

CHAPTER 62-43
SURFACE WATER IMPROVEMENT AND MANAGEMENT ACT

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62-43.010 Intent. (REPEALED)

Rulemaking Authority 373.043, FS. Law Implemented 373.026, 373.453, 373.455, 373.456, FS. History - New 12-7-87; Amended 2-1-90, Formerly 17-43.010, Repealed 2-28-12.

62-43.020 Definitions.

- (1) "Department" means the Department of Environmental Protection.
- (2) "Secretary" means the Secretary of the Department of Environmental Protection.
- (3) "District" means any one of the five water management districts created by Section 373.069, Florida Statutes.
- (4) "Fund" means the Surface Water Improvement and Management Trust Fund.
- (5) "Procedures Manual" means the Department's SWIM Review Procedures Manual dated March 20, 1990 which is hereby incorporated by reference.
- (6) "Approved Surface Water Priority List" means the list adopted by the governing board of a District and approved by the Department based on criteria adopted by this rule.
- (7) "Adopted Plan" means the written strategies for a specific priority water body or bodies, which have completed the full process of approval, review, and adoption pursuant to Sections 373.455 and 373.456, F.S.
- (8) "Uniform Format" means the plan format outlined in the Procedures Manual.
- (9) "Priority Planning" means District activity directed toward developing an Approved Surface Water Priority List or an Adopted Plan for the restoration or protection of surface waters.
- (10) "State Water Policy" means the comprehensive statewide policy as adopted by the Department pursuant to Sections 373.026 and 403.061, F.S., setting for the goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources.
- (11) "State Comprehensive Plan" means the plan adopted pursuant to Chapter 187, F.S.

Specific Authority 373.043, 373.453, FS. Law Implemented 373.026, 373.451, 373.453, 373.455, 373.456, FS. History - New 12-7-87; Amended 2-1-90, 5-03-90, Formerly 17-43.020.

62-43.030 Preparation, Submittal, and Review of Surface Water Priority Lists.

- (1) Each District, in cooperation with the Department, the Department of Agriculture and Consumer Services, the Department of Community Affairs, the Game and Fresh Water Fish Commission, the Department of Environmental Protection, and local governments, shall develop and maintain a list in priority order of surface waters of

regional or statewide significance which require restoration or protection. Each District shall consider the following criteria in preparing the list and priority ranking:

(a) The degree to which state water quality standards are violated. In reviewing this criterion, each District shall consider the following factors:

1. The status and trends of water quality in the water body, including the nature and extent of pollution loading from point and nonpoint sources and the extent to which uses are impaired;
2. Whether the water body can reasonably be expected to meet or maintain water quality standards without action to control point or nonpoint sources; and
3. The nature and extent of sources of point and nonpoint pollution which contribute to the waters not meeting standards.

(b) An evaluation of the nature and extent of conditions that adversely affect the water body, including, but not limited to:

1. Nutrient balance of the water body;
2. Trophic state of the water body;
3. Existence or need for continuous aquatic weed control;
4. Biological condition of the water body;
5. Physical conditions; and
6. Reduced fish and wildlife values.

(c) Threats to water supplies, especially agricultural and urban supplies, and public recreational opportunities. In reviewing this criterion, each District shall consider the following factors:

1. Whether uses of the water body are impaired, including whether the water body does not meet state water quality standards or requires control programs to maintain compliance with standards; and
2. Whether conditions intermittently or frequently prevent a beneficial use.

(d) Threats to or need for long-term protection of those exceptional or outstanding water bodies which are currently in good conditions.

(e) The extent to which the plans, ordinances, and policies of local governmental units with jurisdiction over the water body are consistent with a District's efforts to restore or protect the water body.

(f) The feasibility of monitoring the success of restoration or protection efforts in the water body.

(g) The economic and environmental feasibility of accomplishing the restoration or protection goals.

(2) Using the criteria established by Section 62-43.030(1), F.A.C., each District shall prepare and submit to the Department a surface water priority list. The list shall include supporting documentation explaining the use of the specified criteria in development of the list and of the selected priority order.

(3) Within 30 days after receipt of the District's proposed priority list, the Department shall notify the District in writing whether the list is approved as consistent with the intent and provisions of this rule and Section 373.453, F.S. If the list is not

approved, the notification shall include recommendations for modifications necessary to obtain Department approval of the final list.

(4) The Approved Surface Water Priority List shall be reviewed and updated by the District as necessary, but in no event later than every 3 years. The revised list shall be submitted to the Department for approval as specified by Sections 62-43.030(2), F.A.C.

Specific Authority 373.043, 373.453, FS. Law Implemented 373.026, 373.451, 373.453, FS. History - New 12-7-87; Amended 2-1-90, Formerly 17-43.030.

62-43.035 Preparation, Submittal, and Review of Surface Water Plans.

(1) Each District, in cooperation with the Department, the Department of Agriculture and Consumer Services, the Department of Community Affairs, the Game and Fresh Water Fish Commission, the Department of Environmental Protection, and local governments shall prepare and submit to the Department a plan, composed of one or more strategies, for the management of the specific water bodies in the order in which they appear on the Approved Surface Water Priority List. These plans shall be developed using the Uniform Format. Each plan shall include at least:

(a) a description of the water body system, its historical and current uses, its hydrology, and a history of the conditions which have led to the need for restoration or protection;

(b) an identification of all government units that have jurisdiction over the water body and its drainage basin within the plan area, including local, regional, state and federal units;

(c) a description of land uses within the plan area and those of important tributaries, point and non-point sources of pollution, and permitted discharge activities;

(d) a list of the owners of point and non-point sources of pollution that discharge into each water body and tributary thereto and that adversely affect the public interest (by causing or significantly contributing to violations of water quality standards). This list shall include separate lists of those sources that are operating without a permit, operating with a temporary operating permit, and those presently violating effluent limits or water quality standards, and include recommendations and schedules for bringing all sources into compliance with state standards when not contrary to the public interest;

(e) a description of strategies for restoring or protecting the water body sufficient to meet Class III standards or better;

(f) a list of studies that are being or have been prepared for the water body;

(g) a list and current status of active restoration or protection projects for the water body;

(h) a description of the research and feasibility studies which will be performed to determine the particular strategy or strategies to restore or protect the water body;

(i) a description of the measures needed to manage and maintain the water body once it has been restored and to prevent future degradation;

(j) a schedule for restoration or protection of the water body; and

(k) an estimate of the funding needed to carry out the restoration or protection strategies.

(2) The District shall hold at least one public hearing, and at least one public workshop in the vicinity of the water body, for which a plan is being developed, in order to obtain public input before completing a plan.

(3) The proposed plan shall be submitted to the Department, the Department of Agriculture and Consumer Services, the Department of Community Affairs, the Game and Fresh Water Fish Commission, the Department of Environmental Protection, and local governments for their review, no later than 60 days before consideration of plan approval by the District governing board. Using the criteria set forth in Section 373.455(2)(a), F.S., the Department shall evaluate each proposed plan. Within 45 days after receipt of the District's proposed plan, the Department shall notify the District in writing whether the District's plan is consistent with the intent and provisions of this rule and Section 373.455(2)(a), F.S. If the plan is not consistent, the notification shall include recommendations for modifications necessary to obtain the Department's concurrence with the final plan.

(4) Within 15 days after approval of a plan by the District governing board the plan shall be transmitted to the Department. As provided in Section 373.456(2), F.S., and this rule, the Department shall conduct a final review of the plan to determine its consistency with the State Water Policy and the State Comprehensive Plan. In this review the Department shall consider the actions taken by the District governing board in response to any concerns expressed by the Department and the other reviewing agencies. Within 30 days after receipt of the plan approved by the governing board, the Department shall notify the District in writing whether the District's plan is consistent with the intent and provisions of the State Water Policy and the State Comprehensive Plan. This determination shall not constitute a Department rule or order.

(a) If the Department determines the plan is consistent, the District shall publish notice of adoption of the approved plan in the Florida Administrative Weekly. This shall constitute final District action on the Adopted Plan and is subject to review pursuant to Section 373.114, F.S.

(b) If the Department determines the plan is inconsistent, the Secretary shall notify the District of the changes recommended by the Department to make the plan consistent. The District governing board shall review the recommended changes at its next scheduled meeting and shall either adopt them or state why the recommended changes are not adopted. After this meeting the District shall publish notice of adoption of the approved plan in the Florida Administrative Weekly. Such publication shall constitute final District action on the Adopted Plan and is subject to review pursuant to Section 373.114, F.S.

(5) Adopted Plans shall be updated by the Districts as necessary, but in no event later than every 3 years. A regular schedule of review of updated plans, pursuant to Sections 373.455 and 373.456, F.S., shall begin July 1, 1990. Plans shall be reviewed on an annual cycle with a Section 373.455, F.S., review period of 2 months per year per District with the order to be Northwest Florida, Suwannee River, St. Johns

River, South Florida, and Southwest Florida Water Management District. The schedule may be adjusted as needed to use the remaining two months of the annual review cycle to address other necessary plan revisions. Each District shall, in consultation with the Department, select those plans to be updated during a specific review cycle.

(6) Substantially revised plans shall be submitted for review as specified by Section 62-43.035(3) and (4), F.A.C. Departmental review of revised plans shall be required when the revisions significantly impact the completion of any portion of an Adopted Plan or where the revisions include the addition of new plan strategies. Specific Authority 373.043, 373.453, FS. Law Implemented 373.026, 373.451, 373.453, 373.455, 373.456, FS. History - New 12-7-87; Amended 2-1-90, Formerly 17-43.035.

62-43.050 Release of Funds.

(1) The Department shall release money from the Fund to each District for the development of priority lists or plans or for implementation of Adopted Plans. Implementation funds, including matching funds, are only to be used for new activities or the expansion of current activities, and not to continue previously funded District activities.

(2) A District requesting release of money from the Fund shall submit to the Department a request from the District governing board. The District governing board may delegate funding request authority for implementing Adopted Plans to the District Executive Director by resolution. Requests from the District Executive Director shall be notarized and shall cite the delegation authority. The request shall certify that the money is needed to reimburse the District for expenditures during a specified time period or to meet the reasonably expected cash needs of the District within the next 90 days and that the money was or will be used for either Priority Planning or implementation of an Adopted Plan and shall specifically include:

- (a) The amount of money being requested;
- (b) The total cost of the activity for which funds are required;
- (c) A statement that the District has deposited and presently made available in the District's separate Surface Water Improvement and Management fund 20 percent of the amount identified in (b) above;
- (d) Selected technical project designs and other scopes-of-work and descriptions for verification of the achievement of the original purposes of the Adopted Plan or portion thereof for which the money is requested including reference to the specific portion of the Adopted Plan being addressed; and
- (e) A statement that the proposed use of requested money is consistent with the Adopted Plan; Chapter 187, Florida Statutes (the State Comprehensive Plan); and Chapter 62-40, Florida Administrative Code (the State Water Policy).

(f) The quarterly report in Section 62-43.070(2), F.A.C.

(3) The Department shall review the request for money using the criteria specified in the Procedures Manual. Within 30 days after receipt of the certifying

resolution, the Secretary shall authorize the release of the requested money or shall notify the District in writing why the money cannot be released.

(4) District expenditures, for purposes set out in Paragraph (1) above, made after July 1, 1987, to implement the provisions of Sections 373.451 through 373.459, F.S., and this rule shall be eligible for reimbursement from the Fund. Only upon written approval of the Secretary may projects which were initiated prior to July 1, 1987 be eligible for reimbursement of expenditures incurred after July 1, 1987 or be applied to the District's 20 percent match requirement.

(5) Any money released from the Fund shall be accounted for in a separate District fund together with the District's 20 percent match requirement to provide for segregated accountability. Any District fund money shall be continuously invested and any accrued interest shall be credited to the District fund.

Specific Authority 373.043, FS. Law Implemented 373.026, 373.451, 373.457, 373.459, FS. History - New 12-7-97; Amended 2-1-90, 5-03-90, Formerly 17-43.050.

62-43.060 District Share of Fund.

(1) Each September 1 each District shall submit to the Department a funding proposal for the next state fiscal year for review and approval. Each proposal shall be based on the Adopted Plan funding estimates which shall be revised to reflect actual and projected progress toward meeting Plan goals. Each proposal shall specify the Adopted Plan and portion thereof which needs state funding and the amount of funding and shall describe those activities for which funds are requested. The Department shall consider these proposals, as approved, in developing its annual budget request.

(2) The Department shall not release more than 80 percent of the amount of money specified by a District as necessary for Priority Planning or implementing the Adopted Plans. A District shall provide at least 20 percent of the amount of money necessary for Priority Planning or for implementing the Adopted Plans from District ad valorem revenues, operations funds, or cash grants accepted for the purposes of the implementation of the Adopted Plan.

(3) Any one District may not receive more than 50 percent of the money in the Fund in any year unless otherwise authorized by law.

(4) Beginning in state fiscal year 1990-1991 each District shall receive the amount requested pursuant to Section 373.453(4), F.S., and Section 62-43.060(1), F.A.C., or 10 percent of the money in the appropriation, whichever is less. The balance of the appropriation shall be allocated annually by the Department based on the specific needs of the Districts as specified in the Adopted Plans and funding requests. The Department shall review each District's needs and may grant a District's request to retain for the District's future application any money in the Fund which was allocated to the District but which remains unencumbered by the District at the end of the state fiscal year. District retention of such money shall be contingent on the ability of the requesting District to make timely and effective use of the money.

Specific Authority 373.043, FS. Law Implemented 373.026; 373.451; 373.453, 373.457, 373.459, FS. History - New 12-9-87; Amended 2-1-90, Formerly 17-43.060.

62-43.070 Reports.

(1) On July 1 of each year and each quarter thereafter or as soon thereafter as possible, the Department shall prepare and furnish to each District a financial statement providing the current unobligated cash balance in the Fund for each District.

(2) On July 1 of each year and each quarter thereafter, each District shall submit to the Secretary a certified report of activities conducted with Fund money during the preceding quarter, including, at least, a brief description of projects being implemented, a listing of receipts, disbursements, District match, and account status for each project for each water body with an Adopted Plan.

(3) Any Fund money and related accrued interest remaining with the Districts on completion of an Adopted Plan or portion thereof shall be credited to the Fund or, upon the approval of the Secretary, transferred to implement another of the District's Adopted Plans or portions thereof for which money was requested.

(4) In January of each year, each District shall submit to the Secretary a progress report of all activities conducted toward completing the strategies contained in an Adopted Plan during the preceding year.

(5) The financial audit as required by Section 11.45(3), F.S., shall include a statement regarding the District's compliance with all applicable rules.
Specific Authority 373.043, FS. Law Implemented 373.026, 373.451, 373.457, 373.459, FS. History - New 12-7-87; Amended 2-1-90, Formerly 17-43.070.

**62-43.100 Advisory Table of Approved Surface Water Priority Lists.
(REPEALED)**

Rulemaking Authority 373.043, 373.453, FS. Law Implemented 373.026, 373.451, 373.453, FS. History - New 2-1-90, Formerly 17-43.100, Repealed 2-28-12.