

By Senator Laurent

17-838-01

1                                   A bill to be entitled  
 2           An act relating to environmental control;  
 3           amending s. 369.25, F.S.; granting the  
 4           Department of Environmental Protection  
 5           additional enforcement powers for aquatic plant  
 6           control; amending s. 373.129, F.S.; providing  
 7           additional enforcement authority over surface  
 8           waters; creating s. 373.437, F.S.; authorizing  
 9           water management districts to assess  
 10          administrative penalties; amending s. 377.37,  
 11          F.S.; providing for assessment of  
 12          administrative penalties; amending s. 378.211,  
 13          F.S.; revising administrative penalties;  
 14          amending ss. 403.121, 403.131, 403.860, F.S.;  
 15          revising judicial and administrative remedies  
 16          for violations of environmental laws; requiring  
 17          the Department of Environmental Protection to  
 18          report to the Legislature; repealing s.  
 19          403.727(3)(c), F.S., which provides for  
 20          noncompliance fees for Class II violations;  
 21          providing an effective date.

22  
 23 Be It Enacted by the Legislature of the State of Florida:

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

27           369.25 Aquatic plants; definitions; permits; powers of  
 28           department; penalties.--

29           (3) The department has the following powers:  
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1           (k) To enforce this chapter in the same manner and to  
2 the same extent as provided in ss. 403.121, 403.131, 403.141,  
3 and 403.161.

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

6           373.129 Maintenance of actions.--The department, the  
7 governing board of any water management district, any local  
8 board, or a local government to which authority has been  
9 delegated pursuant to s. 373.103(8), is authorized to commence  
10 and maintain proper and necessary actions and proceedings in  
11 any court of competent jurisdiction for any of the following  
12 purposes:

13           (7) To enforce the provisions of part IV of this  
14 chapter in the same manner and to the same extent as provided  
15 in ss. 373.430, 403.121 ~~403.121(1) and (2)~~, 403.131, 403.141,  
16 and 403.161.

17           Section 3. Section 373.937, Florida Statutes, is  
18 created to read:

19           373.437 Administrative penalties.--The governing board  
20 may assess administrative penalties in the same manner and to  
21 the same extent as provided in s. 403.121.

22           Section 4. Paragraph (a) of subsection (1) of section  
23 377.37, Florida Statutes, is amended to read:

24           377.37 Penalties.--

25           (1)(a) Any person who violates any provision of this  
26 law or any rule, regulation, or order of the division made  
27 under this chapter or who violates the terms of any permit to  
28 drill for or produce oil, gas, or other petroleum products  
29 referred to in s. 377.242(1), or any lessee, permitholder, or  
30 operator of equipment or facilities used in the exploration  
31 for, drilling for, or production of oil, gas, or other

1 petroleum products who refuses inspection by the division as  
2 provided in this chapter, is liable to the state for any  
3 damage caused to the air, waters, or property, including  
4 animal, plant, or aquatic life, of the state and for  
5 reasonable costs and expenses of the state in tracing the  
6 source of the discharge, in controlling and abating the source  
7 and the pollutants, and in restoring the air, waters, and  
8 property, including animal, plant, and aquatic life, of the  
9 state. Furthermore, such person, lessee, permitholder, or  
10 operator is subject to the judicial imposition of a civil  
11 penalty in an amount of not more than \$10,000 for each  
12 offense. However, the court may receive evidence in  
13 mitigation. Each day during any portion of which such  
14 violation occurs constitutes a separate offense. The  
15 department shall assess administrative penalties for  
16 violations of this chapter in accordance with s. 403.121.  
17 Penalties collected under this subsection must be deposited in  
18 the Minerals Trust Fund. The department may use a portion of  
19 the fund to contract for services to help in the collection of  
20 the administrative penalties assessed under this subsection.  
21 Nothing herein shall give the department the right to bring an  
22 action on behalf of any private person.

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

25 378.211 Violations; damages; penalties.--

26 (2) The department may institute a civil action in a  
27 court of competent jurisdiction or an administrative action  
28 under s. 403.121 to impose and recover a civil penalty for  
29 violation of this part or of any rule adopted or order issued  
30 pursuant to this part. ~~The penalty shall not exceed the~~

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1 ~~following amounts, and the court shall consider evidence in~~  
2 ~~mitigation:~~

3 ~~(a) For violations of a minor or technical nature,~~  
4 ~~\$100 per violation.~~

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

8 ~~(c) For major violations not covered by paragraph (b),~~  
9 ~~\$5,000 per violation.~~

10

11 Subject to the provisions of subsection (4), each day or any  
12 portion thereof in which the violation continues shall  
13 constitute a separate violation.

14 Section 6. Section 403.121, Florida Statutes, is  
15 amended to read:

16 403.121 Enforcement; procedure; remedies.--The  
17 department shall have the following judicial and  
18 administrative remedies available to it for violations of this  
19 chapter, as specified in s. 403.161(1).

20 (1) Judicial remedies:

21 (a) The department may institute a civil action in a  
22 court of competent jurisdiction to establish liability and to  
23 recover damages for any injury to the air, waters, or  
24 property, including animal, plant, and aquatic life, of the  
25 state caused by any violation.

26 (b) The department may institute a civil action in a  
27 court of competent jurisdiction to impose and to recover a  
28 civil penalty for each violation in an amount of not more than  
29 \$10,000 per offense. However, the court may receive evidence  
30 in mitigation. Each day during any portion of which such  
31 violation occurs constitutes a separate offense.

1           (c) Except as provided in paragraph (2)(c), it shall  
2 not be a defense to, or ground for dismissal of, these  
3 judicial remedies for damages and civil penalties that the  
4 department has failed to exhaust its administrative remedies,  
5 has failed to serve a notice of violation, or has failed to  
6 hold an administrative hearing prior to the institution of a  
7 civil action.

8           (2) Administrative remedies:

9           (a) The department may institute an administrative  
10 proceeding to establish liability and to recover damages for  
11 any injury to the air, waters, or property, including animal,  
12 plant, or aquatic life, of the state caused by any violation.  
13 The department may order that the violator pay a specified sum  
14 as damages to the state. Judgment for the amount of damages  
15 determined by the department may be entered in any court  
16 having jurisdiction thereof and may be enforced as any other  
17 judgment.

18           (b) If the department has reason to believe a  
19 violation has occurred, it may institute an administrative  
20 proceeding to order the prevention, abatement, or control of  
21 the conditions creating the violation or other appropriate  
22 corrective action. Except for violations involving hazardous  
23 wastes, asbestos, or underground injection, the department  
24 shall proceed administratively in all cases in which the  
25 department seeks administrative penalties that do not exceed  
26 \$10,000 per assessment as calculated in accordance with  
27 subsections (3), (4), (5), (6), and (7). The department may  
28 not impose administrative penalties in excess of \$10,000 in a  
29 notice of violation. The department may not have more than one  
30 notice of violation seeking administrative penalties pending  
31 against the same party at the same time unless the violations

1 occurred at different sites or later violations were  
2 discovered by the department after the filing of the previous  
3 notice of violation.

4 (c) An administrative proceeding shall be instituted  
5 by the department's serving of a written notice of violation  
6 upon the alleged violator by certified mail. If the department  
7 is unable to effect service by certified mail, the notice of  
8 violation may be hand-delivered or personally served in  
9 accordance with chapter 48.The notice shall specify the  
10 provision of the law, rule, regulation, permit, certification,  
11 or order of the department alleged to be violated and the  
12 facts alleged to constitute a violation thereof. An order for  
13 corrective action, penalty assessment, or damages may be  
14 included with the notice. When the department is seeking to  
15 impose an administrative penalty for certain violations by  
16 issuing a notice of violation, any corrective actions or  
17 damages associated with those violations must be pursued in  
18 the notice of violation or they are waived.However, no order  
19 shall become effective until after service and an  
20 administrative hearing, if requested within 20 days after  
21 service. Failure to request an administrative hearing within  
22 this time period constitutes ~~shall constitute~~ a waiver  
23 thereof.

24 (d) If a person timely files a petition challenging a  
25 notice of violation, the hearing must be held within 180 days  
26 after the department has referred the initial petition to the  
27 Division of Administrative Hearings unless the parties agree  
28 to a later date. The department bears the burden of proving by  
29 a preponderance of the evidence that the petitioner caused the  
30 violation. Administrative penalties should not be imposed  
31 unless the department satisfies that burden. Following the

1 close of the hearing, the administrative law judge shall issue  
2 a final order on all matters, including the imposition of an  
3 administrative penalty. When the department seeks to enforce  
4 that portion of a final order imposing administrative  
5 penalties under s. 120.69, the respondent may not assert as a  
6 defense the inappropriateness of the administrative remedy.  
7 The department retains its final-order authority in all  
8 administrative actions that do not request the imposition of  
9 administrative penalties.

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

29 (f) In any administrative proceeding brought by the  
30 department, the prevailing party shall recover all costs as  
31 provided in ss. 57.041 and 57.071. The costs must be included

1 in the final order. The petitioner is the prevailing party  
2 when an order is entered awarding no penalties to the  
3 department and either the order has not been reversed on  
4 appeal or the order has not been appealed and the time for  
5 seeking judicial review has expired. The petitioner is  
6 entitled to an award of attorney's fees if the administrative  
7 law judge determines that the department initiated the notice  
8 of violation seeking the imposition of administrative  
9 penalties for an improper purpose as defined in s.  
10 120.595(1)(e)1. An award of attorney's fees as provided by  
11 this subsection may not exceed \$15,000.

12 (g)(d) Nothing herein shall be construed as preventing  
13 any other legal or administrative action in accordance with  
14 law. This subsection does not limit the department's authority  
15 provided in ss. 403.121, 403.131, and 403.141, to judicially  
16 pursue injunctive relief or damages or to enter into a  
17 settlement, either before or after initiating a notice of  
18 violation. A settlement may include a penalty amount that  
19 departs from the administrative penalty schedule. The  
20 department also retains the authority to judicially pursue  
21 penalties in excess of \$10,000 for violations not specifically  
22 identified in the administrative penalty schedule, or for  
23 multiple or multi-day violation alleged to exceed a total of  
24 \$10,000. Any case filed in state court because the penalties  
25 are alleged to exceed a total of \$10,000 may be settled in the  
26 court action for less than \$10,000.

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

30 (a) For a drinking water contamination violation, the  
31 department shall assess a penalty of \$2,000 for a Maximum



1 Containment Level violation, plus \$1,000 if the violation is  
2 for a primary inorganic, organic, or radiological Maximum  
3 Contaminant Level or if it is a fecal coliform bacteria  
4 violation; plus \$1,000 if the violation occurs at a community  
5 water system; and plus \$1,000 if any Maximum Contaminant Level  
6 is exceeded by more than 100 percent.

7 (b) For a domestic or industrial wastewater violation  
8 not involving a violation of surfacewater or groundwater  
9 quality, the department shall assess a penalty of \$2,000 for  
10 an unpermitted or unauthorized discharge or  
11 effluent-limitation exceedance, plus \$1,000 if the discharge  
12 was from a Type I facility. For an unpermitted or unauthorized  
13 discharge or effluent-limitation exceedance that resulted in a  
14 violation of surfacewater or groundwater quality, the  
15 department shall assess a penalty of \$4,000, plus \$1,000 if  
16 the discharge was from a Type I facility.

17 (c) For a dredge and fill or stormwater violation, the  
18 department shall assess a penalty of \$1,000 for unpermitted or  
19 unauthorized dredging or filling against the persons  
20 responsible for the illegal dredging or filling, plus \$2,000  
21 if the dredging or filling occurs in or contiguous to an  
22 Aquatic Preserve, Outstanding Florida Water, or Class I or  
23 Class II surfacewater, plus \$1,000 if the area dredged or  
24 filled is between one-quarter acre and one-half acre, and plus  
25 \$1,000 if the area dredged or filled is between one-half acre  
26 and one acre. The administrative penalty schedule does not  
27 apply to a dredge and fill violation if the area dredged or  
28 filled exceeds one acre. The department retains the authority  
29 to seek the judicial imposition of civil penalties for all  
30 dredge and fill violations involving more than one acre. The  
31 department shall assess a penalty of \$3,000 for the failure to

1 complete required mitigation or failure to record a required  
2 conservation easement or for a turbidity violation. The  
3 department shall assess a penalty of \$2,000 for the failure to  
4 property construct a stormwater management system within the  
5 designated time and shall assess a penalty of \$1,500 for  
6 violations of surfacewater quality which are caused by  
7 stormwater construction activities or failure of a stormwater  
8 treatment facility. In addition to the other penalties  
9 authorized in this paragraph, the department shall assess a  
10 penalty of \$5,000 per day per violation against the contractor  
11 or agent of the owner or tenant that conducts unpermitted or  
12 unauthorized dredging or filling.

13 (d) For a first-time mangrove trimming or altering  
14 violation, the department shall assess a penalty of \$1,000 for  
15 the alteration of less than 100 square feet of mangroves, or  
16 the trimming of less than 500 square feet of mangroves; \$2,000  
17 for the alteration of 100 to 500 square feet of mangroves, or  
18 trimming of 500 to 1,000 square feet of mangroves; \$3,500 for  
19 the alteration of 500 to 1,000 square feet of mangroves, or  
20 the trimming of 1,000 to 5,000 square feet of mangroves; or  
21 \$5,000 for the alteration of over 1,000 square feet of  
22 mangroves, or the trimming of over 5,000 square feet of  
23 mangroves. In addition to the other penalties authorized in  
24 this paragraph, the department shall assess a penalty of  
25 \$5,000 per day per violation against the contract or agent of  
26 the owner or tenant that conducts unpermitted or unauthorized  
27 mangrove trimming or alteration. For a second or subsequent  
28 mangrove trimming or alteration violation, in addition to this  
29 schedule of penalties, additional penalties shall be imposed  
30 as provided in s. 403.9332(3).

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

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

26           (g) For storage tank system and petroleum discharge or  
27 release violations, the department shall assess a penalty of  
28 \$5,000 for failure to take a storage tank system out of  
29 service until repairs are completed when a release has  
30 occurred from that storage tank system; for failure to timely  
31 recover free product; or for failure to conduct remediation or

1 monitoring activities until a no-further-action or  
2 site-rehabilitation completion order has been issued. The  
3 department shall assess a penalty of \$3,000 for failure to  
4 timely upgrade a storage tank system. The department shall  
5 assess a penalty of \$2,000 for failure to conduct or maintain  
6 required release detection; for failure to timely investigate  
7 a suspected release from a storage tank system; for depositing  
8 motor fuel into an unregistered storage tank; or for failure  
9 to properly install a storage tank system. The department  
10 shall assess a penalty of \$1,000 for failure to properly  
11 operate, maintain, or close a storage tank system.

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

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1 ~~not have to provide 30 days' written notice of the violations~~  
2 ~~prior to assessing a noncompliance fee, except as follows:~~

3       1. ~~If any additional reporting violations occur prior~~  
4 ~~to the expiration of either of the 30-day notices issued by~~  
5 ~~the department, the department must provide the owner or~~  
6 ~~operator with 30 days' written notice to correct these~~  
7 ~~violations as well.~~

8       2. ~~Upon the renewal of the permit, the department~~  
9 ~~shall reinstate the 30-day notice requirements provided in~~  
10 ~~this subsection prior to assessing a noncompliance fee during~~  
11 ~~the new permit period.~~

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

25       (c) ~~Before assessing a noncompliance fee, the~~  
26 ~~department shall adopt rules to implement the provisions of~~  
27 ~~this subsection. The rules shall establish specific procedures~~  
28 ~~and assessment amounts for noncompliance fees authorized by~~  
29 ~~paragraph (a). Noncompliance fees shall be set on a sliding~~  
30 ~~scale based upon the type of violation, the degree of~~  
31 ~~noncompliance, and the potential for harm. Such rules shall~~

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

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

25 ~~(e) Fees collected pursuant to this subsection shall~~  
26 ~~be deposited in the Ecosystem Management and Restoration Trust~~  
27 ~~Fund. The department may use a portion of the fund to~~  
28 ~~contract for services to help in the collection of the fees~~  
29 ~~assessed pursuant to this subsection.~~

30 (4) In an administrative proceeding, in addition to  
31 the penalties that may be assessed under subsection (3), the

1 department shall assess administrative penalties according to  
2 the following schedule:

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

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

7 (c) For failure to obtain a required permit not  
8 otherwise addressed in subsection (3), \$3,000.

9 (d) For failure to conduct required monitoring or  
10 testing; failure to conduct required release detection;  
11 failure to construct in compliance with a permit; violation of  
12 a specific permit condition not otherwise identified in this  
13 section; or failure to plug oil, gas, injection, or disposal  
14 wells, \$2,000.

15 (e) For failure to maintain required staff to respond  
16 to emergencies; failure to conduct required training; failure  
17 to prepare, maintain, or update required contingency plans;  
18 failure to adequately respond to emergencies to bring an  
19 emergency situation under control; failure to comply with  
20 geophysical seismic-line-safety onsite reclamation  
21 requirements; or failure to submit required notification to  
22 the department, \$1,000.

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

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

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

3 (7) Given a history of noncompliance of the violator  
4 for any previous violation identified in subsection (3) or  
5 subsection (4) in the \$2,000 and other categories resulting in  
6 an executed consent order, final order or judgment must be  
7 made in the following manner:

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

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

14 (c) Three or more previous violations within 5 years  
15 before the filing of the notice of violation will result in a  
16 100 percent per day increase in the scheduled administrative  
17 penalty.

18 (8) The administrative penalties assessed for any  
19 particular violation may not exceed \$5,000 against any one  
20 violator, unless the violator has a history of noncompliance,  
21 the economic benefit of the violation to the violator exceeds  
22 \$5,000, or there are multi-day violations. The total  
23 administrative penalties may not exceed \$10,000 per assessment  
24 for all violations attributable to a specific person in the  
25 notice of violation.

26 (9) The administrative law judge may receive evidence  
27 in mitigation. The penalties identified in subsection (3),  
28 subsection (4), or subsection (5) may be reduced up to 50  
29 percent by the administrative law judge for mitigating  
30 circumstances.

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1           (10) Penalties collected under this subsection must be  
2 deposited in the Ecosystem Management and Restoration Trust  
3 Fund or other trust fund designated by statute. The Florida  
4 Conflict Resolution Consortium may use a portion of the fund  
5 to administer the mediation process provided in paragraph  
6 (2)(e) and to contract with private mediators for  
7 administrative penalty cases.

8           (11) The purpose of the administrative penalty  
9 schedule and process is to provide a more predictable and  
10 efficient manner by which individuals and businesses can  
11 resolve minor environmental disputes. Subsection (3),  
12 subsection (4), subsection (5), subsection (6), or subsection  
13 (7) shall not be considered as limiting a state court in its  
14 assessment of a civil penalty or in the assessment of damages.

15           Section 7. Section 403.131, Florida Statutes, is  
16 amended to read:

17           403.131 Injunctive relief, ~~cumulative~~ remedies.--

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

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

1           Section 8. Subsections (5) and (6) of section 403.860,  
2 Florida Statutes, are amended to read:

3           403.860 Penalties and remedies.--

4           (5) In addition to any judicial or administrative  
5 remedy authorized by this part, the department or a county  
6 health department that has received approval by the department  
7 pursuant to s. 403.862(1)(c) shall may assess administrative  
8 penalties for violations of this section in accordance with s.  
9 403.121 a noncompliance fee for failure of any supplier of  
10 water of a public water system to comply with department  
11 requirements for the reporting, in the manner and time  
12 provided by department rule, of test results for  
13 microbiological, inorganic, or organic contaminants; or  
14 turbidity, radionucleides, or secondary standards.

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

1 ~~30-day notice issued by the department, the department must~~  
2 ~~provide the supplier with a 30-day written notice to correct~~  
3 ~~those violations as well. Upon expiration of 36 months, the~~  
4 ~~department shall reinstate the 30-day notice requirements~~  
5 ~~provided in this subsection prior to assessing a noncompliance~~  
6 ~~fee.~~

7 ~~(b) At the time of assessment of a noncompliance fee,~~  
8 ~~the department shall give the supplier written notice setting~~  
9 ~~forth the amount assessed, the specific provision of law,~~  
10 ~~rule, or order alleged to be violated, the facts alleged to~~  
11 ~~constitute the violation, the corrective action needed to~~  
12 ~~bring the party into compliance, and the rights available~~  
13 ~~under chapter 120 to challenge the assessment. The assessment~~  
14 ~~shall be final and effective unless an administrative~~  
15 ~~proceeding is requested within 20 days after receipt of the~~  
16 ~~written notice, and shall be enforceable pursuant to s.~~  
17 ~~120.69.~~

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

1 ~~the reporting violation, the supplier's previous history of~~  
2 ~~reporting violations, and the supplier's ability to pay the~~  
3 ~~noncompliance fee.~~

4 ~~(d) For microbiological reporting requirements, no~~  
5 ~~noncompliance fee shall exceed \$250, and total noncompliance~~  
6 ~~fees assessed shall not exceed \$1,000 per assessment for all~~  
7 ~~reporting violations attributable to a specific facility~~  
8 ~~during any one month.~~

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

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

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

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

26 ~~(a) Prior to the assessment of an administrative~~  
27 ~~penalty, the department shall provide the public water system~~  
28 ~~a reasonable amount of time to complete the corrective action~~  
29 ~~necessary to bring the system back into compliance.~~

30 ~~(b)1. At the time of assessment of the administrative~~  
31 ~~penalty, the department shall give the public water system~~

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

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

22 ~~(c) The amount of the penalties assessed shall be as~~  
23 ~~follows:~~

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

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

29  
30 ~~However, the total amount of the penalty assessed on any~~  
31 ~~public water system may not exceed \$10,000 per violation.~~

1           Section 9. Two years after the effective date of this  
2 act, the Department of Environmental Protection shall submit a  
3 report to the Legislature describing the number of notices of  
4 violation issued by the department seeking the imposition of  
5 administrative penalties, the amount of administrative  
6 penalties obtained by the department, and the efficiencies  
7 gained from the provisions of this act.

8           Section 10. Paragraph (c) of subsection (3) of section  
9 403.727, Florida Statutes, is repealed.

10           Section 11. This act shall take effect upon becoming a  
11 law.

12  
13           \*\*\*\*\*

14   SENATE SUMMARY

15           Revises judicial and administrative remedies for  
16           violations of environmental control laws. (See bill for  
17           details.)

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