

Bill No. SB 2510

Barcode 221688

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

.
. .
. .
. .
. .
. .

The Committee on Environmental Preservation (Lawson)
recommended the following **amendment to amendment** (522094):

Senate Amendment (with title amendment)

On page 4, between lines 1 and 2,

and insert:

Section 2. Section 376.121, Florida Statutes, is
amended to read:

376.121 Liability for damage to natural
resources.--The Legislature finds that extensive damage to the
state's natural resources is the likely result of a pollutant
discharge and that it is essential that the state adequately
assess and recover the cost of such damage from responsible
parties. It is the state's goal to recover the costs of
restoration from the responsible parties and to restore
damaged natural resources to their predischarge condition. In
many instances, however, restoration is not technically
feasible. In such instances, the state has the responsibility
to its citizens to recover the cost of all damage to natural
resources. To ensure that the public does not bear a

Bill No. SB 2510

Barcode 221688

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

27 (1) The department shall assess and recover from
28 responsible parties the compensation for the injury or
29 destruction of natural resources, including, but not limited
30 to, the death or injury of living things and damage to or
31 destruction of habitat, resulting from pollutant discharges

Bill No. SB 2510

Barcode 221688

1 prohibited by s. 376.041. The amount of compensation and any
2 costs of assessing damage and recovering compensation received
3 by the department shall be deposited into the Florida Coastal
4 Protection Trust Fund pursuant to s. 376.12 and disbursed
5 according to subsection (11). Whoever violates, or causes to
6 be violated, s. 376.041 shall be liable to the state for
7 damage to natural resources.

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

14 (a) The volume of the discharge.

15 (b) The characteristics of the pollutant discharged.

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

Bill No. SB 2510

Barcode 221688

1 acute toxicity, mechanical injury, degradability, and
2 dispersibility characteristics on a 1-to-3 relative scale with
3 Category 1 containing the pollutants with the greatest
4 propensity to cause injury to natural resources. The following
5 pollutants are categorized:

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

14
15 The department shall adopt rules establishing the pollutant
16 category of pesticides and other pollutants as defined in s.
17 376.031 and not listed in this paragraph.

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

- 20 1. The location of a discharge. Inshore discharges are
21 discharges that occur within waters under the jurisdiction of
22 the department and within an area extending seaward from the
23 coastline of the state to a point 1 statute mile seaward of
24 the coastline. Nearshore discharges are discharges that occur
25 more than 1 statute mile, but within 3 statute miles, seaward
26 of the coastline. Offshore discharges are discharges that
27 occur more than 3 statute miles seaward of the coastline.
- 28 2. The location of the discharge with respect to
29 special management areas designated because of their unique
30 habitats; living resources; recreational use; aesthetic
31 importance; and other ecological, educational, consumptive,

Bill No. SB 2510

Barcode 221688

1 intrinsic, scientific, and economic values of the natural
2 resources located therein. Special management areas are state
3 parks; recreation areas; national parks, seashores, estuarine
4 research reserves, marine sanctuaries, wildlife refuges, and
5 national estuary program water bodies; state aquatic preserves
6 and reserves; classified shellfish harvesting areas; areas of
7 critical state concern; federally designated critical habitat
8 for endangered or threatened species; and outstanding Florida
9 waters.

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

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

15 (4) Compensation schedule:

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

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

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

29 (d) The final damage assessment figure is the sum of
30 the amount calculated in paragraph (c) plus the compensation
31 for death of endangered or threatened species, plus the cost

Bill No. SB 2510

Barcode 221688

1 of conducting the damage assessment as determined by the
2 department.

3 (5)(a) The factors used in calculating the damage
4 assessment are:

5 1. Location of discharge factor:

6 a. Discharges that originate inshore have a factor of
7 eight. Discharges that originate nearshore have a factor of
8 five. Discharges that originate offshore have a factor of one.

9 b. Compensation for damage to natural resources
10 resulting from discharges that originate outside of state
11 waters but that traverse the state's boundaries and therefore
12 have an impact upon the state's natural resources shall be
13 calculated using a location factor of one.

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

20 2. Special management area factor: Discharges that
21 originate in special management areas described in
22 subparagraph (2)(c)2. have a factor of two. Discharges that
23 originate outside a special management area described in
24 subparagraph (2)(c)2. have a location factor of one. For
25 discharges that originate outside of a special management area
26 but impact the natural resources within a special management
27 area, the value of the natural resources damaged within the
28 area shall be multiplied by the special management area factor
29 of two.

30 3. Pollutant category factor: Discharges of category 1
31 pollutants have a factor of eight. Discharges of category 2

Bill No. SB 2510

Barcode 221688

1 | pollutants have a factor of four. Discharges of category 3

2 | pollutants have a factor of one.

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

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

7 | b. \$1 per square foot of mangrove or seagrass
8 | impacted.

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

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

13 | e. \$0.05 per square foot of sand bottom or mud flats,
14 | or combination thereof, impacted.

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

20 | (6) It is understood that a pollutant will, by its
21 | very nature, result in damage to the flora and fauna of the
22 | waters of the state and the adjoining land. Therefore,
23 | compensation for such resources, which is difficult to
24 | calculate, is included in the compensation schedule. Not
25 | included, however, in this base figure is compensation for the
26 | death of endangered or threatened species directly
27 | attributable to the pollutant discharged. Compensation for the
28 | death of any animal designated by rule as endangered by the
29 | Fish and Wildlife Conservation Commission is \$10,000.

30 | Compensation for the death of any animal designated by rule as
31 | threatened by the Fish and Wildlife Conservation Commission is

Bill No. SB 2510

Barcode 221688

1 \$5,000. These amounts are not intended to reflect the actual
2 value of said endangered or threatened species, but are
3 included for the purposes of this section.

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

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

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

28 (10) For cases in which the department is authorized
29 to use a method of natural resources damage assessment other
30 than the compensation schedules described in subsections (4),
31 (5), (6), and (9), the department may use the methods

Bill No. SB 2510

Barcode 221688

1 described in federal rules implementing the Oil Pollution Act
 2 of 1990, as amended discharges of more than 30,000 gallons,
 3 the department shall, in consultation with the Game and Fresh
 4 Water Fish Commission, adopt rules by July 1, 1994, to assess
 5 compensation for the damage to natural resources based upon
 6 the cost of restoring, rehabilitating, replacing, or acquiring
 7 the equivalent of the damaged natural resources; the
 8 diminution in the value of those resources pending
 9 restoration; and the reasonable cost of assessing those
 10 damages. The person responsible for a discharge shall be given
 11 an opportunity to consult with the department on the
 12 assessment design and restoration program.

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

Bill No. SB 2510

Barcode 221688

1 a written request from the department.

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

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

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

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

25 2. Restoration of damaged resources.

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

28 4. Investigating methods for improving and refining
 29 techniques for containment, abatement, and removal of
 30 pollutants from the environment, especially from mangrove
 31 forests, corals, seagrasses, benthic communities, rookeries,

Bill No. SB 2510

Barcode 221688

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. 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.

Bill No. SB 2510

Barcode 221688

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 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
 27 (Redesignate subsequent sections.)

28
 29
 30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

Bill No. SB 2510

Barcode 221688

1 On page 4, line 21, after the semicolon

2

3 insert:

4 amending s. 376.121, F.S.; providing an

5 alternative to the compensation schedule for

6 calculating natural resources damages; revising

7 procedures relating to damage assessment;

8 removing a restriction on amount of

9 compensation;

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31