

By the Committee on Natural Resources; and Senator Clary

312-2267-04

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 under  
7           federal regulations to calculate compensation  
8           for damage to the state's natural resources;  
9           providing that if the federal methods are not  
10          used, the methods currently specified by law  
11          remain applicable; providing an effective date.

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

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

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

1 resources. Natural resources include coastal waters,  
2 wetlands, estuaries, tidal flats, beaches, lands adjoining the  
3 seacoasts of the state, and all living things except human  
4 beings. The Legislature recognizes the difficulty  
5 historically encountered in calculating the value of damaged  
6 natural resources. The value of certain qualities of the  
7 state's natural resources is not readily quantifiable, yet the  
8 resources and their qualities have an intrinsic value to the  
9 residents of the state, and any damage to natural resources  
10 and their qualities should not be dismissed as nonrecoverable  
11 merely because of the difficulty in quantifying their value.  
12 In order to avoid unnecessary speculation and expenditure of  
13 limited resources to determine these values, the Legislature  
14 hereby establishes a schedule for compensation for damage to  
15 the state's natural resources and the quality of said  
16 resources. As an alternative to the compensation schedule  
17 described in subsections (4), (5), (6), and (9), the  
18 department may, when no responsible party is identified, when  
19 a responsible party opts out of the formula under subsection  
20 (10)(a), or when the department conducts a cooperative damage  
21 assessment with federal agencies, use methods of calculating  
22 natural resources damages in accordance with federal rules  
23 implementing the Oil Pollution Act of 1990, as amended.

24 (1) The department shall assess and recover from  
25 responsible parties the compensation for the injury or  
26 destruction of natural resources, including, but not limited  
27 to, the death or injury of living things and damage to or  
28 destruction of habitat, resulting from pollutant discharges  
29 prohibited by s. 376.041. The amount of compensation and any  
30 costs of assessing damage and recovering compensation received  
31 by the department shall be deposited into the Florida Coastal

1 Protection Trust Fund under ~~pursuant to~~ s. 376.12 and  
2 disbursed according to subsection (11). Whoever violates, or  
3 causes to be violated, s. 376.041 shall be liable to the state  
4 for damage to natural resources.

5 (2) The compensation schedule for damage to natural  
6 resources is based upon the cost of restoration and the loss  
7 of ecological, consumptive, intrinsic, recreational,  
8 scientific, economic, aesthetic, and educational values of  
9 such injured or destroyed resources. The compensation  
10 schedule takes into account:

11 (a) The volume of the discharge.

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

1 propensity to cause injury to natural resources. The following  
2 pollutants are categorized:

- 3 1. Category 1: bunker and residual fuel.
- 4 2. Category 2: waste oils, crude oil, lubricating  
5 oil, asphalt, and tars.
- 6 3. Category 3: hydraulic fluids, numbers 1 and 2  
7 diesel fuels, heating oil, jet aviation fuels, motor gasoline,  
8 including aviation gasoline, kerosene, stationary turbine  
9 fuels, ammonia and its derivatives, and chlorine and its  
10 derivatives.

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12 The department shall adopt rules establishing the pollutant  
13 category of pesticides and other pollutants as defined in s.  
14 376.031 and not listed in this paragraph.

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

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

25 2. The location of the discharge with respect to  
26 special management areas designated because of their unique  
27 habitats; living resources; recreational use; aesthetic  
28 importance; and other ecological, educational, consumptive,  
29 intrinsic, scientific, and economic values of the natural  
30 resources located therein. Special management areas are state  
31 parks; recreation areas; national parks, seashores, estuarine

1 research reserves, marine sanctuaries, wildlife refuges, and  
2 national estuary program water bodies; state aquatic preserves  
3 and reserves; classified shellfish harvesting areas; areas of  
4 critical state concern; federally designated critical habitat  
5 for endangered or threatened species; and outstanding Florida  
6 waters.

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

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

12 (4) Compensation schedule:

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

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

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

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

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

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

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

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

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

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

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

13           (b) The areal and linear coverage of habitat impacted  
14 shall be determined by the department using a combination of  
15 field measurements, aerial photogrammetry, and satellite  
16 imagery. An area is impacted when the pollutant comes in  
17 contact with the habitat.

18           (6) It is understood that a pollutant will, by its  
19 very nature, result in damage to the flora and fauna of the  
20 waters of the state and the adjoining land. Therefore,  
21 compensation for such resources, which is difficult to  
22 calculate, is included in the compensation schedule. Not  
23 included, however, in this base figure is compensation for the  
24 death of endangered or threatened species directly  
25 attributable to the pollutant discharged. Compensation for the  
26 death of any animal designated by rule as endangered by the  
27 Fish and Wildlife Conservation Commission is \$10,000.  
28 Compensation for the death of any animal designated by rule as  
29 threatened by the Fish and Wildlife Conservation Commission is  
30 \$5,000. These amounts are not intended to reflect the actual  
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1 value of the ~~said~~ endangered or threatened species, but are  
2 included for the purposes of this section.

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

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

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

27 (10) For cases in which the department may use a  
28 method of natural resource damage assessment other than the  
29 compensation schedules described in subsections (4), (5), (6),  
30 and (9), the department may use the methods described in  
31 federal rules implementing the Oil Pollution Act of 1990, as



1 ~~amended. For discharges of more than 30,000 gallons, the~~  
2 ~~department shall, in consultation with the Game and Fresh~~  
3 ~~Water Fish Commission, adopt rules by July 1, 1994, to assess~~  
4 ~~compensation for the damage to natural resources based upon~~  
5 ~~the cost of restoring, rehabilitating, replacing, or acquiring~~  
6 ~~the equivalent of the damaged natural resources; the~~  
7 ~~diminution in the value of those resources pending~~  
8 ~~restoration; and the reasonable cost of assessing those~~  
9 ~~damages. The person responsible for a discharge shall be given~~  
10 ~~an opportunity to consult with the department on the~~  
11 ~~assessment design and restoration program.~~

12       (a) When a responsible party is identified and the  
13 department is not conducting a cooperative damage assessment  
14 with federal agencies ~~For discharges greater than 30,000~~  
15 ~~gallons, the person responsible has the option to pay the~~  
16 ~~amount of compensation calculated under pursuant to the~~  
17 ~~compensation schedule established in subsection (4) or pay the~~  
18 ~~amount determined by a damage assessment performed by the~~  
19 ~~department. If the person responsible for the discharge elects~~  
20 ~~to have a damage assessment performed, then such person shall~~  
21 ~~notify the department in writing of the such decision within~~  
22 30 15 days after identification the discovery ~~of the discharge~~  
23 by the department. ~~The decision to have a damage assessment~~  
24 ~~performed to determine compensation for a discharge is shall~~  
25 ~~be final; the person responsible for a discharge may not later~~  
26 ~~elect to use the compensation schedule for computing~~  
27 ~~compensation. Failure to make such notice shall result in the~~  
28 ~~amount of compensation for the total damage to natural~~  
29 ~~resources being calculated based on the compensation schedule.~~  
30 ~~The compensation shall be paid within 90 days after receipt of~~  
31 ~~a written request from the department.~~

1 (b) In the event the person responsible for a  
2 discharge ~~greater than 30,000 gallons~~ elects to have a damage  
3 assessment performed, said person shall pay to the department  
4 an amount equal to the compensation calculated under ~~pursuant~~  
5 ~~to~~ subsection (4) for the discharge using the lesser of the  
6 volume of the discharge or a volume of 30,000 gallons. The  
7 payment shall be made within 90 days after receipt of a  
8 written request from the department.

9 (c) After completion of the damage assessment, the  
10 department shall advise the person responsible for the  
11 discharge of the amount of compensation due to the state. A  
12 credit shall be given for the amount paid under ~~pursuant to~~  
13 paragraph (b). Payment shall be made within 90 days after  
14 receipt of a written request from the department. ~~In no event~~  
15 ~~shall the total compensation paid pursuant to this section be~~  
16 ~~less than the dollar amount calculated pursuant to paragraph~~  
17 ~~(b).~~

18 (11)(a) Moneys recovered by the department as  
19 compensation for damage to natural resources shall be expended  
20 only for the following purposes:

21 1. To the maximum extent practicable, the restoration  
22 of natural resources damaged by the discharge for which  
23 compensation is paid.

24 2. Restoration of damaged resources.

25 3. Developing restoration and enhancement techniques  
26 for natural resources.

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

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

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

8 7. Developing an adequate wildlife rescue and  
9 rehabilitation program.

10 8. Expanding and enhancing the state's pollution  
11 prevention and control education program.

12 9. Restoring natural resources previously impacted by  
13 pollutant discharges, but never completely restored.

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

20 (b) All interest earned from investment of moneys  
21 recovered by the department for damage to natural resources  
22 shall be expended only for the activities described in  
23 paragraph (a).

24 (c) The person or parties responsible for a discharge  
25 for which the department has requested compensation for damage  
26 pursuant to this section shall pay the department, within 90  
27 days after receipt of the request, the entire amount due to  
28 the state. In the event that payment is not made within the 90  
29 days, the person or parties are liable for interest on the  
30 outstanding balance, which interest shall be calculated at the  
31 rate prescribed under s. 55.03.

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

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

17           (14) The department must review the amount of  
18 compensation assessed under ~~pursuant to~~ the damage assessment  
19 formula established in this section and report its findings to  
20 the 1995 Legislature. Thereafter, the department must conduct  
21 such a review and report its findings to the Legislature  
22 biennially.

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

26           Section 2. This act shall take effect July 1, 2004.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 2772

The committee substitute provides that as an alternative to the compensation schedule for natural resources damages specified in s. 376.121, F.S., the DEP may, when no responsible party is identified, when a responsible party opts out of the statutory formula, or when the DEP 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.