

By Senator Clary

4-1412-04

1 A bill to be entitled
2 An act relating to compensation for damage to
3 the state's natural resources from pollutant
4 discharges; amending s. 376.121, F.S.;
5 authorizing the Department of Environmental
6 Protection to use methods established pursuant
7 to federal regulations to calculate
8 compensation for damage to the state's natural
9 resources; providing that if the federal
10 methods are not used, the methods currently
11 specified by law remain applicable; providing
12 an effective date.

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14 Be It Enacted by the Legislature of the State of Florida:

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

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

1 used to assess the cost of damage to such resources. Natural
2 resources include coastal waters, wetlands, estuaries, tidal
3 flats, beaches, lands adjoining the seacoasts of the state,
4 and all living things except human beings. The Legislature
5 recognizes the difficulty historically encountered in
6 calculating the value of damaged natural resources. The value
7 of certain qualities of the state's natural resources is not
8 readily quantifiable, yet the resources and their qualities
9 have an intrinsic value to the residents of the state, and any
10 damage to natural resources and their qualities should not be
11 dismissed as nonrecoverable merely because of the difficulty
12 in quantifying their value. In order to avoid unnecessary
13 speculation and expenditure of limited resources to determine
14 these values, the Legislature hereby establishes a statutory
15 schedule, and two alternative calculation methods, for
16 compensation for damage to the state's natural resources and
17 the quality of said resources.

18 (1) The department shall assess and recover from
19 responsible parties the compensation for the injury or
20 destruction of natural resources, including, but not limited
21 to, the death or injury of living things and damage to or
22 destruction of habitat, resulting from pollutant discharges
23 prohibited by s. 376.041. The amount of compensation and any
24 costs of assessing damage and recovering compensation received
25 by the department shall be deposited into the Florida Coastal
26 Protection Trust Fund pursuant to s. 376.12 and disbursed
27 according to subsection (11). Whoever violates, or causes to
28 be violated, s. 376.041 shall be liable to the state for
29 damage to natural resources.

30 (2) The compensation schedule for damage to natural
31 resources is based upon the cost of restoration and the loss

1 of ecological, consumptive, intrinsic, recreational,
2 scientific, economic, aesthetic, and educational values of
3 such injured or destroyed resources. The compensation
4 schedule takes into account:

5 (a) The volume of the discharge.
6 (b) The characteristics of the pollutant discharged.
7 The toxicity, dispersibility, solubility, and persistence
8 characteristics of a pollutant as affects the severity of the
9 effects on the receiving environment, living things, and
10 recreational and aesthetic resources. Pollutants have varying
11 propensities to injure natural resources based upon their
12 potential exposure and effects. Exposure to natural resources
13 is determined by the dispersibility and degradability of the
14 pollutant. Effects to natural resources result from
15 mechanical injury and toxicity and include physical
16 contamination, smothering, feeding prevention, immobilization,
17 respiratory distress, direct mortality, lost recruitment of
18 larvae and juveniles killed, changes in the food web, and
19 chronic effects of sublethal levels of contaminants in tissues
20 or the environment. For purposes of the compensation schedule,
21 pollutants have been ranked for their propensity to cause
22 injury to natural resources based upon a combination of their
23 acute toxicity, mechanical injury, degradability, and
24 dispersibility characteristics on a 1-to-3 relative scale with
25 Category 1 containing the pollutants with the greatest
26 propensity to cause injury to natural resources. The following
27 pollutants are categorized:

- 28 1. Category 1: bunker and residual fuel.
29 2. Category 2: waste oils, crude oil, lubricating
30 oil, asphalt, and tars.

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1 3. Category 3: hydraulic fluids, numbers 1 and 2
2 diesel fuels, heating oil, jet aviation fuels, motor gasoline,
3 including aviation gasoline, kerosene, stationary turbine
4 fuels, ammonia and its derivatives, and chlorine and its
5 derivatives.

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7 The department shall adopt rules establishing the pollutant
8 category of pesticides and other pollutants as defined in s.
9 376.031 and not listed in this paragraph.

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

12 1. The location of a discharge. Inshore discharges
13 are discharges that occur within waters under the jurisdiction
14 of the department and within an area extending seaward from
15 the coastline of the state to a point 1 statute mile seaward
16 of the coastline. Nearshore discharges are discharges that
17 occur more than 1 statute mile, but within 3 statute miles,
18 seaward of the coastline. Offshore discharges are discharges
19 that occur more than 3 statute miles seaward of the coastline.

20 2. The location of the discharge with respect to
21 special management areas designated because of their unique
22 habitats; living resources; recreational use; aesthetic
23 importance; and other ecological, educational, consumptive,
24 intrinsic, scientific, and economic values of the natural
25 resources located therein. Special management areas are state
26 parks; recreation areas; national parks, seashores, estuarine
27 research reserves, marine sanctuaries, wildlife refuges, and
28 national estuary program water bodies; state aquatic preserves
29 and reserves; classified shellfish harvesting areas; areas of
30 critical state concern; federally designated critical habitat

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1 for endangered or threatened species; and outstanding Florida
2 waters.

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

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

8 (4) Statutory compensation schedule:

9 (a) The amount of compensation assessed under this
10 schedule is calculated by: multiplying \$1 per gallon or its
11 equivalent measurement of pollutant discharged, by the number
12 of gallons or its equivalent measurement, times the location
13 of the discharge factor, times the special management area
14 factor.

15 (b) Added to the amount obtained in paragraph (a) is
16 the value of the observable natural resources damaged, which
17 is calculated by multiplying the areal or linear coverage of
18 impacted habitat by the corresponding habitat factor, times
19 the special management area factor.

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

22 (d) The final damage assessment figure is the sum of
23 the amount calculated in paragraph (c) plus the compensation
24 for death of endangered or threatened species, plus the cost
25 of conducting the damage assessment as determined by the
26 department.

27 (5)(a) The factors used in calculating the damage
28 assessment are:

29 1. Location of discharge factor:
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1 a. Discharges that originate inshore have a factor of
2 eight. Discharges that originate nearshore have a factor of
3 five. Discharges that originate offshore have a factor of one.
4 b. Compensation for damage to natural resources
5 resulting from discharges that originate outside of state
6 waters but that traverse the state's boundaries and therefore
7 have an impact upon the state's natural resources shall be
8 calculated using a location factor of one.
9 c. Compensation for damage to natural resources
10 resulting from discharges of less than 10,000 gallons of
11 pollutants which originate within 100 yards of an established
12 terminal facility or point of routine pollutant transfer in a
13 designated port authority as defined in s. 315.02 shall be
14 assessed a location factor of one.
15 2. Special management area factor: Discharges that
16 originate in special management areas described in
17 subparagraph (2)(c)2. have a factor of two. Discharges that
18 originate outside a special management area described in
19 subparagraph (2)(c)2. have a location factor of one. For
20 discharges that originate outside of a special management area
21 but impact the natural resources within a special management
22 area, the value of the natural resources damaged within the
23 area shall be multiplied by the special management area factor
24 of two.
25 3. Pollutant category factor: Discharges of category 1
26 pollutants have a factor of eight. Discharges of category 2
27 pollutants have a factor of four. Discharges of category 3
28 pollutants have a factor of one.
29 4. Habitat factor: The amount of compensation for
30 damage to the natural resources of the state is established as
31 follows:

- 1 a. \$10 per square foot of coral reef impacted.
- 2 b. \$1 per square foot of mangrove or seagrass
3 impacted.
- 4 c. \$1 per linear foot of sandy beach impacted.
- 5 d. \$0.50 per square foot of live bottom, oyster reefs,
6 worm rock, perennial algae, saltmarsh, or freshwater tidal
7 marsh impacted.
- 8 e. \$0.05 per square foot of sand bottom or mud flats,
9 or combination thereof, impacted.
- 10 (b) The areal and linear coverage of habitat impacted
11 shall be determined by the department using a combination of
12 field measurements, aerial photogrammetry, and satellite
13 imagery. An area is impacted when the pollutant comes in
14 contact with the habitat.
- 15 (6) It is understood that a pollutant will, by its
16 very nature, result in damage to the flora and fauna of the
17 waters of the state and the adjoining land. Therefore,
18 compensation for such resources, which is difficult to
19 calculate, is included in the compensation schedule. Not
20 included, however, in this base figure is compensation for the
21 death of endangered or threatened species directly
22 attributable to the pollutant discharged. Compensation for the
23 death of any animal designated by rule as endangered by the
24 Fish and Wildlife Conservation Commission is \$10,000.
25 Compensation for the death of any animal designated by rule as
26 threatened by the Fish and Wildlife Conservation Commission is
27 \$5,000. These amounts are not intended to reflect the actual
28 value of said endangered or threatened species, but are
29 included for the purposes of this section.
- 30 (7) The owner or operator of the vessel or facility
31 responsible for a discharge may designate a representative or

1 agent to work with the department in assessing the amount of
2 damage to natural resources resulting from the discharge.

3 (8) When assessing the amount of damages to natural
4 resources, the department shall be assisted, if requested by
5 the department, by representatives of other state agencies and
6 local governments that would enhance the department's damage
7 assessment. The Fish and Wildlife Conservation Commission
8 shall assist the department in the assessment of damages to
9 wildlife impacted by a pollutant discharge and shall assist
10 the department in recovering the costs of such damages.

11 (9) Compensation for damage resulting from the
12 discharge of two or more pollutants shall be calculated for
13 the volume of each pollutant discharged. If the separate
14 volume for each pollutant discharged cannot be determined, the
15 highest multiplier for the pollutants discharged shall be
16 applied to the entire volume of the spill. Compensation for
17 commingled discharges that contact habitat shall be calculated
18 on a proportional basis of discharged volumes. The highest
19 multiplier for such commingled pollutants may only be applied
20 if a reasonable proportionality of the commingled pollutants
21 cannot be determined at the point of any contact with natural
22 resources.

23 (10) The department may use the statutory compensation
24 schedule in subsections (4)-(6) and (9) or the methods
25 established pursuant to the federal regulations implementing
26 the Oil Pollution Act of 1990, as amended, to assess the
27 damages of any discharge; however, for discharges of more than
28 30,000 gallons, if the department does not use the methods
29 established pursuant to federal regulation, it shall use the
30 statutory compensation schedule or a departmental damage
31 assessment, as provided in this subsection.The department

1 shall, in consultation with the ~~Game and Fresh Water~~ Fish and
2 Wildlife Conservation Commission, adopt rules ~~by July 1, 1994,~~
3 to assess compensation for the damage to natural resources
4 based upon the cost of restoring, rehabilitating, replacing,
5 or acquiring the equivalent of the damaged natural resources;
6 the diminution in the value of those resources pending
7 restoration; and the reasonable cost of assessing those
8 damages. The person responsible for a discharge shall be given
9 an opportunity to consult with the department on the
10 assessment design and restoration program.

11 (a) For discharges greater than 30,000 gallons, if the
12 department does not use the methods established pursuant to
13 the federal regulations implementing the Oil Pollution Act of
14 1990, as amended, the person responsible has the option to pay
15 the amount of compensation calculated pursuant to the
16 statutory compensation schedule established in subsections
17 (4)-(6) and (9) ~~subsection (4)~~ or pay the amount determined by
18 a damage assessment performed by the department. If the person
19 responsible for the discharge elects to have a damage
20 assessment performed, ~~then~~ such person shall notify the
21 department in writing of such decision within 15 days after
22 the discovery of the discharge. The decision to have a damage
23 assessment performed to determine compensation for a discharge
24 ~~is shall be~~ final; the person responsible for a discharge may
25 not later elect to use the statutory compensation schedule for
26 computing compensation. Failure to make such notice shall
27 result in the amount of compensation for the total damage to
28 natural resources being calculated based on the statutory
29 compensation schedule unless the department uses the methods
30 established pursuant to the federal regulations implementing
31 the Oil Pollution Act of 1990, as amended. Regardless of the

1 schedule or method used, the compensation shall be paid within
2 90 days after receipt of a written request from the
3 department.

4 (b) If, pursuant to paragraph (a), ~~in the event~~ the
5 person responsible for a discharge greater than 30,000 gallons
6 elects to have a departmental damage assessment performed,
7 said person shall pay to the department an amount equal to the
8 compensation calculated pursuant to subsection (4) for the
9 discharge using a volume of 30,000 gallons. The payment shall
10 be made within 90 days after receipt of a written request from
11 the department.

12 (c) After completion of the damage assessment, the
13 department shall advise the person responsible for the
14 discharge of the amount of compensation due to the state. A
15 credit shall be given for the amount paid pursuant to
16 paragraph (b). Payment shall be made within 90 days after
17 receipt of a written request from the department. Unless the
18 department uses the methods established pursuant to the
19 federal regulations implementing the Oil Pollution Act of
20 1990, as amended, ~~in no event~~ shall the total compensation
21 paid pursuant to this section may not be less than the dollar
22 amount calculated pursuant to paragraph (b).

23 (11)(a) Moneys recovered by the department as
24 compensation for damage to natural resources shall be expended
25 only for the following purposes:

26 1. To the maximum extent practicable, the restoration
27 of natural resources damaged by the discharge for which
28 compensation is paid.

29 2. Restoration of damaged resources.

30 3. Developing restoration and enhancement techniques
31 for natural resources.

1 4. Investigating methods for improving and refining
2 techniques for containment, abatement, and removal of
3 pollutants from the environment, especially from mangrove
4 forests, corals, seagrasses, benthic communities, rookeries,
5 nurseries, and other habitats which are unique to Florida's
6 coastal environment.

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

9 6. Investigating the long-term effects of pollutant
10 discharges on natural resources, including pelagic organisms,
11 critical habitats, and marine ecosystems.

12 7. Developing an adequate wildlife rescue and
13 rehabilitation program.

14 8. Expanding and enhancing the state's pollution
15 prevention and control education program.

16 9. Restoring natural resources previously impacted by
17 pollutant discharges, but never completely restored.

18 10. Funding alternative projects selected by the Board
19 of Trustees of the Internal Improvement Trust Fund. Any such
20 project shall be selected on the basis of its anticipated
21 benefits to the marine natural resources available to the
22 residents of this state who previously benefited from the
23 injured or destroyed nonrestorable natural resources.

24 (b) All interest earned from investment of moneys
25 recovered by the department for damage to natural resources
26 shall be expended only for the activities described in
27 paragraph (a).

28 (c) The person or parties responsible for a discharge
29 for which the department has requested compensation for damage
30 pursuant to this section shall pay the department, within 90
31 days after receipt of the request, the entire amount due to

1 the state. In the event that payment is not made within the 90
2 days, the person or parties are liable for interest on the
3 outstanding balance, which interest shall be calculated at the
4 rate prescribed under s. 55.03.

5 (12) Any determination or assessment of damage to
6 natural resources for the purposes of this section by the
7 department in accordance with the compensation sections or in
8 accordance with the rules adopted under subsection (10) shall
9 have the force and effect of rebuttable presumption on behalf
10 of the department in any administrative or judicial
11 proceeding.

12 (13) There shall be no double recovery under this law
13 for natural resource damage resulting from a discharge,
14 including the costs of damage assessment or restoration,
15 rehabilitation, replacement, or acquisition for the same
16 incident and natural resource. The department shall meet with
17 and develop memoranda of understanding with appropriate
18 federal trustees as defined in Pub. L. No. 101-380 (Oil
19 Pollution Act of 1990) to provide further assurances of no
20 double recovery.

21 (14) The department must review the amount of
22 compensation assessed pursuant to the damage assessment
23 formula established in this section and report its findings to
24 the 1995 Legislature. Thereafter, the department must conduct
25 such a review and report its findings to the Legislature
26 biennially.

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

30 Section 2. This act shall take effect July 1, 2004.
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SENATE SUMMARY

Authorizes the Department of Environmental Protection to use methods established pursuant to federal regulations to calculate compensation for damage from pollution of natural resources. Provides that the damage calculation methods now used remain applicable if the federal methods are not used.