

1 A bill to be entitled
2 An act relating to the Department of
3 Environmental Protection; creating s. 15.0337,
4 F.S.; designating Ocala Limestone as the state
5 rock; creating s. 15.0338, F.S.; designating
6 calcite as the state mineral; creating s.
7 15.0339, F.S.; designating the Eocene Heart
8 Urchin as the state fossil; amending s.
9 376.121, F.S.; authorizing the Department of
10 Environmental Protection to use methods
11 established under federal regulations to
12 calculate compensation for damage to the
13 state's natural resources; providing that if
14 the federal methods are not used, the methods
15 currently specified by law remain applicable;
16 providing an effective date.

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

19
20 Section 1. Section 15.0337, Florida Statutes, is
21 created to read:

22 15.0337 State rock.--The Ocala Limestone, a cream to
23 white porous limestone containing abundant fossils, found
24 throughout Florida and one of most permeable rock units of the
25 Floridan aquifer system, is designated the Florida state rock.

26 Section 2. Section 15.0338, Florida Statutes, is
27 created to read:

28 15.0338 State mineral.--Calcite, the major
29 rock-forming mineral of limestone, occurring commonly as
30 translucent crystals of vitreous luster, colorless to
31

1 honey-colored, having the chemical composition of calcium
2 carbonate, is designated the Florida state mineral.

3 Section 3. Section 15.0339, Florida Statutes, is
4 created to read:

5 15.0339 State fossil.--The Eocene Heart Urchin,
6 Eupatagus antillarum. This Late Eocene age irregular echinoid
7 is similar to the heart urchins of modern tropical seas. It
8 lived buried in the bottom sediments of the shallow seas that
9 covered Florida 38 million years ago. The fossilized shell of
10 this species is commonly found in the Ocala Limestone and Avon
11 Park Formations. The Eocene Heart Urchin is designated the
12 Florida state fossil.

13 Section 4. Section 376.121, Florida Statutes, is
14 amended to read:

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

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

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

1 causes to be violated, s. 376.041 shall be liable to the state
2 for damage to natural resources.

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

9 (a) The volume of the discharge.

10 (b) The characteristics of the pollutant discharged.

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

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

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

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

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

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

1 and reserves; classified shellfish harvesting areas; areas of
2 critical state concern; federally designated critical habitat
3 for endangered or threatened species; and outstanding Florida
4 waters.

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

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

10 (4) Compensation schedule:

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

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

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

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

29 (5)(a) The factors used in calculating the damage
30 assessment are:

31 1. Location of discharge factor:

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 the said ~~the 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 ~~the 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) For cases in which the department may use a
24 method of natural resource damage assessment other than the
25 compensation schedules described in subsections (4), (5), (6),
26 and (9), the department may use the methods described in
27 federal rules implementing the Oil Pollution Act of 1990, as
28 amended. For discharges of more than 30,000 gallons, the
29 department shall, in consultation with the Game and Fresh
30 Water Fish Commission, adopt rules by July 1, 1994, to assess
31 compensation for the damage to natural resources based upon

1 ~~the cost of restoring, rehabilitating, replacing, or acquiring~~
2 ~~the equivalent of the damaged natural resources; the~~
3 ~~diminution in the value of those resources pending~~
4 ~~restoration; and the reasonable cost of assessing those~~
5 ~~damages. The person responsible for a discharge shall be given~~
6 ~~an opportunity to consult with the department on the~~
7 ~~assessment design and restoration program.~~

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

28 (b) In the event the person responsible for a
29 discharge ~~greater than 30,000 gallons~~ elects to have a damage
30 assessment performed, said person shall pay to the department
31 an amount equal to the compensation calculated under ~~pursuant~~

1 ~~to~~ subsection (4) for the discharge using the lesser of the
2 volume of the discharge or a volume of 30,000 gallons. The
3 payment shall be made within 90 days after receipt of a
4 written request from the department.

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

14 (11)(a) Moneys recovered by the department as
15 compensation for damage to natural resources shall be expended
16 only for the following purposes:

17 1. To the maximum extent practicable, the restoration
18 of natural resources damaged by the discharge for which
19 compensation is paid.

20 2. Restoration of damaged resources.

21 3. Developing restoration and enhancement techniques
22 for natural resources.

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

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

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

4 7. Developing an adequate wildlife rescue and
5 rehabilitation program.

6 8. Expanding and enhancing the state's pollution
7 prevention and control education program.

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

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

16 (b) All interest earned from investment of moneys
17 recovered by the department for damage to natural resources
18 shall be expended only for the activities described in
19 paragraph (a).

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

28 (12) Any determination or assessment of damage to
29 natural resources for the purposes of this section by the
30 department in accordance with the compensation sections or in
31 accordance with the rules adopted under subsection (10) shall

1 have the force and effect of rebuttable presumption on behalf
2 of the department in any administrative or judicial
3 proceeding.

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

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

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

22 Section 5. This act shall take effect July 1, 2004.
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