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IFAS EXTENSION

Handbook of Florida Water Regulation: State Regulatory Powers¹

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Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principle Federal and Florida laws that directly or indirectly relate to agriculture. This handbook should provide a basic overview of the many rights and responsibilities that farmers and farmland owners have under both Federal and Florida laws as well as the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at anytime. Several details of cited laws are also left out due to space limitations.

This handbook is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. This handbook is not all inclusive in providing information to

achieve compliance with the Federal and Florida laws and regulations governing water protection. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, the Florida Cooperative Extension Service, the Institute of Food and Agricultural Sciences, and the University of Florida for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

State Law Overview

State law fills the gaps and supplements federal law, and often duplicates federal law. In many instances, however, state law standards are stricter than federal standards. Consequently, compliance with state law often assures compliance with federal laws as well. In a nutshell, state law takes two forms: statutes and administrative rules.

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Statutes

Statutes are passed by the state legislature and set out the basic goals of the legislature and the procedures it wants applied to accomplish these goals. Although statutes often provide fairly specific directions or prohibitions, many details of regulating an area of business or an aspect of the environment are frequently too technical and minute for the legislature to address.

Administrative Rules

The legislature will generally rely on administrative agencies to carry out the specific goals of the legislature. To do so the legislature empowers administrative agencies to adopt rules (which have the force of law) within the narrow bounds of their directive from the legislature.

For example, if the legislature decided there was a state interest in regulating the use of certain pesticides, it might pass a statute that broadly outlines pesticide uses or prohibitions, then leave it to an agency (in this instance the Department of Agriculture and Consumer Services) to make rules about when, by whom, and in what quantities the pesticide must be applied. In most instances, agencies also have the power to enforce their rules through both criminal and civil penalties as well as through permitting/licensing regulations.

How Are State and Government Actions Restricted?

To ensure that agencies deal fairly with those who are subject to their regulation, Florida has passed the following laws:

- Florida Administrative Procedure Act (Chapter 120, Florida Statutes — the statute provides the chief mechanism for private input into agency actions and rulemaking). This Act establishes many procedural rights such as the following:
 1. The right to be heard by the agency.
 2. The right to receive notice of agency actions.

3. A guaranteed opportunity for those who are most affected to use those rights.

- Florida Public Records Law (or Chapter 119, Florida Statutes). This statute provides that all agency records, with a few statutory exceptions, are available for public inspection and copying. Exceptions arise where the confidentiality of the information is necessary for efficient government administration or where disclosure would adversely affect law enforcement.
- Florida Sunshine Law (Chapter 286, Florida Statutes) declares that all meetings of any governmental body where any official action is taken must be open to the public and the minutes must be recorded. This statute is not an unconditional guarantee of access to government, but goes a long way toward keeping administrative bodies accountable to the public.

What Is the Structure of Florida Agencies?

The majority of state agencies have similar structures. Most maintain their headquarters in Tallahassee and have regional offices throughout the state. Within each agency, there may be various divisions, each with its own set of duties (e.g., permitting, enforcement, and public information). Many agencies are headed by a secretary who keeps in close touch with the governor. Other agencies are headed by a cabinet officer or appointed commissioner. All keep in close touch with the legislature to keep abreast of policy changes and to maintain accurate, up-to-date rules.

The structure of city and county governments varies from government to government, but each has its own divisions from minimum-sized rural areas to populous urban areas. Each county and city is headed by an elected commission. Some rely on professional managers to run the day-to-day aspects of government, while others rely on elected officials.

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