

By Representative Goodlette

1 A bill to be entitled
2 An act relating to environmental control;
3 amending s. 369.25, F.S.; clarifying
4 enforcement powers of the Department of
5 Environmental Protection with respect to pt. I
6 of ch. 369, F.S., relating to aquatic plant
7 control; amending s. 373.129, F.S.; revising a
8 reference with respect to enforcement of pt. IV
9 of ch. 373, F.S., relating to management and
10 storage of surface waters; creating s. 373.437,
11 F.S.; authorizing the governing board of a
12 water management district to assess
13 administrative penalties for purposes of pt. IV
14 of ch. 373, F.S., relating to management and
15 storage of surface waters; amending s. 377.37,
16 F.S.; providing that the Department of
17 Environmental Protection shall assess
18 administrative penalties for energy resource
19 violations in accordance with provisions for
20 administrative remedies in s. 403.121, F.S.;
21 providing for deposit of such penalties in the
22 Minerals Trust Fund; specifying uses of funds;
23 amending s. 378.211, F.S.; authorizing the
24 department to institute an administrative
25 action with respect to a violation of pt. III
26 of ch. 378, F.S., relating to phosphate land
27 reclamation; removing penalty limitations;
28 amending s. 403.121, F.S.; revising provisions
29 relating to judicial remedies available to the
30 department under the Florida Air and Water
31 Pollution Control Act; providing criteria for

1 cases in which the department shall proceed
2 with administrative action; providing
3 exceptions; providing specified limits on
4 administrative penalties and notice of
5 violation seeking administrative penalties;
6 revising provisions relating to notice and
7 service of notice of violation; providing
8 procedure and requirements with respect to
9 administrative hearings; providing that a
10 respondent may request mediation if the
11 department imposes an administrative penalty;
12 providing mediation procedure and requirements;
13 providing for award of costs and attorney's
14 fees in administrative proceedings; providing
15 construction with respect to injunctive relief,
16 damages, and settlements; authorizing the
17 department to pursue penalties in excess of
18 \$10,000 for specified violations; providing an
19 administrative penalty schedule for drinking
20 water contamination violations, domestic or
21 industrial wastewater violations, dredge and
22 fill stormwater violations, first-time mangrove
23 trimming or altering violations, solid waste
24 violations, air emission violations, and
25 storage tank system and petroleum discharge or
26 release violations; providing exceptions to the
27 schedule; providing a schedule of additional
28 administrative penalties; providing for
29 consideration of a violator's history of
30 noncompliance with respect to specified
31 violations; providing penalty limits and

1 reductions; providing for deposit and use of
2 funds derived from administrative penalties;
3 providing construction; amending s. 403.131,
4 F.S.; providing that judicial and
5 administrative remedies to recover damages and
6 penalties in ss. 403.131 and 403.121, F.S., are
7 alternative and mutually exclusive; amending s.
8 403.727, F.S.; removing provisions relating to
9 assessment by the department of noncompliance
10 fees for Class II violations of pt. IV of ch.
11 403, relating to resource recovery and
12 management, and the deposit of such fees;
13 amending s. 403.860, F.S.; providing for
14 assessment of administrative penalties by the
15 department or a county health department for
16 violations of pt. V of ch. 403, F.S., relating
17 to environmental regulation, in accordance with
18 s. 403.121, F.S.; eliminating provisions
19 relating to noncompliance fees and
20 administrative penalties to conform; requiring
21 the department to submit a report; reenacting
22 ss. 373.129(7), 373.303(1)(j), 376.322(4),
23 403.4135(2), 403.7045(3)(d), 403.708(12),
24 403.726(2) and (3), 403.727(2), 403.758(1),
25 403.811, and 403.9419, F.S., to incorporate the
26 amendments to ss. 403.121 and 403.131, F.S., in
27 references thereto; reenacting s. 627.756(2),
28 F.S., to incorporate the amendment to s.
29 403.727, F.S., in a reference thereto;
30 reenacting ss. 381.0063, 403.854(7), and
31 403.862(7), F.S., to incorporate the amendment

1 to s. 403.860, F.S., in references thereto;
2 providing an effective date.

3

4 Be It Enacted by the Legislature of the State of Florida:

5

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

8 369.25 Aquatic plants; definitions; permits; powers of
9 department; penalties.--

10 (3) The department has the following powers:

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

14 Section 2. Subsection (7) of section 373.129, Florida
15 Statutes, is amended to read:

16 373.129 Maintenance of actions.--The department, the
17 governing board of any water management district, any local
18 board, or a local government to which authority has been
19 delegated pursuant to s. 373.103(8), is authorized to commence
20 and maintain proper and necessary actions and proceedings in
21 any court of competent jurisdiction for any of the following
22 purposes:

23 (7) Enforce the provisions of part IV of this chapter
24 in the same manner and to the same extent as provided in ss.
25 373.430, ~~403.121(1) and (2)~~, 403.131, 403.141, and 403.161.

26 Section 3. Section 373.437, Florida Statutes, is
27 created to read:

28 373.437 Administrative penalties.--The governing board
29 is authorized to assess administrative penalties in the same
30 manner and to the same extent as provided in s. 403.121.

31

1 Section 4. Paragraph (a) of subsection (1) of section
2 377.37, Florida Statutes, is amended to read:

3 377.37 Penalties.--

4 (1)(a) Any person who violates any provision of this
5 law or any rule, regulation, or order of the division made
6 under this chapter or who violates the terms of any permit to
7 drill for or produce oil, gas, or other petroleum products
8 referred to in s. 377.242(1), or any lessee, permitholder, or
9 operator of equipment or facilities used in the exploration
10 for, drilling for, or production of oil, gas, or other
11 petroleum products who refuses inspection by the division as
12 provided in this chapter, is liable to the state for any
13 damage caused to the air, waters, or property, including
14 animal, plant, or aquatic life, of the state and for
15 reasonable costs and expenses of the state in tracing the
16 source of the discharge, in controlling and abating the source
17 and the pollutants, and in restoring the air, waters, and
18 property, including animal, plant, and aquatic life, of the
19 state. Furthermore, such person, lessee, permitholder, or
20 operator is subject to the judicial imposition of a civil
21 penalty in an amount of not more than \$10,000 for each
22 offense. However, the court may receive evidence in
23 mitigation. Each day during any portion of which such
24 violation occurs constitutes a separate offense. The
25 department shall assess administrative penalties for
26 violations of this chapter in accordance with s. 403.121.
27 Penalties collected pursuant to this subsection shall be
28 deposited in the Minerals Trust Fund. The department may use a
29 portion of the fund to contract for services to help in the
30 collection of the administrative penalties assessed pursuant
31

1 ~~to this subsection.~~ Nothing herein shall give the department
2 the right to bring an action on behalf of any private person.

3 Section 5. Subsection (2) of section 378.211, Florida
4 Statutes, is amended to read:

5 378.211 Violations; damages; penalties.--

6 (2) The department may institute a civil action in a
7 court of competent jurisdiction or an administrative action
8 pursuant to s. 403.121 to impose and recover a civil penalty
9 for violation of this part or of any rule adopted or order
10 issued pursuant to this part. ~~The penalty shall not exceed the~~
11 ~~following amounts, and the court shall consider evidence in~~
12 ~~mitigation:~~

13 ~~(a) For violations of a minor or technical nature,~~
14 ~~\$100 per violation.~~

15 ~~(b) For major violations by an operator on which a~~
16 ~~penalty has not been imposed under this paragraph during the~~
17 ~~previous 5 years, \$1,000 per violation.~~

18 ~~(c) For major violations not covered by paragraph (b),~~
19 ~~\$5,000 per violation.~~

20
21 ~~Subject to the provisions of subsection (4), each day or any~~
22 ~~portion thereof in which the violation continues shall~~
23 ~~constitute a separate violation.~~

24 Section 6. Section 403.121, Florida Statutes, is
25 amended to read:

26 403.121 Enforcement; procedure; remedies.--The
27 department shall have the following judicial and
28 administrative remedies available to it for violations of this
29 chapter, as specified in s. 403.161(1).

30 (1) Judicial remedies:

31

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

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

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

19 (2) Administrative remedies:

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

29 (b) If the department has reason to believe a
30 violation has occurred, it may institute an administrative
31 proceeding to order the prevention, abatement, or control of

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

15 (c) An administrative proceeding shall be instituted
16 by the department's serving of a written notice of violation
17 upon the alleged violator by certified mail. If the department
18 is unable to effect service by certified mail, the notice of
19 violation may be hand delivered or personally served in
20 accordance with chapter 48. The notice shall specify the
21 provision of the law, rule, regulation, permit, certification,
22 or order of the department alleged to be violated and the
23 facts alleged to constitute a violation thereof. An order for
24 corrective action, penalty assessment, or damages may be
25 included with the notice. When the department is seeking to
26 impose an administrative penalty for any violation by issuing
27 a notice of violation, any corrective action needed to correct
28 the violation or damages caused by the violation must be
29 pursued in the notice of violation or they are waived.
30 However, no order shall become effective until after service
31 and an administrative hearing, if requested within 20 days

1 after service. Failure to request an administrative hearing
2 within this time period shall constitute a waiver thereof.

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

22 (e) After filing a petition requesting a formal
23 hearing in response to a notice of violation in which the
24 department imposes an administrative penalty, a respondent may
25 request that a private mediator be appointed to mediate the
26 dispute by contacting the Florida Conflict Resolution
27 Consortium within 10 days of receipt of the initial order from
28 the administrative law judge. The Florida Conflict Resolution
29 Consortium shall pay all of the costs of the mediator and up
30 to 8 hours per case of the mediator's time at the rate of \$150
31 per hour. Upon notice from the respondent, the Florida

1 Conflict Resolution Consortium shall provide to the respondent
2 a list of prospective mediators from the area in which the
3 hearing on the petition would be heard. The respondent shall
4 select the mediator and notify the Florida Conflict Resolution
5 Consortium of the selection within 15 days of receipt of the
6 list of prospective mediators. The Florida Conflict Resolution
7 Consortium shall provide all administrative support for the
8 mediation process. The mediation must be completed at least 15
9 days before the final hearing date set by the administrative
10 law judge.

11 (f) In any administrative proceeding brought by the
12 department, the prevailing party shall recover all costs as
13 provided in ss. 57.041 and 57.071. The costs shall be included
14 in the final order. The respondent is the prevailing party
15 when an order is entered awarding no penalties to the
16 department and such order has not been reversed on appeal or
17 the time for seeking judicial review of the order has expired.
18 The respondent shall be entitled to an award of attorney's
19 fees if the administrative law judge determines that the
20 department initiated the notice of violation seeking the
21 imposition of administrative penalties for an improper purpose
22 as defined in s. 120.595(1)(e)1. No award of attorney's fees
23 as provided by this subsection shall exceed \$15,000.

24 (g)(d) Nothing herein shall be construed as preventing
25 any other legal or administrative action in accordance with
26 law. Nothing in this subsection shall limit the department's
27 authority provided in this section and ss. 403.131 and 403.141
28 to judicially pursue temporary injunctive relief. The
29 department has the authority to enter into a settlement either
30 before or after initiating a notice of violation, and the
31 settlement may include a penalty amount different from the

1 administrative penalty schedule. The department retains the
2 authority to judicially pursue penalties in excess of \$10,000
3 for violations not specifically included in the administrative
4 penalty schedule, or for multiple violations or violations
5 occurring on more than 1 day alleged to exceed a total of
6 \$10,000, or for violations in which the economic benefit is
7 alleged to exceed \$10,000. The department also retains the
8 authority provided in this section and in ss. 403.131 and
9 403.141 to judicially pursue permanent injunctive relief and
10 damages if a notice of violation seeking the imposition of
11 administrative penalties has not been issued. Any case filed
12 in state court because it is alleged to exceed a total of
13 \$10,000 in penalties may be settled in the state court action
14 for less than \$10,000.

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

18 (a) For a drinking water contamination violation, the
19 department shall assess a penalty of \$2,000 for a maximum
20 contaminant level violation; plus \$1,000 if the violation is
21 for a primary inorganic, organic, or radiological maximum
22 contaminant level, or if it is a fecal coliform bacteria
23 violation; plus \$1,000 if the violation occurs at a community
24 water system; and plus \$1,000 if any maximum contaminant level
25 is exceeded by more than 100 percent.

26 (b) For a failure to obtain a required wastewater
27 permit, other than a permit required for discharge, the
28 department shall assess a penalty of \$1,000. For a domestic or
29 industrial wastewater violation not involving a surface water
30 or groundwater quality violation, the department shall assess
31 a penalty of \$2,000 for an unpermitted or unauthorized

1 discharge or for exceeding an effluent limitation. For an
2 unpermitted or unauthorized discharge or for exceeding an
3 effluent limitation that resulted in a surface water or
4 groundwater quality violation, the department shall assess a
5 penalty of \$5,000.

6 (c) For a dredge and fill or stormwater violation, the
7 department shall assess a penalty of \$1,000 for unpermitted or
8 unauthorized dredging or filling or unauthorized construction
9 of a stormwater management system against the person or
10 persons responsible for the illegal dredging or filling or
11 unauthorized construction of a stormwater management system;
12 plus \$2,000 if the dredging or filling occurs in or contiguous
13 to an aquatic preserve, Outstanding Florida Water conservation
14 easement, or Class I or Class II surface water; plus \$1,000 if
15 the area dredged and/or filled is greater than 1/4 acre but
16 less than and 1/2 acre; and plus \$1,000 if the area dredged
17 and/or filled is greater than 1/2 acre but less than 1 acre.
18 The administrative penalty schedule shall not apply to a
19 dredge and fill violation if the area dredged and/or filled
20 exceeds 1 acre. The department retains the authority to seek
21 the judicial imposition of civil penalties for all dredge and
22 fill violations involving more than 1 acre. The department
23 shall assess a penalty of \$3,000 for the failure to complete
24 required mitigation, failure to record a required conservation
25 easement, or for a water quality violation resulting from
26 dredging or filling activities, stormwater construction
27 activities, or failure of a stormwater treatment facility. For
28 stormwater management systems serving less than 5 acres, the
29 department shall assess a penalty of \$2,000 for the failure to
30 properly or timely construct a stormwater management system.
31 In addition to the penalties authorized in this subsection,

1 the department shall assess a penalty of \$5,000 per day per
2 violation against the contractor or agent of the owner or
3 tenant that conducts unpermitted or unauthorized dredging or
4 filling.

5 (d) For a first-time mangrove trimming or altering
6 violation, the department shall assess a penalty of \$1,000 for
7 the alteration of less than 100 square feet of mangroves or
8 the trimming of less than 500 square feet of mangroves; \$2,000
9 for the alteration of 100 to 500 square feet of mangroves or
10 the trimming of 500 to 1,000 square feet of mangroves; \$3,500
11 for the alteration of 500 to 1,000 square feet of mangroves or
12 the trimming of 1,000 to 5,000 square feet of mangroves; or
13 \$5,000 for the alteration of over 1,000 square feet of
14 mangroves or the trimming of over 5,000 square feet of
15 mangroves. In addition to the penalties authorized in this
16 subsection, the department shall assess a penalty of \$5,000
17 per day per violation against the contractor or agent of the
18 owner or tenant that conducts unpermitted or unauthorized
19 mangrove trimming or alteration. For second and subsequent
20 mangrove trimming or alteration violations, in addition to the
21 schedule of penalties in this paragraph, additional penalties
22 shall be imposed as provided in s. 403.9332(3).

23 (e) For solid waste violations, the department shall
24 assess a penalty of \$2,000 for the unpermitted or unauthorized
25 disposal or storage of solid waste; plus \$1,000 if the solid
26 waste is Class I or Class III, excluding yard trash, or if the
27 solid waste is construction and demolition debris in excess of
28 20 cubic yards; plus \$1,000 if the waste is disposed of or
29 stored in any natural or artificial body of water or within
30 500 feet of a potable water well; plus \$1,000 if the waste
31 contains polychlorinated biphenyls at a concentration of 50

1 parts per million or greater, untreated biomedical waste,
2 friable asbestos greater than 1 cubic meter that is not
3 wetted, bagged, and covered, used oil greater than 25 gallons,
4 or 10 or more lead acid batteries. The department shall assess
5 a penalty of \$3,000 for failure to properly maintain leachate
6 control; unauthorized burning; failure to have a trained
7 spotter on duty at the working face when accepting waste; or
8 failure to provide access control for three consecutive
9 inspections. The department shall assess a penalty of \$2,000
10 for failure to properly or timely construct or maintain a
11 required stormwater management system.

12 (f) For an air emission violation, the department
13 shall assess a penalty of \$1,000 for an unpermitted or
14 unauthorized air emission or for exceeding the limits of an
15 air emission permit; plus \$1,000 if the emission results in an
16 air quality violation; plus \$3,000 if the emission was from a
17 major source and the source was major for the pollutant in
18 violation; and plus \$1,000 if the emission was more than 150
19 percent of the allowable level.

20 (g) For storage tank system and petroleum
21 contamination violations, the department shall assess a
22 penalty of \$5,000 for failure to empty a damaged storage
23 system as necessary to ensure that a release does not occur
24 until repairs to the storage system are completed, when a
25 release has occurred from that storage tank system, failure to
26 timely recover free product, or failure to conduct remediation
27 or monitoring activities until a no further action order or
28 site rehabilitation completion order has been issued. The
29 department shall assess a penalty of \$3,000 for failure to
30 timely upgrade a storage tank system. The department shall
31 assess a penalty of \$2,000 for failure to conduct or maintain

1 required release detection, failure to timely investigate a
2 suspected release from a storage system, failure to timely
3 assess or remediate petroleum contamination, depositing motor
4 fuel into an unregistered storage tank, or failure to properly
5 install a storage tank system. The department shall assess a
6 penalty of \$1,000 for failure to properly operate, maintain,
7 or close a storage tank system.

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

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

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

16 (c) For failure to obtain a required permit not
17 otherwise specifically included in subsection (3): \$3,000.

18 (d) For failure to conduct required monitoring or
19 testing; failure to conduct required release detection;
20 failure to construct in compliance with a permit; violation of
21 a specific permit condition not otherwise specifically
22 included in this section; or failure to plug oil or gas wells:
23 \$2,000.

24 (e) For failure to maintain required staff to respond
25 to emergencies; failure to conduct required training; failure
26 to prepare, maintain, or update required contingency plans;
27 failure to adequately respond to emergencies to bring an
28 emergency situation under control; failure to comply with
29 geophysical seismic line safety onsite reclamation
30 requirements; or failure to submit required notification to
31 the department or the department's agent: \$1,000.

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

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

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

10 (7) The history of noncompliance of the violator for
11 any previous violation resulting in an executed consent order,
12 final order, or judgment involving the imposition of \$2,000 or
13 more in penalties shall be taken into consideration in the
14 following manner:

15 (a) One previous violation within 5 years prior to the
16 filing of the notice of violation will result in a 50 percent
17 per day increase in the scheduled administrative penalty.

18 (b) Two previous violations within 5 years prior to
19 the filing of the notice of violation will result in a 75
20 percent per day increase in the scheduled administrative
21 penalty.

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

26 (8) The direct economic benefit gained by the violator
27 from the violation shall be added to the scheduled
28 administrative penalty.

29 (9) The administrative penalties assessed for any
30 particular violation shall not exceed \$5,000 against any one
31 violator, unless the violator has a history of noncompliance,

1 the economic benefit of the violation exceeds \$5,000, or there
2 are violations occurring on more than 1 day. The total
3 administrative penalties shall not exceed \$10,000 per
4 assessment for all violations attributable to a specific
5 person in the notice of violation.

6 (10) The administrative law judge may receive evidence
7 in mitigation. The penalties identified in subsections (3),
8 (4), and (5) may be reduced up to 50 percent by the
9 administrative law judge for mitigating circumstances,
10 including good faith efforts to comply prior to or after
11 discovery of the violations by the department.

12 (11) Penalties collected pursuant to this subsection
13 shall be deposited in the Ecosystem Management and Restoration
14 Trust Fund or other trust fund designated by statute. The
15 Florida Conflict Resolution Consortium may use a portion of
16 the fund to administer the mediation process provided in
17 paragraph (2)(e) and to contract with private mediators for
18 administrative penalty cases.

19 (12) The purpose of the administrative penalty
20 schedule and process is to provide a more predictable and
21 efficient manner for individuals and businesses to resolve
22 minor environmental disputes. Nothing in subsections (3), (4),
23 (5), (6), or (7) shall be construed as limiting a state court
24 in the assessment of damages. The administrative penalty
25 schedule does not apply to penalties that exceed the penalty
26 caps described in subsection (9).

27 ~~(3)(a) In addition to any judicial or administrative~~
28 ~~remedy authorized by this part, the department may assess a~~
29 ~~noncompliance fee for failure of any owner or operator of a~~
30 ~~domestic wastewater treatment facility to comply with a permit~~
31 ~~condition that requires the submittal of monthly operating~~

1 ~~reports or the reporting of the characteristics of the waste~~
2 ~~stream or the effects of the facility on surface or ground~~
3 ~~water. For the first and second violations of the reporting~~
4 ~~requirements, the fee shall not be assessed until the~~
5 ~~department has given the owner or operator at least 30 days to~~
6 ~~comply with the reporting requirement. The time shall not~~
7 ~~begin until the department has given the owner or operator~~
8 ~~written notice of the facts alleged to constitute the~~
9 ~~reporting violation, the specific provision of law, rule, or~~
10 ~~order alleged to have been violated by the owner or operator,~~
11 ~~the corrective action needed to bring the facility into~~
12 ~~compliance, and the potential penalties that may be imposed as~~
13 ~~a result of the owner's or operator's failure to comply with~~
14 ~~the notice. For subsequent violations, the department does~~
15 ~~not have to provide 30 days' written notice of the violations~~
16 ~~prior to assessing a noncompliance fee, except as follows:~~

17 ~~1. If any additional reporting violations occur prior~~
18 ~~to the expiration of either of the 30-day notices issued by~~
19 ~~the department, the department must provide the owner or~~
20 ~~operator with 30 days' written notice to correct these~~
21 ~~violations as well.~~

22 ~~2. Upon the renewal of the permit, the department~~
23 ~~shall reinstate the 30-day notice requirements provided in~~
24 ~~this subsection prior to assessing a noncompliance fee during~~
25 ~~the new permit period.~~

26 ~~(b) At the time of assessment of a noncompliance fee,~~
27 ~~the department shall give the owner or operator written notice~~
28 ~~setting forth the amount assessed, the specific provision of~~
29 ~~law, rule, or order alleged to be violated, the facts alleged~~
30 ~~to constitute the violation, the corrective action needed to~~
31 ~~bring the party into compliance, and the rights available~~

1 ~~under chapter 120 to challenge the assessment. The assessment~~
2 ~~shall be final and effective unless an administrative~~
3 ~~proceeding is requested within 20 days after receipt of the~~
4 ~~written notice, and shall be enforceable pursuant to s.~~
5 ~~120.69. Once the assessment has become final and effective,~~
6 ~~the department may refuse to issue, modify, transfer, or renew~~
7 ~~a permit to the facility until the fee has been paid.~~
8 ~~(c) Before assessing a noncompliance fee, the~~
9 ~~department shall adopt rules to implement the provisions of~~
10 ~~this subsection. The rules shall establish specific procedures~~
11 ~~and assessment amounts for noncompliance fees authorized by~~
12 ~~paragraph (a). Noncompliance fees shall be set on a sliding~~
13 ~~scale based upon the type of violation, the degree of~~
14 ~~noncompliance, and the potential for harm. Such rules shall~~
15 ~~also authorize the application of adjustment factors~~
16 ~~subsequent to the initial assessment to increase or decrease~~
17 ~~the total amount assessed, such as the good faith efforts or~~
18 ~~the lack of good faith efforts of the owner or operator to~~
19 ~~comply with the reporting requirement, the lack of or degree~~
20 ~~of willfulness or negligence on the part of the owner or~~
21 ~~operator, the economic benefits associated with the owner's or~~
22 ~~operator's failure to comply, the owner's or operator's~~
23 ~~previous history of reporting violations, and the owner's or~~
24 ~~operator's ability to pay the noncompliance fee. No~~
25 ~~noncompliance fee shall exceed \$250, and total noncompliance~~
26 ~~fees assessed shall not exceed \$1,000 per assessment for all~~
27 ~~reporting violations attributable to a specific facility~~
28 ~~during any one month. No noncompliance fee may be assessed~~
29 ~~unless the department has, within 90 days of the reporting~~
30 ~~violation, provided the owner or operator written notice of~~
31 ~~the violation.~~

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

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

13 Section 7. Subsection (2) of section 403.131, Florida
14 Statutes, is amended to read:

15 403.131 Injunctive relief, cumulative remedies.--

16 (1) The department may institute a civil action in a
17 court of competent jurisdiction to seek injunctive relief to
18 enforce compliance with this chapter or any rule, regulation,
19 permit certification, or order; to enjoin any violation
20 specified in s. 403.161(1); and to seek injunctive relief to
21 prevent irreparable injury to the air, waters, and property,
22 including animal, plant, and aquatic life, of the state and to
23 protect human health, safety, and welfare caused or threatened
24 by any violation.

25 (2) All the judicial and administrative remedies to
26 recover damages and penalties in this section and s. 403.121
27 ~~are independent and cumulative except that the judicial and~~
28 ~~administrative remedies to recover damages~~ are alternative and
29 mutually exclusive.

30 Section 8. Subsection (3) of section 403.727, Florida
31 Statutes, is amended to read:

1 403.727 Violations; defenses, penalties, and
2 remedies.--
3 (3) Violations of the provisions of this act are
4 punishable as follows:
5 (a) Any person who violates the provisions of this
6 act, the rules or orders of the department, or the conditions
7 of a permit is liable to the state for any damages specified
8 in s. 403.141 and for a civil penalty of not more than \$50,000
9 for each day of continued violation, except as otherwise
10 provided herein. The department may revoke any permit issued
11 to the violator. In any action by the department against a
12 small hazardous waste generator for the improper disposal of
13 hazardous wastes, a rebuttable presumption of improper
14 disposal shall be created if the generator was notified
15 pursuant to s. 403.7234; the generator shall then have the
16 burden of proving that the disposal was proper. If the
17 generator was not so notified, the burden of proving improper
18 disposal shall be placed upon the department.
19 (b) Any person who knowingly or by exhibiting reckless
20 indifference or gross careless disregard for human health:
21 1. Transports or causes to be transported any
22 hazardous waste, as defined in s. 403.703, to a facility which
23 does not have a permit when such a permit is required under s.
24 403.707 or s. 403.722;
25 2. Disposes of, treats, or stores hazardous waste:
26 a. At any place but a hazardous waste facility which
27 has a current and valid permit pursuant to s. 403.722;
28 b. In knowing violation of any material condition or
29 requirement of such permit if such violation has a substantial
30 likelihood of endangering human health, animal or plant life,
31 or property; or

1 c. In knowing violation of any material condition or
2 requirement of any applicable rule or standard if such
3 violation has a substantial likelihood of endangering human
4 health, animal or plant life, or property;

5 3. Makes any false statement or representation or
6 knowingly omits material information in any hazardous waste
7 application, label, manifest, record, report, permit, or other
8 document required by this act;

9 4. Generates, stores, treats, transports, disposes of,
10 or otherwise handles any hazardous waste and who knowingly
11 destroys, alters, conceals, or fails to file any record,
12 application, manifest, report, or other document required to
13 be maintained or filed for purposes of compliance with this
14 act; or

15 5. Transports without a manifest, or causes to be
16 transported without a manifest, any hazardous waste required
17 by rules adopted by the department to be accompanied by a
18 manifest

19
20 is, upon conviction, guilty of a felony of the third degree,
21 punishable for the first such conviction by a fine of not more
22 than \$50,000 for each day of violation or imprisonment not to
23 exceed 5 years, or both, and for any subsequent conviction by
24 a fine of not more than \$100,000 per day of violation or
25 imprisonment of not more than 10 years, or both.

26 ~~(c)1. As used in this paragraph, "Class II violation"~~
27 ~~means a violation of this part, or the rules promulgated~~
28 ~~pursuant to this part, which pertains to small quantity~~
29 ~~generators as defined by applicable department rules and which~~
30 ~~does not result in a discharge or serious threat of a~~
31 ~~discharge of hazardous waste to the environment, or does not~~

1 ~~involve the failure to ensure that groundwater will be~~
2 ~~protected or that hazardous waste will be destined for and~~
3 ~~delivered to permitted facilities. Class II violations shall~~
4 ~~include, but need not be limited to, the failure to submit~~
5 ~~manifest exception reports in a timely manner, failure to~~
6 ~~provide a generator's United States Environmental Protection~~
7 ~~Agency identification number on the manifest, failure to~~
8 ~~maintain complete personnel training records, and failure to~~
9 ~~meet inspection schedule requirements for tanks and containers~~
10 ~~that hold hazardous waste.~~

11 ~~2. In addition to any other judicial or administrative~~
12 ~~remedy authorized by this part, the department may assess a~~
13 ~~noncompliance fee for any Class II violation by a small~~
14 ~~quantity generator. For the first and second violations, the~~
15 ~~fee shall not be assessed until the generator has failed to~~
16 ~~comply after notice of noncompliance and has been given a~~
17 ~~reasonable time to comply. If the owner or operator fails~~
18 ~~after three or more notifications to comply with the~~
19 ~~requirement to correct the Class II violation, the department~~
20 ~~may assess the fee without waiting for compliance.~~

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

1 ~~become final and effective, the department shall refuse to~~
2 ~~issue, modify, transfer, or renew a permit or issue an~~
3 ~~identification number to the facility until the fee has been~~
4 ~~paid.~~

5 ~~4. Before assessing any noncompliance fee, the~~
6 ~~department shall adopt rules to implement the provisions of~~
7 ~~this paragraph, which shall include a description of~~
8 ~~activities that constitute Class II violations and the setting~~
9 ~~of appropriate amounts for the noncompliance fees, based upon~~
10 ~~the type of violation, but not to exceed \$250. Total~~
11 ~~noncompliance fees assessed shall not exceed \$1,000 per~~
12 ~~assessment for all violations attributable to a specific~~
13 ~~facility during any one month.~~

14 ~~5. The department's assessment of a noncompliance fee~~
15 ~~shall be in lieu of any civil action that may be instituted by~~
16 ~~the department in a court of competent jurisdiction to impose~~
17 ~~and recover civil penalties for any violation that resulted in~~
18 ~~the fee assessment, unless the department initiates a civil~~
19 ~~action for nonpayment of a fee properly assessed pursuant to~~
20 ~~this paragraph.~~

21 ~~6. Noncompliance fees collected pursuant to this~~
22 ~~paragraph shall be deposited in the Ecosystem Management and~~
23 ~~Restoration Trust Fund. The department may use a portion of~~
24 ~~the fund to contract for services to help in the collection of~~
25 ~~fees assessed pursuant to this paragraph.~~

26 Section 9. Subsections (5), (6), and (7) of section
27 403.860, Florida Statutes, are amended to read:

28 403.860 Penalties and remedies.--

29 (5) In addition to any judicial or administrative
30 remedy authorized by this part, the department or a county
31 health department that has received approval by the department

1 pursuant to s. 403.862(1)(c) shall assess administrative
2 penalties for violations of this section in accordance with s.
3 403.121 may assess a noncompliance fee for failure of any
4 supplier of water of a public water system to comply with
5 department requirements for the reporting, in the manner and
6 time provided by department rule, of test results for
7 microbiological, inorganic, or organic contaminants; or
8 turbidity, radionucleides, or secondary standards.

9 (a) ~~For the first and second violations of the~~
10 ~~microbiological reporting requirements, and for the first~~
11 ~~violation of other reporting requirements, the fee shall not~~
12 ~~be assessed until the department has given the supplier at~~
13 ~~least 30 days to comply with the reporting requirement. The~~
14 ~~time shall not begin until the department has given the~~
15 ~~supplier written notice of the facts alleged to constitute the~~
16 ~~reporting violation, the specific provision of law, rule, or~~
17 ~~order alleged to have been violated by the owner or operator,~~
18 ~~the corrective action needed to bring the facility into~~
19 ~~compliance, and the potential penalties that may be imposed as~~
20 ~~a result of the supplier's failure to comply with the notice.~~
21 ~~For subsequent violations of the microbiological reporting~~
22 ~~requirements, the department does not have to provide 30-day~~
23 ~~written notice of the violations prior to assessing a~~
24 ~~noncompliance fee, provided, however, that if any additional~~
25 ~~reporting violations occur prior to the expiration of either~~
26 ~~30-day notice issued by the department, the department must~~
27 ~~provide the supplier with a 30-day written notice to correct~~
28 ~~those violations as well. Upon expiration of 36 months, the~~
29 ~~department shall reinstate the 30-day notice requirements~~
30 ~~provided in this subsection prior to assessing a noncompliance~~
31 ~~fee.~~

1 ~~(b) At the time of assessment of a noncompliance fee,~~
2 ~~the department shall give the supplier written notice setting~~
3 ~~forth the amount assessed, the specific provision of law,~~
4 ~~rule, or order alleged to be violated, the facts alleged to~~
5 ~~constitute the violation, the corrective action needed to~~
6 ~~bring the party into compliance, and the rights available~~
7 ~~under chapter 120 to challenge the assessment. The assessment~~
8 ~~shall be final and effective unless an administrative~~
9 ~~proceeding is requested within 20 days after receipt of the~~
10 ~~written notice, and shall be enforceable pursuant to s.~~
11 ~~120.69.~~

12 ~~(c) Before assessing a noncompliance fee, the~~
13 ~~department shall adopt rules to implement the provisions of~~
14 ~~this subsection. The rules shall establish specific procedures~~
15 ~~and assessment amounts for noncompliance fees authorized by~~
16 ~~paragraph (a). Noncompliance fees shall be set on a sliding~~
17 ~~scale based upon the type of violation, the degree of~~
18 ~~noncompliance, and the potential for harm. Such rules shall~~
19 ~~also authorize the application of adjustment factors~~
20 ~~subsequent to initial assessment to increase or decrease the~~
21 ~~total amount assessed, such as the good faith efforts or the~~
22 ~~lack of good faith efforts of the supplier to comply with the~~
23 ~~reporting requirements, the lack of or degree of willfulness~~
24 ~~or negligence on the part of the supplier, the economic~~
25 ~~benefits associated with the supplier's failure to comply with~~
26 ~~the reporting violation, the supplier's previous history of~~
27 ~~reporting violations, and the supplier's ability to pay the~~
28 ~~noncompliance fee.~~

29 ~~(d) For microbiological reporting requirements, no~~
30 ~~noncompliance fee shall exceed \$250, and total noncompliance~~
31 ~~fees assessed shall not exceed \$1,000 per assessment for all~~

1 ~~reporting violations attributable to a specific facility~~
2 ~~during any one month.~~

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

7 ~~(f) The department's assessment of a noncompliance fee~~
8 ~~shall be in lieu of any civil action which may be instituted~~
9 ~~by the department in a court of competent jurisdiction to~~
10 ~~impose and recover civil penalties for any violation that~~
11 ~~resulted in the fee assessment, unless the department~~
12 ~~initiates a civil action for nonpayment of a fee properly~~
13 ~~assessed pursuant to this subsection.~~

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

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

20 ~~(a) Prior to the assessment of an administrative~~
21 ~~penalty, the department shall provide the public water system~~
22 ~~a reasonable amount of time to complete the corrective action~~
23 ~~necessary to bring the system back into compliance.~~

24 ~~(b)1. At the time of assessment of the administrative~~
25 ~~penalty, the department shall give the public water system~~
26 ~~notice setting forth the amount assessed, the specific~~
27 ~~provision of law, rule, or order alleged to be violated, the~~
28 ~~facts alleged to constitute the violation, the corrective~~
29 ~~action needed to bring the party into compliance, and the~~
30 ~~rights available under chapter 120 to challenge the~~
31 ~~assessment. The assessment shall be final and effective,~~

1 ~~unless an administrative hearing is requested within 20 days~~
2 ~~after receipt of the written notice, and shall be enforceable~~
3 ~~pursuant to s. 120.69.~~

4 ~~2. The department shall adopt rules to implement the~~
5 ~~provisions of this subsection. The rules shall establish~~
6 ~~specific procedures for implementing the penalties and shall~~
7 ~~identify assessment amounts. The rules shall authorize the~~
8 ~~application of adjustment factors for the purpose of~~
9 ~~increasing or decreasing the total amount assessed subsequent~~
10 ~~to initial assessment. Such factors may include the lack or~~
11 ~~degree of good faith to comply with the requirements, the lack~~
12 ~~or degree of willfulness or negligence on the part of the~~
13 ~~owner, the compliance history of the public water system, the~~
14 ~~economic benefit derived by the failure to comply with the~~
15 ~~requirements, and the ability to pay.~~

16 ~~(c) The amount of the penalties assessed shall be as~~
17 ~~follows:~~

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

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

23
24 ~~However, the total amount of the penalty assessed on any~~
25 ~~public water system may not exceed \$10,000 per violation.~~

26 (6)~~(7)~~ Fees collected pursuant to this section shall
27 be deposited in the Water Quality Assurance Trust Fund or the
28 appropriate County Health Department Trust Fund, in accordance
29 with s. 381.0063, to be used to carry out the provisions of
30 this part. The department may use a portion of the fund to
31

1 contract for services to help collect noncompliance fees
2 assessed pursuant to this section.

3 Section 10. The department shall submit a report to
4 the legislature by July 1, 2003, which shall contain the
5 number of notices of violations issued by the department
6 seeking the imposition of administrative penalties and the
7 amount of administrative penalties collected by the department
8 since the implementation of this act, and any increased
9 efficiency realized as a result of the implementation of this
10 act.

11 Section 11. For the purpose of incorporating the
12 amendments to sections 403.121 and 403.131, Florida Statutes,
13 in references thereto, the sections or subdivisions of Florida
14 Statutes set forth below are reenacted to read:

15 373.129 Maintenance of actions.--The department, the
16 governing board of any water management district, any local
17 board, or a local government to which authority has been
18 delegated pursuant to s. 373.103(8), is authorized to commence
19 and maintain proper and necessary actions and proceedings in
20 any court of competent jurisdiction for any of the following
21 purposes:

22 (7) Enforce the provisions of part IV of this chapter
23 in the same manner and to the same extent as provided in ss.
24 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

25 376.303 Powers and duties of the Department of
26 Environmental Protection.--

27 (1) The department has the power and the duty to:

28 (j) Bring an action on behalf of the state to enforce
29 the liabilities imposed by ss. 376.30-376.319. The provisions
30 of ss. 403.121, 403.131, 403.141, and 403.161 apply to
31 enforcement under ss. 376.30-376.319.

1 376.322 Powers and duties of the department.--The
2 department shall have the power and duty to:
3 (4) Enforce the provisions of ss. 376.320-376.326
4 pursuant to the provisions of ss. 403.121 and 403.161.
5 403.4135 Litter receptacles.--
6 (2) RECEPTACLES REQUIRED.--All ports, terminal
7 facilities, boatyards, marinas, and other commercial
8 facilities which house vessels and from which vessels
9 disembark shall provide or ensure the availability of litter
10 receptacles of sufficient size and capacity to accommodate the
11 litter and other waste materials generated on board the
12 vessels using its facilities, except for large quantities of
13 spoiled or damaged cargoes not usually discharged by a ship.
14 The department may enforce violations of this section pursuant
15 to ss. 403.121 and 403.131.
16 403.7045 Application of act and integration with other
17 acts.--
18 (3) The following wastes or activities shall be
19 regulated pursuant to this act in the following manner:
20 (d) Biomedical waste and biological waste shall be
21 disposed of only as authorized by the department. However,
22 any person who unknowingly disposes into a sanitary landfill
23 or waste-to-energy facility any such waste which has not been
24 properly segregated or separated from other solid wastes by
25 the generating facility is not guilty of a violation under
26 this act. Nothing in this paragraph shall be construed to
27 prohibit the department from seeking injunctive relief
28 pursuant to s. 403.131 to prohibit the unauthorized disposal
29 of biomedical waste or biological waste.
30 403.708 Prohibition; penalty.--
31

1 (12) The department or any county or municipality may
2 also seek to enjoin the violation of, or enforce compliance
3 with, this part or any program adopted hereunder as provided
4 in s. 403.131.

5 403.726 Abatement of imminent hazard caused by
6 hazardous substance.--

7 (2) The department shall take any action necessary
8 pursuant to s. 403.121 or s. 403.131 to abate or substantially
9 reduce any imminent hazard caused by a hazardous substance,
10 including a spill into the environment of a hazardous
11 substance. The department is authorized to use moneys from the
12 Water Quality Assurance Trust Fund to finance such actions,
13 and such expenditures from the fund shall be recoverable
14 pursuant to s. 376.307.

15 (3) An imminent hazard exists if any hazardous
16 substance creates an immediate and substantial danger to human
17 health, safety, or welfare or to the environment. The
18 department may institute action in its own name, using the
19 procedures and remedies of s. 403.121 or s. 403.131, to abate
20 an imminent hazard. However, the department is authorized to
21 recover a civil penalty of not more than \$25,000 for each day
22 of continued violation. Whenever serious harm to human health,
23 safety, and welfare; the environment; or private or public
24 property may occur prior to completion of an administrative
25 hearing or other formal proceeding which might be initiated to
26 abate the risk of serious harm, the department may obtain, ex
27 parte, an injunction without paying filing and service fees
28 prior to the filing and service of process.

29 403.727 Violations; defenses, penalties, and
30 remedies.--

31

1 (2) In addition to the "imminent hazard" provision,
2 ss. 403.121 and 403.131 are available to the department to
3 abate violations of this act.

4 403.758 Enforcement and penalty.--

5 (1) Except as provided in subsection (2), the
6 department may enforce ss. 403.75-403.769 and s. 526.01, as
7 amended by chapter 84-338, Laws of Florida, pursuant to ss.
8 403.121, 403.131, and 403.161.

9 403.811 Dredge and fill permits issued pursuant to ss.
10 403.91-403.929 and s. 373.414.--Permits or other orders
11 addressing dredging and filling in, on, or over waters of the
12 state issued pursuant to this chapter or s. 373.414(9) before
13 the effective date of rules adopted under s. 373.414(9) and
14 permits or other orders issued in accordance with s.
15 373.414(13), (14), (15), or (16) shall remain valid through
16 the duration specified in the permit or order, unless revoked
17 by the agency issuing the permit. The agency issuing the
18 permit or other order may seek to enjoin the violation of, or
19 to enforce compliance with, the permit or other order as
20 provided in ss. 403.121, 403.131, 403.141, and 403.161. A
21 violation of a permit or other order addressing dredging or
22 filling issued pursuant to this chapter is punishable by a
23 civil penalty as provided in s. 403.141 or a criminal penalty
24 as provided in s. 403.161.

25 403.9419 Enforcement of compliance.--Failure to obtain
26 a certification, to comply with the conditions of
27 certification, or to comply with ss. 403.9401-403.9425 shall
28 constitute a violation of this chapter. The department shall
29 enforce compliance with the conditions of certification issued
30 under ss. 403.9401-403.9425, in accordance with the provisions
31 of ss. 403.061 and 403.121.

1 Section 12. For the purpose of incorporating the
2 amendment to section 403.727, Florida Statutes, in references
3 thereto, the sections or subdivisions of Florida Statutes set
4 forth below are reenacted to read:

5 627.756 Bonds for construction contracts; attorney
6 fees in case of suit.--

7 (2) A surety who issues a bid, performance, or payment
8 bond in connection with construction activities where
9 hazardous substances exist or are discovered is liable under
10 ss. 376.308 and 403.727 only to the extent provided in this
11 subsection. In case of a default, the surety is liable only
12 for the cost of completion of the contract work in accordance
13 with the plans and specifications, less the balance of funds
14 remaining to be paid under the contract, up to the penal sum
15 of the bond. The surety is not liable on a bond to indemnify
16 or compensate the obligee for loss or liability arising from
17 personal injury or property damage, whether or not caused by a
18 breach of the bonded contract. Further, a right of action
19 does not accrue on a bond to or for the use of any person
20 other than the obligee named in the bond.

21 Section 13. For the purpose of incorporating the
22 amendment to section 403.860, Florida Statutes, in references
23 thereto, the sections or subdivisions of Florida Statutes set
24 forth below are reenacted to read:

25 381.0063 Drinking water funds.--All fees and penalties
26 received from suppliers of water pursuant to ss. 403.860(5)
27 and 403.861(8) shall be deposited in the appropriate County
28 Health Department Trust Fund to be used by the department to
29 pay the costs of expenditures required pursuant to ss.
30 381.0062 and 403.862(1)(c).

31 403.854 Variances, exemptions, and waivers.--

1 (7) The department may revoke any waiver to protect
2 the public health, provided the department finds, on the basis
3 of technical evidence, that revocation is necessary to achieve
4 compliance with state quality standards for safe drinking
5 water or that the supplier of water fails to comply with any
6 conditions of the waiver. The department may proceed under s.
7 403.855 or s. 403.860.

8 403.862 Department of Health; public water supply
9 duties and responsibilities; coordinated budget requests with
10 department.--

11 (7) Fees and penalties received from suppliers of
12 water pursuant to ss. 403.860(3), (4), and (5) and 403.861(8)
13 in counties where county health departments have been approved
14 by the department pursuant to paragraph (1)(c) shall be
15 deposited in the appropriate County Health Department Trust
16 Fund to be used for the purposes stated in paragraph (1)(c).

17 Section 14. This act shall take effect July 1, 2001.
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HOUSE SUMMARY

Simplifies and removes inconsistencies among various administrative penalty provisions relating to environmental control.

Clarifies enforcement powers of the Department of Environmental Protection with respect to pt. I of ch. 369, F.S., relating to aquatic plant control. Authorizes the governing board of a water management district to assess administrative penalties for purposes of pt. IV of ch. 373, F.S., relating to management and storage of surface waters. Provides that the Department of Environmental Protection shall assess administrative penalties for energy resource violations in accordance with s. 403.121, F.S. Provides for deposit of such penalties in the Minerals Trust Fund and specifies uses of funds. Authorizes the department to institute an administrative action with respect to a violation of pt. III of ch. 378, F.S., relating to phosphate land reclamation. Removes penalty limitations.

Revises provisions relating to judicial remedies available to the department under the Florida Air and Water Pollution Control Act. Provides criteria for cases in which the department shall proceed with administrative action and provides exceptions. Provides specified limits on administrative penalties and notice of violation seeking administrative penalties. Revises provisions relating to notice and service of notice of violation. Provides procedure and requirements with respect to administrative hearings. Provides that a respondent may request mediation if the department imposes an administrative penalty. Provides mediation procedure and requirements. Provides for award of costs and attorney's fees in administrative proceedings. Authorizes the department to pursue penalties in excess of \$10,000 for specified violations.

Provides an administrative penalty schedule for drinking water contamination violations, domestic or industrial wastewater violations, dredge and fill stormwater violations, first-time mangrove trimming or altering violations, solid waste violations, air emission violations, and storage tank system and petroleum discharge or release violations. Provides exceptions to the schedule and provides a schedule of additional administrative penalties. Provides for consideration of a violator's history of noncompliance with respect to specified violations. Provides penalty limits and reductions. Provides for deposit and use of funds derived from administrative penalties.

Provides that specified judicial and administrative remedies to recover damages and penalties are alternative

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1 and mutually exclusive. Removes provisions which provide
 2 for assessment by the department of noncompliance fees
 3 for Class II violations of pt. IV of ch. 403, F.S.,
 4 relating to resource recovery and management, and the
 5 deposit of such fees. Provides for assessment of
 6 administrative penalties by the department or a county
 7 health department for violations of pt. V of ch. 403,
 8 F.S., relating to environmental regulation, in accordance
 9 with s. 403.121, F.S. Eliminates provisions relating to
 10 noncompliance fees and administrative penalties to
 11 conform. Requires the department to submit a report to
 12 the Legislature describing the number of notices of
 13 violation issued by the department seeking the imposition
 14 of administrative penalties and the amount of
 15 administrative penalties obtained by the department since
 16 the implementation of the act, and any increased
 17 efficiency realized as a result of the implementation of
 18 the act.
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