

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Committee on Natural Resources & Environmental Protection offered the following:

**Amendment (with title amendment)**

Remove from the bill: Everything after the enacting clause and insert in lieu thereof:

Section 1. Paragraph (k) is added to subsection (3) of section 369.25, Florida Statutes, to read:

369.25 Aquatic plants; definitions; permits; powers of department; penalties.--

(3) The department has the following powers:

(k) To enforce this chapter in the same manner and to the same extent as provided in ss. 403.121, 403.131, 403.141, and 403.161.

Section 2. Section 403.121, Florida Statutes, is amended to read:

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).

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1           (1) Judicial remedies:

2           (a) The department may institute a civil action in a  
3 court of competent jurisdiction to establish liability and to  
4 recover damages for any injury to the air, waters, or  
5 property, including animal, plant, and aquatic life, of the  
6 state caused by any violation.

7           (b) The department may institute a civil action in a  
8 court of competent jurisdiction to impose and to recover a  
9 civil penalty for each violation in an amount of not more than  
10 \$10,000 per offense. However, the court may receive evidence  
11 in mitigation. Each day during any portion of which such  
12 violation occurs constitutes a separate offense.

13           (c) Except as provided in paragraph (2)(c), it shall  
14 not be a defense to, or ground for dismissal of, these  
15 judicial remedies for damages and civil penalties that the  
16 department has failed to exhaust its administrative remedies,  
17 has failed to serve a notice of violation, or has failed to  
18 hold an administrative hearing prior to the institution of a  
19 civil action.

20           (2) Administrative remedies:

21           (a) The department may institute an administrative  
22 proceeding to establish liability and to recover damages for  
23 any injury to the air, waters, or property, including animal,  
24 plant, or aquatic life, of the state caused by any violation.  
25 The department may order that the violator pay a specified sum  
26 as damages to the state. Judgment for the amount of damages  
27 determined by the department may be entered in any court  
28 having jurisdiction thereof and may be enforced as any other  
29 judgment.

30           (b) If the department has reason to believe a  
31 violation has occurred, it may institute an administrative

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1 proceeding to order the prevention, abatement, or control of  
2 the conditions creating the violation or other appropriate  
3 corrective action. Except for violations involving hazardous  
4 wastes, asbestos, or underground injection, the department  
5 shall proceed administratively in all cases in which the  
6 department seeks administrative penalties that do not exceed  
7 \$10,000 per assessment as calculated in accordance with  
8 subsections (3), (4), (5), (6), and (7). The department shall  
9 not impose administrative penalties in excess of \$10,000 in a  
10 notice of violation. The department shall not have more than  
11 one notice of violation seeking administrative penalties  
12 pending against the same party at the same time unless the  
13 violations occurred at a different site or the violations were  
14 discovered by the department subsequent to the filing of a  
15 previous notice of violation.

16 (c) An administrative proceeding shall be instituted  
17 by the department's serving of a written notice of violation  
18 upon the alleged violator by certified mail. If the department  
19 is unable to effect service by certified mail, the notice of  
20 violation may be hand-delivered or personally served in  
21 accordance with chapter 48.The notice shall specify the  
22 provision of the law, rule, regulation, permit, certification,  
23 or order of the department alleged to be violated and the  
24 facts alleged to constitute a violation thereof. An order for  
25 corrective action, penalty assessment, or damages may be  
26 included with the notice. When the department is seeking to  
27 impose an administrative penalty for any violation by issuing  
28 a notice of violation, any corrective action needed to correct  
29 the violation or damages caused by the violation must be  
30 pursued in the notice of violation or they are waived.

31 However, no order shall become effective until after service

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1 and an administrative hearing, if requested within 20 days  
2 after service. Failure to request an administrative hearing  
3 within this time period shall constitute a waiver thereof,  
4 unless the respondent files a written notice with the  
5 department within this time period opting out of the  
6 administrative process initiated by the department to impose  
7 administrative penalties. Any respondent choosing to opt out  
8 of the administrative process initiated by the department in  
9 an action that seeks the imposition of administrative  
10 penalties must file a written notice with the department  
11 within 20 days after service of the notice of violation opting  
12 out of the administrative process. A respondent's decision to  
13 opt out of the administrative process does not preclude the  
14 department from initiating a state court action seeking  
15 injunctive relief, damages and the judicial imposition of  
16 civil penalties.

17 (d) If a person timely files a petition challenging a  
18 notice of violation, that person will thereafter be referred  
19 to as the respondent. The hearing requested by the respondent  
20 shall be held within 180 days after the department has  
21 referred the initial petition to the Division of  
22 Administrative Hearings unless the parties agree to a later  
23 date. The department has the burden of proving with the  
24 preponderance of the evidence that the respondent is  
25 responsible for the violation. No administrative penalties  
26 should be imposed unless the department satisfies that burden.  
27 Following the close of the hearing, the administrative law  
28 judge shall issue a final order on all matters, including the  
29 imposition of an administrative penalty. When the department  
30 seeks to enforce that portion of a final order imposing  
31 administrative penalties pursuant to s. 120.69, the respondent

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1 shall not assert as a defense the inappropriateness of the  
2 administrative remedy. The department retains its final-order  
3 authority in all administrative actions that do not request  
4 the imposition of administrative penalties.

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

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

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1 respondent shall be entitled to an award of attorney's fees if  
2 the administrative law judge determines that the notice of  
3 violation initiated by the department seeking the imposition  
4 of administrative penalties was not substantially justified as  
5 defined in s. 57.111(3)(e). No award of attorney's fees as  
6 provided by this subsection shall exceed \$15,000.

7 (g)~~(d)~~ Nothing herein shall be construed as preventing  
8 any other legal or administrative action in accordance with  
9 law. Nothing in this subsection shall limit the department's  
10 authority provided in ss. 403.121, 403.131, and 403.141, to  
11 judicially pursue injunctive relief. When the department  
12 exercises its authority to judicially pursue injunctive  
13 relief, penalties in any amount up to the statutory maximum  
14 sought by the department must be pursued as part of the state  
15 court action and not by initiating a separate administrative  
16 proceeding. The department retains the authority to judicially  
17 pursue penalties in excess of \$10,000 for violations not  
18 specifically included in the administrative penalty schedule,  
19 or for multiple or multi-day violations alleged to exceed a  
20 total of \$10,000. The department also retains the authority  
21 provided in ss. 403.121, 403.131, and 403.141, to judicially  
22 pursue injunctive relief and damages, if a notice of violation  
23 seeking the imposition of administrative penalties has not  
24 been issued. The department has the authority to enter into a  
25 settlement, either before or after initiating a notice of  
26 violation, and the settlement may include a penalty amount  
27 different from the administrative penalty schedule. Any case  
28 filed in state court because it is alleged to exceed a total  
29 of \$10,000 in penalties may be settled in the court action for  
30 less than \$10,000.

31 (h) Chapter 120, Florida Statutes, shall apply to any

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1 administrative action taken by the department or any delegated  
2 program pursuing administrative penalties in accordance with  
3 this section.

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

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

18 (b) For failure to obtain a required wastewater  
19 permit, other than a permit required for surface water  
20 discharge, the department shall assess a penalty of \$1,000.  
21 For a domestic or industrial wastewater violation not  
22 involving a surfacewater or groundwater quality violation, the  
23 department shall assess a penalty of \$2,000 for an unpermitted  
24 or unauthorized discharge or effluent-limitation exceedance.  
25 For an unpermitted or unauthorized discharge or  
26 effluent-limitation exceedance that resulted in a surfacewater  
27 or groundwater quality violation, the department shall assess  
28 a penalty of \$5,000.

29 (c) For a dredge and fill or stormwater violation, the  
30 department shall assess a penalty of \$1,000 for unpermitted or  
31 unauthorized dredging or filling or unauthorized construction

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1 of a stormwater management system against the person or  
2 persons responsible for the illegal dredging or filling, or  
3 unauthorized construction of a stormwater management system;  
4 plus \$2,000 if the dredging or filling occurs in an Aquatic  
5 Preserve, Outstanding Florida Water, conservation easement, or  
6 Class I or Class II surfacewater; plus \$1,000 if the area  
7 dredged or filled is greater than one-quarter acre but less  
8 than one-half acre, and plus \$1,000 if the area dredged or  
9 filled is greater than one-half acre but less than one acre.  
10 The administrative penalty schedule shall not apply to a  
11 dredge and fill violation if the area dredged or filled  
12 exceeds one acre. The department retains the authority to seek  
13 the judicial imposition of civil penalties for all dredge and  
14 fill violations involving more than one acre. The department  
15 shall assess a penalty of \$3,000 for the failure to complete  
16 required mitigation, failure to record a required conservation  
17 easement , or for a water quality violation resulting from  
18 dredging or filling activities, stormwater construction  
19 activities or failure of a stormwater treatment facility. For  
20 stormwater management systems serving less than five acres,  
21 the department shall assess a penalty of \$2,000 for the  
22 failure to properly or timely construct a stormwater  
23 management system. In addition to the penalties authorized in  
24 this subsection, the department shall assess a penalty of  
25 \$5,000 per violation against the contractor or agent of the  
26 owner or tenant that conducts unpermitted or unauthorized  
27 dredging or filling.  
28 (d) For mangrove trimming or alteration violations,  
29 the department shall assess a penalty of \$5,000 per violation  
30 against the contractor or agent of the owner or tenant that  
31 conducts mangrove trimming or alteration without a permit as



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1 required by s. 403.9328.

2 (e) For solid waste violations, the department shall  
3 assess a penalty of \$2,000 for the unpermitted or unauthorized  
4 disposal or storage of solid waste; plus \$1,000 if the solid  
5 waste is Class I or Class III (excluding yard trash) or if the  
6 solid waste is construction and demolition debris in excess of  
7 20 cubic yards; plus \$1,000 if the waste is disposed of or  
8 stored in any natural or artificial body of water or within  
9 500 feet of a potable water well; plus \$1,000 if the waste  
10 contains PCB at a concentration of 50 parts per million or  
11 greater; untreated biomedical waste; friable asbestos greater  
12 than 1 cubic meter that is not wetted, bagged, and covered,  
13 used oil greater than 25 gallons; or 10 or more lead acid  
14 batteries. The department shall assess a penalty of \$3,000 for  
15 failure to properly maintain leachate control; unauthorized  
16 burning; failure to have a trained spotter on duty at the  
17 working face when accepting waste; failure to provide access  
18 control for three consecutive inspections. The department  
19 shall assess a penalty of \$2,000 for failure to construct or  
20 maintain a required stormwater management system.

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

29 (g) For storage tank system and petroleum  
30 contamination violations, the department shall assess a  
31 penalty of \$5,000 for failure to empty a damaged storage

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1 system as necessary to ensure that a release does not occur  
2 until repairs to the storage system are completed; when a  
3 release has occurred from that storage tank system; failure to  
4 timely recover free product; or for failure to conduct  
5 remediation or monitoring activities until a no-further-action  
6 or site-rehabilitation completion order has been issued. The  
7 department shall assess a penalty of \$3,000 for failure to  
8 timely upgrade a storage tank system. The department shall  
9 assess a penalty of \$2,000 for failure to conduct or maintain  
10 required release detection; failure to timely investigate a  
11 suspected release from a storage system; depositing motor fuel  
12 into an unregistered storage tank system; failure to timely  
13 assess or remediate petroleum contamination; or failure to  
14 properly install a storage tank system. The department shall  
15 assess a penalty of \$1,000 for failure to properly operate,  
16 maintain, or close a storage tank system.

17 ~~(3)(a) In addition to any judicial or administrative~~  
18 ~~remedy authorized by this part, the department may assess a~~  
19 ~~noncompliance fee for failure of any owner or operator of a~~  
20 ~~domestic wastewater treatment facility to comply with a permit~~  
21 ~~condition that requires the submittal of monthly operating~~  
22 ~~reports or the reporting of the characteristics of the waste~~  
23 ~~stream or the effects of the facility on surface or ground~~  
24 ~~water. For the first and second violations of the reporting~~  
25 ~~requirements, the fee shall not be assessed until the~~  
26 ~~department has given the owner or operator at least 30 days to~~  
27 ~~comply with the reporting requirement. The time shall not~~  
28 ~~begin until the department has given the owner or operator~~  
29 ~~written notice of the facts alleged to constitute the~~  
30 ~~reporting violation, the specific provision of law, rule, or~~  
31 ~~order alleged to have been violated by the owner or operator,~~

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1 ~~the corrective action needed to bring the facility into~~  
2 ~~compliance, and the potential penalties that may be imposed as~~  
3 ~~a result of the owner's or operator's failure to comply with~~  
4 ~~the notice. For subsequent violations, the department does~~  
5 ~~not have to provide 30 days' written notice of the violations~~  
6 ~~prior to assessing a noncompliance fee, except as follows:~~  
7       ~~1. If any additional reporting violations occur prior~~  
8 ~~to the expiration of either of the 30-day notices issued by~~  
9 ~~the department, the department must provide the owner or~~  
10 ~~operator with 30 days' written notice to correct these~~  
11 ~~violations as well.~~  
12       ~~2. Upon the renewal of the permit, the department~~  
13 ~~shall reinstate the 30-day notice requirements provided in~~  
14 ~~this subsection prior to assessing a noncompliance fee during~~  
15 ~~the new permit period.~~  
16       ~~(b) At the time of assessment of a noncompliance fee,~~  
17 ~~the department shall give the owner or operator written notice~~  
18 ~~setting forth the amount assessed, the specific provision of~~  
19 ~~law, rule, or order alleged to be violated, the facts alleged~~  
20 ~~to constitute the violation, the corrective action needed to~~  
21 ~~bring the party into compliance, and the rights available~~  
22 ~~under chapter 120 to challenge the assessment. The assessment~~  
23 ~~shall be final and effective unless an administrative~~  
24 ~~proceeding is requested within 20 days after receipt of the~~  
25 ~~written notice, and shall be enforceable pursuant to s.~~  
26 ~~120.69. Once the assessment has become final and effective,~~  
27 ~~the department may refuse to issue, modify, transfer, or renew~~  
28 ~~a permit to the facility until the fee has been paid.~~  
29       ~~(c) Before assessing a noncompliance fee, the~~  
30 ~~department shall adopt rules to implement the provisions of~~  
31 ~~this subsection. The rules shall establish specific procedures~~

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1 ~~and assessment amounts for noncompliance fees authorized by~~  
2 ~~paragraph (a). Noncompliance fees shall be set on a sliding~~  
3 ~~scale based upon the type of violation, the degree of~~  
4 ~~noncompliance, and the potential for harm. Such rules shall~~  
5 ~~also authorize the application of adjustment factors~~  
6 ~~subsequent to the initial assessment to increase or decrease~~  
7 ~~the total amount assessed, such as the good faith efforts or~~  
8 ~~the lack of good faith efforts of the owner or operator to~~  
9 ~~comply with the reporting requirement, the lack of or degree~~  
10 ~~of willfulness or negligence on the part of the owner or~~  
11 ~~operator, the economic benefits associated with the owner's or~~  
12 ~~operator's failure to comply, the owner's or operator's~~  
13 ~~previous history of reporting violations, and the owner's or~~  
14 ~~operator's ability to pay the noncompliance fee. No~~  
15 ~~noncompliance fee shall exceed \$250, and total noncompliance~~  
16 ~~fees assessed shall not exceed \$1,000 per assessment for all~~  
17 ~~reporting violations attributable to a specific facility~~  
18 ~~during any one month. No noncompliance fee may be assessed~~  
19 ~~unless the department has, within 90 days of the reporting~~  
20 ~~violation, provided the owner or operator written notice of~~  
21 ~~the violation.~~

22 ~~(d) The department's assessment of a noncompliance fee~~  
23 ~~shall be in lieu of any civil action which may be instituted~~  
24 ~~by the department in a court of competent jurisdiction to~~  
25 ~~impose and recover civil penalties for any violation that~~  
26 ~~resulted in the fee assessment, unless the department~~  
27 ~~initiates a civil action for nonpayment of a fee properly~~  
28 ~~assessed pursuant to this subsection.~~

29 ~~(e) Fees collected pursuant to this subsection shall~~  
30 ~~be deposited in the Ecosystem Management and Restoration Trust~~  
31 ~~Fund. The department may use a portion of the fund to~~

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1 ~~contract for services to help in the collection of the fees~~  
2 ~~assessed pursuant to this subsection.~~

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

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

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

11 (c) For failure to obtain a required permit prior to  
12 construction or modification, \$3,000.

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

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

22 (f) For failure to prepare, submit, maintain, or use  
23 required reports or other required documentation, \$500.

24 (5) For failure to comply with any other department  
25 regulatory statute or rule requirement not otherwise  
26 identified in this section, the department may assess a  
27 penalty of \$500.

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

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

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

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

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

20           (8) The direct economic benefit gained by the violator  
21 from the violation shall be added to the scheduled  
22 administrative penalty. The total administrative penalty,  
23 including any economic benefit added to the scheduled  
24 administrative penalty, shall not exceed \$10,000.

25           (9) The administrative penalties assessed for any  
26 particular violation shall not exceed \$5,000 against any one  
27 violator, unless the violator has a history of noncompliance,  
28 the economic benefit of the violation exceeds \$5,000, or there  
29 are multi-day violations. The total administrative penalties  
30 shall not exceed \$10,000 per assessment for all violations  
31 attributable to a specific person in the notice of violation.

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

12           (11) Penalties collected pursuant to this section  
13 shall be deposited in the Ecosystem Management and Restoration  
14 Trust Fund or other trust fund designated by statute and shall  
15 be used to fund the restoration of ecosystems, or polluted  
16 areas of the state, as defined by the department, to their  
17 condition before pollution occurred. The Florida Conflict  
18 Resolution Consortium may use a portion of the fund to  
19 administer the mediation process provided in paragraph (2)(e)  
20 and to contract with private mediators for administrative  
21 penalty cases.

22           (12) The purpose of the administrative penalty  
23 schedule and process is to provide a more predictable and  
24 efficient manner for individuals and businesses to resolve  
25 relatively minor environmental disputes. Nothing in subsection  
26 (3), subsection (4), subsection (5), subsection (6), or  
27 subsection (7) shall be construed as limiting a state court in  
28 the assessment of damages. The administrative penalty schedule  
29 does not apply to the judicial imposition of civil penalties  
30 in state court as provided in this section.

31           Section 3. Section 403.131, Florida Statutes, is

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1 amended to read:

2 403.131 Injunctive relief, ~~cumulative~~ remedies.--

3 (1) The department may institute a civil action in a  
4 court of competent jurisdiction to seek injunctive relief to  
5 enforce compliance with this chapter or any rule, regulation,  
6 permit certification, or order; to enjoin any violation  
7 specified in s. 403.161(1); and to seek injunctive relief to  
8 prevent irreparable injury to the air, waters, and property,  
9 including animal, plant, and aquatic life, of the state and to  
10 protect human health, safety, and welfare caused or threatened  
11 by any violation.

12 (2) All the judicial and administrative remedies to  
13 recover damages and penalties in this section and s. 403.121  
14 ~~are independent and cumulative except that the judicial and~~  
15 ~~administrative remedies to recover damages~~ are alternative and  
16 mutually exclusive.

17 Section 4. Subsection (3) of section 403.727, Florida  
18 Statutes, is amended to read:

19 403.727 Violations; defenses, penalties, and  
20 remedies.--

21 (3) Violations of the provisions of this act are  
22 punishable as follows:

23 (a) Any person who violates the provisions of this  
24 act, the rules or orders of the department, or the conditions  
25 of a permit is liable to the state for any damages specified  
26 in s. 403.141 and for a civil penalty of not more than \$50,000  
27 for each day of continued violation, except as otherwise  
28 provided herein. The department may revoke any permit issued  
29 to the violator. In any action by the department against a  
30 small hazardous waste generator for the improper disposal of  
31 hazardous wastes, a rebuttable presumption of improper



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1 disposal shall be created if the generator was notified  
2 pursuant to s. 403.7234; the generator shall then have the  
3 burden of proving that the disposal was proper. If the  
4 generator was not so notified, the burden of proving improper  
5 disposal shall be placed upon the department.

6 (b) Any person who knowingly or by exhibiting reckless  
7 indifference or gross careless disregard for human health:

8 1. Transports or causes to be transported any  
9 hazardous waste, as defined in s. 403.703, to a facility which  
10 does not have a permit when such a permit is required under s.  
11 403.707 or s. 403.722;

12 2. Disposes of, treats, or stores hazardous waste:

13 a. At any place but a hazardous waste facility which  
14 has a current and valid permit pursuant to s. 403.722;

15 b. In knowing violation of any material condition or  
16 requirement of such permit if such violation has a substantial  
17 likelihood of endangering human health, animal or plant life,  
18 or property; or

19 c. In knowing violation of any material condition or  
20 requirement of any applicable rule or standard if such  
21 violation has a substantial likelihood of endangering human  
22 health, animal or plant life, or property;

23 3. Makes any false statement or representation or  
24 knowingly omits material information in any hazardous waste  
25 application, label, manifest, record, report, permit, or other  
26 document required by this act;

27 4. Generates, stores, treats, transports, disposes of,  
28 or otherwise handles any hazardous waste and who knowingly  
29 destroys, alters, conceals, or fails to file any record,  
30 application, manifest, report, or other document required to  
31 be maintained or filed for purposes of compliance with this

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1 act; or

2 5. Transports without a manifest, or causes to be  
3 transported without a manifest, any hazardous waste required  
4 by rules adopted by the department to be accompanied by a  
5 manifest

6  
7 is, upon conviction, guilty of a felony of the third degree,  
8 punishable for the first such conviction by a fine of not more  
9 than \$50,000 for each day of violation or imprisonment not to  
10 exceed 5 years, or both, and for any subsequent conviction by  
11 a fine of not more than \$100,000 per day of violation or  
12 imprisonment of not more than 10 years, or both.

13 ~~(c)1. As used in this paragraph, "Class II violation"~~  
14 ~~means a violation of this part, or the rules promulgated~~  
15 ~~pursuant to this part, which pertains to small quantity~~  
16 ~~generators as defined by applicable department rules and which~~  
17 ~~does not result in a discharge or serious threat of a~~  
18 ~~discharge of hazardous waste to the environment, or does not~~  
19 ~~involve the failure to ensure that groundwater will be~~  
20 ~~protected or that hazardous waste will be destined for and~~  
21 ~~delivered to permitted facilities. Class II violations shall~~  
22 ~~include, but need not be limited to, the failure to submit~~  
23 ~~manifest exception reports in a timely manner, failure to~~  
24 ~~provide a generator's United States Environmental Protection~~  
25 ~~Agency identification number on the manifest, failure to~~  
26 ~~maintain complete personnel training records, and failure to~~  
27 ~~meet inspection schedule requirements for tanks and containers~~  
28 ~~that hold hazardous waste.~~

29 ~~2. In addition to any other judicial or administrative~~  
30 ~~remedy authorized by this part, the department may assess a~~  
31 ~~noncompliance fee for any Class II violation by a small~~

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1 ~~quantity generator. For the first and second violations, the~~  
2 ~~fee shall not be assessed until the generator has failed to~~  
3 ~~comply after notice of noncompliance and has been given a~~  
4 ~~reasonable time to comply. If the owner or operator fails~~  
5 ~~after three or more notifications to comply with the~~  
6 ~~requirement to correct the Class II violation, the department~~  
7 ~~may assess the fee without waiting for compliance.~~

8 ~~3. At the time of assessment of a noncompliance fee,~~  
9 ~~the department shall give the small quantity generator written~~  
10 ~~notice setting forth the amount assessed, the specific~~  
11 ~~provision of law, rule, or order alleged to be violated, the~~  
12 ~~facts alleged to constitute the violation, the corrective~~  
13 ~~action needed to bring the party into compliance, and the~~  
14 ~~rights available under chapter 120 to challenge the~~  
15 ~~assessment. The assessment shall be final and effective~~  
16 ~~unless an administrative proceeding is requested within 20~~  
17 ~~days after receipt of the written notice, and shall be~~  
18 ~~enforceable pursuant to s. 120.69. Once the assessment has~~  
19 ~~become final and effective, the department shall refuse to~~  
20 ~~issue, modify, transfer, or renew a permit or issue an~~  
21 ~~identification number to the facility until the fee has been~~  
22 ~~paid.~~

23 ~~4. Before assessing any noncompliance fee, the~~  
24 ~~department shall adopt rules to implement the provisions of~~  
25 ~~this paragraph, which shall include a description of~~  
26 ~~activities that constitute Class II violations and the setting~~  
27 ~~of appropriate amounts for the noncompliance fees, based upon~~  
28 ~~the type of violation, but not to exceed \$250. Total~~  
29 ~~noncompliance fees assessed shall not exceed \$1,000 per~~  
30 ~~assessment for all violations attributable to a specific~~  
31 ~~facility during any one month.~~

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1           ~~5. The department's assessment of a noncompliance fee~~  
2 ~~shall be in lieu of any civil action that may be instituted by~~  
3 ~~the department in a court of competent jurisdiction to impose~~  
4 ~~and recover civil penalties for any violation that resulted in~~  
5 ~~the fee assessment, unless the department initiates a civil~~  
6 ~~action for nonpayment of a fee properly assessed pursuant to~~  
7 ~~this paragraph.~~

8           ~~6. Noncompliance fees collected pursuant to this~~  
9 ~~paragraph shall be deposited in the Ecosystem Management and~~  
10 ~~Restoration Trust Fund. The department may use a portion of~~  
11 ~~the fund to contract for services to help in the collection of~~  
12 ~~fees assessed pursuant to this paragraph.~~

13           Section 5. Subsections (5) and (6) of section 403.860,  
14 Florida Statutes, are amended to read:

15           403.860 Penalties and remedies.--

16           (5) In addition to any judicial or administrative  
17 remedy authorized by this part, the department or a county  
18 health department that has received approval by the department  
19 pursuant to s. 403.862(1)(c) shall may assess administrative  
20 penalties for violations of this section in accordance with s.  
21 403.121 a noncompliance fee for failure of any supplier of  
22 water of a public water system to comply with department  
23 requirements for the reporting, in the manner and time  
24 provided by department rule, of test results for  
25 microbiological, inorganic, or organic contaminants; or  
26 turbidity, radionucleides, or secondary standards.

27           ~~(a) For the first and second violations of the~~  
28 ~~microbiological reporting requirements, and for the first~~  
29 ~~violation of other reporting requirements, the fee shall not~~  
30 ~~be assessed until the department has given the supplier at~~  
31 ~~least 30 days to comply with the reporting requirement. The~~

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1 ~~time shall not begin until the department has given the~~  
2 ~~supplier written notice of the facts alleged to constitute the~~  
3 ~~reporting violation, the specific provision of law, rule, or~~  
4 ~~order alleged to have been violated by the owner or operator,~~  
5 ~~the corrective action needed to bring the facility into~~  
6 ~~compliance, and the potential penalties that may be imposed as~~  
7 ~~a result of the supplier's failure to comply with the notice.~~  
8 ~~For subsequent violations of the microbiological reporting~~  
9 ~~requirements, the department does not have to provide 30-day~~  
10 ~~written notice of the violations prior to assessing a~~  
11 ~~noncompliance fee, provided, however, that if any additional~~  
12 ~~reporting violations occur prior to the expiration of either~~  
13 ~~30-day notice issued by the department, the department must~~  
14 ~~provide the supplier with a 30-day written notice to correct~~  
15 ~~those violations as well. Upon expiration of 36 months, the~~  
16 ~~department shall reinstate the 30-day notice requirements~~  
17 ~~provided in this subsection prior to assessing a noncompliance~~  
18 ~~fee.~~

19 ~~(b) At the time of assessment of a noncompliance fee,~~  
20 ~~the department shall give the supplier written notice setting~~  
21 ~~forth the amount assessed, the specific provision of law,~~  
22 ~~rule, or order alleged to be violated, the facts alleged to~~  
23 ~~constitute the violation, the corrective action needed to~~  
24 ~~bring the party into compliance, and the rights available~~  
25 ~~under chapter 120 to challenge the assessment. The assessment~~  
26 ~~shall be final and effective unless an administrative~~  
27 ~~proceeding is requested within 20 days after receipt of the~~  
28 ~~written notice, and shall be enforceable pursuant to s.~~  
29 ~~120.69.~~

30 ~~(c) Before assessing a noncompliance fee, the~~  
31 ~~department shall adopt rules to implement the provisions of~~

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1 ~~this subsection. The rules shall establish specific procedures~~  
2 ~~and assessment amounts for noncompliance fees authorized by~~  
3 ~~paragraph (a). Noncompliance fees shall be set on a sliding~~  
4 ~~scale based upon the type of violation, the degree of~~  
5 ~~noncompliance, and the potential for harm. Such rules shall~~  
6 ~~also authorize the application of adjustment factors~~  
7 ~~subsequent to initial assessment to increase or decrease the~~  
8 ~~total amount assessed, such as the good faith efforts or the~~  
9 ~~lack of good faith efforts of the supplier to comply with the~~  
10 ~~reporting requirements, the lack of or degree of willfulness~~  
11 ~~or negligence on the part of the supplier, the economic~~  
12 ~~benefits associated with the supplier's failure to comply with~~  
13 ~~the reporting violation, the supplier's previous history of~~  
14 ~~reporting violations, and the supplier's ability to pay the~~  
15 ~~noncompliance fee.~~

16 ~~(d) For microbiological reporting requirements, no~~  
17 ~~noncompliance fee shall exceed \$250, and total noncompliance~~  
18 ~~fees assessed shall not exceed \$1,000 per assessment for all~~  
19 ~~reporting violations attributable to a specific facility~~  
20 ~~during any one month.~~

21 ~~(e) For violations of reporting requirements other~~  
22 ~~than microbiological, the fee shall be no greater than \$50 per~~  
23 ~~day for each day of violation, and the total amount assessed~~  
24 ~~shall not exceed \$2,000.~~

25 ~~(f) The department's assessment of a noncompliance fee~~  
26 ~~shall be in lieu of any civil action which may be instituted~~  
27 ~~by the department in a court of competent jurisdiction to~~  
28 ~~impose and recover civil penalties for any violation that~~  
29 ~~resulted in the fee assessment, unless the department~~  
30 ~~initiates a civil action for nonpayment of a fee properly~~  
31 ~~assessed pursuant to this subsection.~~

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1           ~~(g) No noncompliance fee may be assessed unless the~~  
2 ~~department has, within 90 days of the reporting violation,~~  
3 ~~provided the supplier written notice of the violation.~~

4           ~~(6) The department is authorized to assess~~  
5 ~~administrative penalties for failure to comply with the~~  
6 ~~requirements of the Florida Safe Drinking Water Act.~~

7           ~~(a) Prior to the assessment of an administrative~~  
8 ~~penalty, the department shall provide the public water system~~  
9 ~~a reasonable amount of time to complete the corrective action~~  
10 ~~necessary to bring the system back into compliance.~~

11           ~~(b)1. At the time of assessment of the administrative~~  
12 ~~penalty, the department shall give the public water system~~  
13 ~~notice setting forth the amount assessed, the specific~~  
14 ~~provision of law, rule, or order alleged to be violated, the~~  
15 ~~facts alleged to constitute the violation, the corrective~~  
16 ~~action needed to bring the party into compliance, and the~~  
17 ~~rights available under chapter 120 to challenge the~~  
18 ~~assessment. The assessment shall be final and effective,~~  
19 ~~unless an administrative hearing is requested within 20 days~~  
20 ~~after receipt of the written notice, and shall be enforceable~~  
21 ~~pursuant to s. 120.69.~~

22           ~~2. The department shall adopt rules to implement the~~  
23 ~~provisions of this subsection. The rules shall establish~~  
24 ~~specific procedures for implementing the penalties and shall~~  
25 ~~identify assessment amounts. The rules shall authorize the~~  
26 ~~application of adjustment factors for the purpose of~~  
27 ~~increasing or decreasing the total amount assessed subsequent~~  
28 ~~to initial assessment. Such factors may include the lack or~~  
29 ~~degree of good faith to comply with the requirements, the lack~~  
30 ~~or degree of willfulness or negligence on the part of the~~  
31 ~~owner, the compliance history of the public water system, the~~

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1 ~~economic benefit derived by the failure to comply with the~~  
2 ~~requirements, and the ability to pay.~~

3 ~~(c) The amount of the penalties assessed shall be as~~  
4 ~~follows:~~

5 ~~1. In the case of a public water system serving a~~  
6 ~~population of more than 10,000, the penalty shall be not less~~  
7 ~~than \$1,000 per day per violation.~~

8 ~~2. In the case of any other public water system, the~~  
9 ~~penalty shall be adequate to ensure compliance.~~

10

11 ~~However, the total amount of the penalty assessed on any~~  
12 ~~public water system may not exceed \$10,000 per violation.~~

13 Section 6. Two years after the effective date of this  
14 act, the Department of Environmental Protection shall submit a  
15 report to the Legislature describing the number of notices of  
16 violation issued by the department seeking the imposition of  
17 administrative penalties, the amount of administrative  
18 penalties obtained by the department, and the efficiencies  
19 gained from the provisions of this act.

20 Section 7. This act shall take effect upon becoming a  
21 law.

22

23

24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 On page 1, line 1 through page 4 line 2  
27 remove from the title of the bill: all of said lines

28

29 and insert in lieu thereof:

30 An act relating to environmental control;  
31 amending s. 369.25, F.S.; granting the



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1 Department of Environmental Protection  
2 additional enforcement powers for aquatic plant  
3 control; amending ss. 403.121, 403.131,  
4 403.727, 403.860, F.S.; revising judicial and  
5 administrative remedies for violations of  
6 environmental laws; providing for  
7 administrative penalties; requiring the  
8 Department of Environmental Protection to  
9 report to the Legislature; providing an  
10 effective date.

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