

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2772

SPONSOR: Natural Resources Committee and Senator Clary

SUBJECT: State's Natural Resources

DATE: March 23, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>AGG</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill authorizes the Department of Environmental Protection to use methods established pursuant to the federal regulation implementing the Oil Pollution Act of 1990, as amended, to assess the damages to natural resources from pollution.

This bill amends s. 376.121, F.S.

## II. Present Situation:

Sections 376.011-376.17, F.S., and 376.19-376.21, F.S., comprising the "Pollutant Spill Prevention and Control Act," establish the authority and procedures for recovering cleanup costs and compensation for damage to the state's natural resources resulting from an unauthorized discharge of pollutants in Florida waters. Although the costs of cleaning up a discharge are readily identifiable, determining the true extent of the harm caused to natural resources is less susceptible to calculation. Experience in Florida and other states (notably in Alaska) has shown that it is extremely difficult to accurately assess damage to fish, wildlife, and other biota. Difficulties arise in determining the number of organisms actually killed or damaged as well as the fiscal value of each destroyed or damaged natural resource. Because of such problems, extensive litigation often had been necessary in order to arrive at a satisfactory value for compensation to a state for natural resource damage.

In 1992, the Florida Legislature amended s. 376.121, F.S., to create a compensation schedule to determine the amount of compensation due the state for damages to natural resources caused by the discharge of pollutants in state waters. The compensation schedule is based upon the cost of restoration and the loss of ecological, consumptive, intrinsic, recreational, scientific, economic, aesthetic, and educational values of such injured or destroyed resources. The schedule takes into

account the volume of the discharge; the characteristics of the pollutant discharged, such as its toxicity, dispersibility, solubility, and persistence; and the type and sensitivity of the natural resources affected by the discharge, based on factors including whether the discharge is in inshore, nearshore, or offshore waters and whether special management areas are impacted, as well as the areal or linear extent of the natural resources impacted. Special compensation is exacted for the death of any endangered or threatened species.

For discharges of more than 30,000 gallons, s. 376.121(10), F.S., requires that the Department of Environmental Protection rules provide for assessing compensation for the damage to natural resources based upon the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged natural resources; the diminution in the value of those resources pending restoration; and the reasonable cost of assessing those damages. The person responsible for a discharge shall be given an opportunity to consult with the department on the assessment design and restoration program. Also, the person responsible for a discharge of more than 30,000 gallons may elect to have either the damage assessment determine compensation, or pay the amount calculated under the compensation schedule. However, the minimum compensation due the state is the amount due under the schedule, which must be paid within 90 days after receipt of a written request from the department.

While the provisions in s. 376.121, F.S., have generally worked well for Florida, these provisions sometimes conflict with the damage assessment procedures that have been codified in the Code of Federal Regulations<sup>1</sup> to implement the provisions of the Federal Oil Pollution Act of 1990, as amended, that are used by the Federal trustee agencies<sup>2</sup> who are interested in conducting a damage assessment.

### **III. Effect of Proposed Changes:**

This bill amends s. 376.121, F.S., to provide that as an alternative to the compensation schedule specified in this section, the department may, when no responsible party is identified, when a responsible party opts out of the formula under subsection 376.121(10)(a), F.S., or when the department conducts a cooperative damage assessment with federal agencies, use methods of calculating natural resources damages in accordance with federal rules implementing the Oil Pollution Act of 1990, as amended.

For cases in which the department may use a method of natural resource damage assessment other than the compensation schedules described in subsections (4), (5), (6), and (9) of s. 376.121, F.S., the department may use the methods described in federal rules implementing the Oil Pollution Act of 1990, as amended. When a responsible party is identified and the department is not conducting a cooperative damage assessment with federal agencies, the person responsible has the option to pay the amount of compensation calculated under the statutory compensation schedule or pay the amount determined by a damage assessment performed by the department. If the person responsible for the discharge elects to have a damage assessment performed, such person shall notify the department in writing of the decision within 30 days after identification of the discharge by the department.

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<sup>1</sup> 15 CFR 990

<sup>2</sup> As defined in 15 CFR 990.30, trustees are those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b) of the Oil Pollution Act of 1990, as amended.

In the event the person responsible for a discharge elects to have a damage assessment performed, said person shall pay to the department an amount equal to the statutory compensation for the discharge using the lesser of the volume of the discharge or a volume of 30,000 gallons.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Using the federal assessment model may have the effect of reducing the damage assessment costs for the parties responsible for a discharge, based on their ability to effectively remove as much oil as possible, as quickly as possible, thereby limiting the spread of such pollutants.<sup>3</sup>

C. Government Sector Impact:

According to information received from the Department of Environmental Protection, by allowing this alternative method of damage assessment that is used pursuant to the Federal Oil Pollution Act of 1990, as amended, the state would improve its access to federal funds available from the U.S. Coast Guard National Pollution Funds Center for compensation from the U.S. Oil Spill Liability Trust Fund. The statutory assessment formula would remain in use for most coastal oil spills. Since the smaller spills represent a majority of spill incidents in Florida, the assessment process would remain identical for most incidents.<sup>4</sup>

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<sup>3</sup> Department of Environmental Protection Draft Bill Analysis, SB 2772, 3/16/04

<sup>4</sup> Id.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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