



# Overview Water Resources Chapter 373, Florida Statutes

Authority

Responsibilities

Duties

## Origin and Evolution Chapter 373, Florida Statutes

- The South Florida Water Management District transitioned from the Flood Control District which was created in 1949
- Origin in Water Resources Act of 1972
- The Act Created Five Water Management Districts
- The Act amended every year since 1972
- Much of original language remains; however, current version is three times longer than original.



## Chapter 373, Florida Statutes Parts I-VI

- I. State Water Resource Plan
- II. Permitting Consumptive Uses of Water
- III. Regulation of Wells and Well Drillers
- IV. Management and Storage of Surface Waters
- V. Finance and Taxation
- VI. Miscellaneous Provisions



## Today, we will cover Part I - State Water Resource Plan

- Scope and Declaration of Policy
- General Powers and Duties
- Water Resource Plan Requirements
- General Rulemaking Authority



## General Powers and Duties of DEP S. 373.026, F.S.

- Administer Chapter 373, F.S., at the state level
- Supervise all water management districts
  - May exercise any power a district is authorized to exercise
  - To greatest extent practicable, powers should be delegated to the districts
  - DEP Rules 62-113.100-200, F.A.C., cover delegations to the districts
- Hold annual conference on water resource development programs



## The District has broad jurisdiction – and you have many diverse responsibilities

- Governance of district, basins, board and employees
- Declaration of policies
- Central and Southern Florida Project
- Water resource planning
- Water use permitting
- Water shortage and conservation
- Water well construction and well driller regulation



## Responsibilities, Cont.

- Environmental Resource Permitting
- Mitigation and mitigation banking
- Everglades Forever Act
- Lake Okeechobee and Estuaries Protection Act
- Florida Bay
- Miami Lake Belt Plan and Mitigation
- Land acquisition and management
- Finance and taxing
- Emergencies



## Jurisdiction S. 373.023, F.S.

SEWMD

- All waters in the state are subject to regulation under Chapter 373, F.S.
- Waters in the state include any and all water on or beneath the surface of the ground or in the atmosphere



## Legislative Authority

- The District is a creature of statute and can only do what it is authorized to do by the Legislature
- Legislature may set overall policy and leave specifics to be filled in by administrative agency, but must provide adequate legal standards to guide agency's use of discretion



## Legislative Authority

Problem: If law is vague or does not provide adequate guidelines, courts will interpret it as giving the agency unbridled discretion with no legislative standards and it will be struck down.

Problem: If agency takes action outside the scope of powers, functions and duties delegated by the Legislature, courts will interpret it as an “Invalid exercise of delegated legislative authority” and order appropriate corrective action.



## Declaration of Policy S. 373.016, F.S.

- Legislature declared 10 basic policies--to be construed and applied as a whole, not in isolation--when implementing Chapter 373, F.S. They address:
  - Proper utilization of surface and ground water
  - Reservoirs and other works to provide water storage
  - Water for existing and future uses and natural systems
  - Flooding, soil erosion and drainage
  - Preservation of natural resources, fish and wildlife
  - Recreation, public lands and navigation



## General Powers and Duties of the Governing Board

### S. 373.083, F.S.

- Enter into contracts
- Sue and be sued
- Appoint and remove agents, employees and consultants
- Issue orders to implement and enforce Ch. 373 and rules
- Delegate powers and duties to a board member, executive director or other staff (except denial of environmental resource or water use permits)



## Additional Powers Vested In The Board S. 373.103, F.S.

- Administer and enforce all provisions of Chapter 373, including the environmental resource, water use and well construction permit systems
- Construct, operate and maintain water control projects and water levels in bodies of water controlled by the district
- Additional authority necessary to perform duties and decide matters



## Water Resource Plan Requirements Florida Water Plan S. 373.036, F.S.

Under Chapter 373, DEP must develop the Florida Water Plan, which includes:

- DEP's water related programs and activities
- State water quality standards
- District water management plans
- State water policy rule (or water resource implementation rule)



## Water Resource Plan Requirements District Water Management Plan S. 373.036, F.S.

Districts are required to prepare comprehensive water management plan based on a 20-year planning period (update every 5 years, with report annually):

- Our Annual Strategic Plan fulfills this requirement because it:
  - Sets strategic priorities for next five years, and
  - Includes an Annual Work Plan



## Water Resource Plan Requirements Consolidated Annual Report S. 373.036, F.S.

All Districts required to submit an annual report to DEP, Governor, Senate and House and include:

- Annual Work Plan
- Minimum flows and levels priority list and schedule
- 5-year capital improvements plan
- Alternative water supplies annual report
- 5-year water resource development work program
- Florida Forever District Work Plan annual report
- Mitigation donation annual report



## Water Resource Plan Requirements Consolidated Annual Report S. 373.036, F.S.

SFWMD has additional annual report requirements we put these in the South Florida Environmental Report (SFER):

- Lake Okeechobee Protection Program Progress Report
- Everglades Progress Report
- Everglades Restoration Report
- Everglades Forever Act Implementation Report
- Everglades Trust Fund Expenditure Report



## General Rulemaking Authority Ss. 373.044, 373.113, 373.171, F.S.

- Board authorized to adopt rules to:
  - Implement and administer Chapter 373, F.S.
  - Obtain beneficial use of water and to protect public health, safety and welfare of affected water users
- Rules and orders may be enforced in state court by mandatory injunction or other action
- The District has resource rules, like the Environmental Resource Permitting (ERP) Rule that implements our statutory authority as well as business rules like the Small Business Contracting (SBE) Rule.



## What Is a Rule? S. 120.52(15), F.S.

Each agency statement of general applicability that:

- Implements or interprets law or policy
- Describes procedural requirements
- Includes forms that solicit information



## Why Adopt Rules? Ss. 120.54(1)(a) and 120.56(4), F.S.

- Rulemaking is not a matter of agency discretion. The Florida Administrative Procedures Act (APA) requires it.
- Statements that meet the definition of a rule must be adopted by formal rulemaking procedures as soon as feasible and practicable
- Unadopted rules may be challenged
  - By a petition filed with Division of Administrative Hearings, or
  - Flagged by the Legislature's Joint Administrative Procedures Committee



## Why The Florida APA Requires Rules

- Adoption procedures provide notice and opportunity for the public to provide comments and information and help shape agency's requirements
- Adopted rules provide guidance to enhance consistency in agency actions
- Adopted rules and supporting documents are published and easy for the public to find



## Authority To Adopt Rules Definitions 120.52(8) and 120.536, F.S.

- Rules must be based on powers, functions and duties delegated by the Legislature
- Rules will constitute “Invalid exercise of delegated legislative authority” if they:
  - Enlarge or contradict the law implemented
  - Are vague or give agency unbridled discretion
  - Are arbitrary or capricious--not supported by logic, facts, reason



## Emergency Orders S. 373.119, F.S.

Executive Director may issue an Emergency Order when immediate action required to protect:

- Public health, safety or welfare
- Health of animals, fish or aquatic life
- Public water supply, recreational, commercial, industrial, agricultural or other reasonable uses
- Order may require actions Executive Director deems necessary to meet emergency
- May issue without prior notice
- Seek concurrence and advice of the board



## Judicial Enforcement of Regulation and Orders S. 373.136, F.S.

- Board may enforce rules and orders by suit for injunction or other action in courts of the state
- Court may award reasonable attorney's fees and costs to prevailing party
- Citizen's suits seeking enforcement are governed by the Florida Environmental Protection Act, S. 403.412, F.S.



## Additional Judicial Actions S. 373.129, F.S.

Board may authorize lawsuits to:

- Enforce or enjoin violations of its rules, regulations, and orders
- Protect and preserve water resources of the state
- Defend actions involving its powers and duties pertaining to water resources
- Recover investigative and court costs and reasonable attorney's fees



## To Be Continued

- Future workshops to cover other parts of Chapter 373. Will also participate on specific workshop items where applicable.

