

HB 1317

2004

1 A bill to be entitled

2 An act relating to natural resources; amending s. 376.121,
3 F.S.; providing an alternative to the compensation
4 schedule for calculating natural resources damages;
5 providing for consultation by the department with the Fish
6 and Wildlife Conservation Commission with regard to
7 rulemaking; removing a restriction on amount of
8 compensation; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 376.121, Florida Statutes, is amended
13 to read:

14 376.121 Liability for damage to natural resources.--The
15 Legislature finds that extensive damage to the state's natural
16 resources is the likely result of a pollutant discharge and that
17 it is essential that the state adequately assess and recover the
18 cost of such damage from responsible parties. It is the state's
19 goal to recover the costs of restoration from the responsible
20 parties and to restore damaged natural resources to their
21 pre-discharge condition. In many instances, however, restoration
22 is not technically feasible. In such instances, the state has
23 the responsibility to its citizens to recover the cost of all
24 damage to natural resources. To ensure that the public does not
25 bear a substantial loss as a result of the destruction of
26 natural resources, the procedures set out in this section shall
27 be used to assess the cost of damage to such resources. Natural
28 resources include coastal waters, wetlands, estuaries, tidal
29 flats, beaches, lands adjoining the seacoasts of the state, and

HB 1317

2004

30 all living things except human beings. The Legislature
31 recognizes the difficulty historically encountered in
32 calculating the value of damaged natural resources. The value of
33 certain qualities of the state's natural resources is not
34 readily quantifiable, yet the resources and their qualities have
35 an intrinsic value to the residents of the state, and any damage
36 to natural resources and their qualities should not be dismissed
37 as nonrecoverable merely because of the difficulty in
38 quantifying their value. In order to avoid unnecessary
39 speculation and expenditure of limited resources to determine
40 these values, the Legislature hereby establishes a schedule for
41 compensation for damage to the state's natural resources and the
42 quality of said resources. As an alternative to the compensation
43 schedule described in subsections (4), (5), (6), and (9), the
44 department may, at its sole discretion, use other methods of
45 calculating natural resources damages in accordance with either
46 federal rules implementing the Oil Pollution Act of 1990, as
47 amended, or department rules adopted under subsection (10).

48 (1) The department shall assess and recover from
49 responsible parties the compensation for the injury or
50 destruction of natural resources, including, but not limited to,
51 the death or injury of living things and damage to or
52 destruction of habitat, resulting from pollutant discharges
53 prohibited by s. 376.041. The amount of compensation and any
54 costs of assessing damage and recovering compensation received
55 by the department shall be deposited into the Florida Coastal
56 Protection Trust Fund pursuant to s. 376.12 and disbursed
57 according to subsection (11). Whoever violates, or causes to be

HB 1317

2004

58 | violated, s. 376.041 shall be liable to the state for damage to
 59 | natural resources.

60 | (2) The compensation schedule for damage to natural
 61 | resources is based upon the cost of restoration and the loss of
 62 | ecological, consumptive, intrinsic, recreational, scientific,
 63 | economic, aesthetic, and educational values of such injured or
 64 | destroyed resources. The compensation schedule takes into
 65 | account:

66 | (a) The volume of the discharge.

67 | (b) The characteristics of the pollutant discharged. The
 68 | toxicity, dispersibility, solubility, and persistence
 69 | characteristics of a pollutant as affects the severity of the
 70 | effects on the receiving environment, living things, and
 71 | recreational and aesthetic resources. Pollutants have varying
 72 | propensities to injure natural resources based upon their
 73 | potential exposure and effects. Exposure to natural resources is
 74 | determined by the dispersibility and degradability of the
 75 | pollutant. Effects to natural resources result from mechanical
 76 | injury and toxicity and include physical contamination,
 77 | smothering, feeding prevention, immobilization, respiratory
 78 | distress, direct mortality, lost recruitment of larvae and
 79 | juveniles killed, changes in the food web, and chronic effects
 80 | of sublethal levels of contaminates in tissues or the
 81 | environment. For purposes of the compensation schedule,
 82 | pollutants have been ranked for their propensity to cause injury
 83 | to natural resources based upon a combination of their acute
 84 | toxicity, mechanical injury, degradability, and dispersibility
 85 | characteristics on a 1-to-3 relative scale with Category 1
 86 | containing the pollutants with the greatest propensity to cause

HB 1317

2004

87 injury to natural resources. The following pollutants are
 88 categorized:

- 89 1. Category 1: bunker and residual fuel.
- 90 2. Category 2: waste oils, crude oil, lubricating oil,
 91 asphalt, and tars.
- 92 3. Category 3: hydraulic fluids, numbers 1 and 2 diesel
 93 fuels, heating oil, jet aviation fuels, motor gasoline,
 94 including aviation gasoline, kerosene, stationary turbine fuels,
 95 ammonia and its derivatives, and chlorine and its derivatives.

96
 97 The department shall adopt rules establishing the pollutant
 98 category of pesticides and other pollutants as defined in s.
 99 376.031 and not listed in this paragraph.

100 (c) The type and sensitivity of natural resources affected
 101 by a discharge, determined by the following factors:

102 1. The location of a discharge. Inshore discharges are
 103 discharges that occur within waters under the jurisdiction of
 104 the department and within an area extending seaward from the
 105 coastline of the state to a point 1 statute mile seaward of the
 106 coastline. Nearshore discharges are discharges that occur more
 107 than 1 statute mile, but within 3 statute miles, seaward of the
 108 coastline. Offshore discharges are discharges that occur more
 109 than 3 statute miles seaward of the coastline.

110 2. The location of the discharge with respect to special
 111 management areas designated because of their unique habitats;
 112 living resources; recreational use; aesthetic importance; and
 113 other ecological, educational, consumptive, intrinsic,
 114 scientific, and economic values of the natural resources located
 115 therein. Special management areas are state parks; recreation

HB 1317

2004

116 areas; national parks, seashores, estuarine research reserves,
 117 marine sanctuaries, wildlife refuges, and national estuary
 118 program water bodies; state aquatic preserves and reserves;
 119 classified shellfish harvesting areas; areas of critical state
 120 concern; federally designated critical habitat for endangered or
 121 threatened species; and outstanding Florida waters.

122 3. The areal or linear extent of the natural resources
 123 impacted.

124 (3) Compensation for damage to natural resources for any
 125 discharge of less than 25 gallons of gasoline or diesel fuel
 126 shall be \$50.

127 (4) Compensation schedule:

128 (a) The amount of compensation assessed under this
 129 schedule is calculated by: multiplying \$1 per gallon or its
 130 equivalent measurement of pollutant discharged, by the number of
 131 gallons or its equivalent measurement, times the location of the
 132 discharge factor, times the special management area factor.

133 (b) Added to the amount obtained in paragraph (a) is the
 134 value of the observable natural resources damaged, which is
 135 calculated by multiplying the areal or linear coverage of
 136 impacted habitat by the corresponding habitat factor, times the
 137 special management area factor.

138 (c) The sum of paragraphs (a) and (b) is then multiplied
 139 by the pollutant category factor.

140 (d) The final damage assessment figure is the sum of the
 141 amount calculated in paragraph (c) plus the compensation for
 142 death of endangered or threatened species, plus the cost of
 143 conducting the damage assessment as determined by the
 144 department.

HB 1317

2004

145 (5)(a) The factors used in calculating the damage
 146 assessment are:

147 1. Location of discharge factor:

148 a. Discharges that originate inshore have a factor of
 149 eight. Discharges that originate nearshore have a factor of
 150 five. Discharges that originate offshore have a factor of one.

151 b. Compensation for damage to natural resources resulting
 152 from discharges that originate outside of state waters but that
 153 traverse the state's boundaries and therefore have an impact
 154 upon the state's natural resources shall be calculated using a
 155 location factor of one.

156 c. Compensation for damage to natural resources resulting
 157 from discharges of less than 10,000 gallons of pollutants which
 158 originate within 100 yards of an established terminal facility
 159 or point of routine pollutant transfer in a designated port
 160 authority as defined in s. 315.02 shall be assessed a location
 161 factor of one.

162 2. Special management area factor: Discharges that
 163 originate in special management areas described in subparagraph
 164 (2)(c)2. have a factor of two. Discharges that originate outside
 165 a special management area described in subparagraph (2)(c)2.
 166 have a location factor of one. For discharges that originate
 167 outside of a special management area but impact the natural
 168 resources within a special management area, the value of the
 169 natural resources damaged within the area shall be multiplied by
 170 the special management area factor of two.

171 3. Pollutant category factor: Discharges of category 1
 172 pollutants have a factor of eight. Discharges of category 2

HB 1317

2004

173 pollutants have a factor of four. Discharges of category 3

174 pollutants have a factor of one.

175 4. Habitat factor: The amount of compensation for damage
176 to the natural resources of the state is established as follows:

177 a. \$10 per square foot of coral reef impacted.

178 b. \$1 per square foot of mangrove or seagrass impacted.

179 c. \$1 per linear foot of sandy beach impacted.

180 d. \$0.50 per square foot of live bottom, oyster reefs,
181 worm rock, perennial algae, saltmarsh, or freshwater tidal marsh
182 impacted.

183 e. \$0.05 per square foot of sand bottom or mud flats, or
184 combination thereof, impacted.

185 (b) The areal and linear coverage of habitat impacted
186 shall be determined by the department using a combination of
187 field measurements, aerial photogrammetry, and satellite
188 imagery. An area is impacted when the pollutant comes in contact
189 with the habitat.

190 (6) It is understood that a pollutant will, by its very
191 nature, result in damage to the flora and fauna of the waters of
192 the state and the adjoining land. Therefore, compensation for
193 such resources, which is difficult to calculate, is included in
194 the compensation schedule. Not included, however, in this base
195 figure is compensation for the death of endangered or threatened
196 species directly attributable to the pollutant discharged.

197 Compensation for the death of any animal designated by rule as
198 endangered by the Fish and Wildlife Conservation Commission is
199 \$10,000. Compensation for the death of any animal designated by
200 rule as threatened by the Fish and Wildlife Conservation
201 Commission is \$5,000. These amounts are not intended to reflect

HB 1317

2004

202 the actual value of said endangered or threatened species, but
 203 are included for the purposes of this section.

204 (7) The owner or operator of the vessel or facility
 205 responsible for a discharge may designate a representative or
 206 agent to work with the department in assessing the amount of
 207 damage to natural resources resulting from the discharge.

208 (8) When assessing the amount of damages to natural
 209 resources, the department shall be assisted, if requested by the
 210 department, by representatives of other state agencies and local
 211 governments that would enhance the department's damage
 212 assessment. The Fish and Wildlife Conservation Commission shall
 213 assist the department in the assessment of damages to wildlife
 214 impacted by a pollutant discharge and shall assist the
 215 department in recovering the costs of such damages.

216 (9) Compensation for damage resulting from the discharge
 217 of two or more pollutants shall be calculated for the volume of
 218 each pollutant discharged. If the separate volume for each
 219 pollutant discharged cannot be determined, the highest
 220 multiplier for the pollutants discharged shall be applied to the
 221 entire volume of the spill. Compensation for commingled
 222 discharges that contact habitat shall be calculated on a
 223 proportional basis of discharged volumes. The highest multiplier
 224 for such commingled pollutants may only be applied if a
 225 reasonable proportionality of the commingled pollutants cannot
 226 be determined at the point of any contact with natural
 227 resources.

228 (10) For cases in which the department elects to use
 229 methods of natural resource damage assessment other than the
 230 compensation schedules described in subsections (4), (5), (6),

HB 1317

2004

231 and (9) or the methods described in federal rules implementing
 232 the Oil Pollution Act of 1990, as amended ~~discharges of more~~
 233 ~~than 30,000 gallons,~~ the department shall, in consultation with
 234 the Fish and Wildlife Conservation Game and Fresh Water Fish
 235 Commission, adopt rules ~~by July 1, 1994,~~ to assess compensation
 236 for the damage to natural resources based upon the cost of
 237 restoring, rehabilitating, replacing, or acquiring the
 238 equivalent of the damaged natural resources; the diminution in
 239 the value of those resources pending restoration; and the
 240 reasonable cost of assessing those damages. The person
 241 responsible for a discharge shall be given an opportunity to
 242 consult with the department on the assessment design and
 243 restoration program.

244 (a) For discharges greater than 30,000 gallons, the person
 245 responsible has the option to pay the amount of compensation
 246 calculated pursuant to the compensation schedule established in
 247 subsection (4) or pay the amount determined by a damage
 248 assessment performed by the department. If the person
 249 responsible for the discharge elects to have a damage assessment
 250 performed, then such person shall notify the department in
 251 writing of such decision within 15 days after the discovery of
 252 the discharge. The decision to have a damage assessment
 253 performed to determine compensation for a discharge shall be
 254 final; the person responsible for a discharge may not later
 255 elect to use the compensation schedule for computing
 256 compensation. Failure to make such notice shall result in the
 257 amount of compensation for the total damage to natural resources
 258 being calculated based on the compensation schedule, unless the
 259 department elects, at its sole discretion, to conduct a damage

HB 1317

2004

260 assessment pursuant to state or federal rules for assessment of
 261 natural resource damages. The compensation shall be paid within
 262 90 days after receipt of a written request from the department.

263 (b) In the event the person responsible for a discharge
 264 greater than 30,000 gallons elects to have a damage assessment
 265 performed, said person shall pay to the department an amount
 266 equal to the compensation calculated pursuant to subsection (4)
 267 for the discharge using a volume of 30,000 gallons. The payment
 268 shall be made within 90 days after receipt of a written request
 269 from the department.

270 (c) After completion of the damage assessment, the
 271 department shall advise the person responsible for the discharge
 272 of the amount of compensation due to the state. A credit shall
 273 be given for the amount paid pursuant to paragraph (b). Payment
 274 shall be made within 90 days after receipt of a written request
 275 from the department. ~~In no event shall the total compensation~~
 276 ~~paid pursuant to this section be less than the dollar amount~~
 277 ~~calculated pursuant to paragraph (b).~~

278 (11)(a) Moneys recovered by the department as compensation
 279 for damage to natural resources shall be expended only for the
 280 following purposes:

281 1. To the maximum extent practicable, the restoration of
 282 natural resources damaged by the discharge for which
 283 compensation is paid.

284 2. Restoration of damaged resources.

285 3. Developing restoration and enhancement techniques for
 286 natural resources.

287 4. Investigating methods for improving and refining
 288 techniques for containment, abatement, and removal of pollutants

HB 1317

2004

289 from the environment, especially from mangrove forests, corals,
 290 seagrasses, benthic communities, rookeries, nurseries, and other
 291 habitats which are unique to Florida's coastal environment.

292 5. Developing and updating the "Sensitivity of Coastal
 293 Environments and Wildlife to Spilled Oil in Florida" atlas.

294 6. Investigating the long-term effects of pollutant
 295 discharges on natural resources, including pelagic organisms,
 296 critical habitats, and marine ecosystems.

297 7. Developing an adequate wildlife rescue and
 298 rehabilitation program.

299 8. Expanding and enhancing the state's pollution
 300 prevention and control education program.

301 9. Restoring natural resources previously impacted by
 302 pollutant discharges, but never completely restored.

303 10. Funding alternative projects selected by the Board of
 304 Trustees of the Internal Improvement Trust Fund. Any such
 305 project shall be selected on the basis of its anticipated
 306 benefits to the marine natural resources available to the
 307 residents of this state who previously benefited from the
 308 injured or destroyed nonrestorable natural resources.

309 (b) All interest earned from investment of moneys
 310 recovered by the department for damage to natural resources
 311 shall be expended only for the activities described in paragraph
 312 (a).

313 (c) The person or parties responsible for a discharge for
 314 which the department has requested compensation for damage
 315 pursuant to this section shall pay the department, within 90
 316 days after receipt of the request, the entire amount due to the
 317 state. In the event that payment is not made within the 90 days,

HB 1317

2004

318 the person or parties are liable for interest on the outstanding
 319 balance, which interest shall be calculated at the rate
 320 prescribed under s. 55.03.

321 (12) Any determination or assessment of damage to natural
 322 resources for the purposes of this section by the department in
 323 accordance with the compensation sections or in accordance with
 324 the rules adopted under subsection (10) shall have the force and
 325 effect of rebuttable presumption on behalf of the department in
 326 any administrative or judicial proceeding.

327 (13) There shall be no double recovery under this law for
 328 natural resource damage resulting from a discharge, including
 329 the costs of damage assessment or restoration, rehabilitation,
 330 replacement, or acquisition for the same incident and natural
 331 resource. The department shall meet with and develop memoranda
 332 of understanding with appropriate federal trustees as defined in
 333 Pub. L. No. 101-380 (Oil Pollution Act of 1990) to provide
 334 further assurances of no double recovery.

335 (14) The department must review the amount of compensation
 336 assessed pursuant to the damage assessment formula established
 337 in this section and report its findings to the 1995 Legislature.
 338 Thereafter, the department must conduct such a review and report
 339 its findings to the Legislature biennially.

340 (15) The department shall adopt rules necessary or
 341 convenient for carrying out the duties, obligations, powers, and
 342 responsibilities set forth in this section.

343 Section 2. This act shall take effect upon becoming a law.
 344