

By the Committee on Natural Resources and Senator Laurent

312-1722-01

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 ss. 403.121, 403.131,
7 403.727, 403.860, F.S.; revising judicial and
8 administrative remedies for violations of
9 environmental laws; providing for
10 administrative penalties; requiring the
11 Department of Environmental Protection to
12 report to the Legislature; providing for
13 legislative review; providing an effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (k) is added to subsection (3) of
19 section 369.25, Florida Statutes, to read:

20 369.25 Aquatic plants; definitions; permits; powers of
21 department; penalties.--

22 (3) The department has the following powers:

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

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

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

1 (1) Judicial remedies:

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

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

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

20 (2) Administrative remedies:

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

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

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

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

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

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

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

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

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

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

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

31

1 (h) Chapter 120 shall apply to any administrative
2 action taken by the department or any delegated program
3 pursuing administrative penalties in accordance with this
4 section.

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

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

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

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

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

1 conducts mangrove trimming or alteration without a permit as
2 required by s. 403.9328.

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

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

30 (g) For storage tank system and petroleum
31 contamination violations, the department shall assess a

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

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

1 ~~reporting violation, the specific provision of law, rule, or~~
2 ~~order alleged to have been violated by the owner or operator,~~
3 ~~the corrective action needed to bring the facility into~~
4 ~~compliance, and the potential penalties that may be imposed as~~
5 ~~a result of the owner's or operator's failure to comply with~~
6 ~~the notice. For subsequent violations, the department does~~
7 ~~not have to provide 30 days' written notice of the violations~~
8 ~~prior to assessing a noncompliance fee, except as follows:~~

9 1. ~~If any additional reporting violations occur prior~~
10 ~~to the expiration of either of the 30-day notices issued by~~
11 ~~the department, the department must provide the owner or~~
12 ~~operator with 30 days' written notice to correct these~~
13 ~~violations as well.~~

14 2. ~~Upon the renewal of the permit, the department~~
15 ~~shall reinstate the 30-day notice requirements provided in~~
16 ~~this subsection prior to assessing a noncompliance fee during~~
17 ~~the new permit period.~~

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

31

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

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

1 ~~(e) Fees collected pursuant to this subsection shall~~
2 ~~be deposited in the Ecosystem Management and Restoration Trust~~
3 ~~Fund. The department may use a portion of the fund to~~
4 ~~contract for services to help in the collection of the fees~~
5 ~~assessed pursuant to this subsection.~~

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

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

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

14 (c) For failure to obtain a required permit before
15 construction or modification, \$3,000.

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

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

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

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

31

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

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

12 (a) One previous such violation within 5 years prior
13 to the filing of the notice of violation will result in a 25
14 percent per day increase in the scheduled administrative
15 penalty.

16 (b) Two previous such violations within 5 years prior
17 to the filing of the notice of violation will result in a 50
18 percent per day increase in the scheduled administrative
19 penalty.

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

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

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 multi-day violations. The total administrative penalties
3 shall not exceed \$10,000 per assessment for all violations
4 attributable to a specific person in the notice of violation.

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

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

26 (12) The purpose of the administrative penalty
27 schedule and process is to provide a more predictable and
28 efficient manner for individuals and businesses to resolve
29 relatively minor environmental disputes. Subsection (3),
30 subsection (4), subsection (5), subsection (6), or subsection
31 (7) shall not be construed as limiting a state court in the

1 assessment of damages. The administrative penalty schedule
2 does not apply to the judicial imposition of civil penalties
3 in state court as provided in this section.

4 Section 3. Section 403.131, Florida Statutes, is
5 amended to read:

6 403.131 Injunctive relief, ~~cumulative~~ remedies.--

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

16 (2) All the judicial and administrative remedies to
17 recover damages and penalties in this section and s. 403.121
18 ~~are independent and cumulative except that the judicial and~~
19 ~~administrative remedies to recover damages~~ are alternative and
20 mutually exclusive.

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

23 403.727 Violations; defenses, penalties, and
24 remedies.--

25 (3) Violations of the provisions of this act are
26 punishable as follows:

27 (a) Any person who violates the provisions of this
28 act, the rules or orders of the department, or the conditions
29 of a permit is liable to the state for any damages specified
30 in s. 403.141 and for a civil penalty of not more than \$50,000
31 for each day of continued violation, except as otherwise

1 provided herein. The department may revoke any permit issued
2 to the violator. In any action by the department against a
3 small hazardous waste generator for the improper disposal of
4 hazardous wastes, a rebuttable presumption of improper
5 disposal shall be created if the generator was notified
6 pursuant to s. 403.7234; the generator shall then have the
7 burden of proving that the disposal was proper. If the
8 generator was not so notified, the burden of proving improper
9 disposal shall be placed upon the department.

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

12 1. Transports or causes to be transported any
13 hazardous waste, as defined in s. 403.703, to a facility which
14 does not have a permit when such a permit is required under s.
15 403.707 or s. 403.722;

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

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

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

23 c. In knowing violation of any material condition or
24 requirement of any applicable rule or standard if such
25 violation has a substantial likelihood of endangering human
26 health, animal or plant life, or property;

27 3. Makes any false statement or representation or
28 knowingly omits material information in any hazardous waste
29 application, label, manifest, record, report, permit, or other
30 document required by this act;

31

1 4. Generates, stores, treats, transports, disposes of,
2 or otherwise handles any hazardous waste and who knowingly
3 destroys, alters, conceals, or fails to file any record,
4 application, manifest, report, or other document required to
5 be maintained or filed for purposes of compliance with this
6 act; or

7 5. Transports without a manifest, or causes to be
8 transported without a manifest, any hazardous waste required
9 by rules adopted by the department to be accompanied by a
10 manifest

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

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

1 ~~meet inspection schedule requirements for tanks and containers~~
2 ~~that hold hazardous waste.~~

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

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

28 4. ~~Before assessing any noncompliance fee, the~~
29 ~~department shall adopt rules to implement the provisions of~~
30 ~~this paragraph, which shall include a description of~~
31 ~~activities that constitute Class II violations and the setting~~

1 ~~of appropriate amounts for the noncompliance fees, based upon~~
2 ~~the type of violation, but not to exceed \$250. Total~~
3 ~~noncompliance fees assessed shall not exceed \$1,000 per~~
4 ~~assessment for all violations attributable to a specific~~
5 ~~facility during any one month.~~

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

13 ~~6. Noncompliance fees collected pursuant to this~~
14 ~~paragraph shall be deposited in the Ecosystem Management and~~
15 ~~Restoration Trust Fund. The department may use a portion of~~
16 ~~the fund to contract for services to help in the collection of~~
17 ~~fees assessed pursuant to this paragraph.~~

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

20 403.860 Penalties and remedies.--

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

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

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

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

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

21 ~~(d) For microbiological reporting requirements, no~~
22 ~~noncompliance fee shall exceed \$250, and total noncompliance~~
23 ~~fees assessed shall not exceed \$1,000 per assessment for all~~
24 ~~reporting violations attributable to a specific facility~~
25 ~~during any one month.~~

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

30 ~~(f) The department's assessment of a noncompliance fee~~
31 ~~shall be in lieu of any civil action which may be instituted~~

1 ~~by the department in a court of competent jurisdiction to~~
2 ~~impose and recover civil penalties for any violation that~~
3 ~~resulted in the fee assessment, unless the department~~
4 ~~initiates a civil action for nonpayment of a fee properly~~
5 ~~assessed pursuant to this subsection.~~

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

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

12 ~~(a) Prior to the assessment of an administrative~~
13 ~~penalty, the department shall provide the public water system~~
14 ~~a reasonable amount of time to complete the corrective action~~
15 ~~necessary to bring the system back into compliance.~~

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

27 ~~2. The department shall adopt rules to implement the~~
28 ~~provisions of this subsection. The rules shall establish~~
29 ~~specific procedures for implementing the penalties and shall~~
30 ~~identify assessment amounts. The rules shall authorize the~~
31 ~~application of adjustment factors for the purpose of~~

1 ~~increasing or decreasing the total amount assessed subsequent~~
2 ~~to initial assessment. Such factors may include the lack or~~
3 ~~degree of good faith to comply with the requirements, the lack~~
4 ~~or degree of willfulness or negligence on the part of the~~
5 ~~owner, the compliance history of the public water system, the~~
6 ~~economic benefit derived by the failure to comply with the~~
7 ~~requirements, and the ability to pay.~~

8 ~~(c) The amount of the penalties assessed shall be as~~
9 ~~follows:~~

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

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

15
16 ~~However, the total amount of the penalty assessed on any~~
17 ~~public water system may not exceed \$10,000 per violation.~~

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

25 Section 7. This act shall take effect upon becoming a
26 law.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1664

4 The CS deletes amendments to ss. 373.129, 373.437, 377.37, and
5 378.211, F.S., which would have authorized the imposition of
6 administrative penalties by water management districts and for
7 violations relating to oil and gas and land reclamation.

8 Provisions are included that enable a respondent to a notice
9 of an administrative penalty to opt out of the administrative
10 process initiated by the Department of Environmental
11 Protection (DEP). In such cases, the DEP retains its rights in
12 state court.

13 When the DEP pursues injunctive relief and damages judicially,
14 penalties must be part of the court action, not a separate
15 administrative penalty.

16 The CS provides that a person who timely files a petition
17 challenging a notice of violation is to be known as the
18 "respondent."

19 The CS clarifies that ch. 120, F.S., applies to any actions
20 seeking administrative penalties.

21 The schedule of administrative penalties pursuant to s.
22 403.121(3), F.S., has been changed as follows:

- 23 1. Failure to obtain a clearance letter prior to placing a
24 drinking water system into service when the system would
25 not have been eligible for clearance - \$3,000.
- 26 2. Failure to obtain a required wastewater permit, other
27 than a permit required for surface water discharge, -
28 \$1,000.
- 29 3. The penalty for an unpermitted or unauthorized discharge
30 or effluent-limitation exceedance resulting in a
31 surfacewater or groundwater quality violation - \$5,000.
Previously, the penalty was \$4,000 plus \$1,000 if the
discharge was from a Type I facility.
4. Dredge and fill penalties now include penalties for the
unauthorized construction of a stormwater management
system. The CS includes a \$3,000 penalty for a water
quality violation resulting from dredging or filling
activities, stormwater construction activities, or
failure of a stormwater treatment facility.
5. For mangrove trimming or alteration violations, all
penalties have been deleted except the \$5,000 penalty
against a contractor or agent of the owner or tenant.
6. Solid waste penalties have been revised to reduce the
penalty for failure to construct or maintain a required
stormwater management system from \$3,000 to \$2,000.
7. For storage tank system and petroleum discharge or
release violations, a new violation for failure to

1 timely investigate a suspected release or maintain
2 required release detection is created, with a \$2,000
 penalty.

3 The schedule of administrative penalties to be assessed
4 pursuant to s. 403.121(4), F.S., is changed as follows:

- 5 1. A \$2,000 penalty for violation of a specific permit
6 condition not otherwise identified in s. 403.121, F.S.,
 or failure to plug oil, gas, injection, or disposal
 wells has been deleted.
- 7 2. A \$1,000 penalty has been added for failure to comply
8 with geophysical seismic-line-safety onsite reclamation
 requirements.

9 The CS requires that the direct economic benefit gained by the
10 violator from the violation be added to the scheduled
11 administrative penalty; however, the total penalty may not
12 exceed \$10,000 per assessment.

13 The CS authorizes the ALJ to consider good faith efforts to
14 comply prior to or after discovery of violations, when
15 considering mitigation; in such cases, penalties may be
16 reduced up to 50 percent. Also, upon an affirmative finding
17 that the violation was caused by circumstances beyond the
18 reasonable control of the respondent and could not have been
19 prevented by the respondent's due diligence, the ALJ may
20 reduce the penalties further.

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