

By Senator Aronberg

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1 A bill to be entitled
2 An act relating to water restrictions; amending s.
3 373.246, F.S.; authorizing the governing board of a water
4 management district or the Department of Environmental
5 Protection to issue an order establishing liability,
6 requiring corrective action, or imposing an administrative
7 penalty against a person who violates a declaration of
8 water shortage; providing that a court may enter a
9 judgment based on such order; requiring the governing
10 board or the department to issue a notice of noncompliance
11 before taking action against a violator, except if such
12 violator has a history of noncompliance; requiring the
13 governing board or the department to send a written notice
14 of violation to the violator by certified mail; requiring
15 that such notice contain certain information; providing
16 that an order is not effective until the violator has been
17 served notice and an administrative hearing is held;
18 requiring the violator to file a petition in response to
19 the order and request a hearing within a specified time or
20 waive the right to such hearing; providing that such
21 violator is the respondent for hearing purposes; requiring
22 the governing board or the department to refer a timely
23 filed petition to the Division of Administrative Hearings;
24 requiring the hearing to be held in the same county in
25 which the violation occurred; providing that the governing
26 board or the department has the burden of proving by a
27 preponderance of the evidence that the respondent is
28 responsible for the violation; requiring the
29 administrative law judge to conduct the hearing using the

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summary hearing process; requiring the administrative law judge to issue a final order; providing for the prevailing party to recover all costs, including attorney's fees; providing that the governing board or the department may pursue injunctive relief in addition to any other administrative action; providing a schedule of administrative penalties; requiring the administrative law judge to add the direct economic benefit that the violator gained to the penalty; providing that evidence of mitigating circumstances may reduce a penalty; providing an effective date.

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

Section 1. Subsections (9) and (10) are added to section 373.246, Florida Statutes, to read:

373.246 Declaration of water shortage or emergency.--

(9) (a) The governing board or the department may issue an order that establishes liability, requires corrective action, or imposes an administrative penalty against any person who violates the restrictions established by a declaration of water shortage. Any court having jurisdiction may enter a judgment based on the governing board's or the department's order and such judgment has the same force and effect as any other judgment.

(b) The governing board or the department shall issue a notice of noncompliance as set forth in s. 120.695 before taking administrative action against an alleged violator. However, if the person has a history of noncompliance as described in paragraph (10) (f), such notice is not required before taking

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59 administrative action.

60 (c) The governing board or the department shall send a
61 written notice of violation to the alleged violator by certified
62 mail. If the governing board or the department is unable to serve
63 the notice of violation by certified mail, the notice may be hand
64 delivered or personally served in accordance with chapter 48.
65 Such notice must specify the provision of the law, rule, or order
66 which has allegedly been violated and the facts constituting the
67 alleged violation. The notice may include any corrective action
68 required to address the violation, including payment of an
69 administrative penalty and any other corrective action ordered by
70 the governing board or the department. An order is not effective
71 until after the alleged violator has been served and an
72 administrative hearing is held.

73 (d) The alleged violator must file a petition in response
74 to the order and request an administrative hearing within 14 days
75 after the notice is served. Failure to request an administrative
76 hearing within 14 days after service constitutes a waiver of the
77 right to such hearing. If an alleged violator timely files a
78 petition, such violator shall subsequently be referred to as the
79 respondent. The governing board or the department shall refer the
80 petition to the Division of Administrative Hearings. The hearing
81 must be held in the county in which the violation allegedly
82 occurred. Such hearings should be addressed in an expeditious and
83 effective manner and scheduled accordingly. The governing board
84 or the department must prove by a preponderance of the evidence
85 that the respondent is responsible for the violation. A hearing
86 shall proceed in accordance with the summary hearing process as
87 set forth in s. 120.574(2). The administrative law judge shall

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88 issue a final order on all matters and impose an administrative
89 penalty.

90 (e) The prevailing party shall recover all costs, including
91 investigative costs and reasonable attorney's fees in an
92 administrative proceeding brought under this section. The
93 administrative law judge shall include such costs and fees in the
94 final order. The respondent is the prevailing party if an
95 administrative law judge enters an order finding that the notice
96 of violation did not have a reasonable basis in law and fact at
97 the time the proceeding was initiated.

98 (f) The governing board or the department is not prohibited
99 from taking any other legal or administrative action in
100 accordance with law. This subsection does not limit the governing
101 board's or the department's authority to judicially pursue
102 injunctive relief. The governing board and the department may
103 judicially pursue penalties in excess of the administrative
104 penalty schedule set forth in subsection (10). The governing
105 board or the department may enter into a settlement, before or
106 after initiating a notice of violation, and the settlement may
107 include a penalty amount different from the administrative
108 penalty schedule set forth in subsection (10).

109 (10) (a) For a violation involving the use of water on 10
110 acres or less or the use of less than 100,000 gallons of water
111 per day, the penalty is \$500 per offense, per day, and \$2,000 per
112 offense, per day, for a violator that has a history of
113 noncompliance.

114 (b) For a violation involving the use of water on 10 to 100
115 acres or the use of 100,000 to 500,000 gallons of water per day,
116 the penalty is \$1,000 per offense, per day, and \$5,000 per

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117 offense, per day, for a violator that has a history of
118 noncompliance.

119 (c) For a violation involving the use of water on more than
120 100 acres or the use of more than 500,000 gallons of water per
121 day, the penalty is \$3,000 per offense, per day, and \$10,000 per
122 offense, per day, for a violator that has a history of
123 noncompliance.

124 (d) For a golf course that fails to submit timely reports,
125 the penalty is \$300 per offense and \$1,000 per offense for a
126 violator that has a history of noncompliance.

127 (e) For a golf course that fails to meet monthly targeted
128 reductions, the penalty is \$500 per offense for meeting 75
129 percent to 90 percent of the monthly targeted reduction; \$1,500
130 per offense for meeting 25 percent to 75 percent of monthly
131 targeted reduction; and \$3,500 per offense for meeting 0 percent
132 to 25 percent of monthly targeted reduction. The penalty is
133 doubled for a violator that has a history of noncompliance.

134 (f) A violator that has a history of noncompliance is any
135 person who has been found by final order to have violated a
136 declaration of water shortage within 2 years after the most
137 recent violation.

138 (g) An administrative law judge shall add the direct
139 economic benefit gained by a violator from a violation to the
140 scheduled administrative penalty.

141 (h) An administrative law judge may receive evidence in
142 mitigation and may reduce the penalties identified in this
143 subsection up to 50 percent for mitigating circumstances,
144 including good faith efforts to comply before or after discovery
145 of the violation. The administrative law judge may reduce the

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146 penalty further upon an affirmative finding that the violation
147 was caused by circumstances beyond the control of the respondent
148 and could not have been prevented by the respondent's due
149 diligence.

150 Section 2. This act shall take effect July 1, 2008.