify the terms and conditions of the certification if no party objects in writing to the 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.

(c) If objections are raised or the department denies the proposed modification, the licensee may file a request for hearing on the modification with the department. Such a request shall be handled pursuant to chapter 120.

(d) A request for hearing referred to the Division of Administrative Hearings shall be disposed of in the same manner as an application but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

**History.**—s. 1, ch. 80-65; s. 15, ch. 83-222; s. 41, ch. 90-331; s. 155, ch. 96-410; s. 62, ch. 2006-230.

**403.5317 Postcertification activities.**—

(1)(a) If, subsequent to certification, a licensee proposes any material change to the application or prior amendments, the licensee shall submit to the department a written request for amendment and description of the proposed change to the application. The department shall, within 30 days after the receipt of the request for the amendment, determine whether the proposed change to the application requires a modification of the conditions of certification.

(b) If the department concludes that the change would not require a modification of the conditions of certification, the department shall notify, in writing, the licensee, all agencies, and all parties of the approval of the amendment.

(c) If the department concludes that the change would require a modification of the conditions of certification, the department shall notify the licensee that the proposed change to the application requires a request for modification under s. 403.5315.

(2) Postcertification submittals filed by a licensee with one or more agencies are for the purpose of monitoring for compliance with the issued certification. Each submittal must be reviewed by each agency on an expedited and priority basis because each facility certified under this act is a critical infrastructure facility. Postcertification review may not be completed more than 90 days after complete information for a segment of the certified transmission line is submitted to the reviewing agencies.

**History.**—s. 63, ch. 2006-230.

**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 act shall constitute a violation of chapter 403.

**History.**—s. 1, ch. 80-65; s. 42, ch. 90-331.

**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 under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this act shall control and such law, rule, regulation, or ordinance shall be deemed superseded for the purposes of this act.

(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 licensing process.

**History.**—s. 1, ch. 80-65; s. 43, ch. 90-331.

**403.5363 Public notices; requirements.**—

(1)(a) The applicant shall arrange for the publication of the notices specified in paragraph (b).

1. The notices shall be published in newspapers of general circulation within counties crossed by the transmission line corridors proper for certification. The required newspaper notices shall be published in a section of the newspaper other than the section for legal notices. 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 having the largest daily circulation has its principal office outside the county, the notices must 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. The department shall adopt rules specifying the content of the newspaper notices.

3. All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(b) Public notices that must be published under this section include:

1. The notice of the filing of an application, which must include a description of the proceedings required by this act. The notice must describe the provisions of s. 403.531(1) and (2) and give the date by which notice of intent to be a party or a petition to intervene in accordance with s. 403.527(2) must be filed. This notice must be published no more than 21 days after the application is filed. The notice shall, at a minimum, be one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper. The notice must include a map generally depicting all transmission corridors proper for certification.

2. The notice of the certification hearing and any public hearing held under s. 403.527(4). The notice must include the date by which a person wishing to appear as a party must file the notice to do so. The notice of the originally scheduled certification hearing must be published at least 65 days before the date set for the certification hearing. The notice shall meet the size and map requirements set forth in subparagraph 1.

3. The notice of the cancellation of the certification hearing under s. 403.527(6), if applicable. The notice must be published at least 3 days before the date of the originally scheduled certification hearing. The notice shall, at a minimum, be one-fourth page in size in a standard size newspaper or one-half page in a tabloid size newspaper. The notice shall not require a map to be included.

4. The notice of the deferment of the certification hearing due to the acceptance of an alternate corridor under s. 403.5271(1)(b)2. The notice must be published at least 7 days before the date of the originally scheduled certification hearing. The notice shall, at a minimum, be one-eighth page in size in a standard size newspaper or one-fourth page in a tabloid size newspaper. The notice shall not require a map to be included.

5. If the notice of the rescheduled certification hearing required of an alternate proponent under s. 403.5271(1)(c) is not timely published or does not meet the notice requirements such that an alternate corridor is withdrawn under the provisions of s. 403.5271(1)(c), the notice of the rescheduled hearing and any local hearings shall be provided by the applicant at least 30 days prior to the rescheduled certification hearing.

6. The notice of the filing of a proposal to modify the certification submitted under s. 403.5315, if the department determines that the modification would require relocation or expansion of the transmission line right-of-way or a certified substation.

(2)(a) Each proponent of an alternate corridor shall arrange for newspaper notice of the publication of the filing of the proposal for an alternate corridor. If there is more than one alternate proponent, the proponents may jointly publish notice, so long as the content requirements below are met and the maps are legible.

(b) The notice shall specify the revised time schedules, the date by which newly affected persons or agencies may file the notice of intent to become a party, the date of the rescheduled hearing, and the date of any public hearing held under s. 403.5271(1)(b)1.

(c) A notice listed in this subsection must be published in a newspaper of general circulation within the county or counties crossed by the proposed alternate corridor and comply with the content, size, and map requirements set forth in this section.

(d) The notice of the alternate corridor proposal must be published not less than 45 days before the rescheduled certification hearing.

(3) The department shall arrange for the publication of the following notices in the manner specified by chapter 120:

(a) The notice of the filing of an application and the date by which a person intending to become a party must file a petition to intervene or a notice of intent to be a party. The notice must be published no later than 21 days after the application has been filed.

(b) The notice of any administrative hearing for certification, if applicable. The notice must be published not less than 65 days before the date set for a hearing, except that notice for a rescheduled certification hearing after acceptance of an alternative corridor must be published not less than 50 days before the date set for the hearing.

(c) The notice of the cancellation of a certification hearing under s. 403.527(6), if applicable. The notice must be published not later than 7 days before the date of the originally scheduled certification hearing.

(d) The notice of the deferment of the certification hearing due to the acceptance of an alternate corridor under s. 403.5271(1)(b)2. The notice must be published at least 7 days before the date of the originally scheduled certification hearing.

(e) The notice of the hearing before the siting board, if applicable.

(f) The notice of stipulations, proposed agency action, or a petition for modification.

(4) A local government or regional planning council that proposes to conduct an informational public meeting pursuant to s. 403.5272 must publish notice of the meeting in a newspaper of general circulation within the county or counties in which the proposed electrical transmission line will be located no later than 7 days prior to the meeting. A newspaper of general circulation shall be the newspaper that 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, 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.

(5)(a) A good faith effort shall be made by the applicant to provide direct notice of the filing of an application for certification by United States mail or hand delivery no later than 45 days after filing of the application to all local landowners whose property, as noted in the most recent local government tax records, and residences are located within one-quarter mile of the proposed boundaries of a transmission line corridor that only includes a transmission line as defined by s. 403.522(22).

(b) No later than 60 days after the filing of an application for certification, the applicant shall file a list with the department’s Siting Coordination Office of landowners and residences that were notified.

(6)(a) A good faith effort shall be made by the proponent of an alternate corridor that includes a transmission line, as defined by s. 403.522(22), to provide direct notice of the filing of an alternate corridor for certification by United States mail or hand delivery of the filing no later than 30 days after filing of the alternate corridor to all local landowners whose property, as noted in the most recent local government tax records, and residences are located within one-quarter mile of the proposed boundaries of a transmission line corridor that includes a transmission line as defined by s. 403.522(22).

(b) No later than 45 days after the filing of an alternate corridor for certification, the proponent of an alternate corridor shall file a list with the department's Siting Coordination Office of landowners and residences that were notified.

**History.**—s. 64, ch. 2006-230; s. 92, ch. 2008-227; s. 50, ch. 2016-10.

**403.5365 Fees; disposition.**—The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

(1) An application fee.

(a) The application fee shall be $100,000, plus $750 per mile for each mile of corridor in which the transmission line right-of-way is proposed to be located within an existing electric transmission line right-of-way or within any existing right-of-way for any road, highway, railroad, or other aboveground linear facility, or $1,000 per mile for each mile of electric transmission line corridor proposed to be located outside the existing right-of-way.

(b) Sixty percent of the fee shall go to the department to cover any costs associated with coordinating the review of and acting upon the application and any costs for field services associated with monitoring construction and operation of the electric transmission line facility.

(c) The following percentages shall be transferred to the Operating Trust Fund of the Division of Administrative Hearings of the Department of Management Services:

1. Five percent to compensate for expenses from the initial exercise of duties associated with the filing of an application.

2. An additional 10 percent if an administrative hearing under s. 403.527 is held.

(d)1. Upon written request with proper itemized accounting within 90 days after final agency action by the siting board or the department or the written notification of the withdrawal of the application, the agencies that prepared reports under s. 403.526 or s. 403.5271 or participated in a hearing under s. 403.527 or s. 403.5271 may submit a written request to the department for reimbursement of expenses incurred during the certification proceedings. The request must contain an accounting of expenses incurred, which may include time spent reviewing the application, preparation of any studies required of the agencies by this act, agency travel and per diem to attend any hearing held under this act, and for the local government or regional planning council providing additional notice of the informational public meeting. The department shall review the request and verify whether a claimed expense is valid. Valid expenses shall be reimbursed; however, if the amount of funds available for reimbursement is insufficient to provide for full compensation to the agencies, reimbursement shall be on a prorated basis.

2. If the application review is held in abeyance for more than 1 year, the agencies may submit a request for reimbursement under subparagraph 1. This time period shall be measured from the date the applicant has provided written notification to the department that it desires to have the application review process placed on hold. The fee disbursement shall be processed in accordance with subparagraph 1.

(e) If any sums are remaining, the department shall retain them for its use in the same manner as is otherwise authorized by this section; however, if the certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after submittal of the written notification of withdrawal.

(2) An amendment fee.

(a) If no corridor alignment change is proposed by the amendment, no amendment fee shall be charged.

(b) If a corridor alignment change under s. 403.5275 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 this act.

(c) If an amendment is required to address issues, including alternate corridors under s. 403.5271, raised by the department or other parties, no fee for the amendment shall be charged.

(3) A certification modification fee.

(a) If no corridor alignment change is proposed by the licensee, the modification fee shall be $4,000.

(b) If a corridor alignment change is proposed by the licensee, the fee shall be $1,000 for each mile of realignment plus an amount not to exceed $10,000 to be fixed by rule on a sliding scale based on the load-carrying capability and configuration of the transmission line for use in accordance with subsection (1).

**History.**—s. 44, ch. 90-331; s. 14, ch. 93-94; s. 393, ch. 94-356; s. 66, ch. 96-321; s. 211, ch. 99-245; s. 14, ch. 2006-79; s. 65, ch. 2006-230; s. 93, ch. 2008-227.

**403.537 Determination of need for transmission line; powers and duties.**—

(1)(a) Upon request by an applicant 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 Florida Electric Transmission Line Siting Act, ss. 403.52-403.5365. The notice shall be published at least 21 days before the date set for the hearing and shall be published by the applicant in at least one-quarter page size notice in newspapers of general circulation, and by the commission in the manner specified in chapter 120, 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) The commission shall be the sole forum in which to determine the need for a transmission line. The need for a transmission line may not be raised or be the subject of review in another proceeding.

(c) 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 residents 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. The appropriate starting and ending points of the electric transmission line must be verified by the commission in its determination of need.

(d) The determination by the commission of the need for the transmission line, as defined in s. 403.522(22), is binding on all parties to any certification proceeding under the Florida Electric 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. 3, ch. 80-65; s. 13, ch. 81-131; s. 19, ch. 83-222; s. 45, ch. 90-331; s. 66, ch. 2006-230.

**403.539 Certification admissible in eminent domain proceedings; attorney's fees and costs.**—

(1) Certification pursuant to ss. 403.52-403.5365 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; s. 46, ch. 90-331.

## PART III
## INTERSTATE ENVIRONMENTAL CONTROL COMPACT



**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 environment 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 police 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 relating 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 entering 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, responsibilities or duties under this compact of signatories 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 or her 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. 71-79; s. 13, ch. 97-103.

## PART IV
## RESOURCE RECOVERY AND MANAGEMENT

**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 the creation of nuisances; protect the public health, safety, and welfare; and provide a coordinated statewide solid waste 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 have resulted in an ever-mounting increase of the mass of material discarded by the purchasers of such products, thereby necessitating a statewide approach to assist local governments around the state with their solid waste management programs.

(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 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 and parts of this chapter such that nonhazardous waste discharges currently regulated under this chapter, water or solid waste construction, modification, or operating permits, air emissions, special wastes, and other activities regulated under other more appropriate provisions of law 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 in the most economically feasible, cost-effective, and environmentally safe manner 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 this state; and recover resources which have the potential for further usefulness.

(b) Establish and maintain a cooperative state program of planning and technical and financial assistance for solid waste management.

(c) Provide the authority and require counties and municipalities to adequately plan and provide efficient, environmentally acceptable solid waste management and require counties to plan for proper hazardous waste management.

(d) Require review of the design, and issue permits for the construction, operation, and closure of solid waste 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 hazardous 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 reduction, 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.

(i) Encourage counties and municipalities to utilize all means reasonably available to promote efficient and proper methods of managing solid waste and to promote the economical recovery of material and energy resources from solid waste, including, but not limited to, contracting with persons to provide or operate resource recovery services or facilities on behalf of the county or municipality.

(j) Promote the education of the general public and the training of solid waste professionals to reduce the production of solid waste, to ensure proper disposal of solid waste, and to encourage recycling.

(k) Encourage the development of waste reduction and recycling as a means of managing solid waste, conserving resources, and supplying energy through planning, grants, technical assistance, and other incentives.

(l) Encourage the development of the state's recycling industry by promoting the successful development of markets for recycled items and by promoting the acceleration and advancement of the technology used in manufacturing processes that use recycled items.

(m) Require all state agencies to aid and promote the development of recycling through their procurement policies for the general welfare and economy of the state.

(n) Require counties to develop and implement recycling programs within their jurisdictions to return valuable materials to productive use, to conserve energy and natural resources, and to protect capacity at solid waste management facilities.

(o) Ensure that biomedical waste is treated and disposed of in a manner adequate to protect human health, safety, and welfare and the environment.

(p) Require counties, municipalities, and state agencies to determine the full cost for providing, in an environmentally safe manner, storage, collection, transport, separation, processing, recycling, and disposal of solid waste material, and encourage counties, municipalities, and state agencies affected to contract with private persons for any or all such services in order to assure that such services are provided on the most cost-effective basis.

**History.**—s. 1, ch. 74-342; s. 3, ch. 80-302; s. 20, ch. 83-310; s. 30, ch. 84-338; s. 3, ch. 87-107; s. 2, ch. 88-130; s. 7, ch. 93-207; s. 2, ch. 96-284.

**403.703 Definitions.**—As used in this part, the term:

(1) "Ash residue" has the same meaning as in the department rule governing solid waste combustors which defines the term.

(2) "Biological waste" means solid waste that causes or has the capability of causing disease or infection and includes, but is not limited to, biomedical waste, diseased or dead animals, and other wastes capable of

transmitting pathogens to humans or animals. The term does not include human remains that are disposed of by persons licensed under chapter 497.

(3) "Biomedical waste" means any solid waste or liquid waste that may present a threat of infection to humans. The term includes, but is not limited to, nonliquid human tissue and body parts; laboratory and veterinary waste that contains human-disease-causing agents; discarded disposable sharps; human blood and human blood products and body fluids; and other materials that in the opinion of the Department of Health represent a significant risk of infection to persons outside the generating facility. The term does not include human remains that are disposed of by persons licensed under chapter 497.

(4) "Clean debris" means any solid waste that is virtually inert, that is not a pollution threat to groundwater or surface waters, that is not a fire hazard, and that is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes uncontaminated concrete, including embedded pipe or steel, brick, glass, ceramics, and other wastes designated by the department.

(5) "Closure" means the cessation of operation of a solid waste management facility and the act of securing such facility so that it will pose no significant threat to human health or the environment and includes long-term monitoring and maintenance of a facility if required by department rule.

(6) "Construction and demolition debris" means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste will cause the resulting mixture to be classified as other than construction and demolition debris. The term also includes:

(a) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;

(b) Except as provided in s. 403.707(9)(j), yard trash and unpainted, nontreated wood scraps and wood pallets from sources other than construction or demolition projects;

(c) Scrap from manufacturing facilities which is the type of material generally used in construction projects and which would meet the definition of construction and demolition debris if it were generated as part of a construction or demolition project. This includes debris from the construction of manufactured homes and scrap shingles, wallboard, siding concrete, and similar materials from industrial or commercial facilities; and

(d) De minimis amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

(7) "County," or any like term, means a political subdivision of the state established pursuant to s. 1, Art. VIII of the State Constitution and, when s. 403.706(19) applies, means a special district or other entity.

(8) "Department" means the Department of Environmental Protection or any successor agency performing a like function.

(9) "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 groundwaters, or otherwise enter the environment.

(10) "Gasification" means a process through which post-use polymers are heated and converted to synthesis gas in an oxygen-deficient atmosphere, and then converted to crude oil, fuels, or chemical feedstocks.

(11) "Generation" means the act or process of producing solid or hazardous waste.

(12) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this part.

(13) "Hazardous substance" means any substance that is defined as a hazardous substance in the United States Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 94 Stat. 2767.

(14) "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. The term does not include human remains that are disposed of by persons licensed under chapter 497.

(15) "Hazardous waste facility" means any building, site, structure, or equipment at or by which hazardous waste is disposed of, stored, or treated.

(16) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, recycling, and disposal of hazardous waste.

(17) "Land disposal" means any placement of hazardous waste in or on the land and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt bed formation, salt dome formation, or underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.

(18) "Landfill" means any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707 and which receives solid waste for disposal in or upon land. The term does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris.

(19) "Manifest" means the recordkeeping system 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.

(20) "Materials recovery facility" means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

(21) "Municipality," or any like term, means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution and, when s. 403.706(19) applies, means a special district or other entity.

(22) "Operation," with respect to any solid waste management facility, means the disposal, storage, or processing of solid waste at and by the facility.

(23) "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.

(24) "Post-use polymer" means a plastic polymer that is derived from any domestic, commercial, or municipal activity and which might otherwise become waste if not converted to manufacture crude oil, fuels, or other raw materials or intermediate or final products using gasification or pyrolysis. As used in this part, post-use polymer may contain incidental contaminants or impurities, such as paper labels or metal rings. Post-use polymers intended to be converted as described in this subsection are not solid waste.

(25) "Processing" means any technique designed to change the physical, chemical, or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage, or recycling; safe for disposal; or reduced in volume or concentration.

(26) "Pyrolysis" means a process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and then cooled, condensed, and converted to any of the following:

(a) Crude oil, diesel, gasoline, home heating oil, or another fuel.

(b) Feedstocks.

(c) Diesel and gasoline blendstocks.

(d) Chemicals, waxes, or lubricants.

(e) Other raw materials or intermediate or final products.

(27) "Pyrolysis facility" means a facility that receives, separates, stores, and converts post-use polymers, using gasification or pyrolysis. A pyrolysis facility meeting the conditions of s. 403.7045(1)(e) is not a solid waste management facility.

(28) “Recovered materials” means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but the term does not include materials destined for any use that constitutes disposal. Recovered materials as described in this subsection are not solid waste.

(29) “Recovered materials processing facility” means a facility engaged solely in the storage, processing, resale, or reuse of recovered materials. Such a facility is not a solid waste management facility if it meets the conditions of s. 403.7045(1)(e).

(30) “Recyclable material” means those materials that are capable of being recycled and that would otherwise be processed or disposed of as solid waste.

(31) “Recycling” means any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or intermediate or final products. Such raw materials or intermediate or final products include, but are not limited to, crude oil, fuels, and fuel substitutes.

(32) “Resource recovery” means the process of recovering materials or energy from solid waste, excluding those materials or solid waste under the control of the Nuclear Regulatory Commission.

(33) “Resource recovery equipment” means equipment or machinery exclusively and integrally used in the actual process of recovering material or energy resources from solid waste.

(34) “Sludge” includes the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar waste disposal appurtenances.

(35) “Special wastes” means solid wastes that can require special handling and management, including, but not limited to, white goods, waste tires, used oil, lead-acid batteries, construction and demolition debris, ash residue, yard trash, and biological wastes.

(36) “Solid waste” means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials as defined in subsection (28) and post-use polymers as defined in subsection (24) are not solid waste.

(37) “Solid waste disposal facility” means any solid waste management facility that is the final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating municipal solid waste.

(38) “Solid waste 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, which includes closure.

(39) “Solid waste management facility” means any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The term does not include recovered materials processing facilities or pyrolysis facilities that meet the requirements of s. 403.7046, except the portion of such facilities, if any, which is used for the management of solid waste.

(40) “Source separated” means that the recovered materials are separated from solid waste at the location where the recovered materials and solid waste are generated. The term does not require that various types of recovered materials be separated from each other, and recognizes de minimis solid waste, in accordance with industry standards and practices, may be included in the recovered materials. Materials are not considered source separated when two or more types of recovered materials are deposited in combination with each other in a commercial collection container located where the materials are generated and when such materials contain more than 10 percent solid waste by volume or weight. For purposes of this subsection, the term “various types of recovered materials” means metals, paper, glass, plastic, textiles, and rubber.

(41) "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.

(42) "Transfer station" means a site the primary purpose of which is to store or hold solid waste for transport to a processing or disposal facility.

(43) "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.

(44) "Treatment," when used in connection with hazardous waste, means any method, technique, or process, including neutralization, which is 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 that is designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(45) "Volume reduction plant" includes incinerators, pulverizers, compactors, shredding and baling plants, composting plants, and other plants that accept and process solid waste for recycling or disposal.

(46) "White goods" includes discarded air conditioners, heaters, refrigerators, ranges, water heaters, freezers, and other similar domestic and commercial large appliances.

(47) "Yard trash" means vegetative matter resulting from landscaping maintenance and land clearing operations and includes associated rocks and soils.

**History.**—s. 1, ch. 74-342; s. 2, ch. 78-329; s. 1, ch. 78-387; s. 84, ch. 79-65; s. 4, ch. 80-302; s. 1, ch. 81-45; s. 267, ch. 81-259; s. 31, ch. 83-310; s. 33, ch. 84-338; s. 31, ch. 86-186; s. 3, ch. 88-130; s. 67, ch. 90-331; s. 2, ch. 92-104; s. 8, ch. 93-207; s. 394, ch. 94-356; s. 1, ch. 96-381; s. 54, ch. 97-237; s. 160, ch. 99-8; s. 30, ch. 2000-153; s. 18, ch. 2000-211; s. 1, ch. 2000-221; s. 2, ch. 2002-291; s. 139, ch. 2004-301; s. 6, ch. 2007-184; s. 1, ch. 2017-167.

**403.7031 Limitations on definitions adopted by local ordinance.**—A county or a municipality shall not adopt by ordinance any definition that is inconsistent with the definitions in s. 403.703.

**History.**—s. 9, ch. 93-207.

**403.7032 Recycling.**—

(1) The Legislature finds that 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. As the state continues to grow, so will the potential amount of discarded material that must be treated and disposed of, necessitating the improvement of solid waste collection and disposal. Therefore, the maximum recycling and reuse of such resources are considered high-priority goals of the state.

(2) By the year 2020, the long-term goal for the recycling efforts of state and local governmental entities, private companies and organizations, and the general public is to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities. However, any solid waste used for the production of renewable energy shall count toward the long-term recycling goal as set forth in this part.

(3) Each state agency, public institution of higher learning, community college, and state university, including all buildings that are occupied by municipal, county, or state employees and entities occupying buildings managed by the Department of Management Services, must, at a minimum, annually report all recycled materials to the county using the department's designated reporting format. Private businesses, other than certified recovered materials dealers, that recycle paper, metals, glass, plastics, textiles, rubber materials, and mulch, are encouraged to report the amount of materials they recycle to the county annually beginning January 1, 2011, using the department's designated reporting format. Using the information provided, the department shall recognize those private businesses that demonstrate outstanding recycling efforts. Notwithstanding any other provision of state or county law, private businesses, other than certified recovered materials dealers, shall not be required to report recycling rates. Cities with less than a population of 2,500 and per capita taxable value less than $48,000

and cities with a per capita taxable value less than $30,000 are exempt from the reporting requirement specified in this subsection.

(4) The Department of Environmental Protection shall develop a comprehensive recycling program that is designed to achieve the percentage under subsection (2) and submit the program to the President of the Senate and the Speaker of the House of Representatives by January 1, 2010. The program may not be implemented until approved by the Legislature. The program must be developed in coordination with input from state and local entities, private businesses, and the public. Under the program, recyclable materials shall include, but are not limited to, metals, paper, glass, plastic, textile, rubber materials, and mulch. Components of the program shall include, but are not limited to:

(a) Programs to identify environmentally preferable purchasing practices to encourage the purchase of recycled, durable, and less toxic goods. The Department of Management Services shall modify its procurement system to report on green and recycled products purchased through the system by September 30, 2011.

(b) Programs to educate students in grades K-12 in the benefits of, and proper techniques for, recycling.

(c) Programs for statewide recognition of successful recycling efforts by schools, businesses, public groups, and private citizens.

(d) Programs for municipalities and counties to develop and implement efficient recycling efforts to return valuable materials to productive use, conserve energy, and protect natural resources.

(e) Programs by which the department can provide technical assistance to municipalities and counties in support of their recycling efforts.

(f) Programs to educate and train the public in proper recycling efforts.

(g) Evaluation of how financial assistance can best be provided to municipalities and counties in support of their recycling efforts.

(h) Evaluation of why existing waste management and recycling programs in the state have not been better used.

(5) The Department of Environmental Protection shall create the Recycling Business Assistance Center by December 1, 2010. In carrying out its duties under this subsection, the department shall consult with state agency personnel appointed to serve as economic development liaisons under s. 288.021 and seek technical assistance from Enterprise Florida, Inc., to ensure the Recycling Business Assistance Center is positioned to succeed. The purpose of the center shall be to serve as the mechanism for coordination among state agencies and the private sector in order to coordinate policy and overall strategic planning for developing new markets and expanding and enhancing existing markets for recyclable materials in this state, other states, and foreign countries. The duties of the center must include, at a minimum:

(a) Identifying and developing new markets and expanding and enhancing existing markets for recyclable materials.

(b) Pursuing expanded end uses for recycled materials.

(c) Targeting materials for concentrated market development efforts.

(d) Developing proposals for new incentives for market development, particularly focusing on targeted materials.

(e) Providing guidance on issues such as permitting, finance options for recycling market development, site location, research and development, grant program criteria for recycled materials markets, recycling markets education and information, and minimum content.

(f) Coordinating the efforts of various governmental entities having market development responsibilities in order to optimize supply and demand for recyclable materials.

(g) Evaluating source-reduced products as they relate to state procurement policy. The evaluation shall include, but is not limited to, the environmental and economic impact of source-reduced product purchases to the state. For the purposes of this paragraph, the term “source-reduced” means any method, process, product, or technology that significantly or substantially reduces the volume or weight of a product while providing, at a minimum, equivalent or generally similar performance and service to and for the users of such materials.

(h) Providing evaluation of solid waste management grants, pursuant to s. 403.7095, to reduce the flow of solid waste to disposal facilities and encourage the sustainable recovery of materials from Florida's waste stream.

(i) Providing below-market financing for companies that manufacture products from recycled materials or convert recyclable materials into raw materials for use in manufacturing pursuant to the Florida Recycling Loan Program as administered by the Florida First Capital Finance Corporation.

(j) Maintaining a continuously updated online directory listing the public and private entities that collect, transport, broker, process, or remanufacture recyclable materials in the state.

(k) Providing information on the availability and benefits of using recycled materials to private entities and industries in the state.

(l) Distributing any materials prepared in implementing this subsection to the public, private entities, industries, governmental entities, or other organizations upon request.

(m) Coordinating with the Department of Economic Opportunity and its partners to provide job placement and job training services to job seekers through the state's workforce services programs.

**History.**—s. 95, ch. 2008-227; s. 3, ch. 2010-143; s. 31, ch. 2011-4; s. 293, ch. 2011-142; s. 1, ch. 2013-35; s. 4, ch. 2016-174.

**403.7033 Departmental analysis of particular recyclable materials.**—The Legislature finds that prudent regulation of recyclable materials is crucial to the ongoing welfare of Florida's ecology and economy. As such, the Department of Environmental Protection shall undertake an analysis of the need for new or different regulation of auxiliary containers, wrappings, or disposable plastic bags used by consumers to carry products from retail establishments. The analysis shall include input from state and local government agencies, stakeholders, private businesses, and citizens, and shall evaluate the efficacy and necessity of both statewide and local regulation of these materials. To ensure consistent and effective implementation, the department shall submit a report with conclusions and recommendations to the Legislature no later than February 1, 2010. Until such time that the Legislature adopts the recommendations of the department, no local government, local governmental agency, or state government agency may enact any rule, regulation, or ordinance regarding use, disposition, sale, prohibition, restriction, or tax of such auxiliary containers, wrappings, or disposable plastic bags.

**History.**—s. 96, ch. 2008-227.

**403.704 Powers and duties of the department.**—The department shall have responsibility for the implementation and enforcement of this act. In addition to other powers and duties, the department shall:

(1) Develop and implement, in consultation with local governments, a state solid waste management program, as defined in s. 403.705.

(2) Provide technical assistance to counties, municipalities, and other persons, and cooperate with appropriate federal agencies and private organizations in carrying out 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 and assist in and encourage, where appropriate, the development of regional solid waste management facilities.

(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) Use private industry or the State University System through contractual arrangements for implementation of some or all of the requirements of the state solid waste management program and for such other activities as may be considered necessary, desirable, or convenient.

(6) Encourage recycling and resource recovery as a source of energy and materials.

(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) Determine by rule the facilities, equipment, personnel, and number of monitoring wells to be provided at each solid waste disposal facility.

(9) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce this act, including requirements for the classification, construction, operation, maintenance, and closure of solid waste management facilities and requirements for, and conditions on, solid waste disposal in this state, whether such solid waste is

generated within this state or outside this state as long as such requirements and conditions are not based on the out-of-state origin of the waste and are consistent with applicable law. When classifying solid waste management facilities, the department shall consider the hydrogeology of the site for the facility, the types of wastes to be handled by the facility, and methods used to control the types of waste to be handled by the facility and shall seek to minimize the adverse effects of solid waste management on the environment. Whenever the department adopts any rule stricter or more stringent than one that 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 were required prior to October 1, 1988, under s. 8002 of the Resource Conservation and Recovery Act, 42 U.S.C. s. 6982, 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.

(10) 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.

(11) Develop and implement or contract for services to develop information on recovered materials markets and strategies for market development and expansion for use of these materials. Additionally, the department shall maintain a directory of recycling businesses operating in the state and shall serve as a coordinator to match recovered materials with markets. Such directory shall be made available to the public and to local governments to assist with their solid waste management activities.

(12) Establish accounts and deposit to the Solid Waste Management Trust Fund and control and administer moneys it may withdraw from the fund.

(13) Manage a program of grants, using funds from the Solid Waste Management Trust Fund and funds provided by the Legislature for solid waste management, for programs for recycling, composting, litter control, and special waste management and for programs that provide for the safe and proper management of solid waste.

(14) 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 this act.

(15) Delegate its powers, enter into contracts, or take such other actions as may be necessary to implement this act.

(16) Receive and administer funds appropriated for county hazardous waste management assessments.

(17) 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.

(18) Increase public education and public awareness of solid and hazardous waste issues by developing and promoting statewide programs of litter control, recycling, volume reduction, and proper methods of solid waste and hazardous waste management.

(19) 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.

(20) Institute a hazardous waste emergency response program which would include emergency telecommunication capabilities and coordination with appropriate agencies.

(21) Adopt rules necessary to accept delegation of the hazardous waste management program from the Environmental Protection Agency under the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616.

(22) Adopt rules, if necessary, to address the incineration and disposal of biomedical waste and the management of biological waste within the state, whether such waste is generated within this state or outside this state, as long as such requirements and conditions are not based on the out-of-state origin of the waste and are consistent with applicable provisions of law.

**History.**—s. 1, ch. 74-342; s. 1, ch. 75-54; s. 2, ch. 78-387; s. 5, ch. 80-302; ss. 21, 32, ch. 83-310; s. 31, ch. 84-338; s. 32, ch. 86-186; s. 6, ch. 88-130; s. 10, ch. 93-207; s. 3, ch. 96-284; s. 67, ch. 96-321; s. 104, ch. 98-200; s. 7, ch. 2007-184.

**403.7043 Compost standards and applications.**—

(1) In order to protect the state's land and water resources, compost produced, utilized, or disposed of by the composting process at solid waste management facilities in the state must meet criteria established by the department.

(2) The department shall establish and maintain rules addressing standards for the production of compost, including rules establishing:

(a) Requirements necessary to produce hygienically safe compost products for varying applications.

(b) A classification scheme for compost based on the types of waste composted, the maturity of the compost, and the levels of organic and inorganic constituents in the compost. This scheme shall address:

1. Methods for measurement of the compost maturity.

2. Particle sizes.

3. Moisture content.

4. Average levels of organic and inorganic constituents, including heavy metals, for such classes of compost as the department establishes, and the analytical methods to determine those levels.

**History.**—s. 7, ch. 88-130; s. 38, ch. 99-5; s. 86, ch. 2007-5; s. 8, ch. 2007-184.

**403.7045 Application of act and integration with other acts.**—

(1) The following wastes or activities may 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 the federal Atomic Energy Act of 1954, ch. 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 this chapter or 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 this chapter or 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.

(e) Recovered materials, post-use polymers, recovered materials processing facilities, or pyrolysis facilities, except as provided in s. 403.7046, if:

1. A majority of the recovered materials or post-use polymers at the facility are demonstrated to be sold, used, or reused within 1 year. As used in this subparagraph, the terms "used" or "reused" include, but are not limited to, the conversion of post-use polymers into crude oil, fuels, feedstocks, or other raw materials or intermediate or final products by gasification or pyrolysis, as defined in s. 403.703.

2. The recovered materials or post-use polymers handled by the facility or the products or byproducts of operations that process recovered materials or post-use polymers are not discharged, deposited, injected, dumped, spilled, leaked, or placed into or upon any land or water by the owner or operator of the facility so that the recovered materials or post-use polymers, products or byproducts, or any constituent thereof may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment such that a threat of contamination in excess of applicable department standards and criteria is caused.

3. The recovered materials or post-use polymers handled by the facility are not hazardous wastes as defined in s. 403.703 and rules adopted under this section.

4. The facility is registered as required in s. 403.7046.

(f) Industrial byproducts, if:

1. A majority of the industrial byproducts are demonstrated to be sold, used, or reused within 1 year.

2. The industrial byproducts are not discharged, deposited, injected, dumped, spilled, leaked, or placed upon any land or water so that such industrial byproducts, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment

such that a threat of contamination in excess of applicable department standards and criteria or a significant threat to public health is caused.

3. The industrial byproducts are not hazardous wastes as defined in s. 403.703 and rules adopted under this section.

Sludge from an industrial waste treatment works that meets the exemption requirements of this paragraph is not solid waste as defined in s. 403.703.

(2) Except as provided in s. 403.704(9), the following wastes shall not be regulated as a hazardous waste pursuant to this act, except when determined by the United States Environmental Protection Agency to be a hazardous 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) Dredged material that is generated as part of a project permitted under part IV of chapter 373 or chapter 161, or that is authorized to be removed from sovereign submerged lands under chapter 253, shall be managed in accordance with the conditions of that permit or authorization unless the dredged material is regulated as hazardous waste pursuant to this part. If the dredged material contains hazardous substances, the department may further limit or restrict the disposal, sale, or use of the dredged material and may specify such other conditions relative to this material as are reasonably necessary to protect the public from the potential hazards. However, this paragraph does not require the routine testing of dredge material for hazardous substances unless there is a reasonable expectation that such substances will be present.

(b) Hazardous wastes that are contained in artificial recharge waters or other waters intentionally introduced into any underground formation and that 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 that 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. 403.501-403.518, shall undergo such certification subject to the substantive provisions of this act.

(d) Biomedical waste and biological waste shall be disposed of only as authorized by the department. However, any person who unknowingly disposes into a sanitary landfill or waste-to-energy facility any such waste that has not been properly segregated or separated from other solid wastes by the generating facility is not guilty of a violation under this act. This paragraph does not prohibit the department from seeking injunctive relief pursuant to s. 403.131 to prohibit the unauthorized disposal of biomedical waste or biological waste.

(4) Disposal of dead animals, including those which were diseased, shall be consistent with applicable federal and state laws and regulations.

(5) Ash residue generated by a solid waste management facility from the burning of solid waste must be disposed of in a properly designed solid waste disposal area that complies with standards developed by the department for the disposal of such ash residue. The department shall work with solid waste management facilities that burn solid waste to identify and develop methods for recycling and reuse of ash residue or treated ash residue, and the department may allow such recycling or reuse by an applicant who demonstrates that no significant threat to public health will result and that applicable department standards and criteria will not be violated. The Division of Waste Management shall direct the district offices and bureaus on matters relating to the interpretation and applicability of this subsection. The department may adopt rules necessary for administering this subsection, but the department is not required to amend its existing rules.

**History.**—s. 6, ch. 80-302; s. 3, ch. 82-125; s. 28, ch. 83-215; s. 62, ch. 83-218; s. 8, ch. 88-130; s. 55, ch. 90-331; s. 11, ch. 93-207; s. 125, ch. 97-237; s. 1, ch. 98-112; s. 9, ch. 2007-184; s. 15, ch. 2012-205; s. 2, ch. 2017-167.

**403.7046 Regulation of recovered materials.—**

(1) Any person who handles, purchases, receives, recovers, sells, or is an end user of recovered materials or post-use polymers shall annually certify to the department on forms provided by the department. The department may by rule exempt from this requirement generators of recovered materials or post-use polymers; persons who handle or sell recovered materials or post-use polymers as an activity which is incidental to the normal primary business activities of that person; or persons who handle, purchase, receive, recover, sell, or are end users of recovered materials or post-use polymers in small quantities as defined by the department. The department shall adopt rules for the certification of and reporting by such persons and shall establish criteria for revocation of such certification. Such rules shall be designed to elicit, at a minimum, the amount and types of recovered materials or post-use polymers handled by registrants, and the amount and disposal site, or name of person with whom such disposal was arranged, of any solid waste generated by such facility. By February 1 of each year, registrants shall report all required information to the department and to all counties from which it received materials. Such rules may provide for the department to conduct periodic inspections. The department may charge a fee of up to $50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

(2) Information reported pursuant to this section or any rule adopted pursuant to this section which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For reporting or information purposes, however, the department may provide this information in such form that the names of the persons reporting such information and the specific information reported are not revealed. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) Except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(a) The local government may require that the recovered materials generated at the commercial establishment be source separated at the premises of the commercial establishment.

(b)1. Before engaging in business within the jurisdiction of the local government, a recovered materials dealer or pyrolysis facility must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer or pyrolysis facility must register with the local government before engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer or pyrolysis facility to register its name, including the owner or operator of the dealer or pyrolysis facility, and, if the dealer or pyrolysis facility is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials or post-use polymers will be processed at a recovered materials processing facility or pyrolysis facility satisfying the requirements of this section. The local government may not use the information provided in the registration application to compete unfairly with the recovered materials dealer until 90 days after receipt of the application. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process that must be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which must, at a minimum, include requiring the dealer or pyrolysis facility to identify the types and approximate amount of recovered materials or post-use polymers collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials or post-use polymers reused, stored, or delivered to a recovered

materials processing facility or pyrolysis facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials or post-use polymers were disposed of as solid waste. The local government may charge the dealer or pyrolysis facility a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this subparagraph. Any reporting or registration process established by a local government with regard to recovered materials or post-use polymers is governed by this section and department rules adopted pursuant thereto.

2. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) A local government may establish a process in which the local government may temporarily or permanently revoke the authority of a recovered materials dealer to do business within the local government if the local government finds the recovered materials dealer, after reasonable notice of the charges and an opportunity to be heard by an impartial party, has consistently and repeatedly violated state or local laws, ordinances, rules, and regulations.

(d) In addition to any other authority provided by law, a local government is hereby expressly authorized to prohibit a person or entity not certified under this section from doing business within the jurisdiction of the local government; to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments, provided that a local government may not require a certified recovered materials dealer to enter into such franchise agreement in order to enter into a contract with any commercial establishment located within the local government's jurisdiction to purchase, collect, transport, process, or receive source-separated recovered materials; and to enter into an exclusive franchise or to otherwise provide for the exclusive collection, transportation, and processing of recovered materials at single-family or multifamily residential properties.

(e) Nothing in this section shall prohibit a local government from enacting ordinances designed to protect the public's general health, safety, and welfare.

(f) As used in this section:

1. "Commercial establishment" means a property or properties zoned or used for commercial or industrial uses, or used by an entity exempt from taxation under s. 501(c)(3) of the Internal Revenue Code, and excludes property or properties zoned or used for single-family residential or multifamily residential uses.

2. "Local government" means a county or municipality.

3. "Certified recovered materials dealer" means a dealer certified under this section.

(4) A recovered materials dealer or an association whose members include recovered materials dealers may initiate an action for injunctive relief or damages for alleged violations of this section. The court may award to the prevailing party or parties reasonable attorney fees and costs.

**History.**—s. 12, ch. 93-207; s. 5, ch. 95-311; s. 2, ch. 95-366; s. 240, ch. 96-406; s. 17, ch. 2000-211; s. 5, ch. 2000-304; s. 4, ch. 2010-143; s. 20, ch. 2013-92; s. 7, ch. 2016-6; s. 3, ch. 2017-167.

**403.7047 Regulation of fossil fuel combustion products.**—

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

(a) "Beneficial use" means the use of fossil fuel combustion products in building products, and as substitutes for raw materials, necessary ingredients, or additives in products, according to accepted industry practices, including the following:

1. Asphalt, concrete or cement products, flowable fill, and roller-compacted concrete.

2. Structural fill or pavement aggregate that meets the following requirements:

a. The fossil fuel combustion product is not placed within 3 feet of groundwater or 15 feet of wetlands or natural water bodies, or within 100 feet of a potable well that is being used or might be used for human or livestock water consumption;

b. The placement of the fossil fuel combustion product does not extend beyond the outside edge of the structure or pavement. Placement of the structure or pavement must be completed as soon as practicable after placement of the fossil fuel combustion product;

c. The fossil fuel combustion product is not placed so that such product, or any constituent thereof, may enter other lands or be emitted into the air or discharged into any waters, including groundwaters, or otherwise enter the environment in a manner that causes a significant threat to public health or contamination in excess of applicable department standards and criteria; and

d. The owner or duly authorized agent of the owner of the property where the product is placed has given the department written notice, which may be submitted electronically, of the dates, placement locations, and types of fossil fuel combustion products used for structural fill or pavement aggregate.

3. Use of flue-gas emission control materials which meet the definition of gypsum and are used in accordance with applicable Florida Department of Agriculture and Consumer Services rules.

4. Waste stabilization, or initial or intermediate cover material used for lined Class I or III landfills, provided that the material meets applicable department rules for landfill cover or a landfill's permit conditions for cover.

5. Any other use that meets the criteria of s. 403.7045(1)(f) or that is approved by the department prior to use as having an equivalent or reduced potential for environmental impacts, when used in equivalent quantities, compared to the substituted raw products or materials.

(b) "Fossil fuel combustion products" means fly ash, bottom ash, boiler slag, flue-gas emission control materials, and other non-hazardous materials, such as gasifier slag, fluidized-bed combustion system products, and similar combustion materials produced from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof.

(c) "Fossil fuel-fired electric or steam generation facility" means any electric or steam generation facility that is fueled with coal, alone or in combination with petroleum coke, oil, coal gas, natural gas, other fossil fuels, or alternative fuels.

(d) "Pavement aggregate" means fossil fuel combustion products used as sub-base material under a paved road, sidewalk, walkway, or parking lot as a substitute for conventional aggregate, raw material, or soil.

(e) "Structural fill" means the use of a fossil fuel combustion product as a substitute for a conventional aggregate, raw material, or soil under an industrial or commercial building or structure. Structural fill does not include uses of fossil fuel combustion products that involve general filling or grading operations or valley fills.

(2) The storage of fossil fuel combustion products destined for beneficial use must comply with applicable department rules and be conducted in a manner that does not pose a significant risk to public health or violate applicable air or water quality standards.

(3) Fossil fuel combustion products beneficially used in accordance with this section are not subject to regulation as a solid or hazardous waste, but the department may take appropriate action if the beneficial use is demonstrated to be causing violations of applicable air or water quality standards or criteria in department rules, or if such beneficial use poses a significant risk to public health. This section does not limit any other requirements applicable to the beneficial use of fossil fuel combustion products established under this chapter or chapter 376 or under local or federal laws, including requirements governing air pollution control permits, national pollutant discharge elimination system permits, and water quality certifications pursuant to s. 401 of the Clean Water Act.

(4) Nothing in this section shall be construed to limit the department's authority to approve the beneficial use of materials other than fossil fuel combustion products as defined in this section pursuant to other provisions of this part. This section may not be construed to limit or otherwise modify any fossil fuel combustion product beneficial use previously approved by the department, use in the onsite construction of surface impoundments, roads, or similar works at fossil fuel-fired electric or steam generation facilities, or the recovery of these products for beneficial use from fossil fuel combustion product landfills, impoundments, or storage areas.

**History.**—s. 1, ch. 2013-68.

**403.7049 Determination of full cost for solid waste management; local solid waste management fees.**—

(1) Each county and each municipality shall determine each year the full cost for solid waste management within the service area of the county or municipality. The department shall establish by rule the method for local governments to use in calculating full cost. In developing the rule, the department shall examine the feasibility of the use of an enterprise fund process by local governments in operating their solid waste management systems.

(2)(a) Each municipality shall establish a system to inform, no less than once a year, residential and nonresidential users of solid waste management services within the municipality's service area of the user's share, on an average or individual basis, of the full cost for solid waste management as determined pursuant to subsection (1). Counties shall provide the information required of municipalities only to residential and nonresidential users of solid waste management services within the county's service area that are not served by a municipality. Municipalities shall include costs charged to them or persons contracting with them for disposal of solid waste in the full cost information provided to residential and nonresidential users of solid waste management services.

(b) Counties and municipalities are encouraged to operate their solid waste management systems through use of an enterprise fund.

(3) For purposes of this section, "service area" means the area in which the county or municipality provides, directly or by contract, solid waste management services. The provisions of this section shall not be construed to require a person operating under a franchise agreement to collect or dispose of solid waste within the service area of a county or municipality to make the calculations or to establish a system to provide the information required under this section, unless such person agrees to do so as part of such franchise agreement.

(4) Each county and each municipality which provides solid waste collection services, either through its own operations or by contract, is encouraged to charge fees to each residential and nonresidential user of the solid waste collection service which vary based upon the volume or weight of solid waste that is collected from each user.

(5) In order to assist in achieving the municipal solid waste reduction goal and the recycling provisions of s. 403.706(2), a county or a municipality which owns or operates a solid waste management facility is hereby authorized to charge solid waste disposal fees which may vary based on a number of factors, including, but not limited to, the amount, characteristics, and form of recyclable materials present in the solid waste that is brought to the county's or the municipality's facility for processing or disposal.

(6) In addition to all other fees required or allowed by law, a county or a municipality, at the discretion of its governing body, may impose a fee for the services the county or municipality provides with regard to the collection, processing, or disposal of solid waste, to be used for developing and implementing a recycling program. For such fees, the local governing body of any county or municipality may use the non-ad valorem levy, collection, and enforcement method as provided for in chapter 197.

(7) This section does not prohibit a county, municipality, or other person from providing grants, loans, or other aid to low-income persons to pay part or all of the costs of such persons' solid waste management services.

**History.**—s. 9, ch. 88-130; s. 13, ch. 93-207; s. 19, ch. 2000-211; s. 5, ch. 2010-143.

**403.705 State solid waste management program.**—

(1) The state solid waste management program shall:

(a) Provide guidelines for the orderly storage, separation, processing, recovery, recycling, and disposal of solid waste throughout the state;

(b) Encourage coordinated local activity for solid waste management within a common geographical area;

(c) Investigate the present status of solid waste management in the state with positive proposals for local action to correct deficiencies in present solid waste management processes;

(d) Provide planning, technical, and financial assistance to local governments and state agencies for reduction, recycling, reuse, and processing of solid waste and for safe and environmentally sound solid waste management and disposal;

(e) Assist in the development of solid waste reduction and recycling programs to properly manage solid waste and conserve resources; and

(f) Provide for the education of the general public and the training of solid waste management professionals to reduce the production of solid waste, to ensure proper processing and disposal of solid waste, and to encourage recycling and solid waste reduction.

(2) The state solid waste management program shall include, at a minimum:

(a) Procedures and requirements to ensure cooperative efforts in solid waste management by counties and municipalities and groups of counties and municipalities where appropriate.

(b) Provisions for the continuation of existing effective regional resource recovery, recycling, and solid waste management facilities and programs.

(c) Planning guidelines and technical assistance to counties and municipalities to aid in meeting the municipal solid waste recycling goals established in s. 403.706(2).

(d) Planning guidelines and technical assistance to counties and municipalities to develop and implement recycling programs.

(e) Technical assistance to counties and municipalities in determining the full cost for solid waste management pursuant to s. 403.7049(1).

(f) Planning guidelines and technical assistance to counties and municipalities to develop and implement programs for alternative disposal or processing or recycling of the solid wastes prohibited from disposal in landfills under s. 403.708(12) and for special wastes.

(g) A public education program, to be developed in cooperation with the Department of Education, local governments, other state agencies, and business and industry organizations, to inform the public of the need for and the benefits of recycling of solid waste and reducing the amounts of solid and hazardous waste generated and disposed of in the state. The public education program shall be implemented through public workshops and through the use of brochures, reports, public service announcements, and other materials.

(3) The department shall evaluate and report biennially to the President of the Senate and the Speaker of the House of Representatives on the state's success in meeting the solid waste recycling goal as described in s. 403.706(2).

(4) The department shall adopt rules creating a voluntary certification program for materials recovery facilities. The certification criteria shall be based upon the amount and type of materials recycled and the compliance record of the facility and may vary depending on the location in the state and the available markets for the materials that are processed. Any materials recovery facility seeking certification shall file an application to modify its permit, or shall include a certification application as part of its original permit application, which application shall not require an additional fee. The department shall adopt a form for certification applications, and shall require at least annual reports to verify the continued qualification for certification. In order to assist in the development of the certification program, the department shall appoint a technical advisory committee.

**History.**—s. 1, ch. 74-342; s. 2, ch. 75-54; s. 10, ch. 88-130; s. 14, ch. 93-207; s. 395, ch. 94-356; s. 56, ch. 95-144; s. 31, ch. 2000-153; s. 3, ch. 2002-291; s. 10, ch. 2007-184; s. 6, ch. 2010-143.

**403.7055 Methane capture.**—

(1) Each county is encouraged to form multicounty regional solutions to the capture and reuse or sale of methane gas from landfills and wastewater treatment facilities.

(2) The department shall provide planning guidelines and technical assistance to each county to develop and implement such multicounty efforts.

**History.**—s. 94, ch. 2008-227.

**403.706 Local government solid waste responsibilities.**—

(1) The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county. Unless otherwise approved by an interlocal agreement or special act, municipalities may not operate solid waste disposal facilities unless a municipality demonstrates by a preponderance of the evidence that the use of a county designated facility, when compared to alternatives proposed by the municipality, places a significantly higher and disproportionate financial burden on the citizens of the municipality when compared to the financial burden

placed on persons residing within the county but outside of the municipality. However, a municipality may construct and operate a resource recovery facility and related onsite solid waste disposal facilities without an interlocal agreement with the county if the municipality can demonstrate by a preponderance of the evidence that the operation of such facility will not significantly impair financial commitments made by the county with respect to solid waste management services and facilities or result in significantly increased solid waste management costs to the remaining persons residing within the county but not served by the municipality's facility. This section shall not prevent a municipality from continuing to operate or use an existing disposal facility permitted on or prior to October 1, 1988. Any municipality which establishes a solid waste disposal facility under this subsection and subsequently abandons such facility shall be responsible for the payment of any capital expansion necessary to accommodate the municipality's solid waste for the remaining projected useful life of the county disposal facility. Pursuant to this section and notwithstanding any other provision of this chapter, counties shall have the power and authority to adopt ordinances governing the disposal of solid waste generated outside of the county at the county's solid waste disposal facility. In accordance with this section, municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. The fees charged to municipalities at a solid waste management facility specified by the county shall not be greater than the fees charged to other users of the facility except as provided in s. 403.7049(5). Solid waste management fees collected on a countywide basis shall be used to fund solid waste management services provided countywide.

(2)(a) Each county shall implement a recyclable materials recycling program that shall have a goal of recycling recyclable solid waste by 40 percent by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs.

(b) In order to assist counties in attaining the goals set forth in paragraph (a), the Legislature finds that the recycling of construction and demolition debris fulfills an important state interest. Therefore, each county must implement a program for recycling construction and demolition debris.

(c) In accordance with applicable local government ordinances, newly developed property receiving a certificate of occupancy, or its equivalent, on or after July 1, 2012, that is used for multifamily residential or commercial purposes, must provide adequate space and an adequate receptacle for recycling by tenants and owners of the property. This provision is limited to counties and municipalities that have an established residential, including multifamily, or commercial recycling program that provides recycling receptacles to residences and businesses and regular pickup services for those receptacles.

(d) If, by January 1 of 2013, 2015, 2017, 2019, or 2021, the county, as determined by the department in accordance with applicable rules, has not reached the recycling goals as set forth in paragraph (a), the department may direct the county to develop a plan to expand recycling programs to existing commercial and multifamily dwellings, including, but not limited to, apartment complexes.

(e) If the state's recycling rate for the 2013 calendar year is below 40 percent; below 50 percent by January 1, 2015; below 60 percent by January 1, 2017; below 70 percent by January 1, 2019; or below 75 percent by January 1, 2021, the department shall provide a report to the President of the Senate and the Speaker of the House of Representatives. The report shall identify those additional programs or statutory changes needed to achieve the goals set forth in paragraph (a). The report shall be provided no later than 30 days prior to the beginning of the regular session of the Legislature. The department is not required to provide a report to the Legislature if the state reaches its recycling goals as described in this paragraph.

(f) Such programs shall be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling: newspaper, aluminum cans, steel cans, glass, plastic bottles, cardboard, office paper, and yard trash. Local governments which operate permitted waste-to-energy facilities may retrieve ferrous and nonferrous metal as a byproduct of combustion.

(g) Local governments are encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses.

(h) The department shall adopt rules establishing the method and criteria to be used by a county in calculating the recycling rates pursuant to this subsection.

(i) Each county is encouraged to consider plans for composting or mulching organic materials that would otherwise be disposed of in a landfill. The composting or mulching plans are encouraged to address partnership with the private sector.

(3) Each county shall ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements pursuant to s. 163.01 or other means provided by law. Nothing in a county's solid waste management or recycling program shall affect the authority of a municipality to franchise or otherwise provide for the collection of solid waste generated within the boundaries of the municipality.

(4)(a) In order to promote the production of renewable energy from solid waste, each megawatt-hour produced by a renewable energy facility using solid waste as a fuel shall count as 1 ton of recycled material and shall be applied toward meeting the recycling goals set forth in this section. If a county creating renewable energy from solid waste implements and maintains a program to recycle at least 50 percent of municipal solid waste by a means other than creating renewable energy, that county shall count 1.25 tons of recycled material for each megawatt-hour produced. If waste originates from a county other than the county in which the renewable energy facility resides, the originating county shall receive such recycling credit. Any byproduct resulting from the creation of renewable energy that is recycled shall count towards the county recycling goals in accordance with the methods and criteria developed pursuant to paragraph (2)(h).

(b) A county may receive credit for one-half of the recycling goal set forth in subsection (2) from the use of yard trash, or other clean wood waste or paper waste, in innovative programs including, but not limited to, programs that produce alternative clean-burning fuels such as ethanol or that provide for the conversion of yard trash or other clean wood waste or paper waste to clean-burning fuel for the production of energy for use at facilities other than a waste-to-energy facility as defined in s. 403.7061. The provisions of this paragraph apply only if a county can demonstrate that:

1. The county has implemented a yard trash mulching or composting program, and

2. As part of the program, compost and mulch made from yard trash is available to the general public and in use at county-owned or maintained and municipally owned or maintained facilities in the county and state agencies operating in the county as required by this section.

(c) A county with a population of 100,000 or less may provide its residents with the opportunity to recycle in lieu of achieving the goal set forth in this section. For the purposes of this section, the "opportunity to recycle" means that the county:

1.a. Provides a system for separating and collecting recyclable materials prior to disposal that is located at a solid waste management facility or solid waste disposal area; or

b. Provides a system of places within the county for collection of source-separated recyclable materials.

2. Provides a public education and promotion program that is conducted to inform its residents of the opportunity to recycle, encourages source separation of recyclable materials, and promotes the benefits of reducing, reusing, recycling, and composting materials.

(5) As used in this section, "municipal solid waste" includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.

(6) The department may reduce or modify the municipal solid waste recycling goal that a county is required to achieve pursuant to subsection (2) if the county demonstrates to the department that:

(a) The achievement of the goal set forth in subsection (2) would have an adverse effect on the financial obligations of a county that are directly related to a waste-to-energy facility owned or operated by or on behalf of

the county; and

(b) The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.

The goal shall not be waived entirely and may only be reduced or modified to the extent necessary to alleviate the adverse effects of achieving the goal on the financial viability of a county's waste-to-energy facility. Nothing in this subsection shall exempt a county from developing and implementing a recycling program pursuant to this act.

(7) In order to assess the progress in meeting the goal set forth in subsection (2), each county shall, by April 1 each year, provide information to the department regarding its annual solid waste management program and recycling activities.

(a) The information submitted to the department by the county must, at a minimum, include:

1. The amount of municipal solid waste disposed of at solid waste disposal facilities, by type of waste such as yard trash, white goods, clean debris, tires, and unseparated solid waste;

2. The amount and type of materials from the municipal solid waste stream that were recycled; and

3. The percentage of the population participating in various types of recycling activities instituted.

(b) Beginning with the data for the 2012 calendar year, the department shall by July 1 each year post on its website the recycling rates of each county for the prior calendar year.

(8) A county or municipality may enter into a written agreement with other persons, including persons transporting solid waste on October 1, 1988, to undertake to fulfill some or all of the county's or municipality's responsibilities under this section.

(9) In the development and implementation of a curbside recyclable materials collection program, a county or municipality shall enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. If the county or municipality and such franchisee fail to reach an agreement within 60 days from the initiation of such negotiations, the county or municipality may solicit proposals from other persons to undertake curbside recyclable materials collection responsibilities for the county or municipality as it may require. Upon the determination of the lowest responsible proposal, the county or municipality may undertake, or enter into a written agreement with the person who submitted the lowest responsible proposal to undertake, the curbside recyclable materials collection responsibilities for the county or municipality, notwithstanding the exclusivity of such franchise agreement.

(10) In developing and implementing recycling programs, counties and municipalities shall give consideration to the collection, marketing, and disposition of recyclable materials by persons engaged in the business of recycling, whether or not the persons are operating for profit. Counties and municipalities are encouraged to use for-profit and nonprofit organizations in fulfilling their responsibilities under this act.

(11) A county and the municipalities within the county's boundaries may jointly develop a recycling program, provided that the county and each such municipality must enter into a written agreement to jointly develop a recycling program. If a municipality does not participate in jointly developing a recycling program with the county within which it is located, the county may require the municipality to provide information on recycling efforts undertaken within the boundaries of the municipality in order to determine whether the goal for municipal solid waste reduction is being achieved.

(12) 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 a solid waste management or recycling program.

(13) The county shall provide written notice to all municipalities within the county when recycling program development begins and shall provide periodic written progress reports to the municipalities concerning the preparation of the recycling program.

(14) Nothing in this act shall be construed to prevent the governing body of any county or municipality from providing by ordinance or regulation for solid waste management requirements which are stricter or more

extensive than those imposed by the state solid waste management program and rules, regulations, and orders issued thereunder.

(15) 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 regional solid waste management or regional 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 a facility for any such disposal has been approved by the department, unless the municipality is included within a solid waste management program created by interlocal agreement or special or local act. If bonds had been issued to finance a resource recovery or management program or a solid waste management program in reliance on state law granting to a county the responsibility for the resource recovery or management program or a solid waste 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.

(16) 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.

(17) To effect the purposes of this part, counties and municipalities are authorized, in addition to other powers granted pursuant to this part:

(a) To contract with persons to provide resource recovery services or operate resource recovery facilities on behalf of the county or municipality.

(b) To indemnify persons providing resource recovery services or operating resource recovery facilities for liabilities or claims arising out of the provision or operation of such services or facilities that are not the result of the sole negligence of the persons providing such services or operating such facilities.

(c) To waive sovereign immunity and immunity from suit in federal court by vote of the governing body of the county or municipality to the extent necessary to carry out the authority granted in paragraphs (a) and (b), notwithstanding the limitations prescribed in s. 768.28.

(d) To grant a solid waste fee waiver to nonprofit organizations that are engaged in the collection of donated goods for charitable purposes and that have a recycling or reuse rate of 50 percent or better.

(18) Each operator of a solid waste management facility owned or operated by or on behalf of a county or municipality shall weigh all solid waste when it is received. The scale used to measure the solid waste shall conform to the requirements of chapter 531 and any rules promulgated thereunder.

(19) In the event the power to manage solid waste has been granted to a special district or other entity by special act or interlocal agreement, any duty or responsibility or penalty imposed under this part on a county or municipality shall apply to such special district or other entity to the extent of the grant of such duty or responsibility or imposition of such penalty. To the same extent, such special district or other entity shall be eligible for grants or other benefits provided pursuant to this part.

(20) In addition to any other penalties provided by law, a local government that does not comply with the requirements of subsections (2) and (4) shall not be eligible for grants from the Solid Waste Management Trust Fund, and the department may notify the Chief Financial Officer to withhold payment of all or a portion of funds payable to the local government by the department from the General Revenue Fund or by the department from any other state fund, to the extent not pledged to retire bonded indebtedness, unless the local government demonstrates that good faith efforts to meet the requirements of subsections (2) and (4) have been made or that the funds are being or will be used to finance the correction of a pollution control problem that spans jurisdictional boundaries.

(21) Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government, which recyclable materials are specifically intended for purposes of recycling and for which a market exists, and to provide for their collection. Such ordinances may include, but are not limited to, provisions

that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.

(22) Nothing in this act shall limit the authority of the state or any local government to regulate the collection, transportation, processing, or handling of recovered materials or solid waste in order to protect the public health, safety, and welfare.

**History.**—s. 1, ch. 74-342; s. 142, ch. 77-104; s. 1, ch. 77-466; s. 3, ch. 78-329; s. 1, ch. 79-118; s. 7, ch. 80-302; s. 2, ch. 87-107; s. 11, ch. 88-130; s. 15, ch. 93-207; s. 15, ch. 98-258; s. 32, ch. 2000-153; s. 20, ch. 2000-211; s. 6, ch. 2000-304; s. 4, ch. 2002-291; s. 42, ch. 2003-1; s. 429, ch. 2003-261; s. 97, ch. 2008-227; s. 112, ch. 2010-102; s. 7, ch. 2010-143; s. 16, ch. 2012-205.

**403.70605 Solid waste collection services in competition with private companies.**—

(1) SOLID WASTE COLLECTION SERVICES IN COMPETITION WITH PRIVATE COMPANIES.—

(a) A local government that provides specific solid waste collection services in direct competition with a private company:

1. Shall comply with the provisions of local environmental, health, and safety standards that also are applicable to a private company providing such collection services in competition with the local government.

2. Shall not enact or enforce any license, permit, registration procedure, or associated fee that:

a. Does not apply to the local government and for which there is not a substantially similar requirement that applies to the local government; and

b. Provides the local government with a material advantage in its ability to compete with a private company in terms of cost or ability to promptly or efficiently provide such collection services. Nothing in this sub-subparagraph shall apply to any zoning, land use, or comprehensive plan requirement.

(b)1. A private company with which a local government is in competition may bring an action to enjoin a violation of paragraph (a) against any local government. No injunctive relief shall be granted if the official action which forms the basis for the suit bears a reasonable relationship to the health, safety, or welfare of the citizens of the local government unless the court finds that the actual or potential anticompetitive effects outweigh the public benefits of the challenged action.

2. As a condition precedent to the institution of an action pursuant to this paragraph, the complaining party shall first file with the local government a notice referencing this paragraph and setting forth the specific facts upon which the complaint is based and the manner in which the complaining party is affected. The complaining party may provide evidence to substantiate the claims made in the complaint. Within 30 days after receipt of such a complaint, the local government shall respond in writing to the complaining party explaining the corrective action taken, if any. If no response is received within 30 days or if appropriate corrective action is not taken within a reasonable time, the complaining party may institute the judicial proceedings authorized in this paragraph. However, failure to comply with this subparagraph shall not bar an action for a temporary restraining order to prevent immediate and irreparable harm from the conduct or activity complained of.

3. The court may, in its discretion, award to the prevailing party or parties costs and reasonable attorneys' fees.

(c) This subsection does not apply when the local government is exclusively providing the specific solid waste collection services itself or pursuant to an exclusive franchise.

(2) SOLID WASTE COLLECTION SERVICES OUTSIDE JURISDICTION.—

(a) Notwithstanding s. 542.235, or any other provision of law, a local government that provides solid waste collection services outside its jurisdiction in direct competition with private companies is subject to the same prohibitions against predatory pricing applicable to private companies under ss. 542.18 and 542.19.

(b) Any person injured by reason of violation of this subsection may sue therefor in the circuit courts of this state and shall be entitled to injunctive relief and to recover the damages and the costs of suit. The court may, in its discretion, award to the prevailing party or parties reasonable attorneys' fees. An action for damages under this subsection must be commenced within 4 years. No person may obtain injunctive relief or recover damages under this subsection for any injury that results from actions taken by a local government in direct response to a natural disaster or similar occurrence for which an emergency is declared by executive order or proclamation of the

Governor pursuant to s. 252.36 or for which such a declaration might be reasonably anticipated within the area covered by such executive order or proclamation.

(c) As a condition precedent to the institution of an action pursuant to this subsection, the complaining party shall first file with the local government a notice referencing this subsection and setting forth the specific facts upon which the complaint is based and the manner in which the complaining party is affected. Within 30 days after receipt of such complaint, the local government shall respond in writing to the complaining party explaining the corrective action taken, if any. If the local government denies that it has engaged in conduct that is prohibited by this subsection, its response shall include an explanation showing why the conduct complained of does not constitute predatory pricing.

(d) For the purposes of this subsection, the jurisdiction of a county, special district, or solid waste authority shall include all incorporated and unincorporated areas within the county, special district, or solid waste authority.

(3) DISPLACEMENT OF PRIVATE WASTE COMPANIES.—

(a) As used in this subsection, the term “displacement” means a local government’s provision of a collection service which prohibits a private company from continuing to provide the same service that it was providing when the decision to displace was made. The term does not include:

1. Competition between the public sector and private companies for individual contracts;

2. Actions by which a local government, at the end of a contract with a private company, refuses to renew the contract and either awards the contract to another private company or decides for any reason to provide the collection service itself;

3. Actions taken against a private company because the company has acted in a manner threatening to the public health or safety or resulting in a substantial public nuisance;

4. Actions taken against a private company because the company has materially breached its contract with the local government;

5. Refusal by a private company to continue operations under the terms and conditions of its existing agreement during the 3-year notice period;

6. Entering into a contract with a private company to provide garbage, trash, or refuse collection which contract is not entered into under an ordinance that displaces or authorizes the displacement of another private company providing garbage, trash, or refuse collection;

7. Situations in which a majority of the property owners in the displacement area petition the governing body to take over the collection service;

8. Situations in which the private companies are licensed or permitted to do business within the local government for a limited time and such license or permit expires and is not renewed by the local government. This subparagraph does not apply to licensing or permitting processes enacted after May 1, 1999, or to occupational licenses; or

9. Annexations, but only to the extent that the provisions of s. 171.062(4) apply.

(b) A local government or combination of local governments may not displace a private company that provides garbage, trash, or refuse collection service without first:

1. Holding at least one public hearing seeking comment on the advisability of the local government or combination of local governments providing the service.

2. Providing at least 45 days’ written notice of the hearing, delivered by first-class mail to all private companies that provide the service within the jurisdiction.

3. Providing public notice of the hearing.

(c) Following the final public hearing held under paragraph (b), but not later than 1 year after the hearing, the local government may proceed to take those measures necessary to provide the service. A local government shall provide 3 years’ notice to a private company before it engages in the actual provision of the service that displaces the company. As an alternative to delaying displacement 3 years, a local government may pay a displaced company an amount equal to the company’s preceding 15 months’ gross receipts for the displaced service in the displacement area. The 3-year notice period shall lapse as to any private company being displaced when the

company ceases to provide service within the displacement area. Nothing in this paragraph prohibits the local government and the company from voluntarily negotiating a different notice period or amount of compensation.

(4) DEFINITIONS.—As used in this section:

(a) "In competition" or "in direct competition" means the vying between a local government and a private company to provide substantially similar solid waste collection services to the same customer.

(b) "Private company" means any entity other than a local government or other unit of government that provides solid waste collection services.

**History.**—s. 1, ch. 2000-304; s. 3, ch. 2002-23.

**403.7061 Requirements for review of new waste-to-energy facility capacity by the Department of Environmental Protection.**—

(1) The Legislature recognizes the need to use an integrated approach to municipal solid waste management. Accordingly, the solid waste management legislation adopted in 1988 was guided by policies intended to foster integrated solid waste management by using waste reduction, recycling, waste-to-energy facilities, and landfills. Progress is being made in the state using this integrated approach to municipal solid waste management, and this approach should be continued. Waste-to-energy facilities will continue to be an integral part of the state's solid waste management practices. However, the state is committed to achieving its recycling and waste reduction goals and must ensure that waste-to-energy facilities are fully integrated with the state's waste management goals. Therefore, the Legislature finds that the department should evaluate applications for waste-to-energy facilities in accordance with the new criteria in subsection (3) to confirm that the facilities are part of an integrated waste management plan.

(2) Notwithstanding any other provisions of state law, the department shall not issue a construction permit or certification to build a waste-to-energy facility or expand an existing waste-to-energy facility unless the facility meets the requirements set forth in subsection (3). Any construction permit issued by the department between January 1, 1993, and May 12, 1993, which does not address these new requirements is invalid. These new requirements do not apply to the issuance of permits or permit modifications to retrofit existing facilities with new or improved pollution control equipment to comply with state or federal law.

(3) An applicant must provide reasonable assurance that the construction of a new waste-to-energy facility or the expansion of an existing waste-to-energy facility will comply with the following criteria:

(a) The facility is a necessary part of the local government's integrated solid waste management program in the jurisdiction where the facility is located and cannot be avoided through feasible and practical efforts to use recycling or waste reduction.

(b) The use of capacity at existing waste-to-energy facilities within reasonable transportation distance of the proposed facility must have been evaluated and found not to be economically feasible when compared to the use of the proposed facility for the expected life of the proposed facility. This paragraph does not apply to:

1. Applications to build or expand waste-to-energy facilities received by the department before March 1, 1993, or amendments to such applications that do not increase combustion capacity beyond that requested as of March 1, 1993; or

2. Any modification to waste-to-energy facility construction or operating permits or certifications or conditions thereto, including certifications under ss. 403.501-403.518, that do not increase combustion capacity above that amount applied for before March 1, 1993.

(c) The local government in which the facility is located has implemented a mulching, composting, or other waste reduction program for yard trash.

(d) The local governments served by the facility will have implemented or participated in a separation program designed to remove small-quantity generator and household hazardous waste, mercury containing devices, and mercuric-oxide batteries from the waste stream prior to incineration, by the time the facility begins operation.

(e) The local government in which the facility is located has implemented a program to procure products or materials with recycled content, pursuant to s. 403.7065.

(f) A program will exist in the local government in which the facility is located for collecting and recycling recovered material from the institutional, commercial, and industrial sectors by the time the facility begins operation.

(g) The facility will be in compliance with applicable local ordinances and with the approved state and local comprehensive plans required by chapter 163.

(h) The facility is in substantial compliance with its permit, conditions of certification, and any agreements or orders resulting from environmental enforcement actions by state agencies.

(4) For the purposes of this section, the term "waste-to-energy facility" means a facility that uses an enclosed device using controlled combustion to thermally break down solid, liquid, or gaseous combustible solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term also does not include facilities that burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

**History.**—s. 56, ch. 93-207; s. 396, ch. 94-356; s. 16, ch. 98-258; s. 39, ch. 99-5; s. 5, ch. 2002-291; s. 3, ch. 2005-259; s. 11, ch. 2007-184; s. 8, ch. 2010-143; s. 21, ch. 2015-4.

**403.70611 Requirements relating to solid waste disposal facility permitting.**—Local government applicants for a permit to construct or expand a Class I landfill are encouraged to consider construction of a waste-to-energy facility as an alternative to additional landfill space.

**History.**—s. 4, ch. 2005-259.

**403.7063 Use of private services in solid waste management.**—In providing services or programs for solid waste management, local governments and state agencies should use the most cost-effective means for the provision of services and are encouraged to contract with private persons for any or all of such services or programs in order to assure that such services are provided on the most cost-effective basis. Notwithstanding any special or general law to the contrary, no county or municipality shall adopt or enforce regulations that discriminate against privately owned solid waste management facilities because they are privately owned. However, nothing in this section shall interfere with the county's or municipality's ability to control the flow of solid waste within its boundaries pursuant to this chapter.

**History.**—s. 62, ch. 88-130.

**403.7065 Procurement of products or materials with recycled content.**—

(1) Except as provided in [1]s. 287.045, 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 products or materials with recycled content when the Department of Management Services determines that those products or materials are available. A decision not to procure such items must be based on the Department of Management Services' determination that such procurement is not reasonably available within an acceptable period of time, fails to meet the performance standards set forth in the applicable specifications, or fails to meet the performance standards of the agency. When the requirements of [1]s. 287.045 are met, agencies shall be subject to the procurement requirements of that section for procuring products or materials with recycled content.

(2) For the purposes of this section, "recycled content" means materials that have been recycled that are contained in the products or materials to be procured, including, but not limited to, paper, aluminum, steel, plastic, glass, and composted material. The term does not include the virgin component of internally generated scrap that is commonly used in the industrial or manufacturing processes from which it was generated or waste or scrap purchased from another manufacturer who manufactures the same or a closely related product.

**History.**—s. 2, ch. 83-293; s. 12, ch. 88-130; s. 32, ch. 90-268; s. 16, ch. 93-207; s. 104, ch. 98-279.

[1]**Note.**—Repealed by s. 17, ch. 2010-151.

**403.707 Permits.**—

(1) A solid waste management facility may not be operated, maintained, constructed, expanded, modified, or closed without an appropriate and currently valid permit issued by the department. The department may by rule exempt specified types of facilities from the requirement for a permit under this part if it determines that construction or operation of the facility is not expected to create any significant threat to the environment or public health. For purposes of this part, and only when specified by department rule, a permit may include registrations as well as other forms of licenses as defined in s. 120.52. Solid waste construction permits issued under this section may include any permit conditions necessary to achieve compliance with the recycling requirements of this act. The department shall pursue reasonable timeframes for closure and construction requirements, considering pending federal requirements and implementation costs to the permittee. The department shall adopt a rule establishing performance standards for construction and closure of solid waste management facilities. The standards shall allow flexibility in design and consideration for site-specific characteristics. For the purpose of permitting under this chapter, the department shall allow waste-to-energy facilities to maximize acceptance and processing of nonhazardous solid and liquid waste.

(2) Except as provided in s. 403.722(6), a permit under this section is not required for the following:

(a) Disposal by persons of solid waste resulting from their own activities on their own property, if such waste is ordinary household waste from their residential property or is rocks, soils, trees, tree remains, and other vegetative matter that normally result from land development operations. Disposal of materials that could create a public nuisance or adversely affect the environment or public health, such as white goods; automotive materials, such as batteries and tires; petroleum products; pesticides; solvents; or hazardous substances, is not covered under this exemption.

(b) Storage in containers by persons of solid waste resulting from their own activities on their property, leased or rented property, or property subject to a homeowners' or maintenance association for which the person contributes association assessments, if the solid waste in such containers is collected at least once a week.

(c) Disposal by persons of solid waste resulting from their own activities on their property, if the environmental effects of such disposal on groundwater and surface waters are:

1. Addressed or authorized by a site certification order issued under part II or a permit issued by the department under this chapter or rules adopted pursuant to this chapter; or

2. Addressed or authorized by, or exempted from the requirement to obtain, a groundwater monitoring plan approved by the department. If a facility has a permit authorizing disposal activity, new areas where solid waste is being disposed of which are monitored by an existing or modified groundwater monitoring plan are not required to be specifically authorized in a permit or other certification.

(d) Disposal by persons of solid waste resulting from their own activities on their own property, if such disposal occurred prior to October 1, 1988.

(e) Disposal of solid waste resulting from normal farming operations as defined by department rule. Polyethylene agricultural plastic, damaged, nonsalvageable, untreated wood pallets, and packing material that cannot be feasibly recycled, which are used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, may be disposed of by open burning if a public nuisance or any condition adversely affecting the environment or the public health is not created by the open burning and state or federal ambient air quality standards are not violated.

(f) The use of clean debris as fill material in any area. However, this paragraph does not exempt any person from obtaining any other required permits, and does not affect a person's responsibility to dispose of clean debris appropriately if it is not to be used as fill material.

(g) Compost operations that produce less than 50 cubic yards of compost per year when the compost produced is used on the property where the compost operation is located.

(3)(a) All applicable provisions of ss. 403.087 and 403.088, relating to permits, apply to the control of solid waste management facilities.

(b) A permit, including a general permit, issued to a solid waste management facility that is designed with a leachate control system meeting department requirements shall be issued for a term of 20 years unless the applicant requests a shorter permit term. This paragraph applies to a qualifying solid waste management facility

that applies for an operating or construction permit or renews an existing operating or construction permit on or after October 1, 2012.

(c) A permit, including a general permit, but not including a registration, issued to a solid waste management facility that does not have a leachate control system meeting department requirements shall be renewed for a term of 10 years, unless the applicant requests a shorter permit term, if the following conditions are met:

1. The applicant has conducted the regulated activity at the same site for which the renewal is sought for at least 4 years and 6 months before the date that the permit application is received by the department; and

2. At the time of applying for the renewal permit:

a. The applicant is not subject to a notice of violation, consent order, or administrative order issued by the department for violation of an applicable law or rule;

b. The department has not notified the applicant that it is required to implement assessment or evaluation monitoring as a result of exceedances of applicable groundwater standards or criteria or, if applicable, the applicant is completing corrective actions in accordance with applicable department rules; and

c. The applicant is in compliance with the applicable financial assurance requirements.

(d) The department may adopt rules to administer this subsection. However, the department is not required to submit such rules to the Environmental Regulation Commission for approval. Notwithstanding the limitations of s. 403.087(6)(a), permit fee caps for solid waste management facilities shall be prorated to reflect the extended permit term authorized by this subsection.

(4) When application for a construction permit for a Class I solid waste disposal facility is made, it is 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 may prepare an advisory report as to the impact on water resources. This report must contain the district's recommendations as to the disposition of the application and shall be submitted to the department no later than 30 days prior to the deadline for final agency action by the department. However, the failure of the department or the water management district to comply with the provisions of this subsection shall not be the basis for the denial, revocation, or remand of any permit or order issued by the department.

(5) The department may not issue a construction permit pursuant to this part for a new solid waste landfill within 3,000 feet of Class I surface waters.

(6) The department may issue a construction permit pursuant to this part only to a solid waste management facility that provides the conditions necessary to control the safe movement of wastes or waste constituents into surface or ground waters or the atmosphere and that will be operated, maintained, and closed by qualified and properly trained personnel. Such facility must if necessary:

(a) Use natural or artificial barriers that are capable of controlling lateral or vertical movement of wastes or waste constituents into surface or ground waters.

(b) Have a foundation or base that is capable of providing support for structures and waste deposits and capable of preventing foundation or base failure due to settlement, compression, or uplift.

(c) Provide for the most economically feasible, cost-effective, and environmentally safe control of leachate, gas, stormwater, and disease vectors and prevent the endangerment of public health and the environment.

Open fires, air-curtain incinerators, or trench burning may not be used as a means of disposal at a solid waste management facility, unless permitted by the department under s. 403.087.

(7) Prior to application for a construction permit, an applicant shall designate to the department temporary backup disposal areas or processes for the resource recovery facility. Failure to designate temporary backup disposal areas or processes shall result in a denial of the construction permit.

(8) The department may refuse to issue a permit to an applicant who by past conduct in this state has repeatedly violated pertinent statutes, rules, or orders or permit terms or conditions relating to any solid waste management facility and who is deemed to be irresponsible as defined by department rule. For the purposes of this subsection, an applicant includes the owner or operator of the facility, or if the owner or operator is a business

entity, a parent of a subsidiary corporation, a partner, a corporate officer or director, or a stockholder holding more than 50 percent of the stock of the corporation.

(9) The department shall establish a separate category for solid waste management facilities that accept only construction and demolition debris for disposal or recycling. The department shall establish a reasonable schedule for existing facilities to comply with this section to avoid undue hardship to such facilities. However, a permitted solid waste disposal unit that receives a significant amount of waste prior to the compliance deadline established in this schedule shall not be required to be retrofitted with liners or leachate control systems.

(a) The department shall establish reasonable construction, operation, monitoring, recordkeeping, financial assurance, and closure requirements for such facilities. The department shall take into account the nature of the waste accepted at various facilities when establishing these requirements, and may impose less stringent requirements, including a system of general permits or registration requirements, for facilities that accept only a segregated waste stream which is expected to pose a minimal risk to the environment and public health, such as clean debris. The Legislature recognizes that incidental amounts of other types of solid waste are commonly generated at construction or demolition projects. In any enforcement action taken pursuant to this section, the department shall consider the difficulty of removing these incidental amounts from the waste stream.

(b) The department shall require liners and leachate collection systems at individual disposal units and lateral expansions of existing disposal units that have not received a department permit authorizing construction or operation prior to July 1, 2010, unless the owner or operator demonstrates, based upon the types of waste received, the methods for controlling types of waste disposed of, the proximity of the groundwater and surface water, and the results of the hydrogeological and geotechnical investigations, that the facility is not expected to result in violations of the groundwater standards and criteria if built without a liner.

(c) The owner or operator shall provide financial assurance for closing of the facility in accordance with the requirements of s. 403.7125. The financial assurance shall cover the cost of closing the facility and 5 years of long-term care after closing, unless the department determines, based upon hydrogeologic conditions, the types of wastes received, or the groundwater monitoring results, that a different long-term care period is appropriate. However, unless the owner or operator of the facility is a local government, the escrow account described in s. 403.7125(2) may not be used as a financial assurance mechanism.

(d) The department shall establish training requirements for operators of facilities, and shall work with the State University System or other providers to assure that adequate training courses are available. The department shall also assist the Florida Home Builders Association in establishing a component of its continuing education program to address proper handling of construction and demolition debris, including best management practices for reducing contamination of the construction and demolition debris waste stream.

(e) The issuance of a permit under this subsection does not obviate the need to comply with all applicable zoning and land use regulations.

(f) A permit is not required under this section for the disposal of construction and demolition debris on the property where it is generated, but such property must be covered, graded, and vegetated as necessary when disposal is complete.

(g) By January 1, 2012, the amount of construction and demolition debris processed and recycled prior to disposal at a permitted materials recovery facility or at any other permitted disposal facility shall be reported by the county of origin to the department and to the county on an annual basis in accordance with rules adopted by the department. The rules shall establish criteria to ensure accurate and consistent reporting for purposes of determining the recycling rate in s. 403.706 and shall also require that, to the extent economically feasible, all construction and demolition debris must be processed prior to disposal, either at a permitted materials recovery facility or at a permitted disposal facility. This paragraph does not apply to recovered materials, any materials that have been source separated and offered for recycling, or materials that have been previously processed.

(h) The department shall ensure that the requirements of this section are applied and interpreted consistently throughout the state. In accordance with s. 20.255, the Division of Waste Management shall direct the district offices and bureaus on matters relating to the interpretation and applicability of this section.

(i) The department shall provide notice of receipt of a permit application for the initial construction of a construction and demolition debris disposal facility to the local governments having jurisdiction where the facility is to be located.

(j) The Legislature recognizes that recycling, waste reduction, and resource recovery are important aspects of an integrated solid waste management program and as such are necessary to protect the public health and the environment. If necessary to promote such an integrated program, the county may determine, after providing notice and an opportunity for a hearing prior to April 30, 2008, that some or all of the material described in s. 403.703(6)(b) shall be excluded from the definition of "construction and demolition debris" in s. 403.703(6) within the jurisdiction of such county. The county may make such a determination only if it finds that, prior to June 1, 2007, the county has established an adequate method for the use or recycling of such wood material at an existing or proposed solid waste management facility that is permitted or authorized by the department on June 1, 2007. The county is not required to hold a hearing if the county represents that it previously has held a hearing for such purpose, or if the county represents that it previously has held a public meeting or hearing that authorized such method for the use or recycling of trash or other nonputrescible waste materials and that such materials include those materials described in s. 403.703(6)(b). The county shall provide written notice of its determination to the department by no later than April 30, 2008; thereafter, the materials described in s. 403.703(6) shall be excluded from the definition of "construction and demolition debris" in s. 403.703(6) within the jurisdiction of such county. The county may withdraw or revoke its determination at any time by providing written notice to the department.

(k) Brazilian pepper and other invasive exotic plant species as designated by the department resulting from eradication projects may be processed at permitted construction and demolition debris recycling facilities or disposed of at permitted construction and demolition debris disposal facilities or Class III facilities. The department may adopt rules to implement this paragraph.

(10) If the department and a local government independently require financial assurance for the closure of a privately owned solid waste management facility, the department and that local government shall enter into an interagency agreement that will allow the owner or operator to provide a single financial mechanism to cover the costs of closure and any required long-term care. The financial mechanism may provide for the department and local government to be cobeneficiaries or copayees, but shall not impose duplicative financial requirements on the owner or operator. These closure costs must include at least the minimum required by department rules and must also include any additional costs required by local ordinance or regulation.

(11) Before or on the same day of filing with the department of an application for a permit to construct or substantially modify a solid waste management facility, the applicant shall notify the local government having jurisdiction over the facility of the filing of the application. The applicant also shall publish notice of the filing of the application in a newspaper of general circulation in the area where the facility will be located. Notice shall be given and published in accordance with applicable department rules. The department shall not issue the requested permit until the applicant has provided the department with proof that the notices required by this subsection have been given. Issuance of a permit does not relieve an applicant from compliance with local zoning or land use ordinances, or with any other law, rules, or ordinances.

(12) Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site.

(13) A facility shall not be considered a solid waste disposal facility solely by virtue of the fact that it uses processed yard trash or clean wood or paper waste as a fuel source.

(14)(a) A permit to operate a solid waste management facility may not be transferred by the permittee to any other entity without the consent of the department. If the permitted facility is sold or transferred, or if control of the facility is transferred, the permittee must submit to the department an application for transfer of permit no later than 30 days after the transfer of ownership or control. The department shall approve the transfer of a permit unless it determines that the proposed new permittee has not provided reasonable assurance that the conditions of the permit will be met. A permit may not be transferred until any proof of financial assurance required by department rule is provided by the proposed new permittee. If the existing permittee is under a continuing obligation to perform corrective actions as a result of a department enforcement action or consent

order, the permit may not be transferred until the proposed new permittee agrees in writing to accept responsibility for performing such corrective actions.

(b) Until the transfer is approved by the department, the existing permittee is liable for compliance with the permit, including the financial assurance requirements. When the transfer has been approved, the department shall return to the transferring permittee any means of proof of financial assurance which the permittee provided to the department and the permittee is released from obligations to comply with the transferred permit.

(c) An application for the transfer of a permit must clearly state in bold letters that the permit may not be transferred without proof of compliance with financial assurance requirements. Until the permit is transferred, the new owner or operator may not operate the facility without the express consent of the permittee.

(d) The department may adopt rules to administer this subsection, including procedural rules and the permit transfer form.

**History.**—s. 1, ch. 74-342; s. 3, ch. 78-387; s. 14, ch. 82-101; s. 63, ch. 83-218; s. 33, ch. 83-310; s. 32, ch. 84-338; s. 1, ch. 85-269; s. 1, ch. 85-334; s. 13, ch. 88-130; s. 1, ch. 91-284; s. 1, ch. 91-301; s. 1, ch. 92-346; s. 17, ch. 93-207; s. 82, ch. 93-213; s. 397, ch. 94-356; s. 4, ch. 96-284; s. 2, ch. 96-381; s. 2, ch. 98-316; s. 25, ch. 2000-197; s. 21, ch. 2000-211; s. 2, ch. 2001-224; s. 6, ch. 2002-291; s. 18, ch. 2002-295; s. 12, ch. 2007-184; s. 107, ch. 2008-4; s. 9, ch. 2010-143; s. 47, ch. 2010-205; s. 17, ch. 2012-205.

**403.7071 Management of storm-generated debris.**—Solid waste generated as a result of a storm event that is the subject of an emergency order issued by the department may be managed as follows:

(1) Recycling and reuse of storm-generated vegetative debris is encouraged to the greatest extent practicable. Such recycling and reuse must be conducted in accordance with applicable department rules and may include, but is not limited to, chipping and grinding of the vegetative debris to be beneficially used as a ground cover or soil amendment, compost, or as a combustible fuel for any applicable commercial or industrial application.

(2) The department may issue field authorizations for staging areas in those counties affected by a storm event. Such staging areas may be used for the temporary storage and management of storm-generated debris, including the chipping, grinding, or burning of vegetative debris. Field authorizations may include specific conditions for the operation and closure of the staging area and must specify the date that closure is required. To the greatest extent possible, staging areas may not be located in wetlands or other surface waters. The area that is used or affected by a staging area must be fully restored upon cessation of the use of the area.

(3) Storm-generated vegetative debris managed at a staging area may be disposed of in a permitted lined or unlined landfill, a permitted land clearing debris facility, a permitted or certified waste-to-energy facility, or a permitted construction and demolition debris disposal facility. Vegetative debris may also be managed at a permitted waste processing facility or a registered yard trash processing facility.

(4) Construction and demolition debris that is mixed with other storm-generated debris need not be segregated from other solid waste before disposal in a lined landfill. Construction and demolition debris that is source separated or is separated from other hurricane-generated debris at an authorized staging area, or at another area permitted or specifically authorized by the department, may be managed at a permitted construction and demolition debris disposal facility, a Class III landfill, or a recycling facility upon approval by the department of the methods and operational practices used to inspect the waste during segregation.

(5) Unsalvageable refrigerators and freezers containing solid waste, such as rotting food, which may create a sanitary nuisance may be disposed of in a permitted lined landfill; however, chlorofluorocarbons and capacitors must be removed and recycled to the greatest extent practicable.

(6) Local governments or their agents may conduct the burning of storm-generated yard trash, other storm-generated vegetative debris, or untreated wood from construction and demolition debris in air-curtain incinerators without prior notice to the department. Within 10 days after commencing such burning, the local government shall notify the department in writing describing the general nature of the materials burned; the location and method of burning; and the name, address, and telephone number of the representative of the local government to contact concerning the work. The operator of the air-curtain incinerator is subject to any requirement of the Florida Forest Service or of any other agency concerning authorization to conduct open burning. Any person conducting open burning of vegetative debris is also subject to such requirements.

**History.**—s. 13, ch. 2007-184; s. 20, ch. 2012-7.

**403.70715 Research, development, and demonstration permits.**—

(1) The department may issue a research, development, and demonstration permit to the owner or operator of any solid waste management facility or hazardous waste management facility who proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards have not been promulgated. Permits shall:

(a) Provide for construction and operation of the facility for not longer than 3 years, renewable no more than 3 times.

(b) Provide for the receipt and treatment by the facility of only those types and quantities of solid waste which the department deems necessary for purposes of determining the performance capabilities of the technology or process and the effects of such technology or process on human health and the environment.

(c) Include requirements the department deems necessary which may include monitoring, operation, testing, financial responsibility, closure, and remedial action.

(2) The department may apply the criteria set forth in this section in establishing the conditions of each permit without separate establishment of rules implementing such criteria.

(3) For the purpose of expediting review and issuance of permits under this section, the department may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements, except that there shall be no modification or waiver of regulations regarding financial responsibility or of procedures established regarding public participation.

(4) The department may order an immediate termination of all operations at the facility at any time upon a determination that termination is necessary to protect human health and the environment.

**History.**—s. 35, ch. 86-186; s. 80, ch. 88-130; s. 20, ch. 2007-184.

**Note.**—Former s. 403.7221.

**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. 79-161.

**403.708 Prohibition; penalty.**—

(1) A person may not:

(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, this act does not 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 solid waste management facility or site without first having obtained from the department any permit required by s. 403.707.

(2) A beverage may not be sold or offered for sale within the state in a beverage container designed and constructed so that the container is opened by detaching a metal ring or tab. As used in this subsection, the term:

(a) “Beverage” means soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drinks; soft drinks, whether or not carbonated; beer, ale, or other malt drink of whatever alcoholic content; or a mixed wine drink or a mixed spirit drink.

(b) “Beverage container” means an airtight container that at the time of sale contains 1 gallon or less of a beverage, or the metric equivalent of 1 gallon or less, and that is composed of metal, plastic, or glass or a combination thereof.

(3) The Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation may impose a fine of not more than $100 on any person currently licensed pursuant to s. 561.14 for each violation of subsection (2). If the violation is of a continuing nature, each day during which such violation occurs constitutes a separate offense and is subject to a separate fine.

(4) The Department of Agriculture and Consumer Services may impose a fine of not more than $100 against any person not currently licensed pursuant to s. 561.14 for each violation of the provisions of subsection (2). If the violation is of a continuing nature, each day during which such violation occurs constitutes a separate offense and is subject to a separate fine.

(5) Fifty percent of each fine collected pursuant to subsections (3) and (4) shall be deposited into the Solid Waste Management Trust Fund. The balance of fines collected pursuant to subsection (3) shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund for the use of the division for inspection and enforcement of this section. The balance of fines collected pursuant to subsection (4) shall be deposited into the General Inspection Trust Fund for the use of the Department of Agriculture and Consumer Services for inspection and enforcement of this section.

(6) The Division of Alcoholic Beverages and Tobacco and the Department of Agriculture and Consumer Services shall coordinate their responsibilities under this section to ensure that inspections and enforcement are accomplished in an efficient, cost-effective manner.

(7) A person may not distribute, sell, or expose for sale in this state any plastic bottle or rigid container intended for single use unless such container has a molded label indicating the plastic resin used to produce the plastic container. The label must appear on or near the bottom of the plastic container product and be clearly visible. This label must consist of a number placed inside a triangle and letters placed below the triangle. The triangle must be equilateral and must be formed by three arrows, and, in the middle of each arrow, there must be a rounded bend that forms one apex of the triangle. The pointer, or arrowhead, of each arrow must be at the midpoint of a side of the triangle, and a short gap must separate each pointer from the base of the adjacent arrow. The three curved arrows that form the triangle must depict a clockwise path around the code number. Plastic bottles of less than 16 ounces, rigid plastic containers of less than 8 ounces, and plastic casings on lead-acid storage batteries are not required to be labeled under this subsection. The numbers and letters must be as follows:

(a) For polyethylene terephthalate, the letters “PETE” and the number 1.

(b) For high-density polyethylene, the letters “HDPE” and the number 2.

(c) For vinyl, the letter “V” and the number 3.

(d) For low-density polyethylene, the letters “LDPE” and the number 4.

(e) For polypropylene, the letters “PP” and the number 5.

(f) For polystyrene, the letters “PS” and the number 6.

(g) For any other, the letters “OTHER” and the number 7.

(8) A person may not distribute, sell, or expose for sale in this state any product packaged in a container or packing material manufactured with fully halogenated chlorofluorocarbons. Producers of containers or packing material manufactured with chlorofluorocarbons are urged to introduce alternative packaging materials that are environmentally compatible.

(9) 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, other than as expressly provided in this act.

(10) Violations of this part 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 are punishable by a civil penalty as provided in s. 403.141.

(11) The department or any county or municipality may also seek to enjoin the violation of, or enforce compliance with, this part or any program adopted hereunder as provided in s. 403.131.

(12) A person who knows or should know of the nature of the following types of solid waste may not dispose of such solid waste in landfills:

(a) Lead-acid batteries. Lead-acid batteries also may not be disposed of in any waste-to-energy facility. To encourage proper collection and recycling, all persons who sell lead-acid batteries at retail shall accept used lead-acid batteries as trade-ins for new lead-acid batteries.

(b) Used oil.

(c)1. Yard trash in lined landfills classified by department rule as Class I landfills, unless the Class I landfill uses an active gas-collection system to collect landfill gas generated at the disposal facility and provides or arranges for

a beneficial use of the gas. A Class I landfill may also accept yard trash for the purpose of mulching and using the yard trash to provide landfill cover for municipal solid waste disposed at the landfill. The department shall, by rule, develop and adopt a methodology to award recycling credit for the use or disposal of yard trash at a Class I landfill having a gas-collection system that makes beneficial use of the collected landfill gas. A qualifying permitted Class I landfill must obtain a minor permit modification to its operating permit which describes the beneficial use being made of the landfill gas and modifies the facility's operation plan before receiving yard trash as authorized under this subparagraph. The permittee must certify that gas collection and beneficial use will continue after closure of the disposal facility that is accepting yard trash. If the landfill is located in a county that owns and operates a compost facility, waste-to-energy facility, or biomass facility that sells renewable energy to a public utility and that is authorized to accept yard trash, the department shall provide the county with notice of, and opportunity to comment on, the application for permit modification.

2. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area if separate yard trash composting facilities are provided and maintained. The department recognizes that incidental amounts of yard trash may be disposed of in Class I landfills. In any enforcement action taken pursuant to this paragraph, the department shall consider the difficulty of removing incidental amounts of yard trash from a mixed solid waste stream. This limited exception applies in all units of local government, including, but not limited to, municipalities, counties, and special districts. However, the exception does not apply to a county that currently operates under a constitutional home rule charter authorized in 1956 in a statewide referendum. The limited exception to the ban on disposing of yard trash in a Class I landfill is not intended to have a material impact on current operations at existing waste-to-energy or biomass facilities.

(d) White goods.

**History.**—s. 1, ch. 74-342; s. 15, ch. 88-130; s. 18, ch. 93-207; s. 54, ch. 94-218; s. 398, ch. 94-356; s. 6, ch. 96-284; s. 1, ch. 97-23; s. 33, ch. 2000-153; s. 22, ch. 2000-211; s. 87, ch. 2007-5; s. 14, ch. 2007-184; ss. 1, 2, ch. 2010-276; HJR 3-A, 2010 Special Session A.

**403.709 Solid Waste Management Trust Fund; use of waste tire fees.**—There is created the Solid Waste Management Trust Fund, to be administered by the department.

(1) From the annual revenues deposited in the trust fund, unless otherwise specified in the General Appropriations Act:

(a) Up to 40 percent shall be used for funding solid waste activities of the department and other state agencies, such as providing technical assistance to local governments and the private sector, performing solid waste regulatory and enforcement functions, preparing solid waste documents, and implementing solid waste education programs.

(b) Up to 4.5 percent shall be used for funding research and training programs relating to solid waste management through the Center for Solid and Hazardous Waste Management and other organizations that can reasonably demonstrate the capability to carry out such projects.

(c) Up to 14 percent shall be used for funding to supplement any other funds provided to the Department of Agriculture and Consumer Services for mosquito control. This distribution shall be annually transferred to the General Inspection Trust Fund in the Department of Agriculture and Consumer Services to be used for mosquito control, especially control of West Nile Virus.

(d) Up to 4.5 percent shall be used for funding to the Department of Transportation for litter prevention and control programs through a certified Keep America Beautiful Affiliate at the local level.

(e) Up to 37 percent shall be used for funding a waste tire abatement program and a solid waste management grant program pursuant to s. 403.7095 for activities relating to recycling and waste reduction, including waste tires requiring final disposal. Of the funding specified in this paragraph, no more than 5 percent of the total may be used for funding the waste tire abatement program.

(2) Notwithstanding subsection (1), a solid waste landfill closure account is established within the Solid Waste Management Trust Fund to provide funding for the closing and long-term care of solid waste management facilities.

(a) The department may use funds from the account to contract with a third party for the closing and long-term care of a solid waste management facility if:

1. The facility has, had, or was not required to obtain a department permit to operate the facility;

2. The permittee, where required by permit or rule, provided proof of financial assurance for closure in the form of an insurance certificate or an alternative form of financial assurance mechanism established pursuant to s. 403.7125;

3. The department has ordered the facility closed or has deemed the facility abandoned;

4. The closure of the facility is accomplished in substantial accordance with a closure plan approved by the department; and

5. The department has sufficient documentation to confirm that the issuer of the insurance policy or alternative form of financial assurance will provide or reimburse the funds required to complete the closing and long-term care of the facility.

(b) The department shall deposit all funds received from the insurer or other parties for reimbursing the costs of closing or long-term care of the facility under this subsection into the solid waste landfill closure account.

(c) If the amount available under the insurance policy or alternative form of financial assurance is insufficient, or is otherwise unavailable, to perform or complete the facility closing or long-term care under this subsection, and the department has used all such funds from the insurance policy or alternative form of financial assurance, the department may use funds from the Solid Waste Management Trust Fund to pay for or reimburse additional expenses needed for performing or completing the approved facility closure or long-term care activities.

(3) The department shall recover to the use of the fund from the site owner or the person responsible for the accumulation of tires at the site, jointly and severally, all sums expended from the fund pursuant to this section to manage tires at an illegal waste tire site, except that the department may decline to pursue such recovery if it finds the amount involved too small or the likelihood of recovery too uncertain. If a court determines that the owner is unable or unwilling to comply with the rules adopted pursuant to this section or s. 403.717, the court may authorize the department to take possession and control of the waste tire site in order to protect the health, safety, and welfare of the community and the environment.

(4) The department may impose a lien on the real property on which the waste tire site is located and the waste tires equal to the estimated cost to bring the tire site into compliance, including attorney's fees and court costs. Any owner whose property has such a lien imposed may release her or his property from any lien claimed under this subsection by filing with the clerk of the circuit court a cash or surety bond, payable to the department in the amount of the estimated cost of bringing the tire site into compliance with department rules, including attorney's fees and court costs, or the value of the property after the abatement action is complete, whichever is less. A lien provided by this subsection may not continue for a period longer than 4 years after the abatement action is completed, unless within that period an action to enforce the lien is commenced in a court of competent jurisdiction. The department may take action to enforce the lien in the same manner used for construction liens under part I of chapter 713.

(5) This section does not limit the use of other remedies available to the department.

**History.**—s. 1, ch. 74-342; s. 17, ch. 88-130; s. 3, ch. 90-332; s. 11, ch. 92-290; s. 20, ch. 93-207; s. 400, ch. 94-356; s. 3, ch. 95-311; s. 18, ch. 95-430; s. 8, ch. 97-94; s. 14, ch. 97-103; s. 7, ch. 2002-291; s. 19, ch. 2002-295; s. 15, ch. 2007-184; s. 10, ch. 2010-143; s. 26, ch. 2013-41; s. 12, ch. 2015-3; s. 5, ch. 2015-8; s. 53, ch. 2015-222; ss. 88, 126, ch. 2016-62; s. 6, ch. 2016-130; s. 1, ch. 2016-174.

**403.7095 Solid waste management grant program.**—

(1) The department shall develop a consolidated grant program for small counties having populations fewer than 110,000, with grants to be distributed equally among eligible counties. Programs to be supported with the small-county consolidated grants include those for the purpose of general solid waste management, litter prevention and control, waste tire abatement, and recycling and education programs.

(2) The department may adopt rules necessary to administer this section, including, but not limited to, rules governing timeframes for submitting grant applications, criteria for prioritizing, matching criteria, maximum grant amounts, and allocation of appropriated funds based upon project and applicant size.

**History.**—s. 18, ch. 88-130; s. 21, ch. 93-207; s. 3, ch. 95-144; ss. 34, 35, ch. 97-153; s. 22, ch. 98-46; s. 17, ch. 98-258; s. 24, ch. 99-228; s. 57, ch. 2000-171; s. 38, ch. 2001-254; s. 8, ch. 2002-2; s. 8, ch. 2002-291; ss. 33, 34, ch. 2002-402; s. 11, ch. 2004-6; s. 16, ch. 2007-184; s. 38, ch. 2008-153; s. 35, ch. 2009-82; s. 17, ch. 2010-4; s. 11, ch. 2010-143; s. 31, ch. 2010-153; s. 37, ch. 2011-47; s. 28, ch.

2012-119; s. 27, ch. 2013-41; s. 35, ch. 2014-53; s. 6, ch. 2015-8; s. 7, ch. 2016-11; ss. 89, 126, ch. 2016-62; s. 2, ch. 2016-174; s. 18, ch. 2018-111.

**403.712 Revenue bonds.**—

(1) Revenue bonds payable from funds which result from the revenues derived from the operation of solid waste management facilities and from any revenues which may be pledged under s. 14, Art. VII of the State Constitution, 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 State Board of Administration 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 or maintenance of solid waste management facilities, which cost may include the acquisition of real property and easements therein for such purposes, and the closure of solid waste landfills.

(2) Upon a determination by the Division of Bond Finance of the State Board of Administration 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. 75-54; s. 19, ch. 88-130; s. 305, ch. 92-279; s. 55, ch. 92-326.

**403.7125 Financial assurance.**—

(1) Every owner or operator of a landfill is jointly and severally liable for the improper operation and closure of the landfill, as provided by law. As used in this section, the term “owner or operator” means any owner of record of any interest in land wherein a landfill is or has been located and any person or corporation that owns a majority interest in any other corporation that is the owner or operator of a landfill.

(2) The owner or operator of a landfill owned or operated by a local or state government or the Federal Government shall establish a fee, or a surcharge on existing fees or other appropriate revenue-producing mechanism, to ensure the availability of financial resources for the proper closure of the landfill. However, the disposal of solid waste by persons on their own property, as described in s. 403.707(2), is exempt from this section.

(a) The revenue-producing mechanism must produce revenue at a rate sufficient to generate funds to meet state and federal landfill closure requirements.

(b) The revenue shall be deposited in an interest-bearing escrow account to be held and administered by the owner or operator. The owner or operator shall file with the department an annual audit of the account. The audit shall be conducted by an independent certified public accountant. Failure to collect or report such revenue, except as allowed in subsection (3), is a noncriminal violation punishable by a fine of not more than $5,000 for each offense. The owner or operator may make expenditures from the account and its accumulated interest only for the purpose of landfill closure and, if such expenditures do not deplete the fund to the detriment of eventual closure, for planning and construction of resource recovery or landfill facilities. Any moneys remaining in the account after paying for proper and complete closure, as determined by the department, shall, if the owner or operator does not operate a landfill, be deposited by the owner or operator into the general fund or the appropriate solid waste fund of the local government of jurisdiction.

(c) The revenue generated under this subsection and any accumulated interest thereon may be applied to the payment of, or pledged as security for, the payment of revenue bonds issued in whole or in part for the purpose of complying with state and federal landfill closure requirements. Such application or pledge may be made directly in the proceedings authorizing such bonds or in an agreement with an insurer of bonds to assure such insurer of additional security therefor.

(d) The provisions of s. 212.055 which relate to raising of revenues for landfill closure or long-term maintenance do not relieve a landfill owner or operator from the obligations of this section.

(e) The owner or operator of any landfill that had established an escrow account in accordance with this section and the conditions of its permit prior to January 1, 2007, may continue to use that escrow account to

provide financial assurance for closure of that landfill, even if that landfill is not owned or operated by a local or state government or the Federal Government.

(3) An owner or operator of a landfill owned or operated by a local or state government or by the Federal Government may provide financial assurance to the department in lieu of the requirements of subsection (2). An owner or operator of any other landfill, or any other solid waste management facility designated by department rule, shall provide financial assurance to the department for the closure of the facility. Such financial assurance may include surety bonds, certificates of deposit, securities, letters of credit, or other documents showing that the owner or operator has sufficient financial resources to cover, at a minimum, the costs of complying with applicable closure requirements. The owner or operator shall estimate such costs to the satisfaction of the department.

(4) This section does not repeal, limit, or abrogate any other law authorizing local governments to fix, levy, or charge rates, fees, or charges for the purpose of complying with state and federal landfill closure requirements.

(5) The department shall by rule require that the owner or operator of a solid waste management facility that receives waste after October 9, 1993, and that is required by department rule to undertake corrective actions for violations of water quality standards provide financial assurance for the cost of completing such corrective actions. The same financial assurance mechanisms that are available for closure costs shall be available for costs associated with undertaking corrective actions.

(6) The department shall adopt rules to implement this section.

**History.**—s. 40, ch. 88-130; s. 70, ch. 91-221; s. 22, ch. 93-207; s. 17, ch. 2007-184; s. 18, ch. 2012-205.

**403.713 Ownership and control of solid waste and recovered materials.**—

(1) 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 from 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.

(2) Any local government which undertakes resource recovery from 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 authority shall not extend to recovered materials, whether separated at the point of generation or after collection, that are intended to be held for purposes of recycling pursuant to requirements of this part; however, the handling of such materials shall be subject to applicable state and local public health and safety laws.

**History.**—s. 1, ch. 74-342; s. 1, ch. 83-293; s. 20, ch. 88-130; s. 23, ch. 93-207.

**403.714 Duties of state agencies.**—

(1) Each state agency, the judicial branch of state government, and the State University System shall:

(a) Establish a program, in cooperation with the department and the Department of Management Services, for the collection of all recyclable materials generated in state offices and institutions throughout the state, including, at a minimum, aluminum, high-grade office paper, and corrugated paper.

(b) Provide procedures for collecting and storing recyclable materials, containers for storing materials, and contractual or other arrangements with buyers of the recyclable materials.

(c) Evaluate the amount of recyclable material recycled and make all necessary modifications to said recycling program to ensure that all recyclable materials are effectively and practicably recycled.

(d) Establish and implement, in cooperation with the department and the Department of Management Services, a solid waste reduction program for materials used in the course of agency operations. The program shall be designed and implemented to achieve the maximum feasible reduction of solid waste generated as a result of agency operations.

(2) The Department of Agriculture and Consumer Services shall investigate the potential markets for composted materials and shall submit its findings to the department for the waste registry informational program

administered by the department in order to stimulate absorption of available composted materials into such markets.

(3) All state agencies, including, but not limited to, the Department of Transportation, the department, and the Department of Management Services and local governments, are required to procure compost products when they can be substituted for, and cost no more than, regular soil amendment products, provided the compost products meet all applicable state standards, specifications, and regulations.

(4) The Department of Agriculture and Consumer Services, in consultation with the Department of Transportation and the department, and appropriate trade associations, shall undertake to stimulate the development of sustainable state markets for compost through demonstration projects and other approaches the Department of Agriculture and Consumer Services may develop.

(5)(a) The Department of Education, in cooperation with the State University System and the department, shall develop, distribute, and encourage the use of guidelines for the collection of recyclable materials and for solid waste reduction in the state system of education. At a minimum, the guidelines shall address solid waste generated in administrative offices, classrooms, dormitories, and cafeterias.

(b) In order to orient students and their families to the recycling of waste and to encourage the participation of schools, communities, and families in recycling programs, the school board of each school district in the state shall provide a program of student instruction in the recycling of waste materials. The instruction shall be provided at both the elementary and secondary levels of education.

(c) The Department of Education is directed to develop, from funds appropriated for environmental education, curriculum materials and resource guides for a recycling awareness program for instruction at the elementary, middle, and high school levels.

**History.**—s. 2, ch. 74-342; s. 85, ch. 79-65; s. 21, ch. 88-130; s. 306, ch. 92-279; s. 55, ch. 92-326; s. 24, ch. 93-207; s. 401, ch. 94-356; s. 40, ch. 99-5; s. 43, ch. 2001-62; s. 8, ch. 2001-279.

**403.7145 Recycling.**—

(1) The Capitol and the House and Senate office buildings constitute the Capitol recycling area. The Florida House of Representatives, the Florida Senate, and the Office of the Governor, the Secretary of State, and each Cabinet officer who heads a department that occupies office space in the Capitol, shall institute a recycling program for their respective offices in the House and Senate office buildings and the Capitol. Provisions shall be made to collect and sell wastepaper and empty beverage containers generated by employee activities in these offices. The collection and sale of such materials shall be reported to Leon County using the department's designated reporting format and coordinated with Department of Management Services recycling activities to maximize the efficiency and economy of this program. The Governor, the Speaker of the House of Representatives, the President of the Senate, the Secretary of State, and the Cabinet officers may authorize the use of proceeds from recyclable material sales for employee benefits and other purposes, in order to provide incentives to their respective employees for participation in the recycling program. Such proceeds may also be used to offset any costs of the recycling program. As a demonstration of leading by example, the Capitol Building's recycling rates shall be posted on the website of the Department of Management Services and shall include the details of the recycling rates for each Department of Management Services pool facility. The Department of Environmental Protection shall post recycling rates of each state-owned facility reported to the Department of Management Services.

(2) Each state agency, the judicial branch of state government, and the State University System shall collect and sell, to the greatest extent practicable, recyclable materials and products used during the operation of facilities and offices and may use the proceeds of the sale of such materials and products for employee benefits and other purposes and thereby provide incentives for employees to participate in the recycling program. Such proceeds may also be used to offset any recycling program costs.

(3) The department shall develop and contract for an innovative recycling pilot project for the Capitol recycling area. The project shall be designed to collect recyclable materials and create a more sustainable

recycling system. Components of the project shall be designed to increase convenience, incentivize and measure participation, reduce material volume, and assist in achieving the recycling goals enumerated in s. 403.706.

**History.**—s. 22, ch. 88-130; s. 307, ch. 92-279; s. 55, ch. 92-326; s. 74, ch. 93-207; s. 37, ch. 2000-258; s. 12, ch. 2010-143.

**403.715 Certification of resource recovery or recycling equipment.**—For purposes of implementing the tax exemption provided by s. 212.08(7)(q), the department shall establish a system for the examination and certification of resource recovery or recycling 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. The department may require appropriate certification by a certified public accountant or professional engineer that the equipment for which this exemption is being sought complies with the exemption criterion set forth in s. 212.08(7)(q). Within 30 days after receipt of an application by the department, a representative of the department may inspect the equipment. Within 30 days after such inspection, the department shall issue a written decision granting or denying certification.

**History.**—s. 4, ch. 78-329; s. 29, ch. 87-6; s. 23, ch. 88-130; s. 34, ch. 2000-153; s. 6, ch. 2000-228.

**403.716 Training of operators of solid waste management and other facilities.**—

(1) The department shall establish qualifications for, and encourage the development of training programs for, operators of landfills, coordinators of local recycling programs, and operators of other solid waste management facilities.

(2) The department shall work with accredited community colleges, career centers, state universities, and private institutions in developing educational materials, courses of study, and other such information to be made available for persons seeking to be trained as operators of solid waste management facilities.

(3) A person may not perform the duties of an operator of a landfill without first completing an operator training course approved by the department or qualifying as an interim operator in compliance with requirements established by the department by rule. An owner of a landfill may not employ any person to perform the duties of an operator unless such person has completed an approved landfill operator training course or qualified as an interim operator in compliance with requirements established by the department by rule. The department may establish by rule operator training requirements for other solid waste management facilities and facility operators.

(4) The department has authority to adopt minimum standards and other rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section. The department shall ensure the safe, healthy, and lawful operation of solid waste management facilities in this state. The department may establish by rule various classifications for operators to cover the need for differing levels of training required to operate various types of solid waste management facilities due to different operating requirements at such facilities.

(5) For purposes of this section, the term “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 solid waste management facility and includes the person in charge of a shift or period of operation during any part of the day.

**History.**—s. 39, ch. 88-130; s. 63, ch. 90-331; s. 93, ch. 91-221; s. 25, ch. 93-207; s. 402, ch. 94-356; s. 15, ch. 97-103; s. 105, ch. 98-200; s. 23, ch. 2000-211; s. 34, ch. 2004-357; s. 18, ch. 2007-184.

**403.717 Waste tire and lead-acid battery requirements.**—

(1) For purposes of this section and ss. 403.718 and 403.7185:

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

(b) “Motor vehicle” means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated in this state, used to transport persons or property and propelled by power other than muscular power. The term does not include traction engines, road rollers, vehicles that run only upon a track, bicycles, mopeds, or farm tractors and trailers.

(c) “Tire” means a continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle.

(d) “Waste tire” means a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. The term includes, but is not limited to, used tires and processed tires. The term does not include solid rubber tires and tires that are inseparable from the rim.

(e) “Waste tire collection center” means a site where waste tires are collected from the public prior to being offered for recycling and where fewer than 1,500 tires are kept on the site on any given day.

(f) “Waste tire processing facility” means a site where equipment is used to treat waste tires mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal. The term includes mobile waste tire processing equipment.

(g) “Waste tire site” means a site at which 1,500 or more waste tires are accumulated.

(h) “Lead-acid battery” means a lead-acid battery designed for use in motor vehicles, vessels, and aircraft, and includes such batteries when sold new as a component part of a motor vehicle, vessel, or aircraft, but not when sold to recycle components.

(i) “Indoor” means within a structure that excludes rain and public access and would control air flows in the event of a fire.

(j) “Processed tire” means a tire that has been treated mechanically, chemically, or thermally so that the resulting material is a marketable product or is suitable for proper disposal.

(k) “Used tire” means a waste tire which has a minimum tread depth of $^{3}/_{32}$ inch or greater and is suitable for use on a motor vehicle.

(2) The owner or operator of any waste tire site shall provide the department with information concerning the site’s location, size, and the approximate number of waste tires that are accumulated at the site and shall initiate steps to comply with subsection (3).

(3)(a) A person may not maintain a waste tire site unless such site is:

1. An integral part of the person’s permitted waste tire processing facility; or

2. Used for the storage of waste tires prior to processing and is located at a permitted solid waste management facility.

(b) It is unlawful for any person to dispose of waste tires or processed tires in the state except at a permitted solid waste management facility. Collection or storage of waste tires at a permitted waste tire processing facility or waste tire collection center prior to processing or use does not constitute disposal, provided that the collection and storage complies with rules established by the department.

(c) Whole waste tires may not be deposited in a landfill as a method of ultimate disposal.

(d) A person may not contract with a waste tire collector for the transportation, disposal, or processing of waste tires unless the collector is registered with the department or exempt from requirements provided under this section. Any person who contracts with a waste tire collector for the transportation of more than 25 waste tires per month from a single business location must maintain records for that location and make them available for review by the department or by law enforcement officers, which records must contain the date when the tires were transported, the quantity of tires, the registration number of the collector, and the name of the driver.

(4) The department shall adopt rules to administer this section and s. 403.718. Such rules:

(a) Must provide for the administration or revocation of waste tire processing facility permits, including mobile processor permits;

(b) Must provide for the administration or revocation of waste tire collector registrations, the fee for which may not exceed $50 per vehicle registered annually;

(c) Must provide for the administration or revocation of waste tire collection center permits, the fee for which may not exceed $250 annually;

(d) Must set standards, including financial assurance standards, for waste tire processing facilities and associated waste tire sites, waste tire collection centers, waste tire collectors, and for the storage of waste tires and processed tires, including storage indoors;

(e) May exempt not-for-hire waste tire collectors and processing facilities from financial assurance requirements;

(f) Must authorize the final disposal of waste tires at a permitted solid waste disposal facility provided the tires have been cut into sufficiently small parts to assure their proper disposal; and

(g) Must allow waste tire material that has been cut into sufficiently small parts to be used as daily cover material for a landfill.

(5)(a) The department shall encourage the voluntary establishment of waste tire collection centers at retail tire-selling businesses, waste tire processing facilities, and solid waste disposal facilities, to be open to the public for the deposit of waste tires.

(b) The department may establish an incentives program to encourage individuals to return their waste tires to a waste tire collection center. The incentives may involve the use of discount or prize coupons, prize drawings, promotional giveaways, or other activities the department determines will promote collection, reuse, volume reduction, and proper disposal of waste tires.

(c) The department may contract with a promotion company to administer the incentives program.

**History.**—s. 41, ch. 88-130; s. 6, ch. 89-171; s. 4, ch. 90-332; s. 120, ch. 91-112; s. 12, ch. 92-290; s. 26, ch. 93-207; s. 403, ch. 94-356; s. 5, ch. 99-215; s. 1, ch. 99-281; s. 9, ch. 2002-291; s. 19, ch. 2007-184.

**403.718 Waste tire fees.**—

(1) For the privilege of engaging in business, a fee for each new motor vehicle tire sold at retail, including those sold to any governmental entity, is imposed on any person engaging in the business of making retail sales of new motor vehicle tires within this state. The fee imposed under this section shall be stated separately on the invoice to the purchaser. Such fee shall be imposed at the rate of $1 for each new tire sold. The fee imposed shall be paid to the Department of Revenue on or before the 20th day of the month following the month in which the sale occurs. For purposes of this section, a motor vehicle tire sold at retail includes such tires when sold as a component part of a motor vehicle. The terms “sold at retail” and “retail sales” do not include the sale of new motor vehicle tires to a person solely for the purpose of resale provided the subsequent retail sale in this state is subject to the fee. This fee does not apply to recapped tires. Such fee shall be subject to all applicable taxes imposed in chapter 212.

(2) The fee imposed by this section shall be reported to the Department of Revenue. The payment shall be accompanied by such form as the Department of Revenue may prescribe. The proceeds of the waste tire fee, less administrative costs, shall be transferred by the Department of Revenue into the Solid Waste Management Trust Fund. For the purposes of this section, “proceeds” of the fee means all funds collected and received by the department hereunder, including interest and penalties on delinquent fees. The amount deducted for the costs of administration must not exceed 3 percent of the total revenues collected hereunder and may include only those costs reasonably attributable to the fee.

(3)(a) The Department of Revenue shall administer, collect, and enforce the fee authorized under this section pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of this section regarding the authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees apply. The fee shall not be included in the computation of estimated taxes pursuant to s. 212.11 nor shall the dealer’s credit for collecting taxes or fees in s. 212.12 apply to this fee.

(b) The Department of Revenue is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The department is empowered to adopt such rules and shall prescribe and publish such forms as are necessary to effectuate the purposes of this section. The department is authorized to establish audit procedures and to assess delinquent fees.

**History.**—s. 42, ch. 88-130; s. 7, ch. 89-171; s. 17, ch. 89-324; s. 33, ch. 90-132; s. 121, ch. 91-112; s. 19, ch. 93-233; s. 12, ch. 97-99; s. 35, ch. 2000-153; s. 44, ch. 2001-62; s. 10, ch. 2002-291; s. 1, ch. 2005-174.

**403.7185 Lead-acid battery fees.**—

(1) For the privilege of engaging in business, a fee for each new or remanufactured lead-acid battery sold at retail, including those sold to any governmental entity, is imposed on any person engaging in the business of making retail sales of lead-acid batteries within this state. Such fee shall be imposed at the rate of $1.50 for each new or remanufactured lead-acid battery sold. However, the fee shall not be imposed on any battery which has previously been taxed pursuant to s. 206.9935(2), provided the person claiming exemption from the tax can document payment of such tax. The fee imposed shall be paid to the Department of Revenue on or before the 20th day of the month following the calendar month in which the sale occurs. The department may authorize a

quarterly return under the conditions described in s. 212.11(1)(c). A dealer selling motor vehicles, vessels, or aircraft at retail can purchase lead-acid batteries exempt as a sale for resale by presenting a sales tax resale certificate. However, if a dealer thereafter withdraws any such battery from inventory to put into a new or used motor vehicle, vessel, or aircraft for sale, to use on her or his own motor vehicle, vessel, or aircraft, to give away, or any purpose other than for resale, the dealer will owe the fee at the time the battery is withdrawn from inventory. If the dealer sells the battery at retail, that sale will be subject to the fee. If the dealer sells it to a purchaser who presents her or him a sales tax resale certificate, the dealer will owe no fee. The terms “sold at retail” and “retail sales” do not include the sale of lead-acid batteries to a person solely for the purpose of resale; however, a subsequent retail sale of a new or remanufactured battery in this state is subject to the fee one time. Such fee shall be subject to all applicable taxes imposed in chapter 212. The provisions of s. 212.07(4) shall not apply to the provisions of this section. When a sale of a lead-acid battery, upon which the fee has been paid, is canceled or the battery is returned to the seller, and the sale price, taxes, and fees are refunded in full to the purchaser, the seller may take credit for the fee previously paid. If, instead of refunding the purchase price of the battery, the customer is given a new or remanufactured battery in exchange for the returned battery, the dealer cannot take credit for the fee on the returned battery, but no fee is due on the new or remanufactured battery that is given in exchange. However, no credit shall be taken by the dealer for returns resulting in partial refunds or partial credits on purchase of replacement batteries.

(2) The fee imposed by this section shall be reported to the Department of Revenue. The payment shall be accompanied by such form as the Department of Revenue may prescribe. The proceeds of the lead-acid battery fee, less administrative costs, shall be transferred by the Department of Revenue into the Water Quality Assurance Trust Fund. For the purposes of this section, “proceeds” of the fee shall mean all funds collected and received by the department hereunder, including interest and penalties on delinquent fees. The amount deducted for the costs of administration shall not exceed 3 percent of the total revenues collected hereunder and shall be only those costs reasonably attributable to the fee.

(3)(a) The Department of Revenue shall administer, collect, and enforce the fee authorized under this section pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of chapter 212 regarding the authority to audit and make assessments, keeping of books and records, and interest and penalties on delinquent fees shall apply. The fee shall not be included in the computation of estimated taxes pursuant to s. 212.11, nor shall the dealer’s credit for collecting taxes or fees in s. 212.12 or the exemptions in chapter 212 apply to this fee.

(b) The Department of Revenue is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The department is empowered to adopt such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section. The department is authorized to establish audit procedures and to assess delinquent fees.

**History.**—s. 8, ch. 89-171; s. 34, ch. 90-132; s. 122, ch. 91-112; s. 20, ch. 93-233; s. 13, ch. 97-99; s. 16, ch. 97-103; s. 2, ch. 99-281; s. 2, ch. 2005-174.

**403.71851 Electronic recycling grants.**—The Department of Environmental Protection is authorized to use funds from the Solid Waste Management Trust Fund as grants to Florida-based businesses with 5 or more years’ experience in electronics recycling that recycle electronics such as commercial telephone switching equipment, computers, televisions, computer monitors, and other products that utilize lead-containing cathode ray tubes. This funding shall be used for demonstration projects with one or more counties for countywide comprehensive electronics recycling where that term means recycling that provides service to the private sector, nonprofit organizations, governmental agencies, and the residential sector. This funding may also be used for grants to counties to develop methods to collect and transport electronics to be recycled provided such methods are comprehensive in nature.

**History.**—s. 2, ch. 99-215; s. 3, ch. 2001-224.

**403.71852 Collection of lead-containing products.**—The Department of Environmental Protection is directed to work with the Department of Management Services to implement a pilot program to collect lead-

containing products, including end-of-life computers and other electronic equipment from state and local agencies. Local governments are encouraged to establish collection and recycling programs for publicly and privately owned lead-containing products, including end-of-life televisions, computers, and other electronic products, through existing recycling and household hazardous-waste-management programs.

**History.**—s. 3, ch. 99-215.

**403.7186 Environmentally sound management of mercury-containing devices and lamps.**—

(1) DEFINITIONS.—For the purposes of this section, unless the context otherwise requires, the term:

(a) "Department" means the Department of Environmental Protection.

(b) "Mercury-containing device" means any electrical product, or other device, excluding batteries and lamps, that is determined by the department as proven to release mercury into the environment.

(c) "Reclamation facility" means a site where equipment is used to recapture mercury from mercury-containing devices and lamps for the purpose of recycling the mercury. The term does not include those facilities that process mercury-containing devices and lamps that are manufactured at the facility and that have not been sold or distributed.

(d) "Lamp" means any type of high or low pressure lighting device which contains mercury and generates light through the discharge of electricity either directly or through a fluorescing coating. The term lamp includes, but is not limited to, fluorescent lamps, mercury lamps, metal halide lamps, and high pressure sodium lamps. The term excludes mercury-containing lamps used in residential applications and disposed of as part of ordinary household waste.

(e) "Spent mercury-containing lamp" or "spent lamp" means a lamp for which mercury is required for its operation that has been used and removed from service and that is to be discarded.

(2) PROHIBITION ON INCINERATION OR DISPOSAL OF MERCURY-CONTAINING DEVICES.—Mercury-containing devices may not be disposed of or incinerated in any manner prohibited by this section or by the rules of the department promulgated under this section. If the secretary of the department determines that sufficient recycling capacity exists to recycle mercury-containing devices generated in the state, the secretary may, by rule, designate regions of the state in which a person shall not place such a device that was purchased for use or used by a government agency or an industrial or commercial facility in a mixed solid waste stream. A mercury-containing device shall not knowingly be incinerated or disposed of in a landfill.

(3) PROHIBITION ON INCINERATION OF SPENT LAMPS.—Spent mercury-containing lamps shall not knowingly be incinerated in any municipal or other incinerator. This subsection shall not apply to incinerators that are permitted to operate under state or federal hazardous waste regulations.

(4) WASTE MANAGEMENT REQUIREMENT FOR SPENT LAMPS.—

(a) Any person owning or operating an industrial, institutional, or commercial facility in this state or providing outdoor lighting for public places in this state, including streets and highways, that disposes of more than 10 spent lamps per month shall arrange for disposal of such lamps in permitted lined landfills or at appropriately permitted reclamation facilities.

(b) The department may, by rule, designate regions of the state wherein any person owning or operating an industrial, institutional, or commercial facility in such a designated region, or providing lighting for public places in such designated region, including streets and highways, that disposes of more than 10 spent lamps per month shall arrange for disposal of such lamps at appropriately permitted reclamation facilities; provided, however, that before such rule is adopted, the secretary of the department first determines that appropriately permitted reclamation facilities are reasonably available and afford sufficient recycling capacity.

(5) MERCURY RECYCLING PROGRAM FUNDS.—

(a) Moneys received, as provided in this section, shall be deposited into the Solid Waste Management Trust Fund and shall be accounted for separately within the fund, to be used upon appropriation in the following manner:

1. To provide grants to local governments and other public and private entities to develop and operate mercury recycling programs. It is the intent of the Legislature that adequate funding continue to be available for such

programs.

2. To fund the research of mercury in the environment by the Governor's Mercury Task Force.

3. To provide funding for the public service information and other requirements of subsection (7).

4. For administrative costs and other authorized expenses necessary to carry out the responsibilities of this section.

(b) Grants, moneys, or gifts from public or private agencies or entities shall be deposited into the fund and used for activities related to mercury or mercury recycling as specified in paragraph (a).

(6) DEPARTMENT RULES.—The department shall adopt rules to carry out the provisions of this section. Such rules shall:

(a) Provide the criteria and procedures for obtaining a reclamation facility permit, the fee for which may not exceed $2,000 annually.

(b) Set standards for reclamation facilities and associated collection centers and set standards for the storage of mercury-containing devices and spent lamps at collection centers.

(7) PUBLIC SERVICE INFORMATION AND WARNING SIGNS.—As funds become available, the department shall inform the public about the provisions of this section and about the dangers of mercury contamination in game and fish by:

(a) Posting warning signs at contaminated areas and wherever boaters or hunters regularly embark to reach such areas.

(b) Distributing informational materials at tackle shops and other places where fishing and hunting licenses are sold.

(c) Distributing, in primary and secondary schools within the state, informational materials relating to recycling of mercury-containing devices and spent lamps.

(d) Informational materials discussing either the use of mercury in lamps or the provisions of this act concerning reclamation and disposal of spent lamps, including the prohibition on incineration. The materials shall also disclose that the energy efficiency of lamps, compared to other types of lighting, results in reduced emissions of sulfur dioxide, carbon dioxide, and other pollutants, including mercury, from fossil-fuel-fired generating facilities and results in benefits recognized by the state in its Green Lights relamping project.

(8) CIVIL PENALTY.—A person who engages in any act or practice declared in this section to be prohibited or unlawful, or who violates any of the rules of the department promulgated under this section, is liable to the state for any damage caused and for civil penalties in accordance with s. 403.141. The provisions of s. 403.161 are not applicable to this section. The penalty may be waived if the person previously has taken appropriate corrective action to remedy the actual damages, if any, caused by the unlawful act or practice or rule violation. A civil penalty so collected shall accrue to the state and shall be deposited as received into the Solid Waste Management Trust Fund for the purposes specified in paragraph (5)(a).

**History.**—s. 55, ch. 93-207; s. 404, ch. 94-356; s. 2, ch. 97-98; s. 24, ch. 2000-211.

**403.7191 Toxics in packaging.**—

(1) FINDINGS AND INTENT.—The Legislature finds that:

(a) Managing solid waste poses a wide range of hazards to public health and safety and to the environment.

(b) Packaging comprises a significant percentage of total solid waste.

(c) Heavy metals used in packaging contribute to solid waste management problems when present in emissions or ash when packaging waste is incinerated, in leachate when packaging waste is placed in landfills, or in compost when packaging waste is composted.

(d) Based upon available scientific and medical evidence, lead, mercury, cadmium, and hexavalent chromium are of particular concern.

(e) Eliminating or reducing heavy metals in packaging is a necessary first step in reducing the toxicity of packaging waste.

It is the intent of the Legislature to reduce the toxicity of packaging without impeding or discouraging the expanded use of recycled materials in the production of packaging and its components.

(2) DEFINITIONS.—As used in this section:

(a) "Distributor" means any person, firm, or corporation who takes title to goods purchased for resale. The term does not include a person, firm, or corporation that uses packages or packaging components to encase another product.

(b) "Manufacturer" means any person, firm, or corporation who manufactures packages, packaging, or packaging components.

(c) "Package" means any container providing a means of marketing, protecting, or handling a product and includes a unit package, an intermediate package, or a shipping container as defined in ASTM D996. The term includes, but is not limited to, unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil, and other trays, wrappers, and wrapping films, bags, and tubs.

(d) "Packaging component" means any individual assembled part or component of a package, including, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. Tin-plated steel that meets ASTM specification A-263 shall be considered a single packaging component. "Packaging component" does not include an industrial packaging component intended to protect, secure, close, unitize, and provide pilferage protection for any product destined for commercial use.

(3) PROHIBITIONS; SCHEDULE FOR REMOVAL OF INCIDENTAL AMOUNTS.—Except as provided in subsection (4), a manufacturer or distributor may not sell a package or packaging component, and a manufacturer or distributor of products shall not offer for sale or promotional purposes in this state, any package or any packaging component with a total concentration of lead, cadmium, mercury, and hexavalent chromium that exceeds 100 parts per million by weight (.01 percent).

(4) EXEMPTIONS.—All packages and packaging components shall be subject to the provisions of this section except:

(a) Packages or packaging components manufactured prior to May 12, 1993, with a code indicating the date of manufacture, or a package containing an alcoholic beverage that was bottled before July 1, 1993.

(b) Packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium has been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal or state law or for which there is no feasible alternative. The manufacturer of a package or a packaging component must petition the department for any exemption from the provisions of this paragraph for a particular package or packaging component based upon either criterion. The department may grant a 2-year exemption if warranted, and may, upon the package or packaging component meeting either criterion of this paragraph, renew the exemption for an additional 2 years. For the purposes of this paragraph, a use for which there is no feasible alternative is one in which the use of the regulated substance is essential for the protection, safe handling, or function of the contents of the package.

(5) CERTIFICATE OF COMPLIANCE.—Each manufacturer or distributor of a package or packaging component shall provide, if required, to the purchaser of such package or packaging component, a certificate of compliance stating that the package or packaging component is in compliance with the provisions of this section. If compliance is achieved under any of the exemptions provided in paragraph (4)(b), the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing or distributing company. The manufacturer or distributor shall retain the certificate of compliance for as long as the package or packaging component is in use. A copy of the certificate of compliance shall be kept on file by the manufacturer or distributor of the package or packaging component for at least 3 years from the date of the last sale or distribution by the manufacturer or distributor. Certificates of compliance, or copies thereof, shall be furnished within 60 days to the department upon the department's request. If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, including a reformulation or creation to meet the maximum levels set forth in subsection (3), the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

(6) PUBLIC ACCESS.—Any request by the public for any certificate of compliance from the manufacturer or distributor of a package or packaging component shall:

(a) Be in writing, with a copy provided to the department.

(b) Specify the package or packaging component information requested.

(c) Be responded to by the manufacturer or distributor within 90 days from receipt of the request.

(7) ENFORCEMENT.—It is unlawful for any person to:

(a) Violate any provision of this section or any rule adopted or order issued thereunder by the department.

(b) Tender for sale to a purchaser any package, packaging component, or packaged product in violation of this section or any rule adopted or order issued thereunder.

(c) Furnish a certificate of compliance with respect to any package or packaging component which does not comply with the provisions of subsection (3).

(d) Provide a certificate of compliance that contains false information.

Violations shall be punishable by a civil penalty as provided in s. 403.141.

**History.**—s. 28, ch. 93-207; s. 41, ch. 99-5; s. 36, ch. 2000-153; s. 25, ch. 2000-211; s. 45, ch. 2001-62; s. 53, ch. 2013-18.

**403.7192 Batteries; requirements for consumer, manufacturers, and sellers; penalties.**—

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

(a) "Cell" means a galvanic or voltaic device weighing 25 pounds or less consisting of an enclosed or sealed container containing a positive and negative electrode in which one or both electrodes consist primarily of cadmium or lead and which container contains a gel or liquid starved electrolyte.

(b) "Cell manufacturer" means an entity which manufactures cells in the United States; or imports into the United States cells or units for which no unit management program has been put into effect by the actual manufacturer of the cell or unit.

(c) "Marketer" means any person who manufactures, sells, distributes, assembles, or affixes a brand name or private label or licenses the use of a brand name on a unit or rechargeable product. Marketer does not include a person engaged in the retail sale of a unit or rechargeable product.

(d) "Rechargeable battery" means any small, nonvehicular, rechargeable nickel-cadmium or sealed lead-acid battery, or battery pack containing such a battery, weighing less than 25 pounds and not used for memory backup.

(e) "Unit" means a cell, a rechargeable battery, or a rechargeable product with nonremovable rechargeable batteries.

(f) "Unit management program" means a program or system for the collection, recycling, or disposal of units put in place by a marketer in accordance with this section.

(2)(a) A person may not distribute, sell, or offer for sale in this state an alkaline-manganese or zinc-carbon battery that contains any intentionally introduced mercury and more than 0.0004 percent mercury by weight.

(b) For any alkaline-manganese battery resembling a button or coin in size and shape, the limitation shall be 25 milligrams of mercury.

(c) A person may not distribute, sell, or offer for sale in this state a consumer button dry cell battery containing a mercuric oxide electrode or a product containing such a battery.

(d) The secretary of the department may exempt a specific type of battery from this subsection if there is not a battery that meets those requirements and that reasonably can be substituted for the battery for which the exemption is sought.

(3)(a) A person may not knowingly place in a mixed solid waste stream a dry cell battery that uses a mercuric oxide electrode or a product containing such a battery, and that was purchased for use or used by a consumer or by a government, industrial, communications, or medical facility that is a conditionally exempt small quantity generator of hazardous waste under 40 C.F.R. s. 261.5.

(b) A person may not knowingly place in a mixed solid waste stream a rechargeable battery, or a product containing such a rechargeable battery, which was purchased for use or used by a consumer or by a government,

industrial, commercial, communications, or medical facility that is a conditionally exempt small quantity generator of hazardous waste under 40 C.F.R. s. 261.5.

(c) Each government, industrial, commercial, communications, or medical facility shall collect and segregate its batteries to which the prohibitions in paragraphs (a) and (b) apply and send each segregated collection of batteries back to a collection site designated by the manufacturer or distributor in the case of mercuric oxide batteries, to a collection site designated by a marketer or cell manufacturer of rechargeable batteries, or the products powered by nonremovable batteries, or to a facility permitted to dispose of those batteries.

(4) A cell manufacturer or marketer shall not sell or offer for sale in this state any consumer product or nonconsumer product that is powered by a rechargeable battery unless:

(a) In the case of consumer products, the battery can be easily removed by the consumer, or the battery is contained in a battery pack that is separate from the product and can be easily removed from the product.

(b) In the case of nonconsumer products, the battery can be removed or is contained in a battery pack that is separate from the product.

(c) The product or the battery, or the package in the case of a consumer product, is labeled with a recycling symbol and includes, as an indication of the chemical composition of the battery, the term “Cd” for nickel-cadmium batteries or “Pb” for small sealed lead batteries.

(d) The instruction manual for the product or, in the case of a consumer product, the package containing the product states that the sealed lead or nickel-cadmium battery must be recycled or disposed of properly.

(5) The secretary of the department may authorize the sale of a consumer or nonconsumer product that does not comply with paragraphs (4)(a) and (b), if the secretary finds that the design of the product, to comply with the requirements of this subsection, would result in significant danger to public health and safety.

(6) Manufacturers and distributors of mercuric oxide batteries and products containing these batteries and marketers of rechargeable batteries or the products powered by such batteries, excluding those used solely for memory, whose batteries and products are sold and distributed in this state and that are subject to the requirements of subsection (3), must:

(a) Implement a unit management program, other than a local government curbside program and other local government collection system, unless the local government agrees otherwise, through which the discarded batteries or products powered by nonremovable batteries may be returned to designated collection sites and submit this information to the department. The unit management program must be accessible for consumers or local governments collecting batteries or products from consumers, for returning the discarded batteries or products. In addition to other requirements which cell manufacturers have as marketers, cell manufacturers shall accept rechargeable batteries collected in this state. Cell manufacturers shall accept rechargeable batteries returned to them of the same general type, including differing brands, not to exceed the same annual rate as batteries manufactured by them are sold in this state. Cell manufacturers shall have the sole responsibility for reclamation and disposal of rechargeable batteries returned to them.

(b) Clearly inform each purchaser of the prohibition on the disposal in the solid waste stream of these batteries and products powered by nonremovable batteries and of the system for return available to the purchaser for their proper collection, transportation, recycling, or disposal. A telephone number must be provided to each final purchaser of the batteries, or products powered by these batteries, so that the final purchasers can call to get information on returning the discarded batteries or products for recycling or proper disposal. The telephone number must also be provided to the department.

(c) Accept waste batteries or products containing these batteries returned to their designated collection sites as allowed by federal, state, and local laws and regulations.

(d) Ensure that each battery is clearly identifiable as to the type of electrode used in the battery.

(7) Representative organizations of manufacturers shall supply to the department a list of those organization members for whom the association is conducting the unit management program.

(8) Manufacturers and importers of mercuric oxide batteries and cell manufacturers and marketers of rechargeable batteries or products powered by these batteries that do not comply with the requirements in subsection (6) may not sell, distribute, or offer for sale in this state these batteries or products powered by these

batteries. Manufacturers or marketers may satisfy the requirements of subsection (6) individually, as part of a representative organization of manufacturers, or by contracting with private or government parties. Any such contractual arrangements may include appointment of agents, allocation of costs and duties, and such indemnifications as the parties deem appropriate.

(9) Any person who violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A manufacturer or distributor who violates such provision is subject to a minimum fine of $100 per violation.

(10) In an enforcement action under this section in which the state prevails, the state may recover reasonable administrative expenses, court costs, and attorney's fees incurred to take the enforcement action, in an amount to be determined by the court.

**History.**—s. 29, ch. 93-207; s. 42, ch. 99-5; s. 26, ch. 2000-211; s. 46, ch. 2001-62; s. 46, ch. 2004-5.

**403.7193 Environmental representations.**—

(1) Any person who represents in advertising or on the label or container of a consumer product that the consumer product that the person manufactures or distributes is not harmful to, or is beneficial to, the environment through the use of such terms as "environmentally friendly," "ecologically sound," "environmentally safe," "recyclable," "recycled," "biodegradable," "photodegradable," "ozone friendly," or any other like term must maintain records documenting and supporting the validity of such representation. The Department of Legal Affairs may request copies of those records at any time. For purposes of this section, a wholesaler or retailer who does not initiate a representation by advertising or by placing the representation on a package has not made the representation. This section does not apply to instructions for recycling on the label or container of a product.

(2) Any person who makes false representations regarding the environment about any consumer product that the person manufactures or distributes commits a misdemeanor of the first degree, punishable by a fine as provided in s. 775.083.

**History.**—s. 30, ch. 93-207.

**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 and inspection of manifests to describe the quantities of hazardous waste which are identified or listed pursuant to this act and which have been generated or transported during a particular time period to show their disposition and certification of the generator’s efforts to reduce their amount and toxicity.

(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.

(h) Corrective action at a hazardous waste facility which shall be taken beyond a facility boundary where necessary to protect human health and the environment, unless the owner or operator demonstrates that despite her or his best efforts she or he was unable to obtain the necessary permission to undertake such action.

(i) Conditions on a permit which require cleanup of releases of hazardous waste and hazardous constituents from any solid waste management unit, regardless of when the waste was placed in the unit.

(j) Groundwater monitoring, unsaturated zone monitoring, and corrective action requirements for land disposal facilities accepting hazardous waste after July 26, 1982.

(k) The prohibition of the land disposal and storage of certain hazardous waste based on the requirements and criteria set forth in s. 201(g)-(j) of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616.

(7) The department shall adopt rules governing the production, burning, marketing, sale, and distribution of hazardous waste fuel. The department may provide for exemptions to such rules so long as the exemptions are no less stringent than those provided by federal law or regulation.

**History.**—s. 8, ch. 80-302; s. 22, ch. 83-310; s. 33, ch. 86-186; s. 66, ch. 90-331; s. 17, ch. 97-103.

**403.7211 Hazardous waste facilities managing hazardous wastes generated offsite; federal facilities managing hazardous waste.**—

(1) This section applies to facilities managing hazardous waste generated offsite. This section does not apply to manufacturers, power generators, or other industrial operations that have received or apply for a permit or a modification to a permit from the department for the treatment, storage, or disposal of hazardous waste generated only onsite or from other sites owned or acquired by the permittee. Power generators are electric utilities as defined in s. 403.522 which own or operate facilities necessary for the generation, transmission, or distribution of electric energy; federally qualified facilities under the Public Utility Regulatory Act of 1978, or exempt wholesale generators under the Energy Policy Act of 1992. Notwithstanding the foregoing, this section shall apply to all federal facilities that manage hazardous waste.

(2) The department may not issue any permit under s. 403.722 for the construction, initial operation, or substantial modification of a facility for the disposal, storage, or treatment of hazardous waste generated offsite which is proposed to be located in any of the following locations:

(a) Any area where life-threatening concentrations of hazardous substances could accumulate at any residence or residential subdivision as the result of a catastrophic event at the proposed facility, unless each such residence or residential subdivision is served by at least one arterial road or urban minor arterial road, as determined under the procedures referenced in s. 334.03(10), which provides safe and direct egress by land to an area where such life-threatening concentrations of hazardous substances could not accumulate in a catastrophic event. Egress by any road leading from any residence or residential subdivision to any point located within 1,000 yards of the proposed facility is unsafe for the purposes of this paragraph. In determining whether egress proposed by the applicant is safe and direct, the department shall also consider, at a minimum, the following factors:

1. Natural barriers such as water bodies, and whether any road in the proposed evacuation route is impaired by a natural barrier such as a water body.

2. Potential exposure during egress and potential increases in the duration of exposure.

3. Whether any road in a proposed evacuation route passes in close proximity to the facility.

4. Whether any portion of the evacuation route is inherently directed toward the facility.

(b) Any location within 1,500 yards of any hospital, prison, school, nursing home facility, day care facility, stadium, place of assembled worship, or any other similar site where individuals are routinely confined or assembled in such a manner that reasonable access to immediate evacuation is likely to be unavailable.

(c) Any location within 1,000 yards of any residence.

(d) Any location which is inconsistent with rules adopted by the department under this part.

For the purposes of this subsection, all distances shall be measured from the outer limit of the active hazardous waste management area. “Substantial modification” includes: any physical change in, change in the operations of, or addition to a facility which could increase the potential offsite impact, or risk of impact, from a release at that facility; and any change in permit conditions which is reasonably expected to lead to greater potential impacts or risks of impacts, from a release at that facility. “Substantial modification” does not include a change in operations, structures, or permit conditions which does not substantially increase either the potential impact from, or the risk of, a release. Physical or operational changes to a facility related solely to the management of nonhazardous waste at the facility is not considered a substantial modification. The department shall, by rule, adopt criteria to determine whether a facility has been substantially modified. “Initial operation” means the initial commencement of operations at the facility.

(3) It shall be presumed, for the purposes of paragraph (2)(a) only, that life-threatening concentrations of hazardous substances could accumulate in a catastrophic event in any area within a radius of 3 miles of a hazardous waste transfer, disposal, storage, or treatment facility. This presumption may be rebutted by a demonstration that such life-threatening concentrations could accumulate at a greater distance, or that such life-threatening concentrations could accumulate only at a lesser distance, in light of the composition, quantity, and concentration of hazardous waste proposed to be disposed of, treated, or stored at the proposed facility. This demonstration may be made, at the election of the facility, in the form of the submissions required under Program 3 of the Accidental Release Prevention Program of s. 112(r)(7) of the Clean Air Act.

(4) For the purposes of this section, a concentration of hazardous substances shall be deemed to be life-threatening when the concentration could cause susceptible or sensitive individuals, excluding hypersensitive or hypersusceptible individuals, to experience irreversible or other serious, long-lasting effects or impaired ability to escape.

(5) No person shall construct or operate a transfer facility for the management of hazardous waste unless the facility meets the siting requirements of subsection (2).

(6) This section shall not prohibit the operation of existing transfer facilities that have commenced operation as of the effective date of this section, if the transfer facility is not relocated or if there is no substantial modification in the structure or operation of the facility after the effective date of this section.

**History.**—s. 1, ch. 98-334; s. 93, ch. 2012-174.

**403.7215 Tax on gross receipts of commercial hazardous waste facilities.**—

(1) The owner or operator of each privately owned, permitted, commercial hazardous waste transfer, storage, treatment, or disposal facility shall, on or before January 25 of each year, file with the chief fiscal officer of the primary host local government a certified, notarized statement. The statement shall indicate the gross receipts from all charges imposed during the preceding calendar year for the storage, treatment, or disposal of hazardous waste at the facility.

(2) A 3-percent tax is hereby levied on the annual gross receipts of a privately owned, permitted, commercial hazardous waste transfer, storage, treatment, or disposal facility, which tax is payable annually on or before July 1 by the owner of the facility to the primary host local government.

(3) All moneys received by the appropriate local government pursuant to subsection (2) shall be appropriated and used to pay for:

(a) The costs of collecting the tax;

(b) Any local inspection costs incurred by the local government to ensure that the facility is operated pursuant to the provisions of this part and any rule adopted pursuant thereto;

(c) Additional security costs incurred as a result of operating the facility, including monitoring, fire protection, and police protection;

(d) Hazardous waste contingency planning implementation;

(e) Road construction or repair costs for public roads adjacent to and within 1,000 feet of the facility;

(f) Any other cost incurred by the local government as a result of the operation of the facility, if all other costs specified in paragraphs (a)-(e) have been paid; and

(g) Any other purposes relating to environmental protection within the jurisdiction of the local government, including, but not limited to, the establishment of a system for the collection and disposal of household, agricultural and other types of hazardous waste, the protection or improvement of the quality of the air or water, or the acquisition of environmentally sensitive lands, provided all other costs specified in this section have been paid.

(4) The primary host local government is responsible for regulating, controlling, administering, and enforcing the provisions of this section.

**History.**—s. 17, ch. 83-310; s. 24, ch. 88-130; s. 33, ch. 88-393; s. 1, ch. 89-285; s. 36, ch. 91-305.

**Note.**—Former s. 203.10.

**403.722 Permits; hazardous waste disposal, storage, and treatment facilities.**—

(1) Each person who intends to or is required to construct, modify, operate, or close a hazardous waste disposal, storage, or treatment facility shall obtain a construction permit, operation permit, postclosure permit, clean closure plan approval, or corrective action 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 that are being violated by the facility and 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 upon submission of a properly completed application that 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) Applicants shall provide any information that will enable the department to determine that the proposed construction, modification, operation, closure, or corrective action will comply with this act and any applicable rules. In no instance shall any person construct, modify, operate, or close a facility or perform corrective actions at a facility in contravention of the standards, requirements, or criteria for a hazardous waste facility. Authorizations issued under this section may include any permit conditions necessary to achieve compliance with applicable hazardous waste rules and necessary to protect human health and the environment.

(4) The department may require, in an 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) An authorization issued pursuant to this section is not a vested right. The department may revoke or modify any such authorization.

(a) Authorizations may be revoked for failure of the holder to comply with this act, the terms of the authorization, 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; for submission by the holder of false or inaccurate information in the permit application; or if necessary to protect the public health or the environment.

(b) Authorizations may be modified, upon request of the holder, 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.

(c) An owner or operator of a hazardous waste facility in existence on the effective date of a department rule changing an exemption or listing and identifying the hazardous wastes that require that facility to be permitted who notifies the department pursuant to s. 403.72, and who has applied for a permit pursuant to subsection (2), may continue to operate until issued a temporary operation permit. If such owner or operator intends to or is required to discontinue operation, the temporary operation permit must include final closure conditions.

(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) do not apply to hazardous waste.

(7) The department may establish 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 authorizations 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.

(9) It shall not be a requirement for the issuance of a hazardous waste authorization that the facility complies with an adopted local government comprehensive plan, local land use ordinances, zoning ordinances or regulations, or other local ordinances. However, the issuance of such an authorization by the department does not override any local plan, ordinance, or regulation.

(10) Notwithstanding ss. 120.60(1) 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 ss. 120.569 and 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 ss. 120.569 and 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.

(11) Hazardous waste facility operation permits shall be issued for no more than 5 years.

(12) On the same day of filing with the department of an application for a permit for the construction modification, or operation of a hazardous waste facility, the applicant shall notify each city and county within 1 mile of the facility of the filing of the application and shall publish notice of the filing of the application. The applicant shall publish a second notice of the filing within 14 days after the date of filing. Each notice shall be published in a newspaper of general circulation in the county in which the facility is located or is proposed to be located. Notwithstanding the provisions of chapter 50, for purposes of this section, a "newspaper of general circulation" shall be the newspaper within the county in which the installation or facility is proposed which 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, the notice shall appear in both the newspaper with the largest daily circulation in that county, and a newspaper authorized to publish legal notices in that county. The notice shall contain:

(a) The name of the applicant and a brief description of the project and its location.

(b) The location of the application file and when it is available for public inspection.

The notice shall be prepared by the applicant and shall comply with the following format:

Notice of Application

The Department of Environmental Protection announces receipt of an application for a permit from _(name of applicant)_ to _(brief description of project)_. This proposed project will be located at _(location)_ in _(county)_ _(city)_.

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at _(name and address of office)_.

(13) A permit for the construction, modification, or operation of a hazardous waste facility which initially was issued under authority of this section, may not be transferred by the permittee to any other entity, except in conformity with the requirements of this subsection.

(a) At least 30 days prior to the sale or legal transfer of a permitted facility, the permittee shall file with the department an application for transfer of the permits on such form as the department shall establish by rule. The form must be completed with the notarized signatures of both the transferring permittee and the proposed permittee.

(b) The department shall approve the transfer of a permit unless it determines that the proposed permittee has not provided reasonable assurances that the proposed permittee has the administrative, technical, and financial capability to properly satisfy the requirements and conditions of the permit, as determined by department rule. The determination shall be limited solely to the ability of the proposed permittee to comply with the conditions of the existing permit, and it shall not concern the adequacy of the permit conditions. If the department proposes to deny the transfer, it shall provide both the transferring permittee and the proposed permittee a written objection to such transfer together with notice of a right to request a proceeding on such determination under chapter 120.

(c) Within 90 days after receiving a properly completed application for transfer of permit, the department shall issue a final determination. The department may toll the time for making a determination on the transfer by notifying both the transferring permittee and the proposed permittee that additional information is required to adequately review the transfer request. Such notification shall be served within 30 days after receipt of an application for transfer of permit, completed pursuant to paragraph (a). However, the failure of the department to approve or deny within the 90-day time period does not result in the automatic approval or denial of the transfer. If the department fails to approve or deny the transfer within the 90-day period, the applicant may petition for a writ of mandamus to compel the department to act consistently with applicable regulatory requirements.

(d) The transferring permittee is encouraged to apply for a permit transfer well in advance of the sale or legal transfer of a permitted facility. However, the transfer or the permit shall not be effective prior to the sale or legal transfer of the facility.

(e) Until the transfer of the permit is approved by the department, the transferring permittee and any other person constructing, operating, or maintaining the permitted facility shall be liable for compliance with the terms of the permit. Nothing in this section shall relieve the transferring permittee of liability for corrective actions that may be required as a result of any violations occurring prior to the legal transfer of the permit.

**History.**—s. 8, ch. 80-302; s. 2, ch. 82-79; s. 4, ch. 82-122; s. 64, ch. 83-218; s. 24, ch. 83-310; s. 34, ch. 86-186; s. 19, ch. 88-393; s. 2, ch. 91-284; s. 2, ch. 91-301; s. 408, ch. 94-356; s. 157, ch. 96-410; s. 44, ch. 99-5; s. 7, ch. 2000-304; s. 6, ch. 2003-173; s. 21, ch. 2007-184.

**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 that has not undergone treatment is placed in or on land, including an injection well, which is not a land treatment facility. However, hazardous waste may not be disposed of through an injection well or other subsurface method of disposal, which is defined as a Class IV well in 40 C.F.R. s. 144.6(d), except those Class I wells permitted for hazardous waste disposal as of January 1, 1992. The department shall annually review the operations of any such Class I well permitted as of January 1, 1992, and prepare a report analyzing any impact on groundwater systems. This section may not be construed to refer to the products of membrane technology, including reverse osmosis, for the production of potable water where disposal is through a Class I well as defined in 40 C.F.R. s. 144.6(a), or to refer to remedial or corrective action activities conducted in accordance with 40 C.F.R. s. 144.13.

(2) The Legislature declares that, due to the permeability of the soil and high water table in Florida, future hazardous waste landfills are prohibited. Therefore, the department 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. Such a permit may not be issued for a period exceeding 6 months without a further declaration of the Governor. A Class IV injection well, as defined in 40 C.F.R. s. 144.6(d), may not be permitted for construction or operation under this section.

(3) This section does not prohibit the department from banning the disposal of hazardous waste in other types of waste management units in a manner consistent with federal requirements, except as provided under s. 403.804(2).

(4) This section does not apply to a disposal facility or part of a facility that accepts fly ash, bottom ash, boiler slag, or flue-gas emission control materials from the operation of a fossil fuel-fired electric or steam generation facility, from a clean coal or other innovative technology process at a fossil fuel-fired electric or steam generation facility, or from any combination thereof.

**History.**—s. 38, ch. 83-310; s. 36, ch. 86-186; s. 5, ch. 89-285; s. 64, ch. 90-331; s. 1, ch. 93-91; s. 409, ch. 94-356; s. 2, ch. 2013-68.

**403.7223 Waste elimination and reduction assistance program.**—

(1) The Legislature finds that the reduction of the volume and toxicity of hazardous waste generated in the state is the most environmentally, economically, and technically efficient method of protecting the public health and the environment from the improper management of hazardous waste.

(2) The department shall establish a waste reduction and elimination assistance program designed to assist all persons in reducing the amount and toxicity of the hazardous waste generated in the state to the maximum extent possible. The waste reduction assistance program may include, but not be limited to:

(a) The establishment of a waste reduction clearinghouse of all available information concerning waste reduction, waste minimization, recycling programs, economic and energy savings, and production and environmental improvements;

(b) Assistance in transferring information concerning waste reduction technologies through workshops, conferences, and handbooks;

(c) Cooperation with university programs to develop waste reduction curricula and training;

(d) Onsite technical assistance for hazardous waste generators; and

(e) Researching and recommending incentive programs for innovative waste management and reduction programs.

**History.**—s. 6, ch. 88-393.

**403.7225 Local hazardous waste management assessments.**—

(1) The Legislature recognizes that there is a need for identifying the amount, type, sources, and management of hazardous waste generated by small quantity generators in the state. There is also a need for facilitating responsible waste storage, transportation, volume reduction, recycling treatment, disposal, and the introduction of waste reduction opportunities to small quantity generators of hazardous waste. Responsible management of these wastes is imperative in order to protect the public health, safety, and welfare and the environment.

(2) The department 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 small quantity generators of hazardous waste within a county as defined pursuant to federal regulations under 40 C.F.R. s. 260.10.

(b) The types and quantities of hazardous waste generated by small quantity generators within a county.

(c) Current hazardous waste management practices of small quantity generators within a county.

(d) Effective waste management practices for small quantity generators of hazardous waste.

(3) Each county or regional planning council shall coordinate the local hazardous waste management assessments within its jurisdiction according to guidelines established under s. 403.7226. If a county declines to perform the local hazardous waste management assessment, the county shall make arrangements with its regional planning council to perform the assessment.

(4) County-designated areas under the original assessments in which hazardous waste storage facilities have been located are recognized by the Legislature. However, this section does not prohibit a county from amending its comprehensive plan to designate other areas for this purpose, nor does this section 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 designated pursuant to subsection (4) from being used as hazardous waste storage facilities.

(6) Unless performed by the county pursuant to subsection (3), the regional planning councils shall upon successful arrangements with a county:

(a) Perform local hazardous waste management assessments;

(b) Provide any technical expertise needed by the counties in developing the assessments.

(7) The selection of a regional storage facility site during the original assessment will not preclude the siting of a storage facility at some other site which is locally or state approved.

(8) The department shall assemble the data collected from the local hazardous waste management assessments and determine if the needs of small quantity generators of hazardous waste will be met by in-state commercial hazardous waste facilities or if additional storage, treatment, or disposal facilities are needed in the state and which regions have the greatest need.

(9) Storage facility area selections, or regional storage facility site selections from the original assessments shall not prevent siting of storage or treatment facilities in any area of the state.

(10) 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.

(11) Local hazardous waste management assessments shall be renewed every 5 years, based on the schedule determined by the department. More frequent assessments shall not be required by the state. However, at their option, counties may update such assessments at more frequent intervals. The assessment rolls shall be brought up to date annually before the end of the 5-year interval by including the applicable names from department sources, occupational licenses, building permits, and from not less than one complete survey of the business pages of the county local telephone systems. The roll shall be updated continuously thereafter in the same manner.

(12) The Legislature recognizes the expense incurred by county governments in the proper identification, notification, and verification of small quantity generators of hazardous waste within their jurisdictions. When required to support the local hazardous waste assessments required by this section, the small quantity generator notification and verification program required pursuant to s. 403.7234, and the reporting requirements of s. 403.7236, a county may impose a small quantity generator notification and verification surcharge of up to $50 on the business or occupational license or renewal of any firm that is classified as a small quantity generator of hazardous wastes. A county may contract with or otherwise enter into an agreement with the county tax collector to collect the annual surcharge.

**History.**—s. 25, ch. 83-310; s. 34, ch. 84-338; s. 3, ch. 85-269; s. 11, ch. 87-374; s. 37, ch. 91-305; s. 40, ch. 93-207.

**403.7226 Technical assistance by the department.**—The department shall:

(1) Provide technical assistance to county governments and regional planning councils to ensure consistency in implementing local hazardous waste management assessments as provided in ss. 403.7225, 403.7234, and 403.7236. In order to ensure that each local assessment is properly implemented 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 or regional planning council shall follow guidelines established by the department, and adopted by rule as appropriate, in order to properly implement these assessments.

(2) Identify short-term needs and long-term needs for hazardous waste management for the state on the basis of the information gathered through the local hazardous waste management assessments and other information from state and federal regulatory agencies and sources. The state needs assessment must be ongoing and must be updated when new data concerning waste generation and waste management technologies become available.

**History.**—s. 26, ch. 83-310; s. 2, ch. 89-285; s. 41, ch. 93-207; s. 410, ch. 94-356; s. 22, ch. 2007-184.

**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 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 requested 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.**—s. 8, ch. 80-302; s. 41, ch. 81-167; s. 269, ch. 81-259; s. 43, ch. 83-55; s. 28, ch. 83-310.

**403.7234 Small quantity generator notification and verification program.**—

(1) Each county shall notify, according to guidelines established under s. 403.7226, each small quantity generator identified on its assessment roll, during the first year of the local hazardous waste management assessment. Annually thereafter, the county shall notify each small quantity generator not notified previously. The notification of small quantity generators 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 and waste reduction opportunities which are available to the small quantity generator.

(2) Alternatively, a county may perform this notification either through the mail or during the annual business licensing of new or existing facilities that potentially may generate hazardous waste.

(3) Counties shall collect information on the types, amounts, and management of waste generated by small quantity generators according to guidelines established under s. 403.7226.

(4) Within 30 days of receipt of a notification, which includes a survey form, a small quantity generator 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 its small quantity generators. The procedure for verification used by the county shall be developed as part of the guidance established by the department under s. 403.7226. The department may also regulate the waste management practices of small quantity generators in order to ensure proper management of hazardous waste in a manner consistent with federal requirements, except as provided under s. 403.804(2).

(5) Any small quantity generator who does not comply with the requirements of subsection (4) and who has received a notification and survey in person or through one certified letter from the county is subject to a fine of between $50 and $100 per day for a maximum of 100 days. The county may collect such fines and deposit them in its general revenue fund. Fines collected by the county shall be used to carry out the notification and verification procedure established in this section. If there are excess funds after the notification and verification procedures have been completed, such funds shall be used for hazardous and solid waste management purposes only.

**History.**—s. 29, ch. 83-310; s. 35, ch. 84-338; s. 37, ch. 86-186; s. 12, ch. 87-374; s. 42, ch. 93-207.

**403.7236 Local government information to be sent to the department.**—Each county shall transmit the following information to the department, according to guidelines established under s. 403.7226:

(1) A summary of the information gathered during its local hazardous waste management assessment;

(2) Information gathered from each small quantity generator not notified or verified previously; and

(3) Onsite information gathered from each existing small quantity generator verification.

**History.**—s. 30, ch. 83-310; s. 4, ch. 85-269; s. 43, ch. 93-207.

**403.7238 Expanded local hazardous waste management programs.**—

(1) The Legislature recognizes the need for increased participation by local governments in ensuring that small quantity generators are properly managing their hazardous waste and that waste reduction opportunities are promoted and realized. In order to promote this participation, the department shall establish a grant program on a competitive basis for counties that meet the following criteria:

(a) The county has established a funding mechanism to support its local hazardous waste management assessments and the expanded local hazardous waste management program.

(b) The county has adopted a local ordinance approved by the department that addresses the compliance with and enforcement of the federal and state hazardous waste regulations for small quantity generators.

(c) The county has established a plan that is designed to reduce the generation of hazardous waste and hazardous emissions from local governmental agencies and departments.

(d) The county certifies that it will continue to implement its expanded local hazardous waste management assessment program after the grant assistance ceases.

(2) Grants are authorized to cover startup costs incurred to establish the expanded local hazardous waste management program, including training for personnel, and materials and equipment necessary for education, compliance activities, and program administration. The total costs of administration shall not exceed 10 percent of the county's grant award.

(3) The maximum amount of a grant for a county establishing an expanded local hazardous waste management program shall be $50,000.

**History.**—s. 44, ch. 93-207; s. 3, ch. 97-98.

**403.724 Financial responsibility.**—

(1) An owner or operator of a hazardous waste facility, as a prerequisite to the operation, closure, postclosure, or corrective action at a facility in the state, shall guarantee the financial responsibility of such owner or operator for any liability which may be incurred in the operation of the facility and 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, the establishment of a trust fund, surety bonds, a letter of credit, or casualty insurance, a financial test, a corporate guarantee, or a combination thereof, may be used to satisfy the financial responsibility requirement. Any method of financial responsibility used to satisfy this requirement shall be maintained in the amount approved 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 financial responsibility.

(3) The amount of financial responsibility required shall be approved by the department upon each issuance, renewal, or modification of a hazardous waste facility authorization. Such factors as inflation rates and changes in operation may be considered when approving financial responsibility for the duration of the authorization. The Office of Insurance Regulation of the Department of Financial Services shall be available to assist the department in making this determination. In approving or modifying 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 and performing corrective action.

(4) The department may adopt rules which establish the procedures and guidelines it will use to approve or modify the amount of financial responsibility.

(5) Hazardous waste facilities shall, within 1 year after the effective date of rules regarding financial responsibility pursuant to this act, establish financial responsibility 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.

(8)(a) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any state court or any of the federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this act.

(b)1. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual, or common-law liability of a guarantor to its owner or operator, including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim.

2. Nothing in this subsection shall be construed to diminish the liability of any person under s. 107 or s. 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other applicable law.

**History.**—s. 8, ch. 80-302; s. 23, ch. 83-310; s. 38, ch. 86-186; s. 65, ch. 90-331; s. 28, ch. 2000-211; s. 430, ch. 2003-261; s. 23, ch. 2007-184.

**403.7255 Placement of signs.**—

(1) Signs must be placed by the owner or operator at any site in the state which is listed or proposed for listing on the Superfund Site List of the United States Environmental Protection Agency or any site identified by the department as a site contaminated by hazardous waste where there is a risk of exposure to the public. This section does not apply to sites reported under ss. 376.3071 and 376.3072. The department shall establish requirements and procedures for the placement of signs, and may do so in rules, permits, orders, or other authorizations. The authorization shall establish the appropriate size for such signs, which size shall be no smaller than 2 feet by 2 feet, and shall provide in clearly legible print appropriate warning language for the waste or other materials at the site and a telephone number that may be called for further information.

(2) Violations of this act are punishable as provided in s. 403.161(4).

(3) The provisions of this act are independent of and cumulative to any other requirements and remedies in this chapter or chapter 376, or any rules promulgated thereunder.

**History.**—ss. 2, 3, 4, ch. 90-15; s. 412, ch. 94-356; s. 24, ch. 2007-184.

**403.726 Abatement of imminent hazard caused by hazardous substance.**—

(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 a hazardous substance, including a spill into the environment of a hazardous substance. The department is authorized to use moneys from the Water Quality Assurance Trust Fund to finance such actions, and such expenditures from the fund shall be recoverable pursuant to s. 376.307.

(3) An imminent hazard exists if any hazardous substance 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 in its own name whenever a hazardous substance is being generated, transported, disposed of, stored, or treated in violation of those provisions of law.

(5) The department may issue a permit or order requiring prompt abatement of an imminent hazard.

(6) The department may remove or dispose of any hazardous substance 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 a hazardous substance does not take appropriate action to abate or neutralize the hazard.

(7) Where a hazardous substance 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; s. 36, ch. 84-338; s. 4, ch. 95-144; s. 68, ch. 96-321; s. 38, ch. 2000-153; s. 25, ch. 2007-184.

**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)(a) The department 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.

(b) If a local government has established a local or regional hazardous waste collection center pursuant to s. 403.7265(2) and such center is in operation, the department and the local government may enter into a contract whereby the local government shall administer and supervise amnesty days. If a contract is entered into, the department shall provide to the local government, from funds appropriated to the department for amnesty days, an amount of money as determined by the department that is equal to the amount of money that would have been spent by the department to administer and supervise amnesty days in the local government's area. A local government that wishes to administer and supervise amnesty days shall notify the department at least 30 days prior to the beginning of the state fiscal year during which the amnesty days are scheduled to be held in the local government's area.

(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 reporting with less than 100 pounds of hazardous waste, until funds appropriated by the Legislature for this purpose have been exhausted.

(3) Local governments are required to participate in the program by selecting a highly visible site for amnesty days, publicizing the event, and sending a representative to work at amnesty days activities when they occur.

(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; s. 37, ch. 84-338; s. 39, ch. 86-186; s. 7, ch. 88-393; s. 413, ch. 94-356; s. 51, ch. 2009-21; s. 26, ch. 2015-30.

**403.7265 Local hazardous waste collection program.**—

(1) The Legislature recognizes the need for local governments to establish local hazardous waste management programs and local collection centers throughout the state. Local hazardous waste management programs are to educate and assist small businesses and households in properly managing the hazardous waste they generate. Local

collection centers are to serve a purpose similar to the collection locations used in the amnesty days program described in s. 403.7264. Such collection centers are to be operated to provide a service to homeowners, farmers, and conditionally exempt small quantity generators to encourage proper hazardous waste management. Local collection centers will allow local governments the opportunity to provide a location for collection and temporary storage of small quantities of hazardous waste. A private hazardous waste management company should be responsible for collecting the waste within 90 days for transfer to a permitted recycling, disposal, or treatment facility. In time, local collection centers are to become privately operated businesses in order to reduce the burden of hazardous waste collection on local government.

(2) For the purposes of this section, the phrase:

(a) “Collection center” means a secured site approved by the department to be used as a base for a hazardous waste collection facility.

(b) “Regional collection center” means a facility permitted by the department for the storage of hazardous wastes.

(3) The department shall establish a grant program for local governments that desire to provide a local or regional hazardous waste collection center. Grants shall be authorized to cover collection center costs associated with capital outlay for preparing a facility or site to safely serve as a collection center and to cover costs of administration, public awareness, and local amnesty days programs. The total cost for administration and public awareness may not exceed 10 percent of the grant award. Grants shall be available on a competitive basis to local governments which:

(a) Comply with ss. 403.7225 and 403.7264;

(b) Design a collection center which is approved by the department; and

(c) Provide up to 33 percent of the capital outlay money needed for the facility as matching money.

(4) The maximum amount of a grant for any local government participating in the development of a collection center is $100,000. If a regional collection facility is designed, each participating county is eligible for up to $100,000. The department may use up to 1 percent of the funds appropriated for the local hazardous waste collection center grant program for administrative costs and public education relating to proper hazardous waste management.

(5) The department shall establish a cooperative collection center arrangement grant program enabling a local hazardous waste collection center grantee to receive a financial incentive for hosting an amnesty days program in a neighboring county that is currently unable to establish a permanent collection center, but desires a local hazardous waste collection. The grant may reimburse up to 75 percent of the neighboring county’s amnesty days. Grants shall be available, on a competitive basis, to local governments that:

(a) Have established operational hazardous waste collection centers and are willing to assume a host role, similar to that of the state in the amnesty days program described in s. 403.7264, in organizing a local hazardous waste collection in the neighboring county.

(b) Enter into, and jointly submit, an interlocal agreement outlining department-established duties for both the host local government and neighboring county.

(6) The maximum amount for the cooperative collection center arrangement grant is $35,000, with a maximum amnesty days reimbursement of $25,000, and a limit of $10,000 for the host local government. The host local government may receive up to $10,000 per cooperative collection center arrangement in addition to its maximum local hazardous waste collection center grant.

(7) The department may establish an additional local project grant program enabling a local hazardous waste collection center grantee to receive funding for unique projects that improve the collection and lower the incidence of improper management of conditionally exempt or household hazardous waste. Eligible local governments may receive up to $50,000 in grant funds for these unique and innovative projects, provided they match 25 percent of the grant amount. If the department finds that the project has statewide applicability and immediate benefits to other local hazardous waste collection programs in the state, matching funds are not required. This grant will not count toward the $100,000 maximum grant amount for development of a collection center.

(8) The department may use grant funds authorized under this section to assist local governments in carrying out the responsibilities and programs specified in ss. 403.7225, 403.7226, 403.7234, 403.7236, and 403.7238.

**History.**—s. 9, ch. 85-269; s. 40, ch. 86-186; s. 13, ch. 87-374; s. 8, ch. 88-393; s. 45, ch. 93-207; s. 29, ch. 2000-211; s. 26, ch. 2007-184.

**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 s. 403.7234; 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 or by exhibiting reckless indifference or gross careless disregard for human health:

1. Transports or causes to be transported any hazardous waste, as defined in s. 403.703, to a facility which does not have a permit when such a permit is required under s. 403.707 or s. 403.722;

2. Disposes of, treats, or stores hazardous waste:

a. At any place but a hazardous waste facility which has a current and valid permit pursuant to s. 403.722;

b. In knowing violation of any material condition or requirement of such permit if such violation has a substantial likelihood of endangering human health, animal or plant life, or property; or

c. In knowing violation of any material condition or requirement of any applicable rule or standard if such violation has a substantial likelihood of endangering human health, animal or plant life, or property;

3. Makes any false statement or representation or knowingly omits material information in any hazardous waste application, label, manifest, record, report, permit, or other document required by this act;

4. Generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with this act; or

5. Transports without a manifest, or causes to be transported without a manifest, any hazardous waste required by rules adopted by the department to be accompanied by a manifest

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), (7), and (8):

(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 biomedical or 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 adopted 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.

(8) In order to promote the reuse and recycling of recovered materials and to remove potential impediments to recycling, notwithstanding s. 376.308 and this section, a person who sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse of such materials is relieved from liability for hazardous substances released or threatened to be released from the receiving facility. This relief from liability does not apply if the person fails to exercise reasonable care with respect to the management and handling of the recycled and recovered materials, or if the arrangement for reclamation, recycling, manufacturing, or reuse of such materials was not reasonably expected to be legitimate based on information generally available to the person at the time of the arrangement. For the purpose of this subsection, the term “recycled and recovered materials” means scrap paper; scrap plastic; scrap glass; scrap textiles; scrap rubber, other than whole tires; scrap metal; or spent lead-acid or nickel-cadmium batteries or other spent batteries. The term includes minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use before becoming scrap.

The term does not include hazardous waste. This subsection applies to causes of action accruing on or after July 1, 2015, and applies retroactively to causes of action accruing before July 1, 2015, for which a lawsuit has not been filed.

(9) A party liable for a violation of this section shall have a right to contribution from other parties identified in subsection (4) as liable for the pollution conditions.

**History.**—s. 8, ch. 80-302; s. 10, ch. 82-27; s. 35, ch. 83-310; s. 38, ch. 84-338; s. 41, ch. 86-186; s. 3, ch. 89-143; s. 4, ch. 90-82; s. 52, ch. 93-207; s. 414, ch. 94-356; s. 5, ch. 96-284; s. 69, ch. 96-321; s. 4, ch. 2001-258; s. 1, ch. 2015-150.

**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; confidentiality.**—

(1) Records, reports, or information obtained from any person under this part, unless otherwise provided by law, must be available to the public, except upon a showing satisfactory to the department by the person from whom the records, reports, or information is obtained that such records, reports, or information, or a particular part thereof, contains trade secrets as defined in s. 812.081. Such trade secrets are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The person submitting such trade secret information to the department must request that it be kept confidential and must inform the department of the basis for the claim of trade secret. The department shall, subject to notice and opportunity for hearing, determine whether the information, or portions thereof, claimed to be a trade secret is or is not a trade secret. Such trade secrets may be disclosed, however, to authorized representatives of the department or, pursuant to request, to other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding under this part. Authorized representatives and other governmental entities receiving such trade secret information shall retain its confidentiality. Those involved in any proceeding under this part, including an administrative law judge, a hearing officer, or a judge or justice, shall retain the confidentiality of any trade secret information revealed at such proceeding.

(2) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

**History.**—s. 8, ch. 80-302; s. 3, ch. 90-74; s. 5, ch. 95-366; s. 243, ch. 96-406; s. 158, ch. 96-410; s. 8, ch. 2016-6.

**403.74 Management of hazardous materials by governmental agencies.**—

(1) For the purposes of this section, “hazardous materials” are those substances which are:

(a) Listed as constituents of waste streams F001, F002, F003, F004, and F005 in 40 C.F.R. s. 261.31, or

(b) Listed in 40 C.F.R. s. 261.33, including those substances which are “pesticides” as defined by s. 487.021.

(2) Every local, state, or other governmental agency and every institution of the State University System that disposes of hazardous materials shall:

(a) Notify the department of the type and approximate annual quantity of each hazardous material that is generated.

(b) Notify the department of the management practices used for disposal of its hazardous materials.

(3) Each such agency shall develop written plans for the management of the disposal of hazardous material.

(4) Each such agency shall develop plans for spill prevention control and countermeasures for hazardous materials incidents.

(5) Hazardous materials which are used by governmental agencies in annual quantities of less than 1 kilogram, except for those hazardous materials which are listed because of reactivity, are exempt from this section.

**History.**—s. 36, ch. 83-310; s. 39, ch. 84-338; s. 56, ch. 85-81; s. 35, ch. 92-115; s. 415, ch. 94-356.

**Note.**—Former s. 501.118.

**403.75 Definitions relating to used oil.**—As used in ss. 403.75-403.769 and s. 526.01, as amended by chapter 84-338, Laws of Florida, the term:

(1) "Public used oil collection center" means:

(a) Automotive service facilities or governmentally sponsored collection facilities, which in the course of business accept for disposal small quantities of used oil from households; and

(b) Facilities which store used oil in aboveground tanks, which are approved by the department, and which in the course of business accept for disposal small quantities of used oil from households.

(2) "Department" means the Department of Environmental Protection.

(3) "Person" means any individual, private or public corporation, partnership, cooperative, association, estate, political subdivision, or governmental agency or instrumentality.

(4) "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specifications, filtration, simple distillation, chemical or physical separation and rerefining.

(5) "Recycling" means to prepare used oil for reuse as a petroleum product by rerefining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil.

(6) "Rerefining" means the use of refining processes on used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefining may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments.

(7) "Used oil" means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become contaminated and unsuitable for its original purpose due to the presence of physical or chemical impurities or loss of original properties.

**History.**—s. 57, ch. 84-338; s. 25, ch. 88-130; s. 46, ch. 93-207; s. 416, ch. 94-356.

**403.751 Prohibited actions; used oil.**—

(1)(a) No person may collect, transport, store, recycle, use, or dispose of used oil in any manner which endangers the public health or welfare.

(b) No person may discharge used oil into sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or marine waters.

(c) No person may mix or commingle used oil with solid waste that is to be disposed of in landfills or directly dispose of used oil in landfills in Florida unless approved by the department.

(d) Any person who unknowingly disposes into a landfill any used oil which has not been properly segregated or separated from other solid wastes by the generator is not guilty of a violation under this act.

(e) No person may mix or commingle used oil with hazardous substances that make it unsuitable for recycling or beneficial use.

(2) Used oil shall not be used for road oiling, dust control, weed abatement, or other similar uses that have the potential to release used oil into the environment.

**History.**—s. 58, ch. 84-338; s. 26, ch. 88-130.

**403.753 Public educational program about collection and recycling of used oil.**—The department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil and shall:

(1) Encourage persons who annually sell at retail, in containers for use off the premises, more than 500 gallons of oil to provide the purchasers with information on the locations of collection facilities and information on proper disposal practices.

(2) Establish, maintain, and publicize a used oil information center that disperses materials or information explaining local, state, and federal laws and rules governing used oil and informing the public of places and

methods for proper disposal of used oil.

(3) Encourage the voluntary establishment of used oil collection and recycling programs and provide technical assistance to persons who organize such programs.

(4) Encourage the procurement of recycled automotive, industrial, and fuel oils, and oils blended with recycled oils, for all state and local government uses. Recycled oils procured under this section shall meet equipment manufacturer's specifications. A 5-percent price preference may be given in procuring these recycled products.

**History.**—s. 59, ch. 84-338; s. 27, ch. 88-130.

**403.7531 Notice by retail dealer.**—A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place the toll-free telephone number the public can call to learn the location of a public used oil collection center.

**History.**—s. 47, ch. 93-207.

**403.754 Registration of persons transporting, processing, burning, or marketing used oil; fees; reports and records.**—

(1) The following persons shall register annually with the department pursuant to rules of the department on forms prescribed by it:

(a) Used oil transporters and transfer facilities. However, no registration will be issued by the department unless the requirements of s. 403.767 are met.

(b) Used oil processors and rerefiners. However, no registration will be issued by the department unless the requirements of s. 403.769 are met.

(c) Used oil burners.

(d) Used oil fuel marketers.

(2) An electric utility the operations of which generate used oil and which used oil is then reclaimed, recycled, or rerefined by the electric utility for use in its operations is not required to register or report pursuant to this section, but may be subject to other applicable federal or state rules pertaining to used oil processors and rerefiners.

(3) An onsite burner which only burns a specification used oil generated by such burner is not required to register or report pursuant to this section, provided that such burning is done in compliance with any air permits issued by the department, but may be subject to other applicable federal or state rules pertaining to used oil processors and rerefiners.

(4) The department may prescribe a fee for the registration required by this section in an amount which is sufficient to cover the cost of processing applications.

(5) The department shall require each registered person to submit, no later than March 1 of each year, a report which specifies the type and quantity of used oil transported, recycled, burned, or processed during the preceding calendar year.

(6) Each registered person who transports, processes, burns, or recycles used oil shall maintain records which identify at least:

(a) The source of the materials transported or recycled;

(b) The quantity of materials received;

(c) The date of receipt; and

(d) The destination or end use of the materials.

(7) The department shall perform technical studies to sample used oil at facilities of representative used oil transporters and at representative processing facilities to determine the incidence of contamination of used oil with hazardous, toxic, or other harmful substances.

**History.**—s. 60, ch. 84-338; s. 28, ch. 88-130; s. 48, ch. 93-207.

**403.7545 Regulation of used oil as hazardous waste.**—Nothing in ss. 403.75-403.769 and s. 526.01, as amended by chapter 84-338, Laws of Florida, shall prohibit the department from regulating used oil in a manner

consistent with the United States Environmental Protection Agency, or as a hazardous waste in a manner consistent with s. 241 of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616.

**History.**—s. 42, ch. 86-186; s. 29, ch. 88-130; s. 49, ch. 93-207.

**403.757 Coordination with other state agencies.**—

(1) The department shall coordinate its activities and functions under ss. 403.75-403.769 and s. 526.01, as amended by chapter 84-338, Laws of Florida, with the Department of Economic Opportunity and other state agencies to avoid duplication in reporting and information gathering.

(2) The nonprofit corporation established pursuant to s. 946.502 shall examine the feasibility of using used oil to fuel boilers and furnaces of state government buildings.

(3) The Department of Transportation shall examine the feasibility of using recycled oil products in road construction activities.

**History.**—s. 62, ch. 84-338; s. 30, ch. 88-130; s. 14, ch. 91-113; s. 292, ch. 2011-142.

**403.758 Enforcement and penalty.**—

(1) Except as provided in subsection (2), the department may enforce ss. 403.75-403.769 and s. 526.01, as amended by chapter 84-338, Laws of Florida, pursuant to ss. 403.121, 403.131, and 403.161.

(2) Any person who fails to register with the department as required by ss. 403.754 and 526.01, as amended by chapter 84-338, Laws of Florida, is subject to a fine of $300.

**History.**—s. 63, ch. 84-338; s. 31, ch. 88-130; s. 50, ch. 93-207.

**403.759 Disposition of fees, fines, and penalties.**—The proceeds from the registration fees, fines, and penalties imposed by ss. 403.75-403.769 and s. 526.01, as amended by chapter 84-338, Laws of Florida, shall be deposited into the Solid Waste Management Trust Fund for use by the department in implementing the provisions of ss. 403.75-403.769 and s. 526.01, as amended by chapter 84-338, Laws of Florida.

**History.**—s. 64, ch. 84-338; s. 32, ch. 88-130.

**403.760 Public used oil collection centers.**—

(1) The department shall encourage the voluntary establishment of public used oil collection centers and recycling programs and provide technical assistance to persons who organize such programs.

(2) All government agencies, and businesses that change motor oil for the public, are encouraged to serve as public used oil collection centers.

(3) A public used oil collection center must:

(a) Notify the department annually that it is accepting used oil from the public; and

(b) Annually report quantities of used oil collected from the public.

(4) The Department of Agriculture and Consumer Services shall assist the department in inspecting public used oil collection centers.

(5) No person may recover from the owner or operator of a used oil collection center any costs of response actions, as defined in s. 376.301, resulting from a release of either used oil or a hazardous substance or use the authority of ss. 376.307, 376.3071, and 403.724 against the owner or operator of a used oil collection center if such used oil is:

(a) Not mixed with any hazardous substance by the owner or operator of the used oil collection center;

(b) Not knowingly accepted with any hazardous substances contained therein;

(c) Transported from the used oil collection center by a certified transporter pursuant to s. 403.767;

(d) Stored in a used oil collection center that is in compliance with this section; and

(e) In compliance with s. 114(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

This subsection applies only to that portion of the public used oil collection center used for the collection of used oil and does not apply if the owner or operator is grossly negligent in the operation of the public used oil collection center. Nothing in this section shall affect or modify in any way the obligations or liability of any person under any

other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances. For the purpose of this section, the owner or operator of a used oil collection center may presume that a quantity of no more than 5 gallons of used oil accepted from any member of the public is not mixed with a hazardous substance, provided that such owner or operator acts in good faith.

**History.**—s. 33, ch. 88-130; s. 10, ch. 89-188.

**403.761 Incentives program.**—

(1) The department is authorized to establish an incentives program for individuals who change their own oil to encourage them to return their used oil to a used oil collection center.

(2) The incentives used by the department may involve the use of discount or prize coupons, prize drawings, promotional giveaways, or other activities the department determines will promote collection, reuse, or proper disposal of used oil.

(3) The department may contract with a promotion company to administer the incentives program.

**History.**—s. 34, ch. 88-130.

**403.763 Grants to local governments.**—

(1) The department shall develop a grants program for local governments to encourage the collection, reuse, and proper disposal of used oil. No grant may be made for any project unless such project is approved by the department.

(2) The department shall consider for grant assistance any local government project that uses one or more of the following programs or any activity that the department feels will reduce the improper disposal and reuse of used oil:

(a) Curbside pickup of used oil containers by a local government or its designee.

(b) Retrofitting of solid waste equipment to promote curbside pickup or disposal of used oil at used oil collection centers designated by the local government.

(c) Establishment of publicly operated used oil collection centers at landfills or other public places.

(d) Providing containers and other materials and supplies that the public can utilize in an environmentally sound manner to store used oil for pickup or return to a used oil collection center.

(e) Providing incentives for the establishment of privately operated public used oil collection centers.

(3) Eligible projects shall be funded according to provisions established by the department. However, in no case shall one grant exceed $25,000.

**History.**—s. 35, ch. 88-130; s. 22, ch. 2015-4.

**403.767 Certification of used oil transporters.**—

(1) Any person who transports over public highways more than 500 gallons annually of used oil must be a certified transporter. This subsection does not apply to:

(a) Local governments or private solid waste haulers under contract to a local government that transport used oil collected from households to a public used oil collection center.

(b) Persons who transport less than 55 gallons of used oil at one time that is stored in tightly closed containers which are secured in a totally enclosed section of the transport vehicle.

(c) Persons who transport their own used oil, which is generated at their own noncontiguous facilities, to their own central collection facility for storage, processing, or energy recovery. However, such persons shall provide the same proof of liability insurance or other means of financial responsibility for liability which may be incurred in the transport of used oil as provided by certified transporters under subsection (3).

(2) The department shall develop a certification program for transporters of used oil and shall issue, deny, or revoke certifications authorizing the holder to transport used oil. Certification requirements shall help assure that a used oil transporter is familiar with appropriate rules and used oil management procedures.

(3) The department shall adopt rules governing certification, which shall include requirements for the following:

(a) Registration and annual reporting pursuant to s. 403.754.

(b) Evidence of familiarity with applicable state laws and rules governing used oil transportation.

(c) Proof of liability insurance or other means of financial responsibility for any liability which may be incurred in the transport of used oil.

**History.**—s. 36, ch. 88-130; s. 17, ch. 97-277; s. 30, ch. 2000-211.

**403.769 Permits for used oil processing and rerefining facilities.**—

(1) Each person who intends to operate, modify, or close a used oil processing facility shall obtain an operation or closure permit from the department prior to operating, modifying, or closing the facility.

(2) The department shall develop a permitting system for used oil processing facilities after reviewing and considering the applicability of the permit system for hazardous waste treatment, storage, or disposal facilities.

(3) Permits shall not be required under this section for the burning of used oil as a fuel, provided:

(a) A valid department air permit is in effect for the facility; and

(b) The facility burns used oil in accordance with applicable United States Environmental Protection Agency regulations, local government regulations, and the requirements of its department air permit.

(4) No permit is required under this section for the use of used oil for the beneficiation or flotation of phosphate rock, but may be subject to other applicable federal or state used oil rules.

**History.**—s. 37, ch. 88-130; s. 51, ch. 93-207; s. 31, ch. 2000-211.

**403.7721 Rule of construction; chs. 85-269 and 85-277.**—The provisions of chapters 85-269 and 85-277, Laws of Florida, shall be construed to supplement rather than to diminish or supersede the powers exercised by the department under chapter 376 and this chapter. In accordance with chapter 376 and this chapter, the department may fully exercise its authority under said chapters to collect information for other purposes and may coordinate such efforts with the information gathering duties imposed by chapters 85-269 and 85-277, where deemed practicable and advisable, in order to provide for cost-effective use of state resources.

**History.**—s. 15, ch. 85-269; s. 5, ch. 85-277; s. 417, ch. 94-356.

## PART V
## ENVIRONMENTAL REGULATION



**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. 61, 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 Protection.

(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) "Insect control impoundment dikes" means artificial structures, including earthen berms, constructed and used to impound waters for the purpose of insect control.

(11) "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.

(12) "Secretary" means the Secretary of Environmental Protection.

(13) "Standard" means any rule of the Department of Environmental Protection relating to air and water quality, noise, solid-waste management, and electric and magnetic fields associated with electrical transmission and distribution lines and substation facilities. 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.

(14) "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. 62, ch. 83-310; s. 40, ch. 84-338; s. 9, ch. 86-173; s. 56, ch. 86-186; s. 422, ch. 94-356.

**403.804 Environmental Regulation Commission; powers and duties.**—

(1) Except as provided in subsection (2) and s. 120.54(4), the commission, pursuant to s. 403.805(1), shall exercise the standard-setting authority of the department under this chapter; part II of chapter 373; and ss. 373.309(1)(e), 373.414(4) and (10), 373.4145(1)(a), 373.421(1), and 373.4592(4)(d)4. and (e). The commission, in exercising its authority, shall consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and the environment. The commission shall not establish department policies, priorities, plans, or directives. The commission may adopt procedural rules governing the conduct of its meetings and hearings.

(2) The department shall 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. Such study as is provided for in this subsection shall be submitted to the commission, which shall initially adopt the standard. 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.

**History.**—s. 6, ch. 75-22; ss. 4, 5, ch. 80-66; s. 54, ch. 83-310; s. 41, ch. 84-338; s. 1, ch. 88-343; s. 3, ch. 95-295; s. 167, ch. 96-410; s. 41, ch. 2002-296; s. 95, ch. 2014-17.

**403.805 Secretary; powers and duties; review of specified rules.**—

(1) The secretary shall have the powers and duties of heads of departments set forth in chapter 20, including the authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of chapters 253, 373, and 376 and this chapter. The secretary shall have rulemaking responsibility under chapter 120, but shall submit any proposed rule containing standards to the Environmental Regulation Commission for approval, modification, or disapproval pursuant to s. 403.804, except for total maximum daily load calculations and allocations developed pursuant to s. 403.067(6). The secretary shall have responsibility for final agency action regarding total maximum daily load calculations and allocations developed pursuant to s. 403.067(6). 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.

(2) No person who is responsible for final agency action to approve any portion of a permit issued pursuant to s. 403.0885 shall receive or shall have received after appointment or during the 2 years prior to appointment directly or indirectly from such permitholders or applicants 10 percent or more of his or her gross personal income for a calendar year or 50 percent of his or her gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to a retirement pension or similar arrangement. "Permitholders" or "applicants for a permit" as used in this section shall not include any department or agency of state government. The term "income" shall include, but not be limited to, retirement benefits, consultant fees, and stock dividends. Income shall not be deemed received "directly or indirectly from permitholders or applicants for a permit" where it is derived from mutual fund payments, or from other diversified investments, for which the recipient does not know the identity of the primary source of income.

(3) After adoption of proposed rule 62-302.531(9), Florida Administrative Code, a nonseverability and effective date provision approved by the commission on December 8, 2011, in accordance with the commission's legislative authority under s. 403.804, notice of which was published by the department on December 22, 2011, in the Florida Administrative Register, Vol. 37, No. 51, page 4446, any subsequent rule or amendment altering the effect of such rule shall be submitted to the President of the Senate and the Speaker of the House of Representatives no later than 30 days before the next regular legislative session, and such amendment may not take effect until it is ratified by the Legislature.

**History.**—s. 6, ch. 75-22; s. 6, ch. 80-66; s. 2, ch. 80-394; s. 63, ch. 83-310; s. 3, ch. 87-337; s. 10, ch. 87-374; s. 13, ch. 88-393; s. 83, ch. 93-213; ss. 4, 8, ch. 95-295; s. 9, ch. 96-370; s. 1010, ch. 97-103; s. 106, ch. 98-200; s. 4, ch. 99-223; s. 11, ch. 99-353; s. 1, ch. 2012-3; s. 42, ch. 2013-14.

**403.8051 Small Business Air Pollution Compliance Advisory Council; members; duties.**—

(1) The Small Business Air Pollution Compliance Advisory Council is created within the department. The council shall have seven members, appointed as follows:

(a) Two members who are not owners or representatives of owners of small business stationary sources, appointed by the Governor to represent the public.

(b) Two members, one each appointed by the President of the Senate and the Minority Leader of the Senate, who are owners or who represent owners of small business stationary sources.

(c) Two members, one each appointed by the Speaker of the House of Representatives and the Minority Leader of the House of Representatives, who are owners or who represent owners of small business stationary sources.

(d) One member appointed by the Secretary of Environmental Protection to represent the department.

(2) The council shall:

(a) Render advice on the effectiveness of the department's small business stationary air pollution source technical and environmental compliance assistance program, the difficulties encountered, and the degree and severity of enforcement.

(b) Review information for small business stationary air pollution sources to assure such information is understandable by the layperson.

(c) Make periodic reports to the administrator of the United States Environmental Protection Agency as required by federal law.

**History.**—s. 12, ch. 92-132; s. 423, ch. 94-356.

**403.8052 Small Business Stationary Air Pollution Source Technical and Environmental Compliance Assistance Program.**—

(1) The department shall establish a technical and environmental compliance assistance program for small business stationary air pollution sources. The program shall assist such stationary sources in determining applicable permit requirements; collect and disseminate information concerning compliance methods and technologies; and provide information regarding pollution prevention and accidental release detection and prevention, including alternative technologies, process changes, products, and methods of operation that help reduce air pollution. For purposes of this section, a small business stationary air pollution source means a stationary source of air pollution which:

(a) Is owned or operated by a person who employs 100 or fewer individuals.

(b) Is a small business concern as defined in 15 U.S.C. s. 632.

(c) Is other than a major stationary source within the meaning of 42 U.S.C. s. 7602(j) or 42 U.S.C. subchapter I, part C or part D.

(d) Emits less than 50 tons per year of any regulated pollutant.

(e) Emits less than 75 tons per year of all regulated pollutants.

(2) The department shall designate a person with suitable technical qualifications as the head of the program. The program office shall serve as ombudsman for small business stationary air pollution sources in the implementation of s. 403.0872 by the department. The program office shall serve as the staff for the Small Business Air Pollution Compliance Advisory Council and shall assist in the development and dissemination of the reports and opinions of the council.

(3) The department shall establish, by rule, a notice procedure to ensure that small business stationary air pollution sources receive notice of their rights under s. 403.0872 in such a way as to provide reasonable and adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final rules or standards of the department.

(4) Any stationary source that does not meet the criteria of paragraph (1)(c), paragraph (1)(d), or paragraph (1)(e) may petition the department for inclusion in the program as a small business stationary air pollution source, if the source does not emit more than 100 tons per year of all regulated pollutants. The department shall establish, by rule, notice procedures to assure an opportunity for public comment on any petition filed under this subsection.

**History.**—s. 13, ch. 92-132; s. 2, ch. 93-94.

**Note.**—Former s. 403.0852.

**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 Register 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) 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.

(5) 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. 11, ch. 82-27; s. 38, ch. 88-130; s. 43, ch. 2013-14.

**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 or her 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. 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) 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, except where otherwise delegated by the secretary.

(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 elsewhere in the department under s. 403.805 or to the water management districts under [1]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. Permits issued under s. 403.0885, except such permit issuance may be delegated to district managers.
2. Construction of major air pollution sources.
3. Certifications under the Florida Electrical Power Plant Siting Act or the Florida Electric Transmission Line Siting Act and the associated permit issued under s. 403.0885, if applicable.
4. Permits issued under s. 403.0885 to steam electric generating facilities regulated pursuant to 40 C.F.R. part 423.
5. Permits issued under s. 378.901.

**History.**—ss. 4, 6, ch. 75-22; s. 67, ch. 83-310; s. 42, ch. 84-338; s. 15, ch. 88-393; s. 84, ch. 93-213; s. 3, ch. 95-215; s. 18, ch. 97-103; s. 70, ch. 2006-230.

[1]**Note.**—Section 39, ch. 89-279, substantially reworded s. 403.812, removing all references to the delegation of functions to water management districts.

**403.811 Dredge and fill permits issued pursuant to this chapter and s. 373.414.**—Permits or other orders addressing dredging and filling in, on, or over waters of the state issued pursuant to this chapter or s. 373.414(9) before the effective date of rules adopted under s. 373.414(9) and permits or other orders issued in accordance with s. 373.414(13), (14), (15), or (16) shall remain valid through the duration specified in the permit or order, unless revoked by the agency issuing the permit. The agency issuing the permit or other order may seek to enjoin the violation of, or to enforce compliance with, the permit or other order as provided in ss. 403.121, 403.131, 403.141, and 403.161. A violation of a permit or other order addressing dredging or filling issued pursuant to this chapter is punishable by a civil penalty as provided in s. 403.141 or a criminal penalty as provided in s. 403.161.

**History.**—s. 37, ch. 93-213.

**403.812 Dredge and fill permitting in stormwater management systems.**—The department shall not require dredge and fill permits for stormwater management systems where such systems are located landward of the point of connection to waters of the state and are designed, constructed, operated, and maintained for stormwater treatment, flood attenuation, or irrigation. The waters within such systems, unless designed, constructed, operated, and maintained for in-water recreational uses, such as swimming and boating, shall not be considered waters of the state; however, if the system provides other incidental uses and is accessible to the public, then the department may require reasonable assurance that water quality within the system will not adversely impact public health, fish and wildlife in adjacent waters, or adjacent waters. The department shall not require dredge and fill permits for structures designed solely to connect stormwater management systems to waters of the state provided that the connection of such system to waters of the state is regulated pursuant to chapter 373. The department shall initiate rulemaking to implement the provisions of this section.

**History.**—s. 6, ch. 75-22; s. 68, ch. 83-310; s. 6, ch. 84-79; s. 3, ch. 85-154; s. 39, ch. 89-279.

**403.813 Permits issued at district centers; exceptions.**—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a 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 or piers and the installation of private docks, piers and recreational docking facilities, or piers and recreational docking facilities of local governmental entities when the local governmental entity's activities will not take place in any manatee habitat, any of which docks:

1. Has 500 square feet or less of over-water surface area for a dock which is located in an area designated as Outstanding Florida Waters or 1,000 square feet or less of over-water surface area for a dock which is located in an area which is not designated as Outstanding Florida Waters;

2. Is constructed on or held in place by pilings or is a floating dock which is constructed so as not to involve filling or dredging other than that necessary to install the pilings;

3. Shall not substantially impede the flow of water or create a navigational hazard;

4. Is used for recreational, noncommercial activities associated with the mooring or storage of boats and boat paraphernalia; and

5. Is the sole dock constructed pursuant to this exemption as measured along the shoreline for a distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot.

Nothing in this paragraph shall prohibit the department from taking appropriate enforcement action pursuant to this chapter to abate or prohibit any activity otherwise exempt from permitting pursuant to this paragraph if the department can demonstrate that the exempted activity has caused water pollution in violation of this chapter.

(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 and piers, except that fill material may not be used and the replacement or repaired dock or pier must be in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired. This does not preclude the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches waterward of, their previous locations. However, this shall not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(f) The performance of maintenance dredging of existing manmade canals, channels, intake and discharge structures, and previously dredged portions of natural water bodies within drainage rights-of-way or drainage easements which have been recorded in the public records of the county, 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, and previously dredged portions of natural water bodies, to original design specifications or configurations, provided that the work is conducted in compliance with s. 379.2431(2)(d), provided that no significant impacts occur to previously undisturbed natural areas, and provided that control devices for return flow and best management practices for erosion and sediment control are utilized to prevent bank erosion and scouring and to prevent turbidity, dredged material, and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. Further, for maintenance dredging of previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements, an entity that seeks an exemption must notify the department or water management district, as applicable, at least 30 days prior to dredging and provide documentation of original design specifications or configurations where such exist. This exemption applies to all canals and previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements constructed prior to April 3, 1970, and to those canals and previously dredged portions of natural water bodies constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption does 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 Board of 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.

(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, pursuant to s. 403.088(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 or replacement of existing functional pipes or culverts the purpose of which is the discharge or conveyance of stormwater. In all cases, the invert elevation, the diameter, and the length of the culvert shall not be changed. However, the material used for the culvert may be different from the original.

(i) The construction of private docks of 1,000 square feet or less of over-water surface area and seawalls in artificially created waterways where such construction will not violate existing water quality standards, impede navigation, or affect flood control. This exemption does not apply to the construction of vertical seawalls in estuaries or lagoons unless the proposed construction is within an existing manmade canal where the shoreline is currently occupied in whole or part by vertical seawalls.

(j) The construction and maintenance of swales.

(k) The installation of aids to navigation and buoys associated with such aids, provided 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 II waters and aquatic preserves, provided 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 wetlands or other surface waters 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, in estuaries and lagoons the construction of vertical seawalls is limited to the circumstances and purposes stated in s. 373.414(5)(b)1.-4. This paragraph does not affect the permitting requirements of chapter 161, and department rules must clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(p) The restoration of existing insect control impoundment dikes which are less than 100 feet in length. Such impoundments shall be connected to tidally influenced waters for 6 months each year beginning September 1 and ending February 28 if feasible or operated in accordance with an impoundment management plan approved by the department. A dike restoration may involve no more dredging than is necessary to restore the dike to its original design specifications. For the purposes of this paragraph, restoration does not include maintenance of impoundment dikes of operating insect control impoundments.

(q) The construction, operation, or maintenance of stormwater management facilities which are designed to serve single-family residential projects, including duplexes, triplexes, and quadruplexes, if they are less than 10 acres total land and have less than 2 acres of impervious surface and if the facilities:

1. Comply with all regulations or ordinances applicable to stormwater management and adopted by a city or county;

2. Are not part of a larger common plan of development or sale; and

3. Discharge into a stormwater discharge facility exempted or permitted by the department under this chapter which has sufficient capacity and treatment capability as specified in this chapter and is owned, maintained, or operated by a city, county, special district with drainage responsibility, or water management district; however, this exemption does not authorize discharge to a facility without the facility owner’s prior written consent.

(r) The removal of aquatic plants, the removal of tussocks, the associated replanting of indigenous aquatic plants, and the associated removal from lakes of organic detrital material when such planting or removal is performed and authorized by permit or exemption granted under s. 369.20 or s. 369.25, provided that:

1. Organic detrital material that exists on the surface of natural mineral substrate shall be allowed to be removed to a depth of 3 feet or to the natural mineral substrate, whichever is less;

2. All material removed pursuant to this paragraph shall be deposited in an upland site in a manner that will prevent the reintroduction of the material into waters in the state except when spoil material is permitted to be used to create wildlife islands in freshwater bodies of the state when a governmental entity is permitted pursuant to s. 369.20 to create such islands as a part of a restoration or enhancement project;

3. All activities are performed in a manner consistent with state water quality standards; and

4. No activities under this exemption are conducted in wetland areas, as defined in s. 373.019(27), which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys, except when a governmental entity is permitted pursuant to s. 369.20 to conduct such activities as a part of a restoration or enhancement project.

The department may not adopt implementing rules for this paragraph, notwithstanding any other provision of law.

(s) The construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts, provided that such structures:

1. Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;

2. Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water, when associated with a dock that is exempt under this subsection or associated with a permitted dock with no defined boat slip or attached to a bulkhead on a parcel of land where there is no other docking structure;

3. Are not used for any commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners, as defined in s. 253.141;

4. Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where seagrasses are least dense adjacent to the dock or bulkhead; and

5. Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund and, with the exception of those structures attached to a bulkhead on a parcel of land where there is no docking structure, shall not be subject to any more stringent permitting requirements, registration requirements, or other regulation by any local government. Local governments may require either permitting or one-time registration of floating vessel platforms to be attached to a bulkhead on a parcel of land where there is no other docking structure as necessary to ensure compliance with local ordinances, codes, or regulations. Local governments may require either permitting or one-time registration of all other floating vessel platforms as necessary to ensure compliance with the exemption criteria in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning, which are no more stringent than the exemption criteria in this section or address subjects other than subjects addressed by the exemption criteria in this section; and to ensure proper installation, maintenance, and precautionary or evacuation action following a tropical storm or hurricane watch of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure. The exemption provided in this paragraph shall be in addition to the exemption provided in paragraph (b). The department shall adopt a general permit by rule for the construction, installation, operation, or maintenance of those floating vessel platforms or floating boat lifts that do not qualify for the exemption provided in this paragraph but do not cause significant adverse impacts to occur individually or cumulatively. The issuance of such general permit shall also constitute permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund. No local government shall impose a more stringent regulation, permitting requirement, registration requirement, or other regulation covered by such general permit. Local governments may require either permitting or one-time registration of floating vessel platforms as necessary to ensure compliance with the general permit in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning that are no more stringent than the general permit in this section; and to ensure proper installation and maintenance of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure.

(t) The repair, stabilization, or paving of existing county maintained roads and the repair or replacement of bridges that are part of the roadway, within the Northwest Florida Water Management District and the Suwannee River Water Management District, provided:

1. The road and associated bridge were in existence and in use as a public road or bridge, and were maintained by the county as a public road or bridge on or before January 1, 2002;

2. The construction activity does not realign the road or expand the number of existing traffic lanes of the existing road; however, the work may include the provision of safety shoulders, clearance of vegetation, and other work reasonably necessary to repair, stabilize, pave, or repave the road, provided that the work is constructed by generally accepted engineering standards;

3. The construction activity does not expand the existing width of an existing vehicular bridge in excess of that reasonably necessary to properly connect the bridge with the road being repaired, stabilized, paved, or repaved to safely accommodate the traffic expected on the road, which may include expanding the width of the bridge to match the existing connected road. However, no debris from the original bridge shall be allowed to remain in waters of the state, including wetlands;

4. Best management practices for erosion control shall be employed as necessary to prevent water quality violations;

5. Roadside swales or other effective means of stormwater treatment must be incorporated as part of the project;

6. No more dredging or filling of wetlands or water of the state is performed than that which is reasonably necessary to repair, stabilize, pave, or repave the road or to repair or replace the bridge, in accordance with generally accepted engineering standards; and

7. Notice of intent to use the exemption is provided to the department, if the work is to be performed within the Northwest Florida Water Management District, or to the Suwannee River Water Management District, if the work is to be performed within the Suwannee River Water Management District, 30 days prior to performing any work under the exemption.

Within 30 days after this act becomes a law, the department shall initiate rulemaking to adopt a no fee general permit for the repair, stabilization, or paving of existing roads that are maintained by the county and the repair or replacement of bridges that are part of the roadway where such activities do not cause significant adverse impacts to occur individually or cumulatively. The general permit shall apply statewide and, with no additional rulemaking required, apply to qualified projects reviewed by the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District under the division of responsibilities contained in the operating agreements applicable to part IV of chapter 373. Upon adoption, this general permit shall, pursuant to the provisions of subsection (2), supersede and replace the exemption in this paragraph.

(u) Notwithstanding any provision to the contrary in this subsection, a permit or other authorization under chapter 253, chapter 369, chapter 373, or this chapter is not required for an individual residential property owner for the removal of organic detrital material from freshwater rivers or lakes that have a natural sand or rocky substrate and that are not Aquatic Preserves or for the associated removal and replanting of aquatic vegetation for the purpose of environmental enhancement, providing that:

1. No activities under this exemption are conducted in wetland areas, as defined in s. 373.019(27), which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys.

2. No filling or peat mining is allowed.

3. No removal of native wetland trees, including, but not limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

4. When removing organic detrital material, no portion of the underlying natural mineral substrate or rocky substrate is removed.

5. Organic detrital material and plant material removed is deposited in an upland site in a manner that will not cause water quality violations.

6. All activities are conducted in such a manner, and with appropriate turbidity controls, so as to prevent any water quality violations outside the immediate work area.

7. Replanting with a variety of aquatic plants native to the state shall occur in a minimum of 25 percent of the preexisting vegetated areas where organic detrital material is removed, except for areas where the material is removed to bare rocky substrate; however, an area may be maintained clear of vegetation as an access corridor. The access corridor width may not exceed 50 percent of the property owner’s frontage or 50 feet, whichever is less, and may be a sufficient length waterward to create a corridor to allow access for a boat or swimmer to reach open water. Replanting must be at a minimum density of 2 feet on center and be completed within 90 days after removal of existing aquatic vegetation, except that under dewatered conditions replanting must be completed

within 90 days after reflooding. The area to be replanted must extend waterward from the ordinary high water line to a point where normal water depth would be 3 feet or the preexisting vegetation line, whichever is less. Individuals are required to make a reasonable effort to maintain planting density for a period of 6 months after replanting is complete, and the plants, including naturally recruited native aquatic plants, must be allowed to expand and fill in the revegetation area. Native aquatic plants to be used for revegetation must be salvaged from the enhancement project site or obtained from an aquatic plant nursery regulated by the Department of Agriculture and Consumer Services. Plants that are not native to the state may not be used for replanting.

8. No activity occurs any farther than 100 feet waterward of the ordinary high water line, and all activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

9. The person seeking this exemption notifies the applicable department district office in writing at least 30 days before commencing work and allows the department to conduct a preconstruction site inspection. Notice must include an organic-detrital-material removal and disposal plan and, if applicable, a vegetation-removal and revegetation plan.

10. The department is provided written certification of compliance with the terms and conditions of this paragraph within 30 days after completion of any activity occurring under this exemption.

(v) Notwithstanding any other provision in this chapter, chapter 373, or chapter 161, a permit or other authorization is not required for the following exploratory activities associated with beach restoration and nourishment projects and inlet management activities:

1. The collection of geotechnical, geophysical, and cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.

2. Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.

3. Incidental excavation associated with any of the activities listed under subparagraph 1. or subparagraph 2.

(2) The provisions of subsection (1) are superseded by general permits established pursuant to ss. 373.118 and 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 (1) shall remain or shall be reestablished in full force and effect.

(3) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for maintenance dredging conducted under this section by the seaports of Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina or by inland navigation districts if the dredging to be performed is no more than is necessary to restore previously dredged areas to original design specifications or configurations, previously undisturbed natural areas are not significantly impacted, and the work conducted does not violate the protections for manatees under s. 379.2431(2)(d). In addition:

(a) A mixing zone for turbidity is granted within a 150-meter radius from the point of dredging while dredging is ongoing, except that the mixing zone may not extend into areas supporting wetland communities, submerged aquatic vegetation, or hardbottom communities.

(b) The discharge of the return water from the site used for the disposal of dredged material shall be allowed only if such discharge does not result in a violation of water quality standards in the receiving waters. The return-water discharge into receiving waters shall be granted a mixing zone for turbidity within a 150-meter radius from the point of discharge into the receiving waters during and immediately after the dredging, except that the mixing zone may not extend into areas supporting wetland communities, submerged aquatic vegetation, or hardbottom communities. Ditches, pipes, and similar types of linear conveyances may not be considered receiving waters for the purposes of this paragraph.

(c) The state may not exact a charge for material that this subsection allows a public port or an inland navigation district to remove. In addition, consent to use any sovereignty submerged lands pursuant to this section is hereby granted.

(d) The use of flocculants at the site used for disposal of the dredged material is allowed if the use, including supporting documentation, is coordinated in advance with the department and the department has determined that the use is not harmful to water resources.

(e) The spoil material from maintenance dredging may be deposited in a self-contained, upland disposal site. The site is not required to be permitted if:

1. The site exists as of January 1, 2011;

2. A professional engineer certifies that the site has been designed in accordance with generally accepted engineering standards for such disposal sites;

3. The site has adequate capacity to receive and retain the dredged material; and

4. The site has operating and maintenance procedures established that allow for discharge of return flow of water and to prevent the escape of the spoil material into the waters of the state.

(f) The department must be notified at least 30 days before the commencement of maintenance dredging. The notice shall include, if applicable, the professional engineer certification required by paragraph (e).

(g) This subsection does not prohibit maintenance dredging of areas where the loss of original design function and constructed configuration has been caused by a storm event, provided that the dredging is performed as soon as practical after the storm event. Maintenance dredging that commences within 3 years after the storm event shall be presumed to satisfy this provision. If more than 3 years are needed to commence the maintenance dredging after the storm event, a request for a specific time extension to perform the maintenance dredging shall be submitted to the department, prior to the end of the 3-year period, accompanied by a statement, including supporting documentation, demonstrating that contractors are not available or that additional time is needed to obtain authorization for the maintenance dredging from the United States Army Corps of Engineers.

**History.**—s. 7, ch. 75-22; s. 143, ch. 77-104; s. 4, ch. 78-98; s. 1, ch. 78-146; s. 86, ch. 79-65; s. 1, ch. 80-44; s. 8, ch. 80-66; s. 3, ch. 82-80; s. 6, ch. 82-185; s. 65, ch. 83-218; s. 69, ch. 83-310; s. 43, ch. 84-338; s. 39, ch. 85-55; s. 12, ch. 86-138; s. 44, ch. 86-186; ss. 1, 3, ch. 89-324; s. 4, ch. 96-238; s. 3, ch. 97-22; s. 3, ch. 98-131; s. 163, ch. 99-8; s. 1, ch. 2000-145; s. 1, ch. 2002-164; s. 4, ch. 2002-253; s. 1, ch. 2004-16; s. 46, ch. 2006-1; s. 12, ch. 2006-220; s. 8, ch. 2006-309; s. 4, ch. 2008-40; s. 202, ch. 2008-247; s. 52, ch. 2009-21; s. 5, ch. 2010-201; s. 3, ch. 2010-208; s. 8, ch. 2011-164; s. 4, ch. 2012-65; s. 6, ch. 2012-150; s. 21, ch. 2013-92.

**403.8135 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 chapter 253 and this chapter 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 (3), 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) After giving public notice and, upon the request of any person, holding a public hearing in the area affected, the department may issue a general permit in the Biscayne Bay Aquatic Preserve for the placement of riprap waterward of vertical seawalls or as replacement for vertical seawalls, for the purpose of enhancing the water quality and fish and wildlife habitats of the Biscayne Bay area. No other general permits shall be issued within the preserve. Nothing herein shall be construed to abrogate the rights of any person under the provisions of chapter 120. In addition to the public notice required by this subsection, public notice shall be provided by United States mail to any person who requests, in writing, to have her or his name placed on a mailing list by the department. Notice of activities allowed pursuant to such general permit shall also be mailed, at least monthly, to all persons on the list.

(3) 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 ss. 120.569 and 120.57. The failure to request a hearing within 21 days after publication of notice constitutes a waiver of any right to a hearing under ss. 120.569 and 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.

(4) The department is authorized to delegate any of its general permit authority to the district offices of the department or to water management districts.

(5) Notwithstanding the procedures set forth in subsections (1) and (3), the department may specify by rule alternative notice procedures for certain activities which are of a routine and repetitive nature and which are an integral part of agricultural activities or silvicultural activities or are activities of another state agency.

(6) Construction and maintenance of electric transmission or distribution lines in wetlands by electric utilities, as defined in s. 366.02, shall be authorized by general permit provided the following provisions are implemented:

(a) All permanent fill shall be at grade. Fill shall be limited to that necessary for the electrical support structures, towers, poles, guy wires, stabilizing backfill, and at-grade access roads limited to 20-foot widths; and

(b) The permittee may utilize access and work areas limited to the following: a linear access area of up to 25 feet wide between electrical support structures, an access area of up to 25 feet wide to electrical support structures from the edge of the right-of-way, and a work area around the electrical support structures, towers, poles, and guy wires. These areas may be cleared to ground, including removal of stumps as necessary; and

(c) Vegetation within wetlands may be cut or removed no lower than the soil surface under the conductor, and 20 feet to either side of the outermost conductor, while maintaining the remainder of the project right-of-way within the wetland by selectively clearing vegetation which has an expected mature height above 14 feet. Brazilian pepper, Australian pine, and melaleuca shall be eradicated throughout the wetland portion of the right-of-way; and

(d) Erosion control methods shall be implemented as necessary to ensure that state water quality standards for turbidity are met. Diversion and impoundment of surface waters shall be minimized; and

(e) The proposed construction and clearing shall not adversely affect threatened and endangered species; and

(f) The proposed construction and clearing shall not result in a permanent change in existing ground surface elevation; and

(g) Where fill is placed in wetlands, the clearing to ground of forested wetlands is restricted to 4.0 acres per 10-mile section of the project, with no more than one impact site exceeding 0.5 acres. The impact site which exceeds 0.5 acres shall not exceed 2.0 acres. The total forested wetland clearing to the ground per 10-mile section shall not exceed 15 acres. The 10-mile sections shall be measured from the beginning to the terminus, or vice versa, and the section shall not end in a wetland; and

(h) The general permit authorized by this subsection shall not apply in forested wetlands located within 550 feet from the shoreline of a named water body designated as an Outstanding Florida Water; and

(i) This subsection also applies to transmission lines and appurtenances certified under part II of this chapter. However, the criteria of the general permit shall not affect the authority of the siting board to condition certification of transmission lines as authorized under part II of this chapter.

Maintenance of existing electric lines and clearing of vegetation in wetlands conducted without the placement of structures in wetlands or other dredge and fill activities does not require an individual or general construction permit. For the purpose of this subsection, wetlands shall mean the landward extent of waters of the state regulated under s. 403.927 and isolated and nonisolated wetlands regulated under part IV of chapter 373. The provisions provided in this subsection apply to the permitting requirements of the department, any water management district, and any local government implementing part IV of chapter 373 or [1]part VIII of this chapter.

(7) The department and the water management districts may provide by rule for general permits with special criteria including acreage thresholds authorizing the construction of transmission and distribution lines in forested wetlands located within 550 feet of the shoreline of a named water body designated as an Outstanding Florida Water. If a portion of a project qualifies for the general permit under subsection (6) and another portion of that project qualifies under this subsection, then a single general permit may be issued pursuant to both subsections.

(8) An aquaculture general permit shall be established for the cultivation of aquatic fish and other marine organisms, except alligators, in upland aquaculture facilities when such facilities have individual production units whose annual production and water discharge meet or exceed the parameters established by the NPDES program. Activities that have individual production units whose annual production and water discharge are less than the parameters established by the NPDES program shall be regulated pursuant to s. 403.0885(5).

(9) An aquaculture general permit under s. 403.088 shall be established for the freshwater cultivation of fish and other aquatic animals, except alligators, in upland aquaculture facilities.

(10) The authority to issue or deny general permits developed by the department pursuant to subsection (8) for aquaculture facilities is hereby delegated to the water management districts when they have regulatory responsibility for the facility pursuant to s. 373.046.

(11) Upon agreement by the applicant, the department, and the applicable water management district, the department and water management district may reassign the regulatory responsibilities described in s. 373.046(5), based on the specific aquaculture operation, to achieve a more efficient and effective permitting process.

(12) A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres meeting the criteria of this subsection. Such stormwater management systems must be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373. There is a rebuttable presumption that the discharge from such systems complies with state water quality standards. The construction of such a system may proceed without any further agency action by the department or water management district if, before construction begins, an electronic self-certification is submitted to the department or water management district which certifies that the proposed system was designed by a Florida registered professional and that the registered professional has certified that the proposed system will meet the following additional requirements:

(a) The total project area involves less than 10 acres and less than 2 acres of impervious surface;

(b) Activities will not impact wetlands or other surface waters;

(c) Activities are not conducted in, on, or over wetlands or other surface waters;

(d) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner;

(e) The project is not part of a larger common plan, development, or sale; and

(f) The project does not:

1. Cause adverse water quantity or flooding impacts to receiving water and adjacent lands;

2. Cause adverse impacts to existing surface water storage and conveyance capabilities;

3. Cause a violation of state water quality standards; or

4. Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. 373.042 or a work of the district established pursuant to s. 373.086.

**History.**—s. 9, ch. 80-66; s. 12, ch. 82-27; s. 7, ch. 84-79; s. 60, ch. 86-186; s. 2, ch. 86-295; s. 1, ch. 93-24; s. 19, ch. 96-247; s. 168, ch. 96-410; s. 1011, ch. 97-103; s. 23, ch. 98-333; s. 18, ch. 2000-364; s. 98, ch. 2008-227; s. 19, ch. 2012-205; s. 7, ch. 2016-130.

[1]**Note.**—Section 18, ch. 95-145, repealed s. 403.939, which constituted the entirety of former part VIII.

**403.8141 Special event permits.**—

(1) The department shall issue permits for special events under s. 253.0345. The permits must be for a period that runs concurrently with the lease or letter of consent issued pursuant to s. 253.0345 and must allow for the movement of temporary structures within the footprint of the lease area.

(2) An administrative challenge to any proposed regulatory permit related to a special event is subject to the summary hearing provisions of s. 120.574, except that the summary proceeding must be conducted within 30 days

after a party files a motion for a summary hearing regardless of whether the parties agree to the summary proceeding.

**History.**—s. 22, ch. 2013-92; s. 7, ch. 2016-116.

**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 department shall require the applicant for a permit to construct or expand a solid waste facility to publish such notice. 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 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 ss. 120.569 and 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 ss. 120.569 and 120.57. The failure to request a hearing within 14 days after publication of notice of proposed agency action constitutes a waiver of any right to a hearing on the application under ss. 120.569 and 120.57.

**History.**—s. 10, ch. 80-66; s. 13, ch. 82-27; s. 44, ch. 84-338; s. 48, ch. 87-225; s. 169, ch. 96-410.

**403.816 Permits for maintenance dredging of deepwater ports and beach restoration projects.**—

(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, harbor berths, and beach restoration projects approved pursuant to chapter 161. However, permits issued for dredging river channels which are not a part of a deepwater port shall be valid for no more than five years. No charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority.

(2) The provisions of s. 253.77 do 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.

(3) The provisions of this section relating to ports 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, St. Petersburg, Port Bartow, Florida Power Corporation's Crystal River Canal, Boca Grande, Green Cove Springs, and Pensacola.

**History.**—ss. 3, 5, ch. 81-228; s. 8, ch. 84-79; s. 2, ch. 85-296; s. 13, ch. 86-138; s. 20, ch. 89-175; s. 4, ch. 89-324.

**403.8163 Sites for disposal of spoil from maintenance dredge operations; selection.**—Lands created by spoil or used as dredge spoil sites must be given priority consideration as sites for disposal of spoil in maintenance dredge operations, except when the [1]Division of Beaches and Shores of the Department of Environmental Protection determines that the spoil, or some substantial portion thereof, may be placed as compatible sediment into the littoral system of an adjacent sandy beach or coastal barrier dune system for the preservation and protection of such beach or dune system.

**History.**—s. 48, ch. 84-338; s. 14, ch. 86-138; s. 424, ch. 94-356.

[1]**Note.**—The Division of Beaches and Shores was abolished by s. 1, ch. 94-356.

**PART VI**

## WATER SUPPLY; WATER TREATMENT PLANTS



**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, in a lead-agency role of primary responsibility for the program, and by the Department of Health 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; s. 425, ch. 94-356; s. 164, ch. 99-8.

**403.852 Definitions; ss. 403.850-403.864.**—As used in ss. 403.850-403.864:

(1) "Department" means the Department of Environmental Protection, 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 system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system is either a community water system or a noncommunity water system. The term "public water system" 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 that is not a community water system. A noncommunity water system is either a nontransient noncommunity water system or a transient 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, 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.

(17) "Nontransient noncommunity water system" means a noncommunity water system that regularly serves at least 25 of the same persons over 6 months per year.

(18) "Transient noncommunity water system" means a noncommunity water system that has at least 15 service connections or regularly serves at least 25 persons daily at least 60 days out of the year but that does not regularly serve 25 or more of the same persons for more than 6 months per year.

**History.**—s. 3, ch. 77-337; s. 1, ch. 82-80; s. 10, ch. 89-324; s. 38, ch. 91-305; s. 426, ch. 94-356; s. 165, ch. 99-8; s. 1, ch. 2001-270.

**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 nontransient noncommunity water systems and transient noncommunity water systems, which shall be no more stringent than the corresponding national primary or secondary drinking water regulations in effect at such time, except that nontransient noncommunity systems shall monitor and comply with additional primary drinking water regulations as determined by the department.

(2) Subject to the exceptions authorized pursuant to s. 403.854, state primary drinking water regulations apply to each public water system in the state, except that such regulations do 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 the request of the owner or operator of a transient noncommunity water system using groundwater as a source of supply and serving religious institutions or businesses, other than restaurants or other public food service establishments or religious institutions with school or day care services, the department, or a local county health department 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 such 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 are not required for transient 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.

(7) Unless otherwise required by federal act, the department may require testing of public water supply systems only for those contaminants for which maximum contaminant levels have been set by the administrator or the department or for which the United States Environmental Protection Agency or the department has established a correlation between pollutant concentration and human health effects.

**History.**—s. 4, ch. 77-337; s. 1, ch. 79-358; s. 45, ch. 84-338; s. 45, ch. 86-186; s. 11, ch. 89-324; s. 103, ch. 97-101; s. 2, ch. 2001-270; s. 20, ch. 2012-205.

**403.8532 Drinking water state revolving loan fund; use; rules.**—

(1) The purpose of this section is to assist in implementing the legislative declarations of public policy contained in ss. 403.021 and 403.851 by establishing infrastructure financing, technical assistance, and source water protection programs to assist public drinking water systems in achieving and maintaining compliance with the Florida Safe Drinking Water Act and the federal Safe Drinking Water Act, as amended, and to conserve and protect the quality of waters of the state.

(2) For purposes of this section, the term:

(a) “Bonds” means bonds, certificates, or other obligations of indebtedness issued by the corporation under this section and s. 403.1837.

(b) “Corporation” means the Florida Water Pollution Control Financing Corporation created pursuant to s. 403.1837.

(c) “Financially disadvantaged community” means the service area of a project to be served by a public water system that meets criteria established by department rule and in accordance with federal guidance.

(d) “Local governmental agency” means 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 a public water system.

(e) “Public water system” means all facilities, including land, necessary for the treatment and distribution of water for human consumption and includes public water systems as defined in s. 403.852 and as otherwise defined in the federal Safe Drinking Water Act, as amended. Such systems may be publicly owned, privately owned, investor-owned, or cooperatively held.

(f) “Small public water system” means a public water system that regularly serves fewer than 10,000 people.

(3) The department may make, or request that the corporation make, loans, grants, and deposits to community water systems; for-profit, privately owned, or investor-owned water systems; nonprofit, transient, noncommunity water systems; and nonprofit, nontransient, noncommunity water systems to assist them in planning, designing, and constructing public water systems. The department may provide loan guarantees, purchase loan insurance, and refinance local debt through the issue of new loans for projects approved by the department. Public water systems

may borrow funds made available pursuant to this section and may pledge any revenues or other adequate security available to them to repay any funds borrowed.

(a) The department shall administer loans so that amounts credited to the Drinking Water Revolving Loan Trust Fund in any fiscal year are reserved for the following purposes:

1. At least 15 percent for qualifying small public water systems.

2. Up to 15 percent for qualifying financially disadvantaged communities.

(b) If an insufficient number of the projects for which funds are reserved under this subsection have been submitted to the department at the time the funding priority list authorized under this section is adopted, the reservation of these funds no longer applies. The department may award the unreserved funds as otherwise provided in this section.

(4) The department is authorized, subject to legislative appropriation authority and authorization of positions, to use funds from the annual capitalization grant for activities authorized under the federal Safe Drinking Water Act, as amended, such as:

(a) Program administration.

(b) Technical assistance.

(c) Source water protection program development and implementation, including wellhead and aquifer protection programs, programs to alleviate water quality and water supply problems associated with saltwater intrusion, programs to identify, monitor, and assess source waters, and contaminant source inventories.

(d) Capacity development and financial assessment program development and administration.

(e) The costs of establishing and administering an operator certification program for drinking water treatment plant operators, to the extent such costs cannot be paid for from fees.

This subsection does not limit the department's ability to apply for and receive other funds made available for specific purposes under the federal Safe Drinking Water Act, as amended.

(5) The term of loans made pursuant to this section shall not exceed 30 years. The interest rate on such loans shall be no greater than that paid on the last bonds sold pursuant to s. 14, Art. VII of the State Constitution.

(6)(a) The department may provide financial assistance to financially disadvantaged communities for the purpose of planning, designing, and constructing public water systems. Such assistance may include the forgiveness of loan principal.

(b) The department shall establish by rule the criteria for determining whether a public water system serves a financially disadvantaged community. Such criteria shall be based on the median household income of the service population or other reliably documented measures of disadvantaged status.

(7) To the extent not allowed by federal law, the department shall not provide financial assistance for projects primarily intended to serve future growth.

(8) In order to ensure that public moneys are managed in an equitable, prudent, and cost-effective manner, the total amount of money loaned to any public water system during a fiscal year shall be no more than 25 percent of the total funds available for making loans during that year. The minimum amount of a loan shall be $75,000.

(9) The department may adopt rules regarding the procedural and contractual relationship between the department and the corporation under s. 403.1837 and to carry out the purposes of this section and the federal Safe Drinking Water Act, as amended. Such rules shall:

(a) Set forth a priority system for loans based on public health considerations, compliance with state and federal requirements relating to public drinking water systems, and affordability. The priority system shall give special consideration to:

1. Projects that provide for the development of alternative drinking water supply projects and management techniques in areas where existing source waters are limited or threatened by saltwater intrusion, excessive drawdowns, contamination, or other problems;

2. Projects that provide for a dependable, sustainable supply of drinking water and that are not otherwise financially feasible; and

3. Projects that contribute to the sustainability of regional water sources.

(b) Establish the requirements for the award and repayment of financial assistance.

(c) Require evidence of credit worthiness and adequate security, including an identification of revenues to be pledged, and documentation of their sufficiency for loan repayment and pledged revenue coverage, to ensure that each loan recipient can meet its loan repayment requirements.

(d) Require each project receiving financial assistance to be cost-effective, environmentally sound, implementable, and self-supporting.

(e) Implement other provisions of the federal Safe Drinking Water Act, as amended.

(10) The department shall prepare a report at the end of each fiscal year, detailing the financial assistance provided under this section, service fees collected, interest earned, and loans outstanding.

(11) Prior to approval of a loan, the local government or public water system shall, at a minimum:

(a) Provide a repayment schedule.

(b) Submit evidence of the permittability or implementability of the project proposed for financial assistance.

(c) Submit plans and specifications, biddable contract documents, or other documentation of appropriate procurement of goods and services.

(d) Provide assurance that records will be kept using generally accepted accounting principles and that the department or its agents and the Auditor General will have access to all records pertaining to the loan.

(e) Provide assurance that the public water system will be properly operated and maintained in order to achieve or maintain compliance with the requirements of the Florida Safe Drinking Water Act and the federal Safe Drinking Water Act, as amended.

(f) Document that the public water system will be self-supporting.

(12) The department may conduct an audit of the loan project upon completion, or may require that a separate project audit, prepared by an independent certified public accountant, be submitted.

(13) The department may require reasonable service fees on loans made to public water systems to ensure that the Drinking Water Revolving Loan Trust Fund will be operated in perpetuity and to implement the purposes authorized under this section. Service fees shall not be less than 2 percent nor greater than 4 percent of the loan amount exclusive of the service fee. Service fee revenues shall be deposited into the department’s Grants and Donations Trust Fund. The fee revenues, and interest earnings thereon, shall be used exclusively to carry out the purposes of this section.

(14) The Drinking Water Revolving Loan Trust Fund established under s. 403.8533 shall be used exclusively to carry out the purposes of this section. Any funds that are not needed on an immediate basis for financial assistance shall be invested pursuant to s. 215.49. State revolving fund capitalization grants awarded by the Federal Government, state matching funds, and investment earnings thereon shall be deposited into the fund. The principal and interest of all loans repaid and investment earnings thereon shall be deposited into the fund.

(15)(a) If a local governmental agency defaults under the terms of its loan agreement, the department shall so certify to the Chief Financial Officer, who shall forward the amount delinquent to the department from any unobligated 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. Certification of delinquency shall not limit the department from pursuing other remedies available for default on a loan, including accelerating loan repayments, eliminating all or part of the interest rate subsidy on the loan, and court appointment of a receiver to manage the public water system.

(b) If a public water system owned by a person other than a local governmental agency defaults under the terms of its loan agreement, the department may take all actions available under law to remedy the default.

(c) The department may impose a penalty for delinquent loan payments in the amount of 6 percent of the amount due, in addition to charging the cost to handle and process the debt. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(16) The department is authorized to terminate or rescind a financial assistance agreement when the recipient fails to comply with the terms and conditions of the agreement.

**History.**—s. 5, ch. 94-243; s. 1, ch. 97-236; s. 112, ch. 2001-266; s. 3, ch. 2001-270; s. 431, ch. 2003-261; s. 42, ch. 2010-205; s. 8, ch. 2016-226.

**403.8533 Drinking Water Revolving Loan Trust Fund.**—

(1) There is created the Drinking Water Revolving Loan Trust Fund to be administered by the Department of Environmental Protection for the purposes of:

(a) Funding for low-interest loans for planning, engineering design, and construction of public drinking water systems and improvements to such systems;

(b) Funding for compliance activities, operator certification programs, and source water protection programs;

(c) Funding for administering loans by the department; and

(d) Paying amounts payable under any service contract entered into by the department under s. 403.1837, subject to annual appropriation by the Legislature.

(2) The trust fund shall be used for the deposit of all moneys awarded by the Federal Government to fund revolving loan programs. All moneys in the fund that are not needed on an immediate basis for loans shall be invested pursuant to s. 215.49. The principal and interest of all loans repaid and investment earnings shall be deposited into this fund.

(3) Pursuant to s. 19(f)(3), Art. III of the State Constitution, the Drinking Water Revolving Loan Trust Fund is exempt from the termination provisions of s. 19(f)(2), Art. III of the State Constitution.

**History.**—s. 1, ch. 97-232; s. 2, ch. 99-108; s. 8, ch. 2001-65; s. 43, ch. 2010-205.

**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. 79-161.

**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 Pub. L. No. 93-523, s. 1416(g), 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 disinfection requirement applicable to transient noncommunity water systems using groundwater as a source of supply 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 transient noncommunity water system using groundwater as a source of supply 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 transient noncommunity water system granted a waiver under subsection (4) or subsection (5).

**History.**—s. 5, ch. 77-337; s. 1, ch. 80-417; s. 70, ch. 90-331; s. 39, ch. 91-305; s. 4, ch. 2001-270.

**403.855 Imminent hazards.**—In coordination with the Department of Health, 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(4).

(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. 163, ch. 79-400; s. 5, ch. 83-310; s. 170, ch. 96-410; s. 166, ch. 99-8.

**403.856 Plan for emergency provision of water.**—The department shall adopt an adequate plan, after consultation with the Department of Health, 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; s. 167, ch. 99-8.

**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 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; s. 168, ch. 99-8.

**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 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 the requirements of a permit issued under s. 403.861(7).

(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 of reclaimed water from domestic wastewater treatment reuse facilities if the effluent quality meets the water quality standards established by the Department of Environmental Protection as part of the operation permit to construct the treatment facility.

(a) By January 1, 1995, the Department of Environmental Protection shall promulgate by rule effluent standards and conditions for any project proposing wastewater reuse of reclaimed water, for injection of the reclaimed water into the Floridan Aquifer or Biscayne Aquifer. Any injection into a geologic formation of the

Floridan Aquifer or Biscayne Aquifer containing total dissolved solids of 500 milligrams per liter or less must meet the requirements of these rules.

(b) In the event a facility does not receive, as a part of its operation permit, permission for injection which assures compliance with department rules promulgated pursuant to this subsection, the treated or untreated effluent shall be returned to the wastewater treatment plant from which the effluent was diverted during any testing period required by department rules or to another legally acceptable reuse or disposal alternative.

The provisions of this subsection do not apply to treated or untreated effluent currently discharging into the Floridan Aquifer or Biscayne Aquifer on June 22, 1983. However, any expansion of existing facilities on or after the effective date of this act are subject to the requirements of this subsection.

**History.**—s. 10, ch. 77-337; s. 164, ch. 79-400; s. 1, ch. 83-161; s. 3, ch. 94-153; s. 169, ch. 99-8; s. 5, ch. 2001-270.

**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 or a county health department that has been approved by the department under s. 403.862(1)(c) 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.

(5) In addition to any judicial or administrative remedy authorized by this part, the department or a county health department that has received approval by the department pursuant to s. 403.862(1)(c) shall assess administrative penalties for violations of this section in accordance with s. 403.121.

(6) Fees collected pursuant to this section shall be deposited in the Water Quality Assurance Trust Fund or the appropriate County Health Department Trust Fund, in accordance with s. 381.0063, to be used to carry out the provisions of this part. The department may use a portion of the fund to contract for services to help collect noncompliance fees assessed pursuant to this section.

**History.**—s. 11, ch. 77-337; s. 71, ch. 90-331; s. 2, ch. 93-50; s. 3, ch. 93-264; s. 104, ch. 97-101; s. 3, ch. 97-236; s. 5, ch. 2001-258.

**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) Issue permits for constructing, altering, extending, or operating a public water system, based upon the size of the system, type of treatment provided by the system, or population served by the system, including issuance of an annual operation license.

(a) The department may issue a permit for a public water system based upon review of a preliminary design report or plans and specifications, a completed permit application form, and other required information as set forth in department rule, including receipt of an appropriate fee. The department may require a fee in an amount sufficient to cover the costs of viewing and acting upon any application for the construction and operation of a public water supply system and the costs of surveillance and other field services associated with any permit issued, but the amount in no case shall exceed $15,000. The fee schedule shall be adopted by rule based on a sliding scale relating to the size, type of treatment, or population served by the system that is proposed by the applicant.

(b) Each public water system that operates in this state shall submit annually to the department an operation license fee, separate from and in addition to any permit application fees required under paragraph (a), in an amount established by department rule. The amount of each fee shall be reasonably related to the size of the public water system, type of treatment, population served, amount of source water used, or any combination of these factors, but the fee may not be less than $50 or greater than $7,500. Public water systems shall pay annual operation license fees at a time and in a manner prescribed by department rule.

(8) Initiate rulemaking no later than July 1, 2008, to increase each drinking water permit application fee authorized under s. 403.087(6) and this part and adopted by rule to ensure that such fees are increased to reflect, at a minimum, any upward adjustment in the Consumer Price Index compiled by the United States Department of Labor, or similar inflation indicator, since the original fee was established or most recently revised.

(a) The department shall establish by rule the inflation index to be used for this purpose. The department shall review the drinking water permit application fees authorized under s. 403.087(6) and this part at least once every 5 years and shall adjust the fees upward, as necessary, within the established fee caps to reflect changes in the Consumer Price Index or similar inflation indicator. In the event of deflation, the department shall consult with the Executive Office of the Governor and the Legislature to determine whether downward fee adjustments are appropriate based on the current budget and appropriation considerations. The department shall also review the drinking water operation license fees established pursuant to paragraph (7)(b) at least once every 5 years to adopt, as necessary, the same inflationary adjustments provided for in this subsection.

(b) Effective July 1, 2008, the minimum fee amount shall be the minimum fee prescribed in this section, and such fee amount shall remain in effect until the effective date of fees adopted by rule by the department.

(9) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act.

(10) Review and approve record drawings prior to allowing operation of any new, altered, or extended public water system for which a valid permit has been issued under subsection (7).

(11) 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 is necessary.

(12) Plan, develop, and coordinate program activities for the management and implementation of the state primary and secondary drinking water regulations, including taking sanitary surveys.

(13) Collect and disseminate information and conduct educational and training programs relating to drinking water and public water systems.

(14) 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.

(15) 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 in conducting its public water supply laboratory functions.

(16) 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.

(17) 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. The information may include raw water data to determine whether additional treatment will be required to ensure that water at the consumer's tap meets applicable drinking water standards and action levels.

(18) Issue such orders as may be necessary to effectuate the intent and purposes of this act.

(19) Assist state and local agencies in the determination and investigation of suspected waterborne disease outbreaks, including diseases associated with chemical contaminants.

(20) Encourage public involvement and participation in the planning and implementation of the state public water system supervisory plans.

(21)(a) Upon issuance of a construction permit to construct a new public water system drinking water treatment facility to provide potable water supply using a surface water that, at the time of the permit application, is not being used as a potable water supply, and the classification of which does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(29)(b).

(b) For existing public water system drinking water treatment facilities that use a surface water as a treated potable water supply, which surface water classification does not include potable water supply as a designated use, the department shall add treated potable water supply as a designated use of the surface water segment in accordance with s. 403.061(29)(b).

**History.**—s. 12, ch. 77-337; s. 165, ch. 79-400; s. 46, ch. 86-186; s. 40, ch. 91-305; s. 107, ch. 98-200; s. 170, ch. 99-8; s. 6, ch. 2001-270; s. 20, ch. 2008-150; s. 35, ch. 2016-1.

**403.8615 Determination of capability and capacity development.**—

(1) The department shall require all new community water systems and new nontransient, noncommunity water systems seeking to commence operations after October 1, 1999, to demonstrate the technical, managerial, and financial capabilities to comply with national primary drinking water regulations as required by the federal Safe Drinking Water Act, as amended. The department shall establish by rule, consistent with any federal guidance on capacity development, the criteria for determining technical, managerial, and financial capabilities. At a minimum, such water systems must:

(a) Employ or contract for the services of a certified operator, unless the department has waived this requirement pursuant to s. 403.854(5).

(b) Demonstrate the capabilities to conduct required monitoring and reporting programs and maintain appropriate records of such monitoring.

(c) Demonstrate financial soundness through the posting of a bond, creation of a reserve, documentation of an unreserved revenue source, or other appropriate means established by department rule.

(2) If the department determines that such a water system cannot demonstrate technical, managerial, or financial capability, a permit may not be issued for that system pursuant to s. 403.861(7) until the water system has been determined to have the required capabilities.

**History.**—s. 4, ch. 97-236.

**403.862 Department of Health; public water supply duties and responsibilities; coordinated budget requests with department.**—

(1) Recognizing that supervision and control of county health departments of the Department of Health is retained by the State Surgeon General, and that public health aspects of the state public water supply program

require joint participation in the program by the Department of Health and its units and the department, the Department of Health 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 approved by the department as having qualified sanitary engineering staffs and available legal resources, in addition to the duties prescribed in paragraph (b), to:

1. Review, evaluate, and approve or disapprove each application for the construction, modification, or expansion of a public water system to determine compliance with federal, state, and local requirements. A copy of the completed permit application and a report of the final action taken by the county health department shall be forwarded to the appropriate department district office.

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.

5. Enforce the provisions of this part and rules adopted under this part.

(d) Require those county health departments designated by the Department of Health as having the capability of performing bacteriological analyses, in addition to the duties prescribed in paragraph (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 otherwise covered or included in this part. This shall include the authority to adopt and enforce rules, including definitions of terms, to protect the health, safety, or welfare of persons being served by all private water systems and all public water systems not otherwise covered by this part.

(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 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 the department shall coordinate their respective budget requests to ensure that sufficient funding is provided to the Department of Health 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 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.

(4) If the department determines that a county health department or other unit of the Department of Health is not performing its public water supply responsibilities satisfactorily, the secretary of the department shall certify such determination in writing to the State Surgeon General. The State Surgeon General shall evaluate the determination of the department and shall inform the secretary of the department of his or her evaluation. Upon concurrence, the State Surgeon General shall take immediate corrective action.

(5) Nothing in this section shall serve to negate the powers, duties, and responsibilities of the State Surgeon General relating to the protection of the public from the spread of communicable disease, epidemics, and plagues.

(6) No county health department may be designated and approved unless it can carry out all functions of the drinking water program. Each year, the department, in conjunction with the Department of Health, shall review approved county health departments to determine continued qualification for approved status. To receive and maintain approved status, a county health department shall meet the following criteria and other reasonable and necessary requirements established by the department for its district offices:

(a) The staff shall be under the direction of a qualified individual who is a registered professional engineer in Florida pursuant to chapter 471.

(b) The county health department shall have sufficient legal resources to carry out the requirements of this part.

(7) Fees and penalties received from suppliers of water pursuant to ss. 403.860(3), (4), and (5) and 403.861(7)(a) in counties where county health departments have been approved by the department pursuant to paragraph (1)(c) shall be deposited in the appropriate County Health Department Trust Fund to be used for the purposes stated in paragraph (1)(c).

**History.**—s. 13, ch. 77-337; s. 166, ch. 79-400; s. 12, ch. 89-324; s. 73, ch. 90-331; s. 41, ch. 91-305; s. 3, ch. 93-50; s. 427, ch. 94-356; s. 105, ch. 97-101; s. 19, ch. 97-103; s. 171, ch. 99-8; s. 28, ch. 2000-242; s. 54, ch. 2008-6; s. 53, ch. 2009-21.

**403.863 State public water supply laboratory certification program.**—

(1) The department and the Department of Health shall jointly develop a state program, and the Department of Health shall adopt rules for the evaluation and certification of all laboratories, other than the principal state laboratory, which perform or make application to perform analyses pursuant to the Florida Safe Drinking Water Act or which conduct a water analysis business. 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 may adopt and enforce rules to administer this section, including, but not limited to, definitions of terms, certified laboratory personnel requirements, methodologies for the collection of samples, the handling and analysis of samples, methodology and proficiency testing, the format and frequency of reports, onsite inspections of laboratories, and quality assurance.

(3) The Department of Health shall have the responsibility for the operation and implementation of the state laboratory certification program. The Department of Health shall contract for the evaluation and review of laboratory certification applications and laboratory inspections. 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 by the Department of Health.

(4) The following acts constitute grounds for which the disciplinary actions specified in subsection (5) may be taken:

(a) Making false statements on an application or on any document associated with certification.

(b) Making consistent errors in analyses or erroneous reporting.

(c) Permitting personnel who are not qualified, as required by rules of the Department of Health, to perform analyses.

(d) Falsifying the results of analyses.

(e) Failing to employ approved laboratory methods in performing analyses as outlined in rules of the Department of Health.

(f) Failing to properly maintain facilities and equipment according to the laboratory's quality assurance plan.

(g) Failing to report analytical test results or maintain required records of test results as outlined in rules of the Department of Health.

(h) Failing to participate successfully in a performance evaluation program approved by the Department of Health.

(i) Violating any provision of this section or of the rules adopted under this section.

(j) Falsely advertising services or credentials.

(k) Failing to pay fees for initial certification or renewal certification or to pay inspection expenses incurred.

(l) Failing to report any change of an item included in the initial or renewal certification application.

(m) Refusing to allow representatives of the department or the Department of Health to inspect a laboratory and its records during normal business hours.

(5) When the Department of Health finds any applicant or certificateholder guilty of any of the grounds set forth in subsection (4), it may enter an order imposing one or more of the following penalties:

(a) Denial of an application for certification.

(b) Revocation or suspension of certification.

(c) Imposition of an administrative fine not to exceed $1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the certification on probation for a period of time and subject to such conditions as the Department of Health specifies.

(f) Restricting the authorized scope of the certification.

(6) 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 by interagency agreement between the two departments. Such agreement shall require the Department of Health to provide the department with a quarterly accounting of the funds transferred.

(7) A laboratory that conducts a water analysis business, except the principal state laboratory, may not 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.

(8) For the purposes of this section, the term "principal state laboratory" means the central laboratory of the Department of Health.

(9) 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.

(10) The certification program shall be governed by chapter 120.

**History.**—s. 14, ch. 77-337; s. 167, ch. 79-400; s. 23, ch. 98-151; s. 90, ch. 2012-184.

**403.8635 State drinking water sample laboratory certification program.**—

(1) In addition to certifying laboratories pursuant to s. 403.863, the Department of Health is authorized to establish a periodic certification and approval program for laboratories that perform analyses of drinking water samples, which program will assure the acceptable quality, reliability, and validity of all testing results.

(2) The Department of Health has the responsibility for the operation and implementation of laboratory certification pursuant to this section, except that, upon completion of the evaluation and review of an application for laboratory certification, the evaluation shall be forwarded, along with recommendations, to the department for review and comment prior to final approval or disapproval.

(3) The Department of Health is authorized to charge and collect fees for the evaluation and certification of laboratories pursuant to this part. The fee schedule shall be based on the number of analytical functions for which certification is sought. Such fees shall be sufficient to meet the costs incurred by the Department of Health in the administration and operation of this program. All fees shall be deposited in a trust fund administered by the Department of Health to be used for the sole purpose of this section.

**History.**—s. 49, ch. 84-338; s. 428, ch. 94-356; s. 172, ch. 99-8.

**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 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 no later than February 1 of each year.

(2) In furtherance of this intent, the Department of Health and the department shall jointly develop an accounting program for use by the department and the Department of Health 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 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 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 any other entity of the Department of Health involved in and carrying out public water supply functions to account to the Department of Health 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 any other entity of the Department of Health 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. 77-337; s. 100, ch. 79-164; s. 5, ch. 95-144; s. 173, ch. 99-8; s. 113, ch. 2001-266.

**403.8645 Intended Use Plan.**—

(1) The Florida Legislature recognizes that over 80 percent of the state's population lives in coastal areas and is dependent on groundwater sources for drinking water supplies. Further, the Legislature recognizes that saltwater intrusion is an increased threat to healthful and safe drinking water supplies.

(2) The Intended Use Plan required of the department under the federal Safe Drinking Water Act, as amended, shall provide, in general, to the maximum extent practicable, that priority for the use of funds be given to projects that:

(a) Address the most serious risk to human health, especially projects that would develop alternative water supply in areas with saltwater intrusion problems;

(b) Are necessary to ensure compliance with the requirements of the federal Safe Drinking Water Act, as amended, including requirements for filtration; and

(c) Assist systems most in need on a per-household basis according to affordability criteria established by the Department of Environmental Protection by rule.

**History.**—s. 2, ch. 97-236.

**403.865 Water and wastewater facility personnel; legislative purpose.**—The Legislature finds that the threat to the public health and the environment from the operation of water and wastewater treatment plants and water distribution systems mandates that qualified personnel operate these facilities. It is the legislative intent that any person who performs the duties of an operator and who falls below minimum competency or who otherwise presents a danger to the public be prohibited from operating a plant or system in this state.

**History.**—s. 5, ch. 97-236; s. 7, ch. 2001-270.

**403.866 Definitions; ss. 403.865-403.876.**—As used in ss. 403.865-403.876, the term:

(1) "Domestic wastewater collection 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.

(2) "Domestic wastewater treatment plant" means any plant or other works used for the purpose of treating, stabilizing, or holding domestic wastes.

(3) "Operator" means any person, including the owner, who is in onsite charge of the actual operation, supervision, and maintenance of a water treatment plant, water distribution system, or domestic wastewater treatment plant and includes the person in onsite charge of a shift or period of operation during any part of the day.

(4) "Public water system" has the same meaning as it has in s. 403.852.

(5) "Water distribution system" means those components of a public water system used in conveying water for human consumption from the water treatment plant to the consumer's property, including pipes, tanks, pumps, and other constructed conveyances.

(6) "Water treatment plant" means those components of a public water system used in collection, treatment, and storage of water for human consumption, whether or not such components are under the control of the operator of such system.

**History.**—s. 6, ch. 97-236; s. 8, ch. 2001-270.

**403.867 License required.**—A person may not perform the duties of an operator of a water treatment plant, water distribution system, or a domestic wastewater treatment plant unless he or she holds a current operator's license issued by the department.

**History.**—s. 7, ch. 97-236; s. 9, ch. 2001-270.

**403.868 Requirements by a utility.**—A utility may have more stringent requirements than set by law, including certification requirements for water distribution systems and domestic wastewater collection systems operations, except that a utility may not require a licensed contractor, as defined in s. 489.105(3) to have any additional license for work in water distribution systems or domestic wastewater collection systems.

**History.**—s. 8, ch. 97-236.

**403.869 Authority to adopt rules.**—The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of ss. 403.865-403.876.

**History.**—s. 9, ch. 97-236; s. 108, ch. 98-200.

**403.87 Technical advisory council for water and domestic wastewater operator certification.**—Within 90 days of the effective date of this act, the secretary of the department shall appoint a technical advisory council as necessary for the purposes of ss. 403.865-403.876. The technical advisory council shall meet upon the request of the chair, upon request of a majority of its members, or upon request of the secretary. Members shall provide for their own expenses. The council shall consist of not less than five persons who, collectively, are expert in domestic wastewater and drinking water treatment, facilities operation, public health, and environmental protection, including at least one licensed wastewater treatment plant operator and one licensed water treatment plant operator.

**History.**—s. 10, ch. 97-236.

**403.871 Fees.**—The department shall establish fees to be paid by persons seeking licensure or license renewal to cover the entire cost to the department of administering ss. 403.865-403.876, including, but not limited to, the costs associated with application review and examination, reexamination, licensing and renewal, renewal of an inactive license, reactivation of an inactive license, recordmaking, and recordkeeping, and the costs of ensuring compliance with ss. 403.865-403.876. The fees for license application and license renewal shall be nonrefundable. The department shall establish fees adequate to administer and implement ss. 403.865-403.876.

(1) The application fee may not exceed $100 and is not refundable.

(2) The renewal fee may not exceed $100 and is not refundable.

(3) All fees collected under this section must be deposited into the Water Quality Assurance Trust Fund. The fees shall be used exclusively to implement the provisions of ss. 403.865-403.876.

**History.**—s. 11, ch. 97-236; s. 10, ch. 2001-270; s. 23, ch. 2015-4.

**403.872 Requirements for licensure.**—

(1) Any person desiring to be licensed as a water treatment plant operator, a water distribution system operator, or a domestic wastewater treatment plant operator must apply to the department to take the licensure examination.

(2) The department shall examine the qualifications of any applicant who meets the criteria established by the department for licensure, submits a completed application, and remits the required fee.

(3) The department shall license as an operator any applicant who has passed the examination and meets the other criteria established under this section.

(4) The department shall establish, by rule, the criteria for licensure, including, but not limited to, a requirement of a high school diploma or its equivalent, a training course approved by the department, and onsite operational experience.

(5) The department may also include a requirement that an operator must not be the subject of a disciplinary or enforcement action in another state at the time of application for licensure in this state.

**History.**—s. 12, ch. 97-236; s. 11, ch. 2001-270.

**403.873 Renewal of license.**—

(1) The department shall renew a license upon receipt of the renewal application, proof of completion of department-approved continuing education units during the current biennium, and the renewal fee, and in accordance with the other provisions of ss. 403.865-403.876.

(2) The department shall adopt a procedure for the biennial renewal of licenses, including the requirements for continuing education.

**History.**—s. 13, ch. 97-236; s. 21, ch. 2008-150; s. 24, ch. 2015-4.

**403.874 Inactive status.**—

(1) The department shall reactivate an inactive license upon receipt of the reactivation application and fee within the 2-year period immediately following the expiration date of the license. Any license not reactivated within this 2-year period shall be null and void, and an operator seeking a license thereafter must meet the training, examination, and experience requirements for the type and class or level of license sought.

(2) The department shall adopt procedures for null and void licenses and how to obtain a new license after a license has become null and void.

**History.**—s. 14, ch. 97-236; s. 22, ch. 2008-150; s. 25, ch. 2015-4.

**403.875 Prohibitions; penalties.**—

(1) A person may not:

(a) Perform the duties of an operator of a water treatment plant, water distribution system, or domestic wastewater treatment plant unless he or she is licensed under ss. 403.865-403.876.

(b) Use the name or title “water treatment plant operator,” “water distribution system operator,” “domestic wastewater treatment plant operator” or any other words, letters, abbreviations, or insignia indicating or implying

that he or she is an operator, or otherwise holds himself or herself out as an operator, unless the person is the holder of a valid license issued under ss. 403.865-403.876.

(c) Present as his or her own the license of another.

(d) Knowingly give false or forged evidence to the department.

(e) Use or attempt to use a license that has been suspended, revoked, or placed on inactive or delinquent status.

(f) Employ unlicensed persons to perform the duties of an operator of a water treatment or domestic wastewater treatment plant or a water distribution system.

(g) Conceal information relative to any violation of ss. 403.865-403.876.

(2) Any person who violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 15, ch. 97-236; s. 12, ch. 2001-270.

**403.876 Grounds for disciplinary action.**—

(1) The department shall establish the grounds for taking disciplinary action, including suspending or revoking a valid license, placing a licensee on probation, refusing to issue a license, refusing to renew a license, or refusing to reactivate a license, and the imposition of an administrative fine, not to exceed $1,000 per count or offense. The fines collected under this section shall be deposited into the Water Quality Assurance Trust Fund.

(2) The department shall conduct disciplinary proceedings in accordance with chapter 120.

(3) The department shall reissue the license of a disciplined operator when that operator has complied with all terms and conditions of the department's final order.

**History.**—s. 16, ch. 97-236; s. 26, ch. 2015-4.

**403.88 Classification of water and wastewater treatment facilities and facility operators.**—

(1) The department shall classify water treatment plants, wastewater treatment plants, and water distribution systems by size, complexity, and level of treatment necessary to render the wastewater or source water suitable for its intended purpose in compliance with this chapter and department rules.

(2) The department shall establish the levels of certification and the staffing requirements for water treatment plant, water distribution system, and wastewater treatment plant operators certified under ss. 403.865-403.876 necessary to carry out subsection (1).

(3) A water treatment plant operator's license is also valid as a water distribution system license of the same classification or lower.

(4) The department shall adopt rules necessary to carry out this section.

**History.**—s. 1, ch. 98-62; s. 13, ch. 2001-270.

**403.885 Water Projects Grant Program.**—

(1) The Department of Environmental Protection shall administer a grant program to use funds appropriated by the Legislature for water quality improvement, stormwater management, wastewater management, and water restoration and other water projects as specifically appropriated by the Legislature. Eligible recipients of such grants include counties, municipalities, water management districts, and special districts that have legal responsibilities for water quality improvement, water management, stormwater management, wastewater management, lake and river water restoration projects, and drinking water projects pursuant to this section.

(2) The grant program shall provide for the evaluation of annual grant proposals. The department shall evaluate such proposals to determine if they:

(a) Protect public health or the environment.

(b) Implement plans developed pursuant to the Surface Water Improvement and Management Act created in part IV of chapter 373, other water restoration plans required by law, management plans prepared pursuant to s. 403.067, or other plans adopted by local government for water quality improvement and water restoration.

**History.**—s. 11, ch. 2002-291; s. 16, ch. 2005-291; s. 34, ch. 2006-26; s. 73, ch. 2006-230; s. 14, ch. 2008-5; s. 73, ch. 2015-229.

**403.890 Water Protection and Sustainability Program.**—

(1) Revenues deposited into or appropriated to the Water Protection and Sustainability Program Trust Fund shall be distributed by the Department of Environmental Protection for the following purposes:

(a) The alternative water supply program as provided in s. 373.707.

(b) The water storage facility revolving loan fund as provided in s. 373.475.

(2) Revenues deposited into or appropriated to the Water Protection and Sustainability Program Trust Fund for purposes of the water storage facility revolving loan fund may only be used for such purposes.

(3) On June 30, 2009, and every 24 months thereafter, the Department of Environmental Protection shall request the return of all unencumbered funds distributed for the purposes of the alternative water supply program. These funds shall be deposited into the Water Protection and Sustainability Program Trust Fund and redistributed for such purposes.

**History.**—s. 17, ch. 2005-291; s. 41, ch. 2007-73; s. 2, ch. 2007-335; s. 108, ch. 2008-4; s. 12, ch. 2008-114; s. 42, ch. 2008-153; s. 8, ch. 2009-2; s. 10, ch. 2009-20; s. 54, ch. 2009-21; s. 3, ch. 2009-23; s. 18, ch. 2010-4; s. 24, ch. 2010-205; s. 6, ch. 2017-10.

**403.891 Water Protection and Sustainability Program Trust Fund of the Department of Environmental Protection.**—

(1) The Water Protection and Sustainability Program Trust Fund is created within the Department of Environmental Protection. The purpose of the trust fund is to implement the Water Protection and Sustainability Program created in s. 403.890.

(2) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

**History.**—s. 1, ch. 2005-289; s. 13, ch. 2008-114; s. 2, ch. 2009-23; s. 25, ch. 2010-205; s. 32, ch. 2011-4.

## PART VII
## MISCELLANEOUS PROVISIONS

**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.**—ss. 1, 2, 3, 4, 5, 6, ch. 78-85.

**403.905 Removal of fill on sovereignty lands.**—The department or the Board of Trustees of the Internal Improvement Trust Fund has the authority to direct an abutting upland owner to remove from submerged sovereignty lands or state-owned lands any fill created in violation of [1]ss. 403.91-403.929 or part IV of chapter 373, except that the department or the board may consider the time at which the submerged land was filled, the length of upland ownership by the current owner, and any other equitable consideration. 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 of removal will become a lien upon the property of such abutting upland owner. However, the department and board may, if they choose, allow such fill to remain as state-owned land and may employ a surveyor to determine the boundary between such state land and that of the abutting upland owner. The amount of the cost of such survey will become a lien on the property of the abutting upland owner. Nothing herein may be construed to grant the department or the board authority to direct an upland owner to adjust, alter, or remove silt, fill, or other solid material which has accumulated or has been deposited seaward of his or her property, through no fault of the owner.

**History.**—s. 38, ch. 93-213; s. 20, ch. 97-103.

[1]**Note.**—Sections 403.91-403.925 and 403.929 were repealed by s. 45, ch. 93-213, and s. 403.913, as amended by s. 46, ch. 93-213, was transferred to s. 403.939 and subsequently repealed by s. 18, ch. 95-145. The only section remaining within the cited range is s. 403.927.

**403.927 Use of water in farming and forestry activities.**—

(1) The Legislature recognizes the great value of farming and forestry to this state and that continued agricultural activity is compatible with wetlands protection. In order to avoid unnecessary expense and delay from duplicative programs, it is the intent of the Legislature to provide for the construction and operation of agricultural water management systems under authority granted to water management districts and to control, by the department or by delegation of authority to water management districts, the ultimate discharge from agricultural water management systems.

(2) Agricultural activities and agricultural water management systems are authorized by this section and are not subject to the provisions of s. 403.087 or [1]ss. 403.91-403.929. Except for aquaculture water management systems located within waters of the state, the department shall not enforce water quality standards within an agricultural water management system. The department may require a stormwater permit or appropriate discharge permit at the ultimate point of discharge from an agricultural water management system or a group of connected agricultural water management systems. Impacts of agricultural activities and agricultural water management systems on groundwater quality shall be regulated by water management districts.

(3) If land served by a water management system is converted to a use other than an agricultural use, the water management system, or the portion of the system which serves that land, will be subject to the provisions of this chapter. However, mitigation under chapter 373 or this chapter to offset any adverse effects caused by agricultural activities that occurred before the conversion of the land is not required if the activities occurred on the land in the last 4 years preceding the conversion.

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

(a) "Agricultural activities" includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, cultivating, harvesting, fallowing, leveling, construction of access roads, placement of bridges and culverts, and implementation of best management practices adopted by the Department of Agriculture and Consumer Services or practice standards adopted by the United States Department of Agriculture's Natural Resources Conservation Service, provided such operations are not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.

(b) "Agricultural water management systems" means farming and forestry water management or irrigation systems and farm ponds which are permitted pursuant to chapter 373 or which are exempt from the permitting provisions of that chapter.

(c) "Farm pond" means a pond located on a farm, used for farm purposes, as determined by water management district rule.

**History.**—s. 1, ch. 84-79; s. 25, ch. 91-192; s. 23, ch. 91-305; s. 44, ch. 93-213; s. 20, ch. 96-247; s. 3, ch. 2011-165.

[1]**Note.**—Sections 403.91-403.925 and 403.929 were repealed by s. 45, ch. 93-213, and s. 403.913, as amended by s. 46, ch. 93-213, was transferred to s. 403.939 and subsequently repealed by s. 18, ch. 95-145. The only section remaining within the cited range is s. 403.927.

**403.928 Assessment of water resources and conservation lands.**—The Office of Economic and Demographic Research shall conduct an annual assessment of Florida's water resources and conservation lands.

(1) WATER RESOURCES.—The assessment must include all of the following:

(a) Historical and current expenditures and projections of future expenditures by federal, state, regional, and local governments and public and private utilities based upon historical trends and ongoing projects or initiatives associated with:

1. Water supply and demand; and

2. Water quality protection and restoration.

(b) An analysis and estimates of future expenditures by federal, state, regional, and local governments and public and private utilities necessary to comply with federal and state laws and regulations governing subparagraphs (a)1. and 2. The analysis and estimates must address future expenditures by federal, state, regional, and local governments and all public and private utilities necessary to achieve the Legislature's intent that sufficient water be available for all existing and future reasonable-beneficial uses and the natural systems, and that adverse effects of competition for water supplies be avoided. The assessment must include a compilation

of projected water supply and demand data developed by each water management district pursuant to ss. 373.036 and 373.709, with notations regarding any significant differences between the methods used by the districts to calculate the data.

(c) Forecasts of federal, state, regional, and local government revenues dedicated in current law for the purposes specified in subparagraphs (a)1. and 2. or that have been historically allocated for these purposes, as well as public and private utility revenues.

(d) An identification of gaps between projected revenues and projected and estimated expenditures.

(2) CONSERVATION LANDS.—The assessment must include all of the following:

(a) Historical and current expenditures and projections of future expenditures by federal, state, regional, and local governments based upon historical trends and ongoing projects or initiatives associated with real property interests eligible for funding under s. 259.105.

(b) An analysis and estimates of future expenditures by federal, state, regional, and local governments necessary to purchase lands identified in plans set forth by state agencies or water management districts.

(c) An analysis of the ad valorem tax impacts, by county, resulting from public ownership of conservation lands.

(d) Forecasts of federal, state, regional, and local government revenues dedicated in current law to maintain conservation lands and the gap between projected expenditures and revenues.

(e) The total percentage of Florida real property that is publicly owned for conservation purposes.

(f) A comparison of the cost of acquiring and maintaining conservation lands under fee simple or less than fee simple ownership.

(3) The assessment shall include analyses on a statewide, regional, or geographic basis, as appropriate, and shall identify analytical challenges in assessing information across the different regions of the state.

(4) The assessment must identify any overlap in the expenditures for water resources and conservation lands.

(5) The water management districts, the Department of Environmental Protection, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, counties, municipalities, and special districts shall provide assistance to the Office of Economic and Demographic Research related to their respective areas of expertise.

(6) The Office of Economic and Demographic Research must be given access to any data held by an agency as defined in s. 112.312 if the Office of Economic and Demographic Research considers the data necessary to complete the assessment, including any confidential data.

(7) The assessment shall be submitted to the President of the Senate and the Speaker of the House of Representatives by January 1, 2017, and by January 1 of each year thereafter.

**History.**—s. 36, ch. 2016-1.

**403.9321 Short title.**—Sections 403.9321-403.9333 may be cited as the “Mangrove Trimming and Preservation Act.”

**History.**—s. 1, ch. 95-299.

**403.9322 Legislative findings.**—

(1) The Legislature finds that there are over 555,000 acres of mangroves now existing in Florida. Of this total, over 80 percent are under some form of government or private ownership or control and are expressly set aside for preservation or conservation purposes.

(2) The Legislature finds that mangroves play an important ecological role as habitat for various species of marine and estuarine vertebrates, invertebrates, and other wildlife, including mammals, birds, and reptiles; as shoreline stabilization and storm protection; and for water quality protection and maintenance and as food-web support. The mangrove forest is a tropical ecosystem that provides nursery support to the sports and commercial fisheries. Through a combination of functions, mangroves contribute to the economies of many coastal counties in the state.

(3) The Legislature finds that many areas of mangroves occur as narrow riparian mangrove fringes that do not provide all the functions of mangrove forests or provide such functions to a lesser degree.

(4) The Legislature finds that scientific studies have shown that mangroves are amenable to standard horticultural treatments and that waterfront property owners can live in harmony with mangroves by incorporating such treatments into their landscaping systems.

(5) The Legislature finds that the trimming of mangroves by professional mangrove trimmers has a significant potential to maintain the beneficial attributes of mangrove resources and that professional mangrove trimmers should be authorized to conduct mangrove trimming, under certain circumstances, without prior government authorization.

**History.**—s. 2, ch. 95-299; s. 1, ch. 96-206.

**403.9323 Legislative intent.**—

(1) It is the intent of the Legislature to protect and preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction.

(2) It is the intent of the Legislature that no trimming or alteration of mangroves may be permitted on uninhabited islands which are publicly owned or on lands set aside for conservation and preservation, or mitigation, except where necessary to protect the public health, safety, and welfare, or to enhance public use of, or access to, conservation areas in accordance with approved management plans.

(3) It is the intent of the Legislature to provide waterfront property owners their riparian right of view, and other rights of riparian property ownership as recognized by s. 253.141 and any other provision of law, by allowing mangrove trimming in riparian mangrove fringes without prior government approval when the trimming activities will not result in the removal, defoliation, or destruction of the mangroves.

(4) It is the intent of the Legislature that ss. 403.9321-403.9333 shall be administered so as to encourage waterfront property owners to voluntarily maintain mangroves, encourage mangrove growth, and plant mangroves along their shorelines.

(5) It is the intent of the Legislature that all trimming of mangroves pursuant to this act conducted on parcels having multifamily residential units result in an equitable distribution of the riparian rights provided herein.

(6) It is the intent of the Legislature to grandfather certain historically established mangrove maintenance activities.

**History.**—s. 3, ch. 95-299; s. 2, ch. 96-206.

**403.9324 Mangrove protection rule; delegation of mangrove protection to local governments.**—

(1) Sections 403.9321-403.9333 and any lawful regulations adopted by a local government that receives a delegation of the department's authority to administer and enforce the regulation of mangroves as provided by this section shall be the sole regulations in this state for the trimming and alteration of mangroves on privately or publicly owned lands. All other state and local regulation of mangrove is as provided in subsection (3).

(2) The department shall delegate its authority to regulate the trimming and alteration of mangroves to any local government that makes a written request for delegation, if the local government meets the requirements of this section. To receive delegation, a local government must demonstrate that it has sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove-regulatory program. When a county receives delegation from the department, it may, through interlocal agreement, further delegate the authority to administer and enforce regulation of mangrove trimming and alteration to municipalities that meet the requirements of this section. In no event shall more than one permit for the alteration or trimming of mangroves be required within the jurisdiction of any delegated local government.

(3) A local government that wants to establish a program for the regulation of mangroves may request delegation from the department at any time. However, all local government regulation of mangroves, except pursuant to a delegation as provided by this section, is abolished 180 days after this section takes effect.

(4) Within 45 days after receipt of a written request for delegation from a local government, the department shall grant or deny the request in writing. The request is deemed approved if the department fails to respond within the 45-day time period. In reviewing requests for delegation, the department shall limit its review to whether the request complies with the requirements of subsection (2). The department shall set forth in writing

with specificity the reasons for denial of a request for delegation. The department's determination regarding delegation constitutes final agency action and is subject to review under chapter 120.

(5) The department may biannually review the performance of a delegated local program and, upon a determination by the department that the delegated program has failed to properly administer and enforce the program, may seek to revoke the authority under which the program was delegated. The department shall provide a delegated local government with written notice of its intent to revoke the authority to operate a delegated program. The department's revocation of the authority to operate a delegated program is subject to review under chapter 120.

(6) A local government that receives delegation of the department's authority to regulate mangroves shall issue all permits required by law and in lieu of any departmental permit provided for by ss. 403.9321-403.9333. The availability of the exemptions to trim mangroves in riparian mangrove fringe areas provided in s. 403.9326 may not be restricted or qualified in any way by any local government. This subsection does not preclude a delegated local government from imposing stricter substantive standards or more demanding procedural requirements for mangrove trimming or alteration outside of riparian mangrove fringe areas.

**History.**—s. 4, ch. 95-299; s. 3, ch. 96-206.

**403.9325 Definitions.**—For the purposes of ss. 403.9321-403.9333, the term:

(1) "Alter" means anything other than trimming of mangroves.

(2) "Local government" means a county or municipality.

(3) "Mangrove" means any specimen of the species *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove), or *Avicennia germinans* (black mangrove).

(4) "Mangroves on lands that have been set aside as mitigation" means mangrove areas on public or private land which have been created, enhanced, restored, or preserved as mitigation under a dredge and fill permit issued under ss. 403.91-403.929, Florida Statutes (1984 Supplement, as amended), or a dredge and fill permit, management and storage of surface waters permit, or environmental resource permit issued under part IV of chapter 373, applicable dredge and fill licenses or permits issued by a local government, a resolution of an enforcement action, or a conservation easement that does not provide for trimming.

(5) "Professional mangrove trimmer" means a person who meets the qualifications set forth in s. 403.9329.

(6) "Public lands that have been set aside for conservation or preservation" means:

(a) Lands and interests acquired with funds deposited into the Land Acquisition Trust Fund pursuant to s. 28(a), Art. X of the State Constitution;

(b) Conservation and recreation lands under chapter 259;

(c) State and national parks;

(d) State and national reserves and preserves, except as provided in s. 403.9326(3);

(e) State and national wilderness areas;

(f) National wildlife refuges (only those lands under Federal Government ownership);

(g) Lands acquired under the Save Our Rivers Program;

(h) Lands acquired under the Save Our Coast program;

(i) Lands acquired under the environmentally endangered lands bond program;

(j) Public lands designated as conservation or preservation under a local government comprehensive plan;

(k) Lands purchased by a water management district, the Fish and Wildlife Conservation Commission, or any other state agency for conservation or preservation purposes;

(l) Public lands encumbered by a conservation easement that does not provide for the trimming of mangroves; and

(m) Public lands designated as critical wildlife areas by the Fish and Wildlife Conservation Commission.

(7) "Riparian mangrove fringe" means mangroves growing along the shoreline on private property, property owned by a governmental entity, or sovereign submerged land, the depth of which does not exceed 50 feet as measured waterward from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline to the trunk of the most waterward mangrove tree. Riparian mangrove fringe does not include mangroves

on uninhabited islands, or public lands that have been set aside for conservation or preservation, or mangroves on lands that have been set aside as mitigation, if the permit, enforcement instrument, or conservation easement establishing the mitigation area did not include provisions for the trimming of mangroves.

(8) "Trim" means to cut mangrove branches, twigs, limbs, and foliage, but does not mean to remove, defoliate, or destroy the mangroves.

**History.**—s. 5, ch. 95-299; s. 4, ch. 96-206; s. 215, ch. 99-245; s. 75, ch. 2015-229.

**403.9326 Exemptions.**—

(1) The following activities are exempt from the permitting requirements of ss. 403.9321-403.9333 and any other provision of law if no herbicide or other chemical is used to remove mangrove foliage:

(a) Mangrove trimming in riparian mangrove fringe areas that meet the following criteria:

1. The riparian mangrove fringe must be located on lands owned or controlled by the person who will supervise or conduct the trimming activities or on sovereign submerged lands immediately waterward and perpendicular to the lands.

2. The mangroves that are the subject of the trimming activity may not exceed 10 feet in pretrimmed height as measured from the substrate and may not be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate.

This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.

(b) Mangrove trimming supervised or conducted exclusively by a professional mangrove trimmer, as defined in s. 403.9325, in riparian mangrove fringe areas that meet the following criteria:

1. The riparian mangrove fringe must be located on lands owned or controlled by the professional mangrove trimmer or by the person contracting with the professional mangrove trimmer to perform the trimming activities, or on sovereign submerged lands immediately waterward and perpendicular to such lands.

2. The mangroves that are the subject of the trimming activity may not exceed 24 feet in pretrimmed height and may not be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate.

3. The trimming of mangroves that are 16 feet or greater in pretrimmed height must be conducted in stages so that no more than 25 percent of the foliage is removed annually.

4. A professional mangrove trimmer that is trimming red mangroves for the first time under the exemption provided by this paragraph must notify the department or delegated local government in writing at least 10 days before commencing the trimming activities.

This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.

(c) Mangrove trimming in riparian mangrove fringe areas which is designed to reestablish or maintain a previous mangrove configuration if the mangroves to be trimmed do not exceed 24 feet in pretrimmed height. The reestablishment of a previous mangrove configuration must not result in the destruction, defoliation, or removal of mangroves. Documentation of a previous mangrove configuration may be established by affidavit of a person with personal knowledge of such configuration, through current or past permits from the state or local government, or by photographs of the mangrove configuration. Trimming activities conducted under the exemption provided by this paragraph shall be conducted by a professional mangrove trimmer when the mangroves that are the subject of the trimming activity have a pretrimmed height which exceeds 10 feet as measured from the substrate. A person trimming red mangroves for the first time under the exemption provided by this paragraph must notify the department or delegated local government in writing at least 10 days before commencing the trimming activities.

(d) The maintenance trimming of mangroves that have been previously trimmed in accordance with an exemption or government authorization, including those mangroves that naturally recruited into the area and any

mangrove growth that has expanded from the area subsequent to the authorization, if the maintenance trimming does not exceed the height and configuration previously established. Historically established maintenance trimming is grandfathered in all respects, notwithstanding any other provisions of law. Documentation of established mangrove configuration may be verified by affidavit of a person with personal knowledge of the configuration or by photographs of the mangrove configuration.

(e) The trimming of mangrove trees by a state-licensed surveyor in the performance of her or his duties, if the trimming is limited to a swath of 3 feet or less in width.

(f) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company, or by a federal, state, county, or municipal agency, or by an engineer or a surveyor and mapper working under a contract with such utility company or agency, when the trimming is done as a governmental function of the agency.

(g) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company in or adjacent to a public or private easement or right-of-way, if the trimming is limited to those areas where it is necessary for the maintenance of existing lines or facilities or for the construction of new lines or facilities in furtherance of providing utility service to its customers and if work is conducted so as to avoid any unnecessary trimming of mangrove trees.

(h) The trimming of mangrove trees by a duly constituted communications, water, sewerage, or electrical utility company on the grounds of a water treatment plant, sewerage treatment plant, or electric power plant or substation in furtherance of providing utility service to its customers, if work is conducted so as to avoid any unnecessary trimming of mangrove trees.

(2) Any rule, regulation, or other provision of law must be strictly construed so as not to limit directly or indirectly the exemptions provided by this section for trimming in riparian mangrove fringe areas except as provided in s. 403.9329(7)(b). Any rule or policy of the department, or local government regulation, that directly or indirectly serves as a limitation on the exemptions provided by this section for trimming in riparian mangrove fringe areas is invalid.

(3) The designation of riparian mangrove fringe areas as aquatic preserves or Outstanding Florida Waters shall not affect the use of the exemptions provided by this section.

**History.**—s. 6, ch. 95-299; s. 5, ch. 96-206; s. 1012, ch. 97-103.

**403.9327 General permits.**—

(1) The following general permits are created for the trimming of mangroves that do not qualify for an exemption provided by s. 403.9326:

(a) A general permit to trim mangroves for riparian property owners, if:

1. The trimming is conducted in an area where the department has not delegated the authority to regulate mangroves to a local government;

2. The trimming is supervised or conducted exclusively by a professional mangrove trimmer;

3. The mangroves subject to trimming under the permit do not extend more than 500 feet waterward as measured from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline;

4. No more than 65 percent of the mangroves along the shoreline which exceed 6 feet in pretrimmed height as measured from the substrate will be trimmed, and no mangrove will be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate; and

5. No herbicide or other chemical will be used for the purpose of removing leaves of a mangrove.

(b) A general permit for the limited trimming of mangroves within existing navigational channels, basins, or canals to provide clearance for navigation of watercraft, if:

1. The trimming is conducted in an area where the department has not delegated the authority to regulate mangroves to a local government;

2. The trimming is supervised or conducted exclusively by a professional mangrove trimmer;

3. The mangroves are located on lands owned or controlled by the professional mangrove trimmer or by the person contracting with the professional mangrove trimmer to perform the trimming activities, or on sovereign

submerged lands immediately waterward and perpendicular to such lands;

4. The trimming is limited to those portions of branches or trunks of mangroves which extend into the navigation channel beyond a vertical plane of the most waterward prop root or root system; and

5. No herbicide or other chemical will be used for the purpose of removing leaves of a mangrove.

(2) The department may establish additional general permits for mangrove trimming.

(3) The general permits under this section are subject to the following conditions:

(a) A general permit may be used only once on any parcel of property to achieve a mangrove height of no less than 6 feet;

(b) Trimming must be conducted in stages so that no more than 25 percent of the foliage is removed annually; and

(c) The height and configuration of mangroves trimmed under these general permits may be maintained under s. 403.9326(1)(d).

(4) Notice of intent to use a general permit must be made in writing to the department and must contain sufficient information to enable the department to determine the scope of the proposed trimming and whether the activity will comply with the conditions of this section.

(5) The department shall grant or deny in writing each request for a general permit within 30 days after receipt, unless the applicant agrees to an extension. If the applicant does not agree to an extension and the department fails to act on the request within the 30-day period, the request is approved. The department's denial of a request for a general permit is subject to review under chapter 120. The department's action may not receive a presumption of validity in any administrative or judicial proceeding for review.

(6) Trimming that does not qualify for an exemption under s. 403.9326 or a general permit under this section requires a permit as provided in s. 403.9328.

(7) If a local government receives delegation of the department's authority to regulate mangroves, the delegated local government shall issue permits for mangrove trimming in lieu of a general permit from the department, but the local government may not directly or indirectly limit the use of the exemptions in s. 403.9326. A delegated local government may impose stricter substantive standards than those of the department for the issuance of a permit authorized by this section; however, such regulations may not prohibit all mangrove trimming.

**History.**—s. 7, ch. 95-299; s. 6, ch. 96-206.

**403.93271 Applicability to multifamily residential units.**—

(1) When trimming under s. 403.9327(1)(a) occurs on property developed for multifamily residential use, the 65-percent shoreline trimming limit must be equitably distributed so that each owner's riparian view is similarly affected.

(2) If it is necessary to trim more than 65 percent of the mangroves along the shoreline in order to provide a water view from each unit, the department or delegated local government may authorize a greater percentage of trimming under s. 403.9327(1)(a). This subsection applies only to property on which multifamily residential units exist as of June 1, 1996.

**History.**—s. 7, ch. 96-206.

**403.9328 Alteration and trimming of mangroves; permit requirement.**—

(1) A person may not alter or trim, or cause to be altered or trimmed, any mangrove within the landward extent of wetlands and other surface waters, as defined in chapter 62-340.200(19), Florida Administrative Code, using the methodology in s. 373.4211 and chapter 62-340, Florida Administrative Code, when the trimming does not meet the criteria in s. 403.9326 or s. 403.9327 except under a permit issued under this section by the department or a delegated local government or as otherwise provided by ss. 403.9321-403.9333. Any violation of ss. 403.9321-403.9333 is presumed to have occurred with the knowledge and consent of any owner, trustee, or other person who directly or indirectly has charge, control, or management, either exclusively or with others, of the property upon which the violation occurs. However, this presumption may be rebutted by competent, substantial evidence that the violation was not authorized by the owner, trustee, or other person.

(2)(a) The department, when deciding to issue or deny a permit for mangrove alteration or trimming under this section, shall use the criteria in s. 373.414(1) and (8). If the applicant is unable to meet these criteria, the department and the applicant shall first consider measures to reduce or eliminate the unpermittable impacts. If unpermittable impacts still remain, the applicant may propose, and the department shall consider, measures to mitigate the otherwise unpermittable impacts. A request for a permit to alter mangroves must be submitted in writing with sufficient specificity to enable the department to determine the scope and impacts of the proposed alteration activities.

(b) The department shall issue or deny a permit for mangrove alteration in accordance with chapter 120 and s. 403.0876.

(3) The use of herbicides or other chemicals for the purposes of removing leaves from a mangrove is strictly prohibited.

(4) If a local government receives delegation of the department's authority to regulate mangroves, the delegated local government shall issue permits for mangrove trimming when the trimming does not meet the criteria in s. 403.9326 or for mangrove alteration in lieu of a departmental permit. A delegated local government may impose stricter substantive standards than those of the department for the issuance of a permit authorized by this section but may not prohibit all mangrove trimming.

(5) A permit is not required under ss. 403.9321-403.9333 to trim or alter mangroves if the trimming or alteration is part of an activity that is exempt under s. 403.813 or is permitted under part IV of chapter 373. The procedures for permitting under part IV of chapter 373 will control in those instances.

**History.**—s. 8, ch. 95-299; s. 8, ch. 96-206; s. 38, ch. 97-98.

**403.9329 Professional mangrove trimmers.**—

(1) For purposes of ss. 403.9321-403.9333, the following persons are considered professional mangrove trimmers:

(a) Certified arborists, certified by the International Society of Arboriculture;

(b) Professional wetland scientists, certified by the Society of Wetland Scientists;

(c) Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals;

(d) Certified ecologists certified by the Ecological Society of America;

(e) Persons licensed under part II of chapter 481. The Board of Landscape Architecture shall establish appropriate standards and continuing legal education requirements to assure the competence of licensees to conduct the activities authorized under ss. 403.9321-403.9333. Trimming by landscape architects as professional mangrove trimmers is not allowed until the establishment of standards by the board. The board shall also establish penalties for violating ss. 403.9321-403.9333. Only those landscape architects who are certified in the state may qualify as professional mangrove trimmers under ss. 403.9321-403.9333, notwithstanding any reciprocity agreements that may exist between this state and other states;

(f) Persons who have conducted mangrove trimming as part of their business or employment and who are able to demonstrate to the department or a delegated local government, as provided in subsection (2) or subsection (3), a sufficient level of competence to assure that they are able to conduct mangrove trimming in a manner that will ensure the survival of the mangroves that are trimmed; and

(g) Persons who have been qualified by a delegated local government through a mangrove-trimming qualification program as provided in subsection (7).

(2) A person who seeks to assert professional mangrove trimmer status under paragraph (1)(f) to trim mangroves under the exemptions and general permits provided in ss. 403.9326 and 403.9327, in areas where a local government has not established a professional mangrove trimmer qualification program as provided in subsection (7), must request in writing professional mangrove trimmer status from the department. The department shall grant or deny any written request for professional mangrove trimmer status within 60 days after receipt of the request. If professional mangrove trimmer status has been granted by the department, no additional requests for professional mangrove trimmer status need be made to the department to trim mangroves under the

exemptions provided in s. 403.9326. Persons applying for professional mangrove trimmer status must provide to the department a notarized sworn statement attesting:

(a) That the applicant has successfully completed a minimum of 10 mangrove-trimming projects authorized by the department or a local government program. Each project must be separately identified by project name and permit number;

(b) That a mangrove-trimming or alteration project of the applicant is not in violation of ss. 403.9321-403.9333 or any lawful rules adopted thereunder; and

(c) That the applicant possesses the knowledge and ability to correctly identify mangrove species occurring in this state.

(3) A person asserting professional mangrove trimmer status who wishes to use a general permit authorized under s. 403.9327 must complete and sign a notice of intent to use the general permit, along with the individual who owns or controls the property, and provide a copy of the department's qualification of professional mangrove trimmer status as provided for in subsection (2). A professional mangrove trimmer signing a notice of intent to use the general permit must conduct or supervise the trimming at the site specified in the notice.

(4) The department may deny a request for professional mangrove trimmer status if the department finds that the information provided by the applicant is incorrect or incomplete, or if the applicant has demonstrated a past history of noncompliance with the provisions of ss. 403.9321-403.9333 or any adopted mangrove rules.

(5) A professional mangrove trimmer status granted by the department may be revoked by the department for any person who is responsible for any violations of ss. 403.9321-403.9333 or any adopted mangrove rules.

(6) The department's decision to grant, deny, or revoke a professional mangrove trimmer status is subject to review under chapter 120.

(7)(a) A local government that receives delegation of the department's mangrove regulatory authority may establish criteria for qualification of persons as professional mangrove trimmers working within the jurisdiction of the local government. A delegated local government that establishes a program shall provide procedures and minimum qualifications and may develop training programs for those persons wishing to become qualified as professional mangrove trimmers. A delegated local government may establish criteria for disciplining persons qualified as professional mangrove trimmers working within its jurisdiction.

(b) A delegated local government may require that any person qualifying as a professional mangrove trimmer within the jurisdiction of the local government:

1. Be registered with the local government.

2. Pay an annual registration fee that may not exceed $500.

3. Provide prior written notice to the delegated local government before conducting the trimming activities authorized under the exemptions provided by s. 403.9326.

4. Be onsite when mangrove-trimming activities are performed.

(c) The department may require a person who qualifies as a professional mangrove trimmer and works in an area where a local government has not received delegation to provide written notice to the department 10 days before conducting trimming activities under the exemptions and general permits provided in ss. 403.9326 and 403.9327 and to be onsite when mangrove-trimming activities are performed.

(d) Any person who qualifies as a professional mangrove trimmer under this subsection may conduct trimming activities within the jurisdiction of a delegated local government if the person registers and pays any appropriate fee required by a delegated local government. A delegated local government that wishes to discipline persons licensed under part II of chapter 481 for mangrove-trimming or alteration activities may file a complaint against the licensee as provided for by chapter 481 and may take appropriate local disciplinary action. Any local disciplinary action imposed against a licensee is subject to administrative and judicial review.

(e) A locally registered mangrove trimmer may use the exemptions and general permits in ss. 403.9326 and 403.9327 only within the jurisdiction of delegated local governments in which the mangrove trimmer is registered. Nothing in ss. 403.9321-403.9333 shall prevent any person who qualifies as a professional mangrove trimmer under subsection (1) from using the exemptions and general permits in ss. 403.9326 and 403.9327 outside the jurisdiction of delegated local governments.

(f) Any local governmental regulation imposed on professional mangrove trimmers that has the effect of limiting directly or indirectly the availability of the exemptions provided by s. 403.9326 is invalid.

**History.**—s. 9, ch. 95-299; s. 9, ch. 96-206.

**403.9331 Applicability; rules and policies.**—

(1) The regulation of mangrove protection under ss. 403.9321-403.9333 is intended to be complete and effective without reference to or compliance with other statutory provisions.

(2) Any rule or policy applicable to permits provided for by s. 403.9327 or s. 403.9328 which establishes a standard applicable to mangrove trimming or alteration is invalid unless a scientific basis for the rule or policy is established. Such rules or policies shall not receive a presumption of validity in any administrative or judicial proceeding for review. Any such rule or policy must be demonstrated to substantially advance a fundamental purpose of the statute cited as authority for the rule or policy or shall be invalid.

**History.**—s. 10, ch. 95-299.

**403.9332 Mitigation and enforcement.**—

(1)(a) Any area in which 5 percent or more of the trimmed mangrove trees have been trimmed below 6 feet in height, except as provided in s. 403.9326(1)(c), (d), (f), (g), and (h), destroyed, defoliated, or removed as a result of trimming conducted under s. 403.9326 or s. 403.9327 must be restored or mitigated. Restoration must be accomplished by replanting mangroves, in the same location and of the same species as each mangrove destroyed, defoliated, removed, or trimmed, to achieve within 5 years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed; or mitigation must be accomplished by replanting offsite, in areas suitable for mangrove growth, mangroves to achieve within 5 years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed. Where all or a portion of the restoration or mitigation is not practicable, as determined by the department or delegated local government, the impacts resulting from the destruction, defoliation, removal, or trimming of the mangroves must be offset by donating a sufficient amount of money to offset the impacts, which must be used for the restoration, enhancement, creation, or preservation of mangrove wetlands within a restoration, enhancement, creation, or preservation project approved by the department or delegated local government; or by purchasing credits from a mitigation bank created under s. 373.4135 at a mitigation ratio of 2-to-1 credits to affected area. The donation must be equivalent to the cost, as verified by the department or delegated local government, of creating mangrove wetlands at a 2-to-1, created versus affected ratio, based on canopy area. The donation may not be less than $4 per square foot of created wetland area.

(b) In all cases, the applicant, permittee, landowner, and person performing the trimming are jointly and severally liable for performing restoration under paragraph (a) and for ensuring that the restoration successfully results in a variable mangrove community that can offset the impacts caused by the removal, destruction, or defoliation of mangroves. The applicant, landowner, and person performing the trimming are also jointly and severally subject to penalties.

(c) If mangroves are to be trimmed or altered under a permit issued under s. 403.9328, the department or delegated local government may require mitigation. The department or delegated local government shall establish reasonable mitigation requirements that must include, as an option, the use of mitigation banks created under s. 373.4135, where appropriate. The department's mitigation requirements must ensure that payments received as mitigation are sufficient to offset impacts and are used for mangrove creation, preservation, protection, or enhancement.

(d) Any replanting for restoration and mitigation under this subsection must result in at least 80 percent survival of the planted mangroves 1 year after planting. If the survival requirement is not met, additional mangroves must be planted and maintained until 80 percent survival is achieved 1 year after the last mangrove planting.

(2) The department or delegated local government shall enforce the provisions of ss. 403.9321-403.9333 in the same manner and to the same extent provided for in ss. 403.141 and 403.161 for the first violation.

(3) For second and subsequent violations, the department or delegated local government, in addition to the provisions of ss. 403.141 and 403.161, shall impose additional monetary penalties for each mangrove illegally

trimmed or altered as follows:

(a) Up to $100 for each mangrove illegally trimmed; or

(b) Up to $250 for each mangrove illegally altered.

(4) In addition to the penalty provisions provided in subsections (1)-(3), for second and all subsequent violations by a professional mangrove trimmer, the department or delegated local government shall impose a separate penalty upon the professional mangrove trimmer up to $250 for each mangrove illegally trimmed or altered.

(5) This section does not limit or restrict a delegated local government from enforcing penalty, restoration, and mitigation provisions under its local authority.

**History.**—s. 11, ch. 95-299; s. 10, ch. 96-206.

**403.9333 Variance relief.**—Upon application, the department or delegated local government may grant a variance from the provisions of ss. 403.9321-403.9333 if compliance therewith would impose a unique and unnecessary hardship on the owner or any other person in control of the affected property. Relief may be granted upon demonstration that such hardship is not self-imposed and that the grant of the variance will be consistent with the general intent and purpose of ss. 403.9321-403.9333. The department or delegated local government may grant variances as it deems appropriate.

**History.**—s. 55, ch. 84-338; s. 44, ch. 93-213; s. 12, ch. 95-299.

**Note.**—Former s. 403.938.

**403.9334 Effect of ch. 96-206.**—Nothing in chapter 96-206, Laws of Florida, shall invalidate any permit or order related to mangrove activities which has been approved by the department or any other governmental entity, nor shall it affect any application for permits related to mangrove activities deemed sufficient and substantially complete prior to July 1, 1996.

**History.**—s. 11, ch. 96-206.

**403.93345 Coral reef protection.**—

(1) This section may be cited as the “Florida Coral Reef Protection Act.”

(2) This act applies to the sovereign submerged lands that contain coral reefs as defined in this act off the coasts of Broward, Martin, Miami-Dade, Monroe, and Palm Beach Counties.

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

(a) “Aggravating circumstances” means operating, anchoring, or mooring a vessel in a reckless or wanton manner; under the influence of drugs or alcohol; or otherwise with disregard for boating regulations concerning speed, navigation, or safe operation.

(b) “Coral” means species of the phylum Cnidaria found in state waters including:

1. Class Anthozoa, including the subclass Octocorallia, commonly known as gorgonians, soft corals, and telestaceans; and

2. Orders Scleractinia, commonly known as stony corals; Stolonifera, including, among others, the organisms commonly known as organ-pipe corals; Antipatharia, commonly known as black corals; and Hydrozoa, including the family Millaporidae and family Stylasteridae, commonly known as hydrocoral.

(c) “Coral reefs” mean:

1. Limestone structures composed wholly or partially of living corals, their skeletal remains, or both, and hosting other coral, associated benthic invertebrates, and plants; or

2. Hard-bottom communities, also known as live bottom habitat or colonized pavement, characterized by the presence of coral and associated reef organisms or worm reefs created by the *Phragmatopoma* species.

(d) “Damages” means moneys paid by any person or entity, whether voluntarily or as a result of administrative or judicial action, to the state as compensation, restitution, penalty, civil penalty, or mitigation for causing injury to or destruction of coral reefs.

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

(f) “Fund” means the Water Quality Assurance Trust Fund.

(g) "Person" means any and all persons, natural or artificial, foreign or domestic, including any individual, firm, partnership, business, corporation, and company and the United States and all political subdivisions, regions, districts, municipalities, and public agencies thereof.

(h) "Responsible party" means the owner, operator, manager, or insurer of any vessel.

(4) The Legislature finds that coral reefs are valuable natural resources that contribute ecologically, aesthetically, and economically to the state. Therefore, the Legislature declares it is in the best interest of the state to clarify the department's powers and authority to protect coral reefs through timely and efficient recovery of monetary damages resulting from vessel groundings and anchoring-related injuries. It is the intent of the Legislature that the department be recognized as the state's lead trustee for coral reef resources located within waters of the state or on sovereignty submerged lands unless preempted by federal law. This section does not divest other state agencies and political subdivisions of the state of their interests in protecting coral reefs.

(5) The responsible party who knows or should know that their vessel has run aground, struck, or otherwise damaged coral reefs must notify the department of such an event within 24 hours after its occurrence. Unless otherwise prohibited or restricted by the United States Coast Guard, the responsible party must remove or cause the removal of the grounded or anchored vessel within 72 hours after the initial grounding or anchoring absent extenuating circumstances such as weather, or marine hazards that would prevent safe removal of the vessel. The responsible party must remove or cause the removal of the vessel or its anchor in a manner that avoids further damage to coral reefs and shall consult with the department in accomplishing this task. The responsible party must cooperate with the department to undertake damage assessment and primary restoration of the coral reef in a timely fashion.

(6) In any action or suit initiated pursuant to chapter 253 on the behalf of the Board of Trustees of the Internal Improvement Trust Fund, or under chapter 373 or this chapter for damage to coral reefs, the department may recover all damages from the responsible party, including, but not limited to:

(a) Compensation for the cost of replacing, restoring, or acquiring the equivalent of the coral reef injured and the value of the lost use and services of the coral reef pending its restoration, replacement, or acquisition of the equivalent coral reef, or the value of the coral reef if the coral reef cannot be restored or replaced or if the equivalent cannot be acquired.

(b) The cost of damage assessments, including staff time.

(c) The cost of activities undertaken by or at the request of the department to minimize or prevent further injury to coral or coral reefs pending restoration, replacement, or acquisition of an equivalent.

(d) The reasonable cost of monitoring the injured, restored, or replaced coral reef for at least 10 years. Such monitoring is not required for a single occurrence of damage to a coral reef damage totaling less than or equal to 1 square meter.

(e) The cost of enforcement actions undertaken in response to the destruction or loss of or injury to a coral reef, including court costs, attorney's fees, and expert witness fees.

(7) The department may use habitat equivalency analysis as the method by which the compensation described in subsection (5) is calculated. The parameters for calculation by this method may be prescribed by rule adopted by the department.

(8) In addition to the compensation described in subsection (5), the department may assess, per occurrence, civil penalties according to the following schedule:

(a) For any anchoring of a vessel on a coral reef or for any other damage to a coral reef totaling less than or equal to an area of 1 square meter, $150, provided that a responsible party who has anchored a recreational vessel as defined in s. 327.02 which is lawfully registered or exempt from registration pursuant to chapter 328 is issued, at least once, a warning letter in lieu of penalty; with aggravating circumstances, an additional $150; occurring within a state park or aquatic preserve, an additional $150.

(b) For damage totaling more than an area of 1 square meter but less than or equal to an area of 10 square meters, $300 per square meter; with aggravating circumstances, an additional $300 per square meter; occurring within a state park or aquatic preserve, an additional $300 per square meter.

(c) For damage exceeding an area of 10 square meters, $1,000 per square meter; with aggravating circumstances, an additional $1,000 per square meter; occurring within a state park or aquatic preserve, an additional $1,000 per square meter.

(d) For a second violation, the total penalty may be doubled.

(e) For a third violation, the total penalty may be tripled.

(f) For any violation after a third violation, the total penalty may be quadrupled.

(g) The total of penalties levied may not exceed $250,000 per occurrence.

(9) To carry out the intent of this section, the department may enter into delegation agreements with another state agency or any coastal county with coral reefs within its jurisdiction. In deciding to execute such agreements, the department must consider the ability of the potential delegee to adequately and competently perform the duties required to fulfill the intent of this section. When such agreements are executed by the parties and incorporated in department rule, the delegee shall have all rights accorded the department by this section. Nothing herein shall be construed to require the department, another state agency, or a coastal county to enter into such an agreement.

(10) Nothing in this section shall be construed to prevent the department or other state agencies from entering into agreements with federal authorities related to the administration of the Florida Keys National Marine Sanctuary.

(11) All damages recovered by or on behalf of this state for injury to, or destruction of, the coral reefs of the state that would otherwise be deposited in the general revenue accounts of the State Treasury or in the Internal Improvement Trust Fund shall be deposited into the Water Quality Assurance Trust Fund in the department and shall remain in such account until expended by the department for the purposes of this section. Moneys in the fund received from damages recovered for injury to, or destruction of, coral reefs must be expended only for the following purposes:

(a) To provide funds to the department for reasonable costs incurred in obtaining payment of the damages for injury to, or destruction of, coral reefs, including administrative costs and costs of experts and consultants. Such funds may be provided in advance of recovery of damages.

(b) To pay for restoration or rehabilitation of the injured or destroyed coral reefs or other natural resources by a state agency or through a contract to any qualified person.

(c) To pay for alternative projects selected by the department. Any such project shall be selected on the basis of its anticipated benefits to the residents of this state who used the injured or destroyed coral reefs or other natural resources or will benefit from the alternative project.

(d) All claims for trust fund reimbursements under paragraph (a) must be made within 90 days after payment of damages is made to the state.

(e) Each private recipient of fund disbursements shall be required to agree in advance that its accounts and records of expenditures of such moneys are subject to audit at any time by appropriate state officials and to submit a final written report describing such expenditures within 90 days after the funds have been expended.

(f) When payments are made to a state agency from the fund for expenses compensable under this subsection, such expenditures shall be considered as being for extraordinary expenses, and no agency appropriation shall be reduced by any amount as a result of such reimbursement.

(12) The department may adopt rules pursuant to ss. 120.536 and 120.54 to administer this section.

**History.**—s. 57, ch. 2009-86; s. 86, ch. 2010-5; s. 76, ch. 2015-229.

**403.9335 Short title.**—Sections 403.9335-403.9338 may be cited as the “Protection of Urban and Residential Environments and Water Act.”

**History.**—s. 2, ch. 2009-199.

**403.9336 Legislative findings.**—The Legislature finds that the implementation of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008), which was developed by the department in conjunction with the Consumer Fertilizer Task Force, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, will assist in protecting the quality of Florida’s surface water

and groundwater resources. The Legislature further finds that local conditions, including variations in the types and quality of water bodies, site-specific soils and geology, and urban or rural densities and characteristics, may necessitate the implementation of additional or more stringent fertilizer management practices at the local government level.

**History.**—s. 3, ch. 2009-199; s. 87, ch. 2010-5.

**403.9337 Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.**—

(1) All county and municipal governments are encouraged to adopt and enforce the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes or an equivalent requirement as a mechanism for protecting local surface and groundwater quality.

(2) Each county and municipal government located within the watershed of a water body or water segment that is listed as impaired by nutrients pursuant to s. 403.067, shall, at a minimum, adopt the department's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. A local government may adopt additional or more stringent standards than the model ordinance if the following criteria are met:

(a) The local government has demonstrated, as part of a comprehensive program to address nonpoint sources of nutrient pollution which is science-based, and economically and technically feasible, that additional or more stringent standards than the model ordinance are necessary in order to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body.

(b) The local government documents that it has considered all relevant scientific information, including input from the department, the institute, the Department of Agriculture and Consumer Services, and the University of Florida Institute of Food and Agricultural Sciences, if provided, on the need for additional or more stringent provisions to address fertilizer use as a contributor to water quality degradation. All documentation must become part of the public record before adoption of the additional or more stringent criteria.

(3) Any county or municipal government that adopted its own fertilizer use ordinance before January 1, 2009, is exempt from this section. Ordinances adopted or amended on or after January 1, 2009, must substantively conform to the most recent version of the model fertilizer ordinance and are subject to subsections (1) and (2), as applicable.

(4) This section does not apply to the use of fertilizer on farm operations as defined in s. 823.14 or on lands classified as agricultural lands pursuant to s. 193.461.

**History.**—s. 4, ch. 2009-199; s. 16, ch. 2012-83.

**403.9338 Training.**—

(1) The department, in cooperation with the Institute of Food and Agricultural Sciences, shall:

(a) Provide training and testing programs in urban landscape best management practices and may issue certificates demonstrating satisfactory completion of the training.

(b) Approve training and testing programs that are equivalent to or more comprehensive than the training provided by the department under paragraph (a). Such programs must be reviewed and reapproved by the department if significant changes are made.

(2) After receiving a certificate demonstrating successful completion of a department or department-approved training program under this section, a person may apply to the Department of Agriculture and Consumer Services to receive a limited certification for urban landscape commercial fertilizer application under s. 482.1562. A person possessing such certification is not subject to additional local testing.

**History.**—s. 5, ch. 2009-199; s. 96, ch. 2014-17.

## PART VIII
## NATURAL GAS TRANSMISSION
## PIPELINE SITING

**403.9401 Short title.**—Sections 403.9401-403.9425 may be cited as the "Natural Gas Transmission Pipeline Siting Act."

**History.**—s. 1, ch. 92-284.

**403.9402 Legislative intent.**—It is the Legislature's intent by adoption of ss. 403.9401-403.9425 to establish a centralized and coordinated permitting process for the location of natural gas transmission pipeline corridors and the construction and maintenance of natural gas transmission pipelines, which necessarily involves several broad interests of the public addressed through the subject matter jurisdiction of several agencies. Recognizing the need to ensure natural gas delivery reliability, safety, and integrity, and in order to meet natural gas energy needs in an orderly and timely fashion, the centralized and coordinated permitting process established by ss. 403.9401-403.9425 is intended to further the legislative goal of ensuring, through available and reasonable methods, that the location of natural gas transmission pipelines produce minimal adverse effect on the environment and public health, safety, and welfare. It is the intent of ss. 403.9401-403.9425 to fully balance the need for natural gas supplies with the broad interests of the public in order to effect a reasonable balance between the need for the natural gas transmission pipeline as a means of providing abundant clean-burning natural gas and the impact on the public and the environment resulting from the location of the natural gas transmission pipeline corridor and the construction and maintenance of the natural gas transmission pipelines. The Legislature intends that the provisions of chapter 120 apply to ss. 403.9401-403.9425 and to proceedings pursuant to those sections except as otherwise expressly exempted by other provisions of ss. 403.9401-403.9425. It is not the intent of this legislation that the natural gas transmission pipeline certification process prevent, delay, or prohibit the issuance of government permits by the appropriate agencies necessary to locate or construct other natural gas pipelines regulated by the state, pipelines regulated by the Federal Energy Regulatory Commission, and natural gas distribution companies, provided all applicable agency permit requirements are met. Nothing in ss. 403.9401-403.9425 shall be deemed to

supersede the department's authority to administer federally delegated or approved permit programs in accordance with the terms of such programs.

**History.**—s. 1, ch. 92-284; s. 11, ch. 94-321.

**403.9403 Definitions.**—As used in ss. 403.9401-403.9425, the term:

(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, including a county, municipality, or other regional or local governmental entity.

(2) "Amendment" means a material change in information provided in the application made after the initial application filing.

(3) "Applicant" means any natural gas transmission pipeline company that applies for certification pursuant to ss. 403.9401-403.9425.

(4) "Application" means the documents required by the department to be filed by a natural gas transmission pipeline company to initiate the certification process.

(5) "Board" means the Governor and Cabinet sitting as the Natural Gas Transmission Pipeline Siting Board.

(6) "Certification" means the approval by the board of a corridor and of the construction and maintenance of a pipeline within that corridor with any changes or conditions that the board considers appropriate. Certification is evidenced by a written order of the board.

(7) "Commission" means the Florida Public Service Commission.

(8) "Complete" means that the applicant has addressed all applicable sections of the application, but does not mean that those sections are sufficient in comprehensiveness of data or in quality of information provided.

(9) "Corridor" means the area within which a natural gas transmission pipeline right-of-way is to be located.

(10) "Department" means the Department of Environmental Protection.

(11) "Federally delegated or approved permit program" means any environmental regulatory program delegated or approved by an agency of the Federal Government so as to authorize the department to administer the program and issue licenses.

(12) "License" means a franchise, permit, certification, registration, charter, comprehensive plan amendment, development order or permit as defined in chapter 163 or chapter 380, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes if issuance of the license is merely a ministerial act.

(13) "Local government" means a municipality or a county in the jurisdiction of which the project is proposed to be located.

(14) "Modification" means any change in a certification order after issuance, including a change in the conditions of certification.

(15) "Natural gas" means either natural gas in a gaseous state unmixed or a mixture of natural and artificial gas.

(16) "Natural gas transmission pipeline" or "pipeline" means the transmission pipeline and any related equipment, facility, or building used in the transportation of natural gas or its treatment or storage during the course of transportation. The term does not include a gathering line, but the term includes a transmission pipeline that transports gas from a gathering line or a storage facility to a distribution center or a storage facility or that operates at a hoop stress of 20 percent or more of specified minimum yield strength, as defined by federal law, or that transports gas within a storage field.

(17) "Natural gas transmission pipeline company" means a person engaged in the transportation, by natural gas transmission pipeline, of natural gas.

(18) "Natural gas transmission pipeline right-of-way" or "pipeline right-of-way" means land necessary for the construction and maintenance of a natural gas transmission pipeline.

(19) "Nonprocedural requirements of agencies" means an agency's regulatory requirements established by statute, rule, ordinance, or comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or

time limits for the review or processing of information submitted to demonstrate compliance with those regulatory requirements.

(20) "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.

(21) "Preliminary statement of issues" means a listing and explanation of those issues within the agency's jurisdiction which are of major concern to the agency in relation to the proposed corridor.

(22) "Regional planning council" means a regional planning council created pursuant to chapter 186 in the jurisdiction of which the project is proposed to be located.

(23) "Sufficient" means that an application is not only complete but also that all sections are adequate in the comprehensiveness of data and the quality of information provided to enable the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.941.

(24) "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.

**History.**—s. 1, ch. 92-284; s. 12, ch. 94-321; s. 431, ch. 94-356.

**403.9404 Department of Environmental Protection; powers and duties.**—The Department of Environmental Protection shall have the following powers and duties:

(1) To adopt procedural rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of ss. 403.9401-403.9425 and to adopt rules to implement the provisions of subsection (8).

(2) To prescribe the form and content of the public notices and 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 natural gas transmission pipeline 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 require such fees as allowed by ss. 403.9401-403.9425.

(7) To prepare a report and written analysis as required by s. 403.941.

(8) To prescribe the means for monitoring the effects arising from the construction, operation, and maintenance of the natural gas transmission pipelines to assure continued compliance with the terms of the certification.

(9) To make a determination of acceptability of any alternate corridor proposed for consideration pursuant to s. 403.9412.

(10) To act as clerk for the board.

(11) To enforce compliance with the provisions of ss. 403.9401-403.9425.

(12) To function as staff to the board, when appropriate.

**History.**—s. 1, ch. 92-284; s. 432, ch. 94-356; s. 109, ch. 98-200.

**403.9405 Applicability; certification; exemption; notice of intent.**—

(1) The provisions of ss. 403.9401-403.9425 apply to each natural gas transmission pipeline, except as provided in subsection (2).

(2) No construction of a natural gas transmission pipeline may be undertaken after October 1, 1992, without first obtaining certification under ss. 403.9401-403.9425, but these sections do not apply to:

(a) Natural gas transmission pipelines which are less than 15 miles in length or which do not cross a county line, unless the applicant has elected to apply for certification under ss. 403.9401-403.9425.

(b) Natural gas transmission pipelines for which a certificate of public convenience and necessity has been issued under s. 7(c) of the Natural Gas Act, 15 U.S.C. s. 717f, or a natural gas transmission pipeline certified as an associated facility to an electrical power plant pursuant to the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, unless the applicant elects to apply for certification of that pipeline under ss. 403.9401-403.9425.

(c) Natural gas transmission pipelines that are owned or operated by a municipality or any agency thereof, by any person primarily for the local distribution of natural gas, or by a special district created by special act to distribute natural gas, unless the applicant elects to apply for certification of that pipeline under ss. 403.9401-403.9425.

(3) Except as otherwise provided in this section, the exemption of a natural gas transmission pipeline under ss. 403.9401-403.9425 does not constitute an exemption for the natural gas transmission pipeline from other applicable permitting processes under other provisions of law or local government ordinances.

(4) All natural gas transmission pipeline companies except those engaged in activities pursuant to paragraph (2)(c) shall notify the department in writing, prior to the start of construction, of their intent to construct a natural gas transmission pipeline 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.

(5) No natural gas transmission pipeline certified pursuant to ss. 403.9401-403.9425 shall be used for the transport of any substance other than natural gas.

**History.**—s. 1, ch. 92-284.

**403.94055 Application contents; corridor requirements.**—

(1) A natural gas transmission pipeline company may file an application encompassing all or a part of one or more proposed pipelines. The beginning and ending points of a pipeline must be specified in the application and must be verified by the commission in its determination of need. The application must include all structures and maintenance and access roads required to be constructed. The applicant may include metering and compressor stations and other facilities directly related to the transportation of natural gas which will serve the pipeline.

(2) The width of the corridor may be the width of the pipeline right-of-way or wider, but may not exceed 1/3 mile. After the property interests required for the pipeline right-of-way have been acquired by the applicant, the boundaries of the corridor shall be narrowed to include only that land within pipeline right-of-way. The corridor must be specified in the application, in amendments to the application filed pursuant to s. 403.9413, and in notices of acceptance of alternate corridors filed by an applicant and the department pursuant to s. 403.9412.

**History.**—s. 1, ch. 92-284.

**403.9406 Appointment of an administrative law judge.**—Within 7 days after receipt of an application, whether complete or not, the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by ss. 403.9401-403.9425. The division director shall designate an administrative law judge to conduct the hearings required by ss. 403.9401-403.9425 within 7 days after receipt of the request from the department. Whenever practicable, the division director shall assign an administrative law judge who has had prior experience or training in the certification of linear facilities. Upon being advised that an administrative law judge has been designated, the department shall immediately file a copy of the application and all supporting documents with the administrative law judge who shall docket the application.

**History.**—s. 1, ch. 92-284; s. 171, ch. 96-410.

**403.9407 Distribution of application; schedules.**—

(1) Within 7 days after the filing of an application, the department shall provide the applicant and the Division of Administrative Hearings the names and addresses of those affected or other agencies entitled to notice and copies of the application and any amendments.

(2) Within 7 days after completeness has been determined, the department shall prepare a schedule of dates for submission of statements of issues, determination of sufficiency, and submittal of final reports from affected and other agencies and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to s. 403.9411(4). This schedule shall be provided by the department to the applicant, the administrative law judge, and the agencies identified pursuant to subsection (1).

(3) Within 7 days after completeness has been determined, the applicant shall distribute copies of the application to all agencies identified by the department pursuant to subsection (1). Copies of changes and amendments to the application shall be timely distributed by the applicant to all agencies and parties who have received a copy of the application.

**History.**—s. 1, ch. 92-284; s. 172, ch. 96-410.

**403.9408 Determination of completeness.**—Within 15 days after 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.

(1) If the department declares the application to be incomplete, the applicant, within 15 days after the filing of the statement by the department, shall file with the Division of Administrative Hearings and with the department a statement:

(a) Agreeing with the statement of the department and withdrawing the application;

(b) Agreeing with the statement of the department and agreeing to amend the application without withdrawing it. The time schedules referencing a complete application under ss. 403.9401-403.9425 shall not commence until the application is determined complete; or

(c) Contesting the statement of the department.

(2) If the applicant contests the determination by the department that an application is incomplete, the administrative law judge shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 30 days after the filing of the statement by the department. The administrative law judge shall render a decision within 10 days after the hearing.

(a) If the administrative law judge determines that the application was not complete as filed, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under ss. 403.9401-403.9425 shall not commence until the application is determined complete.

(b) If the administrative law judge determines that the application was complete at the time it was filed, the time schedules referencing a complete application under ss. 403.9401-403.9425 shall commence upon such determination.

**History.**—s. 1, ch. 92-284; s. 173, ch. 96-410.

**403.9409 Determination of sufficiency.**—Within 45 days after the distribution of the complete application or amendment, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the sufficiency of the application or amendment. The department's statement shall be based upon consultation with the affected agencies, which shall submit to the department recommendations on the sufficiency of the application within 30 days after distribution of the complete application.

(1) If the department declares the application or amendment insufficient, the applicant may:

(a) Withdraw the application or amendment;

(b) File additional information necessary to make the application or amendment sufficient; or

(c) Contest the notice of insufficiency by filing a request for hearing with the administrative law judge within 15 days after the filing of the statement of insufficiency. If a hearing is requested by the applicant, all time schedules under ss. 403.9401-403.9425 shall be tolled as of the date of the department's statement of insufficiency, pending the administrative law judge's decision concerning the dispute. A hearing shall be held no later than 30 days after the filing of the statement by the department, and a decision shall be rendered within 10 days after the hearing, unless otherwise agreed by the department and the applicant.

(2)(a) If the administrative law judge determines, contrary to the department, that an application or amendment is sufficient, all time schedules under ss. 403.9401-403.9425 shall resume as of the date of the administrative law judge's determination.

(b) If the administrative law judge agrees that the application is insufficient, all time schedules under ss. 403.9401-403.9425 shall remain tolled until the applicant files additional information and the application or amendment is determined sufficient by the department or the administrative law judge.

(3) If, within 30 days after receipt of the additional information submitted pursuant to paragraph (1)(b), or paragraph (2)(b), based upon the recommendations of the affected agencies, the department determines that the additional information supplied by an applicant does not render the application or amendment sufficient, the applicant may exercise any of the options specified in subsection (1) as often as may be necessary to resolve the matter.

**History.**—s. 1, ch. 92-284; s. 174, ch. 96-410.

**403.941 Preliminary statements of issues, reports, and studies.**—

(1) Each affected agency which received an application in accordance with s. 403.9407(3) shall submit a preliminary statement of issues to the department and the applicant no later than 60 days after distribution of the complete application. Such statements of issues shall be made available to each local government for use as information for public meetings held pursuant to s. 403.9424. The failure to raise an issue in this preliminary statement of issues shall not preclude the issue from being raised in the agency's report.

(2)(a) The affected agencies shall prepare reports as provided in this paragraph and shall submit them to the department and the applicant within 60 days after the application is determined sufficient:

1. The department shall prepare a report as to the impact of each proposed natural gas transmission pipeline or corridor as it relates to matters within its jurisdiction.

2. Each water management district in the jurisdiction of which a proposed natural gas transmission pipeline or corridor is to be located shall prepare a report as to the impact on water resources and other matters within its jurisdiction.

3. The Department of Economic Opportunity shall prepare a report containing recommendations which address the impact upon the public of the proposed natural gas transmission pipeline or corridor, based on the degree to which the proposed natural gas transmission pipeline or corridor is consistent with the applicable portions of the state comprehensive plan and other matters within its jurisdiction. The Department of Economic Opportunity may also comment on the consistency of the proposed natural gas transmission pipeline or corridor with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

4. The Fish and Wildlife Conservation Commission shall prepare a report as to the impact of each proposed natural gas transmission pipeline or corridor on fish and wildlife resources and other matters within its jurisdiction.

5. Each local government in which the natural gas transmission pipeline or natural gas transmission pipeline corridor will be located shall prepare a report as to the impact of each proposed natural gas transmission pipeline or corridor on matters within its jurisdiction, including the consistency of the proposed natural gas transmission pipeline or corridor with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed natural gas transmission pipeline or corridor, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means. No change by the responsible local government or local agency in local comprehensive plans, zoning ordinances, or other regulations made after the date required for the filing of the local government's report required by this section shall be applicable to the certification of the proposed natural gas transmission pipeline or corridor unless the certification is denied or the application is withdrawn.

6. The Department of Transportation shall prepare a report on the effect of the natural gas transmission pipeline or natural gas transmission pipeline corridor on matters within its jurisdiction, including roadway crossings by the pipeline. The report shall contain at a minimum:

a. A report by the applicant to the department stating that all requirements of the department's utilities accommodation guide have been or will be met in regard to the proposed pipeline or pipeline corridor; and

b. A statement by the department as to the adequacy of the report to the department by the applicant.

7. The Department of State, Division of Historical Resources, shall prepare a report on the impact of the natural gas transmission pipeline or natural gas transmission pipeline corridor on matters within its jurisdiction.

8. The commission shall prepare a report addressing matters within its jurisdiction. The commission's report shall include its determination of need issued pursuant to s. 403.9422.

(b) Each report shall contain the information on variances required by s. 403.9416(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.

(c) Each reviewing agency shall initiate the activities required by this section no later than 15 days after the complete application is distributed. Each agency shall keep the applicant and the department informed as to the progress of its studies and any issues raised thereby.

(3) The department shall prepare a written analysis which contains a compilation of agency reports and summaries of the material contained therein which shall be filed with the administrative law judge and served on all parties no later than 115 days after the application has been determined sufficient, and which shall include:

(a) The studies and reports required by this section and s. 403.9422.

(b) Comments received from any other agency or person.

(c) The recommendation of the department as to the disposition of the application; of variances, exemptions, exceptions, or other relief identified by any party; and of any proposed conditions of certification which the department believes should be imposed.

(4) The failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, shall not be grounds for the alteration of any time limitation in ss. 403.9401-403.9425 pursuant to s. 403.9414. Neither the failure to submit a preliminary statement of issues or a report, nor the inadequacy of the preliminary statement of issues or report, shall be grounds to deny or condition certification. However, the failure of an agency to raise issues in its report shall preclude the agency from raising those issues at the certification hearing.

**History.**—s. 1, ch. 92-284; s. 433, ch. 94-356; s. 16, ch. 95-149; s. 175, ch. 96-410; s. 216, ch. 99-245; s. 294, ch. 2011-142; s. 27, ch. 2015-30.

**403.9411 Notice; proceedings; parties and participants.**—

(1)(a) No later than 15 days after an application has been determined complete, the applicant shall arrange for publication of a notice of the application and of the proceedings required by ss. 403.9401-403.9425. Such notice shall give notice of the provisions of s. 403.9416(1) and (2).

(b) The applicant 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 applicant shall arrange for publication of a reminder notice in the newspapers specified in paragraph (d) no more than 10 days 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 to be published by the applicant shall be published in newspapers of general circulation within counties crossed by the natural gas transmission pipeline 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 and published in a section of the newspaper other than the legal notices section. These notices shall include a map generally depicting all natural gas transmission pipeline corridors proper for certification. A newspaper of general circulation shall be the newspaper within a county crossed by a natural gas transmission pipeline 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, 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.

(e) The department shall publish in the Florida Administrative Register notices of the application; of the certification hearing; of the hearing before the board; and of stipulations, proposed agency action, or petitions for modification.

(f) The department shall adopt rules specifying the content of notices required by this section. All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(2) No later than 215 days after receipt of a complete application by the department, the administrative law judge shall conduct a certification hearing pursuant to ss. 120.569 and 120.57 at a central location in proximity to the proposed natural gas transmission pipeline 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 administrative law judge 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 determining the location of the public hearing. Within 5 days after such notification, the administrative law judge 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 administrative law judge. If a local government does not request a public hearing within 50 days after the receipt of a complete application, persons residing within 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 administrative law judge shall, after consideration of all evidence of record, issue a recommended order disposing of the application no later than 60 days after the transcript of the certification hearing and the public hearings is filed with the Division of Administrative Hearings. The recommended order shall include findings of fact and conclusions of law to enable the board to effect the balance in s. 403.9415(4).

(b) Any exceptions to a recommended order shall be filed with the clerk of the department, within 15 days after the date the order is rendered.

(4)(a) Parties to the proceeding shall be:

1. The applicant.
2. The department.
3. The commission.
4. The Department of Economic Opportunity.
5. The Fish and Wildlife Conservation Commission.
6. Each water management district in the jurisdiction of which the proposed natural gas transmission pipeline or corridor is to be located.
7. The local government.
8. The Department of Transportation.
9. The Department of State, Division of Historical Resources.

(b) Any party listed in paragraph (a), other than the department or the applicant, 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.

(c) Notwithstanding the provisions of chapter 120 to the contrary, upon the filing with the administrative law judge of a notice of intent to be a party by an agency, corporation, or association described in subparagraph 1. or subparagraph 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 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

comprehensive planning or orderly development of the area in which the proposed natural gas transmission pipeline or corridor is to be located.

3. Any person whose substantial interests are affected and being determined by the proceeding.

4. Any agency whose properties or works might be affected shall be made a party upon the request of the agency or any party to this proceeding.

(5) At an appropriate time in the hearing, members of the public who are not parties shall be given an opportunity to present unsworn oral or written communications to the administrative law judge. The administrative law judge shall give parties an opportunity to challenge or rebut such communications.

(6) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:

(a) The applicant.

(b) The department.

(c) State agencies.

(d) Regional agencies, including water management districts.

(e) Local governments.

(f) Other parties.

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.

**History.**—s. 1, ch. 92-284; s. 434, ch. 94-356; s. 57, ch. 95-144; s. 176, ch. 96-410; s. 217, ch. 99-245; s. 295, ch. 2011-142; s. 44, ch. 2013-14; s. 28, ch. 2015-30.

**403.9412 Alternate corridors.**—

(1) No later than 50 days prior to the originally scheduled certification hearing, any party may propose alternate natural gas transmission pipeline corridor routes for consideration pursuant to ss. 403.9401-403.9425.

(a) A notice of any such proposed alternate corridor shall be filed with the administrative law judge, all parties, and any local governments in whose jurisdiction the alternate corridor is proposed. Such filing shall include the most recent United States Geological Survey 1:24,000 quadrangle maps specifically delineating the corridor boundaries, a description of the proposed corridor, and a statement of the reasons the proposed alternate corridor should be certified.

(b) Within 7 days after receipt of such notice, the applicant and the department shall file with the administrative law judge 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. If rescheduled, the certification hearing shall be held no later than 135 days after the previously scheduled certification hearing, unless additional time is needed due to the alternate corridor crossing a local government jurisdiction not previously affected, in which case the remainder of the schedule listed in this section shall be appropriately adjusted by the administrative law judge to allow that local government to prepare a report pursuant to s. 403.941(2)(a)5.

(c) Notice pursuant to s. 403.9411(1)(b) and (c) shall be published.

(d) Within 25 days after acceptance of an alternate corridor by the department and the applicant, the party proposing an alternate corridor shall have the burden of providing additional data to the agencies listed in s. 403.941 necessary for the preparation of a supplementary report on the proposed alternate corridor.

(e) If the department determines within 15 days that this additional data is insufficient, the party proposing the alternate corridor shall file such additional data that corrects the insufficiency within 15 days after the filing of the department's determination. If such additional data is determined insufficient, such insufficiency of data shall be deemed a withdrawal of the proposed alternate corridor. The party proposing an alternate corridor shall have the burden of proof on the certifiability, pursuant to s. 403.9415(4), of the alternate corridor at the certification

hearing. Sections 403.9401-403.9425 do not require the applicant or agencies not proposing the alternate corridor to submit data in support of such alternate corridor.

(f) The agencies listed in s. 403.941 shall file supplementary reports addressing the proposed alternate corridors no later than 45 days after additional data submitted pursuant to paragraph (e) is determined sufficient. The agencies shall submit supplementary notice pursuant to s. 403.9416(2) at the time of filing of their supplemental report.

(g) The department shall prepare a written analysis consistent with s. 403.941(3) at least 40 days prior to the rescheduled certification hearing addressing the proposed alternate corridor.

(2) If the original certification hearing date is rescheduled, the rescheduling shall not provide the opportunity for parties to file additional alternate corridors to the applicant's proposed corridor or any accepted alternate corridor. However, an amendment to the application which changes the alignment of the applicant's proposed corridor shall require rescheduling of the certification hearing, if necessary, so as to allow time for a party to file alternate corridors to the realigned proposed corridor for which the application has been amended. Any such alternate corridor proposal shall have the same starting and ending points as the realigned portion of the corridor proposed by the applicant's amendment, provided that the administrative law judge for good cause shown may authorize another starting or ending point in the area of the applicant's amended corridor.

(3) 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. 403.9415 or that a rejected alternate corridor would meet the criteria set forth in s. 403.9415. 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 originally scheduled certification hearing pursuant to this section. Rejected alternate corridors shall be considered by the board as provided in s. 403.9415(4) and (5).

(4) 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. 403.9415(4) and (5), the board shall certify that corridor.

**History.**—s. 1, ch. 92-284; s. 435, ch. 94-356; s. 177, ch. 96-410.

**403.9413 Amendment to the application.**—

(1) Any amendment made to the application shall be sent by the applicant to the administrative law judge and to all parties to the proceeding.

(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. 403.9414.

**History.**—s. 1, ch. 92-284; s. 178, ch. 96-410.

**403.9414 Alteration of time limits.**—Any time limitation in ss. 403.9401-403.9425 may be altered by the administrative law judge upon stipulation between the department and the applicant unless objected to by any party within 5 days after notice or for good cause shown.

**History.**—s. 1, ch. 92-284; s. 179, ch. 96-410.

**403.9415 Final disposition of application.**—

(1) Within 60 days after receipt of the administrative law judge's recommended order, the board shall act upon the application by written order, approving in whole, approving with such conditions as the board deems appropriate, or denying the certification and stating the reasons for issuance or denial.

(2) The issues that may be raised in any hearing before the board shall be limited to matters raised in the certification proceeding before the administrative law judge or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

(3) 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.

(4) 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 natural gas transmission pipeline corridor and the construction and maintenance of the natural gas transmission pipeline will effect a reasonable balance between the need for the natural gas transmission pipeline as a means of providing natural gas energy and the impact upon the public and the environment resulting from the location of the natural gas transmission pipeline corridor and the construction, operation, and maintenance of the natural gas transmission pipeline. In effecting this balance, the board shall consider, based on all relevant, competent and substantial evidence in the record, subject to s. 120.57(1)(l), whether and the extent to which the project will:

(a) Ensure natural gas delivery reliability and integrity;

(b) Meet the natural gas energy needs of the state in an orderly and timely fashion;

(c) Comply with the nonprocedural requirements of agencies;

(d) Adversely affect historical sites and the natural environment;

(e) Adversely affect the health, safety, and welfare of the residents of the affected local government jurisdictions;

(f) Be consistent with applicable local government comprehensive plans and land development regulations; and

(g) Avoid densely populated areas to the maximum extent feasible. If densely populated areas cannot be avoided, locate, to the maximum extent feasible, within existing utility corridors or rights-of-way.

(5)(a) Any natural gas transmission pipeline corridor certified by the board shall meet the criteria of this section. When more than one natural gas transmission pipeline corridor is proper for certification pursuant to s. 403.94055(2) and meets the criteria of this section, the board shall certify the natural gas transmission pipeline corridor that has the least adverse impact regarding the criteria in subsection (4), including costs.

(b) If the board finds that an alternate corridor rejected pursuant to s. 403.9412 meets the criteria of subsection (4) and has the least adverse impact regarding the criteria in subsection (4) of all corridors that meet the criteria of subsection (4), 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 (4) have the least adverse impacts regarding the criteria in subsection (4) and that such corridors are substantially equal in adverse impacts regarding the criteria in subsection (4), the board shall certify the corridor preferred by the applicant if the corridor is one proper for certification pursuant to s. 403.94055(2).

(6) The issuance or denial of the certification by the board shall be the final administrative action required as to that application.

(7) Within 60 days after the date a certification becomes final, an applicant which has been authorized to locate a pipeline right-of-way within a certified corridor shall pay to the department the appropriate postcertification fee prescribed by s. 403.9421(2). Failure of an applicant to pay its postcertification fee in a timely manner shall be grounds for revocation of its authorization to locate a pipeline right-of-way in the certified corridor.

(8) An applicant which has been authorized to locate a pipeline right-of-way within a certified corridor shall file documents with the department prior to construction, identifying the location of the right-of-way within the certified corridor.

**History.**—s. 1, ch. 92-284; s. 180, ch. 96-410; s. 40, ch. 2000-153.

**403.9416 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 a natural gas transmission pipeline corridor and, except for permits issuable pursuant to a federally delegated or approved permit program and permits issuable under s. 403.0872 or s. 403.0885, for the construction and maintenance of a natural gas transmission pipeline therein. The certification shall be valid for the life of the natural gas transmission pipeline. If construction on, or condemnation or acquisition of, the right-of-way is not commenced within 5 years after the date of certification or such later date as may be authorized by the board, the certification shall become void.

(2)(a) The certification shall authorize the applicant to locate the natural gas transmission pipeline corridor and to construct and maintain the natural gas transmission pipelines subject only to the conditions of certification set forth in such certification.

(b) The certification may include conditions which constitute variances and exemptions 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 in this paragraph and which otherwise would be applicable to the location of the proposed natural gas transmission pipeline corridor or the construction and maintenance of the natural gas transmission pipelines. Each party shall notify the applicant and other parties at the time scheduled for the filing of the agency reports of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any corridor proposed for certification. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program. Failure of such notification shall be treated as a waiver from the nonprocedural requirements of that 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 166, chapter 186, chapter 253, chapter 258, chapter 298, chapter 373, chapter 376, chapter 377, chapter 379, chapter 380, chapter 381, chapter 403, 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 to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or a water management district created pursuant to chapter 373, 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 or from the governing board of the water management district 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) 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) A certification does not represent an exclusive license limiting the number of natural gas transmission pipelines which may be located within the geographical boundaries of a certified corridor, nor shall it prevent a natural gas transmission pipeline company which has been issued a certificate of public convenience and necessity under s. 7(c) of the Natural Gas Act, 15 U.S.C. s. 717f, from obtaining permits from this state for the construction of such pipeline within the geographical area encompassed by a certified corridor, upon the satisfaction of applicable permitting criteria. No term or condition of an existing certification shall be interpreted to preclude an applicant from submitting an application for certification of a natural gas transmission pipeline corridor which encompasses part or all of an existing certified corridor.

(6) No term or condition of a site certification shall be interpreted to supersede or control the provisions of a final permit issued pursuant to a federally delegated or approved permit program, including any permit issued under s. 403.0872 or s. 403.0885.

(7) This act shall not in any way affect the right of any local government to charge appropriate fees.

**History.**—s. 1, ch. 92-284; s. 13, ch. 94-321; s. 55, ch. 2009-21; s. 75, ch. 2013-15.

**403.9417 Recording of notice of certified corridor route.**—Within 60 days after certification of a natural gas transmission pipeline corridor pursuant to ss. 403.9401-403.9425, 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 natural gas transmission pipeline 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. 1, ch. 92-284.

**403.9418 Modification of certification.**—

(1) A certification may be modified after issuance in any one of the following ways:

(a) The board may delegate to the department the authority to modify specific conditions in the certification.

(b) 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. If objections are raised, the applicant or department may file a petition for modification with the department and the Division of Administrative Hearings setting forth:

1. The proposed modification.
2. The factual reasons asserted for the modification.
3. The anticipated additional environmental effects of the proposed modification.

(2) Petitions filed pursuant to paragraph (1)(b) shall be disposed of in the same manner as an application but within the times established by the administrative law judge commensurate with the significance of the modification requested.

(3) In the event that any of the terms and conditions of any permit issued pursuant to a federally delegated or approved permit program are modified under the requirements of the program and the modified permit conflicts with the terms and conditions of the site certification, the terms and conditions of the permit shall control and the site certification shall be deemed modified to incorporate the permit requirements.

**History.**—s. 1, ch. 92-284; s. 14, ch. 94-321; s. 181, ch. 96-410.

**403.9419 Enforcement of compliance.**—Failure to obtain a certification, to comply with the conditions of certification, or to comply with ss. 403.9401-403.9425 shall constitute a violation of this chapter. The department shall enforce compliance with the conditions of certification issued under ss. 403.9401-403.9425, in accordance with the provisions of ss. 403.061 and 403.121.

**History.**—s. 1, ch. 92-284.

**403.942 Superseded laws, regulations, and certification power.**—

(1) Except for those provisions related to or rules adopted pursuant to a federally delegated or approved permit program, including ss. 403.0872 and 403.0885, if any provision of ss. 403.9401-403.9425 is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, ss. 403.9401-403.9425 shall control and such law, rule, regulation, or ordinance shall be deemed superseded.

(2) The state preempts the certification and regulation of natural gas transmission pipelines and natural gas transmission pipeline corridors subject to ss. 403.9401-403.9425.

**History.**—s. 1, ch. 92-284; s. 15, ch. 94-321; s. 27, ch. 2015-4.

**403.9421 Fees; disposition.**—The department shall charge the applicant the following fees, as appropriate, which shall be paid into the Florida Permit Fee Trust Fund:

(1) An application fee of $240,000, plus $500 per mile for each mile of natural gas transmission pipeline corridor proposed to be located in an existing electrical transmission line right-of-way or in existing rights-of-way for roads, highways, railroads, gas, water, oil, sewer, or any other public purpose, and $1,000 per mile for each

mile of natural gas transmission pipeline proposed to be located outside existing rights-of-way, not to exceed a total fee of $890,000.

(2) A postcertification fee determined as follows:

(a) For pipelines of 50 miles or less in total length, the fee shall be $75,000.

(b) For pipelines of between 50 and 150 miles in total length, the fee shall be $125,000.

(c) For pipelines of a total length greater than 150 miles, the fee shall be $175,000.

(3) An application amendment fee which shall apply only when a corridor alignment change is proposed by an applicant prior to the issuance of the department's written analysis as to a proposed corridor.

(a) The fee shall be $5,000 plus $500 for each mile of natural gas transmission pipeline corridor proposed to be located in an existing electrical transmission line right-of-way or in existing rights-of-way for roads, highways, railroads, gas, water, oil, sewer, or any other public purpose, and $1,000 per mile for each mile of natural gas transmission pipeline proposed to be located outside existing rights-of-way.

(b) No fee shall be required if an applicant adopts an alternate corridor alignment which is timely proposed under s. 403.9412.

(4) A certification modification fee determined as follows:

(a) If no corridor alignment change is involved, the fee shall be $10,000.

(b) If a corridor alignment change is proposed, the fee shall be $10,000 plus $500 for each mile of natural gas transmission pipeline corridor proposed to be located in an existing electrical transmission line right-of-way or in existing rights-of-way for roads, highways, railroads, gas, water, oil, sewer, or any other public purpose, and $1,000 per mile for each mile of natural gas transmission pipeline proposed to be located outside existing rights-of-way.

(5) In administering fee revenues received under this section, the department shall allocate the funds as follows:

(a) The department shall retain fee revenues to be utilized as follows:

1. Fifty percent of the fees specified under this section, except for postcertification fees, shall be retained by the department to cover its costs associated with reviewing and acting upon applications and requests for modification of certification.

2. Sixty percent of postcertification fees shall be retained by the department exclusively to cover its costs associated with postcertification review of natural gas transmission pipeline rights-of-way which are established, constructed, and maintained under certification issued under ss. 403.9401-403.9425.

(b) Sixteen percent of the fees specified under this section, except for postcertification fees, shall be transferred to the Operating Trust Fund of the Division of Administrative Hearings to cover its costs associated with reviewing and hearing applications, amendments, modifications, and disputes related to ss. 403.9401-403.9425.

(c) The balance of fees remaining shall be used by the department to reimburse affected agencies included in s. 403.941(2)(a) for costs incurred in application and postcertification review, respectively.

1. For application processing costs, upon presentation by an affected agency of a proper itemized accounting within 90 days after the date of the board's order approving certification or the date on which a pending application is otherwise disposed of, the department shall reimburse the agencies for authorized costs from the fee balances remaining. Such reimbursement shall be authorized for studies and the preparation of any reports required of the agencies by ss. 403.9401-403.9425, for agency travel and per diem to attend any hearing held, and for participation in the proceedings. In the event the amount available for allocation is insufficient to provide for complete reimbursement to the agencies, reimbursement shall be on a prorated basis. If any sums are remaining, the department shall retain them for use in the same manner as is otherwise authorized by this section; however, if the certification application is withdrawn, the remaining sums shall be refunded to the applicant within 120 days after withdrawal.

2. For postcertification costs, an invoice may be submitted on an annual basis, commencing from the date of certification, for expenses incurred by affected agencies conducting postcertification review work pursuant to the conditions of certification. In the event the amount available for allocation is insufficient to provide for complete reimbursement to the agencies, reimbursement shall be on a prorated basis.

**History.**—s. 1, ch. 92-284; s. 70, ch. 96-321; s. 15, ch. 2006-79.

**403.9422 Determination of need for natural gas transmission pipeline; powers and duties.**—

(1)(a) Upon request by an applicant or upon its own motion, the commission shall schedule a public hearing, after notice, to determine the need for a natural gas transmission pipeline regulated by ss. 403.9401-403.9425. Such notice shall be published at least 45 days before the date set for the hearing and shall be published in at least one-quarter page size in newspapers of general circulation and in the Florida Administrative Register, by giving notice to counties and regional planning councils in whose jurisdiction the natural gas transmission pipeline 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 75 days after the filing of the request, and a decision shall be rendered within 90 days after such filing.

(b) In the determination of need, the commission shall take into account the need for natural gas delivery reliability, safety, and integrity; the need for abundant, clean-burning natural gas to assure the economic well-being of the public; the appropriate commencement and terminus of the line; and other matters within its jurisdiction deemed relevant to the determination of need.

(c) The commission shall be the sole forum for the determination of need. The determination by the commission of the need for the natural gas transmission pipeline is binding on all parties to any certification proceeding pursuant to ss. 403.9401-403.9425 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.

(d) For pipelines regulated under the Natural Gas Act, 15 U.S.C. ss. 717f et seq., a certificate of public convenience and necessity under s. 7(c) of the Natural Gas Act is considered equivalent to the determination of need by the commission for all purposes under ss. 403.9401-403.9425, notwithstanding any provision in paragraph (c) to the contrary.

(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. 92-284; s. 45, ch. 2013-14.

**403.9423 Certification admissible in eminent domain proceedings; attorney's fees and costs.**—

(1) Certification pursuant to ss. 403.9401-403.9425 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. 1, ch. 92-284.

**403.9424 Local governments; informational public meetings.**—

(1) Local governments may hold informational public meetings in addition to the hearings specifically authorized by ss. 403.9401-403.9425 on any matter associated with the natural gas transmission pipeline siting proceeding. Such informational public meetings should be held no later than 80 days after the complete application is filed. The purpose of an informational public meeting is for the local government to further inform the public about the natural gas transmission pipeline proposed, obtain comments from the public, and formulate its recommendation with respect to the proposed natural gas transmission pipeline. Neither the meetings held nor the recommendations made by the local government pursuant to this section shall address the need for the pipeline.

(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 ss. 403.9401-403.9425 shall be encouraged to attend; however, no party shall be required to attend such informational public meetings.

(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 ss. 403.9401-403.9425 pursuant to s. 403.9414 or grounds to deny or condition certification.

**History.**—s. 1, ch. 92-284.

**403.9425 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 ss. 403.9401-403.9425 or rules or orders issued thereunder.

**History.**—s. 1, ch. 92-284.

## PART IX
## EXPEDITED PERMITTING

403.973 Expedited permitting; amendments to comprehensive plans.

**403.973 Expedited permitting; amendments to comprehensive plans.**—

(1) It is the intent of the Legislature to encourage and facilitate the location and expansion of those types of economic development projects which offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment. It is also the intent of the Legislature to provide for an expedited permitting and comprehensive plan amendment process for such projects.

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

(a) "Duly noticed" means publication in a newspaper of general circulation in the municipality or county with jurisdiction. The notice shall appear on at least 2 separate days, one of which shall be at least 7 days before the meeting. The notice shall state the date, time, and place of the meeting scheduled to discuss or enact the memorandum of agreement, and the places within the municipality or county where such proposed memorandum of agreement may be inspected by the public. The notice must be one-eighth of a page in size and must be published in a portion of the paper other than the legal notices section. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the memorandum of agreement.

(b) "Jobs" means permanent, full-time equivalent positions not including construction jobs.

(c) "Permit applications" means state permits and licenses, and at the option of a participating local government, local development permits or orders.

(d) "Secretary" means the Secretary of Environmental Protection or his or her designee.

(3)(a) The secretary shall direct the creation of regional permit action teams for the purpose of expediting review of permit applications and local comprehensive plan amendments submitted by:

1. Businesses creating at least 50 jobs or a commercial or industrial development project that will be occupied by businesses that would individually or collectively create at least 50 jobs; or

2. Businesses creating at least 25 jobs if the project is located in an enterprise zone, or in a county having a population of fewer than 75,000 or in a county having a population of fewer than 125,000 which is contiguous to a county having a population of fewer than 75,000, as determined by the most recent decennial census, residing in incorporated and unincorporated areas of the county.

(b) On a case-by-case basis and at the request of a county or municipal government, the Department of Economic Opportunity may certify as eligible for expedited review a project not meeting the minimum job creation thresholds but creating a minimum of 10 jobs. The recommendation from the governing body of the county or municipality in which the project may be located is required in order for the Department of Economic Opportunity to certify that any project is eligible for expedited review under this paragraph. When considering projects that do not meet the minimum job creation thresholds but that are recommended by the governing body in which the

project may be located, the Department of Economic Opportunity shall consider economic impact factors that include, but are not limited to:

1. The proposed wage and skill levels relative to those existing in the area in which the project may be located;

2. The project's potential to diversify and strengthen the area's economy;

3. The amount of capital investment; and

4. The number of jobs that will be made available for persons served by the welfare transition program.

(c) At the request of a county or municipal government, the Department of Economic Opportunity or a Quick Permitting County may certify projects located in counties where the ratio of new jobs per participant in the welfare transition program, as determined by CareerSource Florida, Inc., is less than one or otherwise critical, as eligible for the expedited permitting process. Such projects must meet the numerical criteria for job creation specified in this subsection, but the jobs created by the project do not have to be high-wage jobs that diversify the state's economy.

(d) Projects located in a designated brownfield area are eligible for the expedited permitting process.

(e) Projects that are part of the state-of-the-art biomedical research institution and campus to be established in this state by the grantee under s. 288.955 are eligible for the expedited permitting process, if the projects are designated as part of the institution or campus by the board of county commissioners of the county in which the institution and campus are established.

(f) Projects resulting in the production of biofuels cultivated on lands that are 1,000 acres or more or in the construction of a biofuel or biodiesel processing facility or a facility generating renewable energy, as defined in s. 366.91(2)(d), are eligible for the expedited permitting process.

(g) Projects for natural gas storage facilities that are permitted under chapter 377 are eligible for the expedited permitting process.

(h) Projects to construct interstate natural gas pipelines subject to certification by the Federal Energy Regulatory Commission are eligible for the expedited permitting process.

(4) The regional teams shall be established through the execution of a project-specific memorandum of agreement developed and executed by the applicant and the secretary, with input solicited from the respective heads of the Department of Transportation and its district offices, the Department of Agriculture and Consumer Services, the Fish and Wildlife Conservation Commission, appropriate regional planning councils, appropriate water management districts, and voluntarily participating municipalities and counties. The memorandum of agreement should also accommodate participation in this expedited process by other local governments and federal agencies as circumstances warrant.

(5) In order to facilitate local government's option to participate in this expedited review process, the secretary shall, in cooperation with local governments and participating state agencies, create a standard form memorandum of agreement. The standard form of the memorandum of agreement shall be used only if the local government participates in the expedited review process. In the absence of local government participation, only the project-specific memorandum of agreement executed pursuant to subsection (4) applies. A local government shall hold a duly noticed public workshop to review and explain to the public the expedited permitting process and the terms and conditions of the standard form memorandum of agreement.

(6) The local government shall hold a duly noticed public hearing to execute a memorandum of agreement for each qualified project. Notwithstanding any other provision of law, and at the option of the local government, the workshop provided for in subsection (5) may be conducted on the same date as the public hearing held under this subsection. The memorandum of agreement that a local government signs shall include a provision identifying necessary local government procedures and time limits that will be modified to allow for the local government decision on the project within 90 days. The memorandum of agreement applies to projects, on a case-by-case basis, that qualify for special review and approval as specified in this section. The memorandum of agreement must make it clear that this expedited permitting and review process does not modify, qualify, or otherwise alter existing local government nonprocedural standards for permit applications, unless expressly authorized by law.

(7) Appeals of local government comprehensive plan approvals for a project shall be pursuant to the summary hearing provisions of s. 120.574, pursuant to subsection (14), and consolidated with the challenge of any applicable state agency actions.

(8) Each memorandum of agreement shall include a process for final agency action on permit applications and local comprehensive plan amendment approvals within 90 days after receipt of a completed application, unless the applicant agrees to a longer time period or the secretary determines that unforeseen or uncontrollable circumstances preclude final agency action within the 90-day timeframe. Permit applications governed by federally delegated or approved permitting programs whose requirements would prohibit or be inconsistent with the 90-day timeframe are exempt from this provision, but must be processed by the agency with federally delegated or approved program responsibility as expeditiously as possible.

(9) The secretary shall inform the Legislature by October 1 of each year which agencies have not entered into or implemented an agreement and identify any barriers to achieving success of the program.

(10) The memoranda of agreement may provide for the waiver or modification of procedural rules prescribing forms, fees, procedures, or time limits for the review or processing of permit applications under the jurisdiction of those agencies that are members of the regional permit action team. Notwithstanding any other provision of law to the contrary, a memorandum of agreement must to the extent feasible provide for proceedings and hearings otherwise held separately to be combined into one proceeding or held jointly and at one location. Such waivers or modifications are not authorized for permit applications governed by federally delegated or approved permitting programs, the requirements of which would prohibit, or be inconsistent with, such a waiver or modification.

(11) The memoranda of agreement shall include guidelines to be used in working with state, regional, and local permitting authorities. Guidelines may include, but are not limited to, the following:

(a) A central contact point for filing permit applications and local comprehensive plan amendments and for obtaining information on permit and local comprehensive plan amendment requirements.

(b) Identification of the individual or individuals within each respective agency who will be responsible for processing the expedited permit application or local comprehensive plan amendment for that agency.

(c) A mandatory preapplication review process to reduce permitting conflicts by providing guidance to applicants regarding the permits needed from each agency and governmental entity, site planning and development, site suitability and limitations, facility design, and steps the applicant can take to ensure expeditious permit application and local comprehensive plan amendment review. As a part of this process, the first interagency meeting to discuss a project shall be held within 14 days after the secretary's determination that the project is eligible for expedited review. Subsequent interagency meetings may be scheduled to accommodate the needs of participating local governments that are unable to meet public notice requirements for executing a memorandum of agreement within this timeframe. This accommodation may not exceed 45 days from the secretary's determination that the project is eligible for expedited review.

(d) The preparation of a single coordinated project description form and checklist and an agreement by state and regional agencies to reduce the burden on an applicant to provide duplicate information to multiple agencies.

(e) Establishment of a process for the adoption and review of any comprehensive plan amendment needed by any certified project within 90 days after the submission of an application for a comprehensive plan amendment. However, the memorandum of agreement may not prevent affected persons as defined in s. 163.3184 from appealing or participating in this expedited plan amendment process and any review or appeals of decisions made under this paragraph.

(f) Additional incentives for an applicant who proposes a project that provides a net ecosystem benefit.

(12) The applicant, the regional permit action team, and participating local governments may agree to incorporate into a single document the permits, licenses, and approvals that are obtained through the expedited permit process. This consolidated permit is subject to the summary hearing provisions set forth in subsection (14).

(13) Notwithstanding any other provisions of law, projects qualified under this section are not subject to interstate highway level-of-service standards adopted by the Department of Transportation for concurrency purposes. The memorandum of agreement specified in subsection (5) must include a process by which the applicant will be assessed a fair share of the cost of mitigating the project's significant traffic impacts, as defined

in chapter 380 and related rules. The agreement must also specify whether the significant traffic impacts on the interstate system will be mitigated through the implementation of a project or payment of funds to the Department of Transportation. Where funds are paid, the Department of Transportation must include in the 5-year work program transportation projects or project phases, in an amount equal to the funds received, to mitigate the traffic impacts associated with the proposed project.

(14)(a) Challenges to state agency action in the expedited permitting process for projects processed under this section are subject to the summary hearing provisions of s. 120.574, except that the administrative law judge's decision, as provided in s. 120.574(2)(f), shall be in the form of a recommended order and does not constitute the final action of the state agency. In those proceedings where the action of only one agency of the state other than the Department of Environmental Protection is challenged, the agency of the state shall issue the final order within 45 working days after receipt of the administrative law judge's recommended order, and the recommended order shall inform the parties of their right to file exceptions or responses to the recommended order in accordance with the uniform rules of procedure pursuant to s. 120.54. In those proceedings where the actions of more than one agency of the state are challenged, the Governor shall issue the final order within 45 working days after receipt of the administrative law judge's recommended order, and the recommended order shall inform the parties of their right to file exceptions or responses to the recommended order in accordance with the uniform rules of procedure pursuant to s. 120.54. For the issuance of department licenses required under any federally delegated or approved permit program, the department, and not the Governor, shall enter the final order. The participating agencies of the state may opt at the preliminary hearing conference to allow the administrative law judge's decision to constitute the final agency action.

(b) Projects identified in paragraphs (3)(f)-(h) or challenges to state agency action in the expedited permitting process for establishment of a state-of-the-art biomedical research institution and campus in this state by the grantee under s. 288.955 are subject to the same requirements as challenges brought under paragraph (a), except that, notwithstanding s. 120.574, summary proceedings must be conducted within 30 days after a party files the motion for summary hearing, regardless of whether the parties agree to the summary proceeding.

(15) The Department of Economic Opportunity, working with the agencies providing cooperative assistance and input regarding the memoranda of agreement, shall review sites proposed for the location of facilities that the Department of Economic Opportunity has certified to be eligible for the Innovation Incentive Program under s. 288.1089. Within 20 days after the request for the review by the Department of Economic Opportunity, the agencies shall provide to the Department of Economic Opportunity a statement as to each site's necessary permits under local, state, and federal law and an identification of significant permitting issues, which if unresolved, may result in the denial of an agency permit or approval or any significant delay caused by the permitting process.

(16) This expedited permitting process shall not modify, qualify, or otherwise alter existing agency nonprocedural standards for permit applications or local comprehensive plan amendments, unless expressly authorized by law. If it is determined that the applicant is not eligible to use this process, the applicant may apply for permitting of the project through the normal permitting processes.

(17) The Department of Economic Opportunity shall be responsible for certifying a business as eligible for undergoing expedited review under this section. Enterprise Florida, Inc., a county or municipal government, or the Rural Economic Development Initiative may recommend to the Department of Economic Opportunity that a project meeting the minimum job creation threshold undergo expedited review.

(18) The Department of Economic Opportunity, working with the Rural Economic Development Initiative, shall provide technical assistance in preparing permit applications and local comprehensive plan amendments for counties having a population of fewer than 75,000 residents, or counties having fewer than 125,000 residents which are contiguous to counties having fewer than 75,000 residents. Additional assistance may include, but not be limited to, guidance in land development regulations and permitting processes, working cooperatively with state, regional, and local entities to identify areas within these counties which may be suitable or adaptable for preclearance review of specified types of land uses and other activities requiring permits.

(19) The following projects are ineligible for review under this part:

(a) A project funded and operated by a local government, as defined in s. 377.709, and located within that government's jurisdiction.

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(d).

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, or sewage pipeline.

**History.**—s. 148, ch. 96-320; s. 2, ch. 97-28; s. 9, ch. 99-244; s. 221, ch. 99-245; s. 91, ch. 2000-165; s. 14, ch. 2000-317; s. 3, ch. 2003-420; s. 6, ch. 2006-55; s. 23, ch. 2007-105; s. 110, ch. 2008-4; s. 62, ch. 2010-205; s. 63, ch. 2011-139; s. 296, ch. 2011-142; s. 21, ch. 2012-205; s. 23, ch. 2013-92; s. 24, ch. 2013-205; s. 14, ch. 2015-98.