

CHAMBER ACTION

1 The Committee on Natural Resources recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to natural resources; amending s. 376.121,
7 F.S.; providing an alternative to the compensation
8 schedule for calculating natural resources damages;
9 revising procedures relating to damage assessment;
10 removing a restriction on amount of compensation;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 376.121, Florida Statutes, is amended
16 to read:

17 376.121 Liability for damage to natural resources.--The
18 Legislature finds that extensive damage to the state's natural
19 resources is the likely result of a pollutant discharge and that
20 it is essential that the state adequately assess and recover the
21 cost of such damage from responsible parties. It is the state's
22 goal to recover the costs of restoration from the responsible
23 parties and to restore damaged natural resources to their

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24 | predischarge condition. In many instances, however, restoration
25 | is not technically feasible. In such instances, the state has
26 | the responsibility to its citizens to recover the cost of all
27 | damage to natural resources. To ensure that the public does not
28 | bear a substantial loss as a result of the destruction of
29 | natural resources, the procedures set out in this section shall
30 | be used to assess the cost of damage to such resources. Natural
31 | resources include coastal waters, wetlands, estuaries, tidal
32 | flats, beaches, lands adjoining the seacoasts of the state, and
33 | all living things except human beings. The Legislature
34 | recognizes the difficulty historically encountered in
35 | calculating the value of damaged natural resources. The value of
36 | certain qualities of the state's natural resources is not
37 | readily quantifiable, yet the resources and their qualities have
38 | an intrinsic value to the residents of the state, and any damage
39 | to natural resources and their qualities should not be dismissed
40 | as nonrecoverable merely because of the difficulty in
41 | quantifying their value. In order to avoid unnecessary
42 | speculation and expenditure of limited resources to determine
43 | these values, the Legislature hereby establishes a schedule for
44 | compensation for damage to the state's natural resources and the
45 | quality of said resources. As an alternative to the compensation
46 | schedule described in subsections (4), (5), (6), and (9), the
47 | department, when no responsible party is identified, when a
48 | responsible party opts out of the formula pursuant to subsection
49 | (10)(a), or when the department conducts a cooperative damage
50 | assessment with federal agencies, may use methods of calculating

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51 | natural resources damages in accordance with federal rules
52 | implementing the Oil Pollution Act of 1990, as amended.

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

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

71 | (a) The volume of the discharge.

72 | (b) The characteristics of the pollutant discharged. The
73 | toxicity, dispersibility, solubility, and persistence
74 | characteristics of a pollutant as affects the severity of the
75 | effects on the receiving environment, living things, and
76 | recreational and aesthetic resources. Pollutants have varying
77 | propensities to injure natural resources based upon their
78 | potential exposure and effects. Exposure to natural resources is

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79 | determined by the dispersibility and degradability of the
80 | pollutant. Effects to natural resources result from mechanical
81 | injury and toxicity and include physical contamination,
82 | smothering, feeding prevention, immobilization, respiratory
83 | distress, direct mortality, lost recruitment of larvae and
84 | juveniles killed, changes in the food web, and chronic effects
85 | of sublethal levels of contaminants in tissues or the
86 | environment. For purposes of the compensation schedule,
87 | pollutants have been ranked for their propensity to cause injury
88 | to natural resources based upon a combination of their acute
89 | toxicity, mechanical injury, degradability, and dispersibility
90 | characteristics on a 1-to-3 relative scale with Category 1
91 | containing the pollutants with the greatest propensity to cause
92 | injury to natural resources. The following pollutants are
93 | categorized:

94 | 1. Category 1: bunker and residual fuel.

95 | 2. Category 2: waste oils, crude oil, lubricating oil,
96 | asphalt, and tars.

97 | 3. Category 3: hydraulic fluids, numbers 1 and 2 diesel
98 | fuels, heating oil, jet aviation fuels, motor gasoline,
99 | including aviation gasoline, kerosene, stationary turbine fuels,
100 | ammonia and its derivatives, and chlorine and its derivatives.

101 |
102 | The department shall adopt rules establishing the pollutant
103 | category of pesticides and other pollutants as defined in s.
104 | 376.031 and not listed in this paragraph.

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

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

115 2. The location of the discharge with respect to special
 116 management areas designated because of their unique habitats;
 117 living resources; recreational use; aesthetic importance; and
 118 other ecological, educational, consumptive, intrinsic,
 119 scientific, and economic values of the natural resources located
 120 therein. Special management areas are state parks; recreation
 121 areas; national parks, seashores, estuarine research reserves,
 122 marine sanctuaries, wildlife refuges, and national estuary
 123 program water bodies; state aquatic preserves and reserves;
 124 classified shellfish harvesting areas; areas of critical state
 125 concern; federally designated critical habitat for endangered or
 126 threatened species; and outstanding Florida waters.

127 3. The areal or linear extent of the natural resources
 128 impacted.

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

132 (4) Compensation schedule:

133 (a) The amount of compensation assessed under this
 134 schedule is calculated by: multiplying \$1 per gallon or its

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135 equivalent measurement of pollutant discharged, by the number of
136 gallons or its equivalent measurement, times the location of the
137 discharge factor, times the special management area factor.

138 (b) Added to the amount obtained in paragraph (a) is the
139 value of the observable natural resources damaged, which is
140 calculated by multiplying the areal or linear coverage of
141 impacted habitat by the corresponding habitat factor, times the
142 special management area factor.

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

145 (d) The final damage assessment figure is the sum of the
146 amount calculated in paragraph (c) plus the compensation for
147 death of endangered or threatened species, plus the cost of
148 conducting the damage assessment as determined by the
149 department.

150 (5)(a) The factors used in calculating the damage
151 assessment are:

152 1. Location of discharge factor:

153 a. Discharges that originate inshore have a factor of
154 eight. Discharges that originate nearshore have a factor of
155 five. Discharges that originate offshore have a factor of one.

156 b. Compensation for damage to natural resources resulting
157 from discharges that originate outside of state waters but that
158 traverse the state's boundaries and therefore have an impact
159 upon the state's natural resources shall be calculated using a
160 location factor of one.

161 c. Compensation for damage to natural resources resulting
162 from discharges of less than 10,000 gallons of pollutants which

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163 originate within 100 yards of an established terminal facility
 164 or point of routine pollutant transfer in a designated port
 165 authority as defined in s. 315.02 shall be assessed a location
 166 factor of one.

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

176 3. Pollutant category factor: Discharges of category 1
 177 pollutants have a factor of eight. Discharges of category 2
 178 pollutants have a factor of four. Discharges of category 3
 179 pollutants have a factor of one.

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

- 182 a. \$10 per square foot of coral reef impacted.
- 183 b. \$1 per square foot of mangrove or seagrass impacted.
- 184 c. \$1 per linear foot of sandy beach impacted.
- 185 d. \$0.50 per square foot of live bottom, oyster reefs,
 186 worm rock, perennial algae, saltmarsh, or freshwater tidal marsh
 187 impacted.
- 188 e. \$0.05 per square foot of sand bottom or mud flats, or
 189 combination thereof, impacted.

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190 (b) The areal and linear coverage of habitat impacted
 191 shall be determined by the department using a combination of
 192 field measurements, aerial photogrammetry, and satellite
 193 imagery. An area is impacted when the pollutant comes in contact
 194 with the habitat.

195 (6) It is understood that a pollutant will, by its very
 196 nature, result in damage to the flora and fauna of the waters of
 197 the state and the adjoining land. Therefore, compensation for
 198 such resources, which is difficult to calculate, is included in
 199 the compensation schedule. Not included, however, in this base
 200 figure is compensation for the death of endangered or threatened
 201 species directly attributable to the pollutant discharged.
 202 Compensation for the death of any animal designated by rule as
 203 endangered by the Fish and Wildlife Conservation Commission is
 204 \$10,000. Compensation for the death of any animal designated by
 205 rule as threatened by the Fish and Wildlife Conservation
 206 Commission is \$5,000. These amounts are not intended to reflect
 207 the actual value of said endangered or threatened species, but
 208 are included for the purposes of this section.

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

213 (8) When assessing the amount of damages to natural
 214 resources, the department shall be assisted, if requested by the
 215 department, by representatives of other state agencies and local
 216 governments that would enhance the department's damage
 217 assessment. The Fish and Wildlife Conservation Commission shall

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218 assist the department in the assessment of damages to wildlife
 219 impacted by a pollutant discharge and shall assist the
 220 department in recovering the costs of such damages.

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

233 (10) For cases in which the department is authorized to
 234 use a method of natural resources damage assessment other than
 235 the compensation schedules described in subsections (4), (5),
 236 (6), and (9), the department may use the methods described in
 237 federal rules implementing the Oil Pollution Act of 1990, as
 238 amended discharges of more than 30,000 gallons, the department
 239 shall, in consultation with the Game and Fresh Water Fish
 240 Commission, adopt rules by July 1, 1994, to assess compensation
 241 for the damage to natural resources based upon the cost of
 242 restoring, rehabilitating, replacing, or acquiring the
 243 equivalent of the damaged natural resources; the diminution in
 244 the value of those resources pending restoration; and the
 245 reasonable cost of assessing those damages. The person

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246 ~~responsible for a discharge shall be given an opportunity to~~
 247 ~~consult with the department on the assessment design and~~
 248 ~~restoration program.~~

249 (a) When a responsible party is identified and the
 250 department is not conducting a cooperative damage assessment
 251 with federal agencies ~~For discharges greater than 30,000~~
 252 ~~gallons~~, the person responsible has the option to pay the amount
 253 of compensation calculated pursuant to the compensation schedule
 254 established in subsection (4) or pay the amount determined by a
 255 damage assessment performed by the department. If the person
 256 responsible for the discharge elects to have a damage assessment
 257 performed, then such person shall notify the department in
 258 writing of such decision within 30 ~~15~~ days after identification
 259 ~~the discovery~~ of the discharge by the department. The decision
 260 to have a damage assessment performed to determine compensation
 261 for a discharge shall be final; the person responsible for a
 262 discharge may not later elect to use the compensation schedule
 263 for computing compensation. Failure to make such notice shall
 264 result in the amount of compensation for the total damage to
 265 natural resources being calculated based on the compensation
 266 schedule. The compensation shall be paid within 90 days after
 267 receipt of a written request from the department.

268 (b) In the event the person responsible for a discharge
 269 ~~greater than 30,000 gallons~~ elects to have a damage assessment
 270 performed, said person shall pay to the department an amount
 271 equal to the compensation calculated pursuant to subsection (4)
 272 for the discharge using the lesser of the volume of the
 273 discharge or a volume of 30,000 gallons. The payment shall be

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274 | made within 90 days after receipt of a written request from the
275 | department.

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

284 | (11)(a) Moneys recovered by the department as compensation
285 | for damage to natural resources shall be expended only for the
286 | following purposes:

287 | 1. To the maximum extent practicable, the restoration of
288 | natural resources damaged by the discharge for which
289 | compensation is paid.

290 | 2. Restoration of damaged resources.

291 | 3. Developing restoration and enhancement techniques for
292 | natural resources.

293 | 4. Investigating methods for improving and refining
294 | techniques for containment, abatement, and removal of pollutants
295 | from the environment, especially from mangrove forests, corals,
296 | seagrasses, benthic communities, rookeries, nurseries, and other
297 | habitats which are unique to Florida's coastal environment.

298 | 5. Developing and updating the "Sensitivity of Coastal
299 | Environments and Wildlife to Spilled Oil in Florida" atlas.

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300 6. Investigating the long-term effects of pollutant
301 discharges on natural resources, including pelagic organisms,
302 critical habitats, and marine ecosystems.

303 7. Developing an adequate wildlife rescue and
304 rehabilitation program.

305 8. Expanding and enhancing the state's pollution
306 prevention and control education program.

307 9. Restoring natural resources previously impacted by
308 pollutant discharges, but never completely restored.

309 10. Funding alternative projects selected by the Board of
310 Trustees of the Internal Improvement Trust Fund. Any such
311 project shall be selected on the basis of its anticipated
312 benefits to the marine natural resources available to the
313 residents of this state who previously benefited from the
314 injured or destroyed nonrestorable natural resources.

315 (b) All interest earned from investment of moneys
316 recovered by the department for damage to natural resources
317 shall be expended only for the activities described in paragraph
318 (a).

319 (c) The person or parties responsible for a discharge for
320 which the department has requested compensation for damage
321 pursuant to this section shall pay the department, within 90
322 days after receipt of the request, the entire amount due to the
323 state. In the event that payment is not made within the 90 days,
324 the person or parties are liable for interest on the outstanding
325 balance, which interest shall be calculated at the rate
326 prescribed under s. 55.03.

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327 (12) Any determination or assessment of damage to natural
 328 resources for the purposes of this section by the department in
 329 accordance with the compensation sections or in accordance with
 330 the rules adopted under subsection (10) shall have the force and
 331 effect of rebuttable presumption on behalf of the department in
 332 any administrative or judicial proceeding.

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

341 (14) The department must review the amount of compensation
 342 assessed pursuant to the damage assessment formula established
 343 in this section and report its findings to the 1995 Legislature.
 344 Thereafter, the department must conduct such a review and report
 345 its findings to the Legislature biennially.

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

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