

HB 1855

2005

1 A bill to be entitled
2 An act relating to natural resources; amending s. 376.121,
3 F.S.; providing an alternative to the compensation
4 schedule for calculating natural resources damages;
5 revising procedures relating to damage assessment;
6 removing a restriction on amount of compensation;
7 providing an effective date.

8

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

10

11 Section 1. Section 376.121, Florida Statutes, is amended
12 to read:

13 376.121 Liability for damage to natural resources.--The
14 Legislature finds that extensive damage to the state's natural
15 resources is the likely result of a pollutant discharge and that
16 it is essential that the state adequately assess and recover the
17 cost of such damage from responsible parties. It is the state's
18 goal to recover the costs of restoration from the responsible
19 parties and to restore damaged natural resources to their
20 predischage condition. In many instances, however, restoration
21 is not technically feasible. In such instances, the state has
22 the responsibility to its citizens to recover the cost of all
23 damage to natural resources. To ensure that the public does not
24 bear a substantial loss as a result of the destruction of
25 natural resources, the procedures set out in this section shall
26 be used to assess the cost of damage to such resources. Natural
27 resources include coastal waters, wetlands, estuaries, tidal
28 flats, beaches, lands adjoining the seacoasts of the state, and

29 | all living things except human beings. The Legislature
30 | recognizes the difficulty historically encountered in
31 | calculating the value of damaged natural resources. The value of
32 | certain qualities of the state's natural resources is not
33 | readily quantifiable, yet the resources and their qualities have
34 | an intrinsic value to the residents of the state, and any damage
35 | to natural resources and their qualities should not be dismissed
36 | as nonrecoverable merely because of the difficulty in
37 | quantifying their value. In order to avoid unnecessary
38 | speculation and expenditure of limited resources to determine
39 | these values, the Legislature hereby establishes a schedule for
40 | compensation for damage to the state's natural resources and the
41 | quality of said resources. As an alternative to the compensation
42 | schedule described in subsections (4), (5), (6), and (9), the
43 | department, when no responsible party is identified, when a
44 | responsible party opts out of the formula pursuant to paragraph
45 | (10)(a), or when the department conducts a cooperative damage
46 | assessment with federal agencies, may use methods of calculating
47 | natural resources damages in accordance with federal rules
48 | implementing the Oil Pollution Act of 1990, as amended.

49 | (1) The department shall assess and recover from
50 | responsible parties the compensation for the injury or
51 | destruction of natural resources, including, but not limited to,
52 | the death or injury of living things and damage to or
53 | destruction of habitat, resulting from pollutant discharges
54 | prohibited by s. 376.041. The amount of compensation and any
55 | costs of assessing damage and recovering compensation received
56 | by the department shall be deposited into the Florida Coastal

57 Protection Trust Fund pursuant to s. 376.12 and disbursed
58 according to subsection (11). Whoever violates, or causes to be
59 violated, s. 376.041 shall be liable to the state for damage to
60 natural resources.

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

67 (a) The volume of the discharge.

68 (b) The characteristics of the pollutant discharged. The
69 toxicity, dispersibility, solubility, and persistence
70 characteristics of a pollutant as affects the severity of the
71 effects on the receiving environment, living things, and
72 recreational and aesthetic resources. Pollutants have varying
73 propensities to injure natural resources based upon their
74 potential exposure and effects. Exposure to natural resources is
75 determined by the dispersibility and degradability of the
76 pollutant. Effects to natural resources result from mechanical
77 injury and toxicity and include physical contamination,
78 smothering, feeding prevention, immobilization, respiratory
79 distress, direct mortality, lost recruitment of larvae and
80 juveniles killed, changes in the food web, and chronic effects
81 of sublethal levels of contaminates in tissues or the
82 environment. For purposes of the compensation schedule,
83 pollutants have been ranked for their propensity to cause injury
84 to natural resources based upon a combination of their acute

85 toxicity, mechanical injury, degradability, and dispersibility
86 characteristics on a 1-to-3 relative scale with Category 1
87 containing the pollutants with the greatest propensity to cause
88 injury to natural resources. The following pollutants are
89 categorized:

- 90 1. Category 1: bunker and residual fuel.
- 91 2. Category 2: waste oils, crude oil, lubricating oil,
92 asphalt, and tars.
- 93 3. Category 3: hydraulic fluids, numbers 1 and 2 diesel
94 fuels, heating oil, jet aviation fuels, motor gasoline,
95 including aviation gasoline, kerosene, stationary turbine fuels,
96 ammonia and its derivatives, and chlorine and its derivatives.

97
98 The department shall adopt rules establishing the pollutant
99 category of pesticides and other pollutants as defined in s.
100 376.031 and not listed in this paragraph.

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

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

111 2. The location of the discharge with respect to special
112 management areas designated because of their unique habitats;

113 living resources; recreational use; aesthetic importance; and
 114 other ecological, educational, consumptive, intrinsic,
 115 scientific, and economic values of the natural resources located
 116 therein. Special management areas are state parks; recreation
 117 areas; national parks, seashores, estuarine research reserves,
 118 marine sanctuaries, wildlife refuges, and national estuary
 119 program water bodies; state aquatic preserves and reserves;
 120 classified shellfish harvesting areas; areas of critical state
 121 concern; federally designated critical habitat for endangered or
 122 threatened species; and outstanding Florida waters.

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

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

128 (4) Compensation schedule:

129 (a) The amount of compensation assessed under this
 130 schedule is calculated by: multiplying \$1 per gallon or its
 131 equivalent measurement of pollutant discharged, by the number of
 132 gallons or its equivalent measurement, times the location of the
 133 discharge factor, times the special management area factor.

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

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

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

146 (5)(a) The factors used in calculating the damage
 147 assessment are:

148 1. Location of discharge factor:

149 a. Discharges that originate inshore have a factor of
 150 eight. Discharges that originate nearshore have a factor of
 151 five. Discharges that originate offshore have a factor of one.

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

157 c. Compensation for damage to natural resources resulting
 158 from discharges of less than 10,000 gallons of pollutants which
 159 originate within 100 yards of an established terminal facility
 160 or point of routine pollutant transfer in a designated port
 161 authority as defined in s. 315.02 shall be assessed a location
 162 factor of one.

163 2. Special management area factor: Discharges that
 164 originate in special management areas described in subparagraph
 165 (2)(c)2. have a factor of two. Discharges that originate outside
 166 a special management area described in subparagraph (2)(c)2.
 167 have a location factor of one. For discharges that originate
 168 outside of a special management area but impact the natural

169 resources within a special management area, the value of the
 170 natural resources damaged within the area shall be multiplied by
 171 the special management area factor of two.

172 3. Pollutant category factor: Discharges of category 1
 173 pollutants have a factor of eight. Discharges of category 2
 174 pollutants have a factor of four. Discharges of category 3
 175 pollutants have a factor of one.

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

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

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

191 (6) It is understood that a pollutant will, by its very
 192 nature, result in damage to the flora and fauna of the waters of
 193 the state and the adjoining land. Therefore, compensation for
 194 such resources, which is difficult to calculate, is included in
 195 the compensation schedule. Not included, however, in this base
 196 figure is compensation for the death of endangered or threatened

197 species directly attributable to the pollutant discharged.
198 Compensation for the death of any animal designated by rule as
199 endangered by the Fish and Wildlife Conservation Commission is
200 \$10,000. Compensation for the death of any animal designated by
201 rule as threatened by the Fish and Wildlife Conservation
202 Commission is \$5,000. These amounts are not intended to reflect
203 the actual value of said endangered or threatened species, but
204 are included for the purposes of this section.

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

209 (8) When assessing the amount of damages to natural
210 resources, the department shall be assisted, if requested by the
211 department, by representatives of other state agencies and local
212 governments that would enhance the department's damage
213 assessment. The Fish and Wildlife Conservation Commission shall
214 assist the department in the assessment of damages to wildlife
215 impacted by a pollutant discharge and shall assist the
216 department in recovering the costs of such damages.

217 (9) Compensation for damage resulting from the discharge
218 of two or more pollutants shall be calculated for the volume of
219 each pollutant discharged. If the separate volume for each
220 pollutant discharged cannot be determined, the highest
221 multiplier for the pollutants discharged shall be applied to the
222 entire volume of the spill. Compensation for commingled
223 discharges that contact habitat shall be calculated on a
224 proportional basis of discharged volumes. The highest multiplier

225 | for such commingled pollutants may only be applied if a
 226 | reasonable proportionality of the commingled pollutants cannot
 227 | be determined at the point of any contact with natural
 228 | resources.

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

245 | (a) When a responsible party is identified and the
 246 | department is not conducting a cooperative damage assessment
 247 | with federal agencies ~~For discharges greater than 30,000~~
 248 | ~~gallons, the person responsible has the option to pay the amount~~
 249 | ~~of compensation calculated pursuant to the compensation schedule~~
 250 | ~~established in subsection (4) or pay the amount determined by a~~
 251 | ~~damage assessment performed by the department. If the person~~
 252 | ~~responsible for the discharge elects to have a damage assessment~~

253 performed, then such person shall notify the department in
 254 writing of such decision within 30 ~~15~~ days after identification
 255 ~~the discovery~~ of the discharge by the department. The decision
 256 to have a damage assessment performed to determine compensation
 257 for a discharge shall be final; the person responsible for a
 258 discharge may not later elect to use the compensation schedule
 259 for computing compensation. Failure to make such notice shall
 260 result in the amount of compensation for the total damage to
 261 natural resources being calculated based on the compensation
 262 schedule. The compensation shall be paid within 90 days after
 263 receipt of a written request from the department.

264 (b) In the event the person responsible for a discharge
 265 ~~greater than 30,000 gallons~~ elects to have a damage assessment
 266 performed, said person shall pay to the department an amount
 267 equal to the compensation calculated pursuant to subsection (4)
 268 for the discharge using the lesser of the volume of the
 269 discharge or a volume of 30,000 gallons. The payment shall be
 270 made within 90 days after receipt of a written request from the
 271 department.

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

280 (11)(a) Moneys recovered by the department as compensation

281 for damage to natural resources shall be expended only for the
282 following purposes:

283 1. To the maximum extent practicable, the restoration of
284 natural resources damaged by the discharge for which
285 compensation is paid.

286 2. Restoration of damaged resources.

287 3. Developing restoration and enhancement techniques for
288 natural resources.

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

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

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

299 7. Developing an adequate wildlife rescue and
300 rehabilitation program.

301 8. Expanding and enhancing the state's pollution
302 prevention and control education program.

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

305 10. Funding alternative projects selected by the Board of
306 Trustees of the Internal Improvement Trust Fund. Any such
307 project shall be selected on the basis of its anticipated
308 benefits to the marine natural resources available to the

309 residents of this state who previously benefited from the
 310 injured or destroyed nonrestorable natural resources.

311 (b) All interest earned from investment of moneys
 312 recovered by the department for damage to natural resources
 313 shall be expended only for the activities described in paragraph
 314 (a).

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

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

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

HB 1855

2005

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

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

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