

1 A bill to be entitled
2 An act relating to environmental protection; amending s.
3 253.034, F.S.; establishing a date by which land
4 management plans for conservation lands must contain
5 certain outcomes, goals, and elements; amending s.
6 253.111, F.S.; deleting a 40-day timeframe for a board of
7 county commissioners to decide whether to acquire county
8 land being sold by the Board of Trustees of the Internal
9 Improvement Trust Fund; amending s. 259.035, F.S.;
10 increasing the maximum number of terms of appointed
11 members of the Acquisition and Restoration Council;
12 clarifying that vacancies in the unexpired term of
13 appointed members shall be filled in the same manner as
14 the original appointment; requiring a majority vote of the
15 council for certain decisions; amending s. 259.037, F.S.;
16 establishing certain dates by which agencies managing
17 certain lands must submit certain reports and lists to the
18 Land Management Uniform Accounting Council; amending s.
19 259.105, F.S.; providing that the certain proceeds from
20 the Florida Forever Trust Fund shall be spent on certain
21 capital projects within a year after acquisition rather
22 than only at the time of acquisition; requiring a majority
23 vote of the Acquisition and Restoration Council for
24 certain decisions; amending s. 253.12, F.S.; clarifying
25 that title to certain sovereignty lands which were
26 judicially adjudicated are excluded from automatically
27 becoming private property; amending s. 373.427, F.S.;
28 increasing the amount of time for filing a petition for an

29 administrative hearing on an application to use board of
 30 trustees-owned submerged lands; amending s. 403.0876,
 31 F.S.; providing that the Department of Environmental
 32 Protection's failure to approve or deny certain air
 33 construction permits within 90 days does not automatically
 34 result in approval or denial; amending s. 403.121, F.S.;

35 excluding certain air pollution violations from certain
 36 departmental actions; clarifying when a respondent in an
 37 administrative action is the prevailing party; revising
 38 the penalties that may be assessed for violations
 39 involving drinking water contamination, wastewater,
 40 dredge, fill, or stormwater, mangrove trimming or
 41 alterations, solid waste, air emission, and waste cleanup;
 42 increasing fines relating to public water system
 43 requirements; revising provisions relating to a limit on
 44 the amount of a fine for a particular violation by certain
 45 violators; amending ss. 712.03 and 712.04, F.S.; providing
 46 an exception from an entitlement to marketable record
 47 title to interests held by governmental entities;
 48 providing an effective date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Paragraphs (a) and (c) of subsection (5) of
 53 section 253.034, Florida Statutes, are amended to read:

54 253.034 State-owned lands; uses.--

55 (5) Each manager of conservation lands shall submit to the
 56 Division of State Lands a land management plan at least every 10

HB 1349

2009

57 | years in a form and manner prescribed by rule by the board and
58 | in accordance with the provisions of s. 259.032. Each manager of
59 | conservation lands shall also update a land management plan
60 | whenever the manager proposes to add new facilities or make
61 | substantive land use or management changes that were not
62 | addressed in the approved plan, or within 1 year of the addition
63 | of significant new lands. Each manager of nonconservation lands
64 | shall submit to the Division of State Lands a land use plan at
65 | least every 10 years in a form and manner prescribed by rule by
66 | the board. The division shall review each plan for compliance
67 | with the requirements of this subsection and the requirements of
68 | the rules established by the board pursuant to this section. All
69 | land use plans, whether for single-use or multiple-use
70 | properties, shall include an analysis of the property to
71 | determine if any significant natural or cultural resources are
72 | located on the property. Such resources include archaeological
73 | and historic sites, state and federally listed plant and animal
74 | species, and imperiled natural communities and unique natural
75 | features. If such resources occur on the property, the manager
76 | shall consult with the Division of State Lands and other
77 | appropriate agencies to develop management strategies to protect
78 | such resources. Land use plans shall also provide for the
79 | control of invasive nonnative plants and conservation of soil
80 | and water resources, including a description of how the manager
81 | plans to control and prevent soil erosion and soil or water
82 | contamination. Land use plans submitted by a manager shall
83 | include reference to appropriate statutory authority for such
84 | use or uses and shall conform to the appropriate policies and

HB 1349

2009

85 guidelines of the state land management plan. Plans for managed
86 areas larger than 1,000 acres shall contain an analysis of the
87 multiple-use potential of the property, which analysis shall
88 include the potential of the property to generate revenues to
89 enhance the management of the property. Additionally, the plan
90 shall contain an analysis of the potential use of private land
91 managers to facilitate the restoration or management of these
92 lands. In those cases where a newly acquired property has a
93 valid conservation plan that was developed by a soil and
94 conservation district, such plan shall be used to guide
95 management of the property until a formal land use plan is
96 completed.

97 (a) State lands shall be managed to ensure the
98 conservation of the state's plant and animal species and ~~to~~
99 ~~ensure~~ the accessibility of state lands for the benefit and
100 enjoyment of all people of the state, both present and future.
101 Effective July 1, 2009, each land management plan must ~~shall~~
102 provide a desired outcome, describe both short-term and long-
103 term management goals, and include measurable objectives for
104 achieving these ~~to achieve these~~ goals. Short-term goals must
105 ~~shall~~ be achievable within a 2-year planning period, and long-
106 term goals must ~~shall~~ be achievable within a 10-year planning
107 period. These short-term and long-term management goals shall be
108 the basis for all subsequent land management activities.

109 (c) Effective July 1, 2009, the land management plan must,
110 ~~shall~~ at a minimum, contain the following elements:

- 111 1. A physical description of the land.
- 112 2. A quantitative data description of the land which

HB 1349

2009

113 includes an inventory of forest and other natural resources;
114 exotic and invasive plants; hydrological features;
115 infrastructure, including recreational facilities; and other
116 significant land, cultural, or historical features. The
117 inventory must ~~shall~~ reflect the number of acres for each
118 resource and feature, as ~~when~~ appropriate. The inventory shall
119 be of such detail that objective measures and benchmarks can be
120 established for each tract of land and monitored during the
121 lifetime of the plan. All quantitative data collected must ~~shall~~
122 be aggregated, standardized, collected, and presented in an
123 electronic format to allow for uniform management reporting and
124 analysis. The information collected by the Department of
125 Environmental Protection pursuant to s. 253.0325(2) shall be
126 available to the land manager and his or her assignee.

127 3. A detailed description of each short-term and long-term
128 land management goal, the associated measurable objectives, and
129 the related activities that are to be performed to meet the land
130 management objectives. Each land management objective must be
131 addressed by the land management plan, and where practicable,
132 may not ~~no land management objective shall~~ be performed to the
133 detriment of ~~the~~ other land management objectives.

134 4. A schedule of land management activities which contains
135 short-term and long-term land management goals and ~~the~~ related
136 measurable objective and activities. The schedule must ~~shall~~
137 include ~~for each activity~~ a timeline for completing each
138 activity completion, quantitative measures, and detailed expense
139 and manpower budgets. The schedule must ~~shall~~ provide a
140 management tool that facilitates the development of performance

141 measures.

142 5. A summary budget for the scheduled land management
 143 activities of the land management plan. For state lands
 144 containing or anticipated to contain imperiled species habitat,
 145 the summary budget must ~~shall~~ include any fees anticipated from
 146 public or private entities for projects to offset adverse
 147 impacts to imperiled species or such habitat, which ~~fees~~ shall
 148 be used solely to restore, manage, enhance, repopulate, or
 149 acquire imperiled species habitat. The summary budget must ~~shall~~
 150 be prepared in a ~~such~~ manner that ~~it~~ facilitates computing an
 151 aggregate of land management costs for all state-managed lands
 152 using the categories described in s. 259.037(3).

153 Section 2. Subsection (2) of section 253.111, Florida
 154 Statutes, is amended to read:

155 253.111 Notice to board of county commissioners before
 156 sale.--The Board of Trustees of the Internal Improvement Trust
 157 Fund of the state may not sell any land to which they hold title
 158 unless and until they afford an opportunity to the county in
 159 which such land is situated to receive such land on the
 160 following terms and conditions:

161 (2) The board of county commissioners of the county in
 162 which such land is situated shall, ~~within 40 days after receipt~~
 163 ~~of such notification from the board,~~ determine by resolution
 164 whether ~~or not~~ it proposes to acquire such land.

165 Section 3. Subsections (1), (2), and (5) of section
 166 259.035, Florida Statutes, are amended to read:

167 259.035 Acquisition and Restoration Council.--

168 (1) There is created the Acquisition and Restoration

HB 1349

2009

169 Council-

170 ~~(a) The council shall be composed of eleven voting~~
171 ~~members, of which six members shall be appointed pursuant to~~
172 ~~paragraphs (a), (b), and (c) four of whom shall be appointed by~~
173 ~~the Governor. The appointed members shall be appointed Of these~~
174 ~~four appointees, three shall be from scientific disciplines~~
175 ~~related to land, water, or environmental sciences and the fourth~~
176 ~~shall have at least 5 years of experience in managing lands for~~
177 ~~both active and passive types of recreation. They shall serve 4-~~
178 ~~year terms, except that, initially, to provide for staggered~~
179 ~~terms, two of the appointees shall serve 2-year terms. All~~
180 ~~subsequent appointments shall be for 4-year staggered terms. An~~
181 ~~No appointee may not shall serve more than two terms 6 years. A~~
182 ~~vacancy shall be filled for the remainder of an unexpired term~~
183 ~~in the same manner as the original appointment. The Governor may~~
184 ~~at any time fill a vacancy for the unexpired term of a member~~
185 ~~appointed under this paragraph.~~

186 (a) Four members shall be appointed by the Governor. Of
187 these, three members shall be from scientific disciplines
188 related to land, water, or environmental sciences and the fourth
189 member must have at least 5 years of experience in managing
190 lands for both active and passive types of recreation.

191 (b) One member shall be appointed by the Commissioner of
192 Agriculture from a discipline related to agriculture including
193 silviculture.

194 (c) One member shall be appointed by the Fish and Wildlife
195 Conservation Commission from a discipline related to wildlife
196 management or wildlife ecology.

197 (d) ~~(b)~~ The five remaining members ~~appointees~~ shall be
 198 composed of the Secretary of Environmental Protection, the
 199 director of the Division of Forestry of the Department of
 200 Agriculture and Consumer Services, the executive director of the
 201 Fish and Wildlife Conservation Commission, the director of the
 202 Division of Historical Resources of the Department of State, and
 203 the secretary of the Department of Community Affairs, or their
 204 respective designees.

205 ~~(e) One member shall be appointed by the Commissioner of
 206 Agriculture with a discipline related to agriculture including
 207 silviculture. One member shall be appointed by the Fish and
 208 Wildlife Conservation Commission with a discipline related to
 209 wildlife management or wildlife ecology.~~

210 (e) ~~(d)~~ The Governor shall appoint the chair of the
 211 council, and a vice chair shall be elected from among the
 212 members.

213 (f) ~~(e)~~ The council shall hold periodic meetings at the
 214 request of the chair.

215 (g) ~~(f)~~ The Department of Environmental Protection shall
 216 provide primary staff support to the council and shall ensure
 217 that council meetings are electronically recorded. Such
 218 recording must ~~shall~~ be preserved pursuant to chapters 119 and
 219 257.

220 (h) ~~(g)~~ The board of trustees may ~~has authority to~~ adopt
 221 rules ~~pursuant to~~ administer ss. 120.536(1) and 120.54 ~~to~~
 222 ~~implement the provisions of this section.~~

223 (2) The six appointed ~~four~~ members of the council
 224 ~~appointed pursuant to paragraph (a) and the two members of the~~

HB 1349

2009

225 ~~council appointed pursuant to paragraph (c)~~ shall receive
 226 reimbursement for expenses and per diem for travel, to attend
 227 council meetings, ~~as allowed state officers and employees while~~
 228 ~~in the performance of their duties,~~ pursuant to s. 112.061.

229 (5) A majority vote ~~An affirmative vote of five members~~ of
 230 the council is required ~~in order~~ to change a project boundary or
 231 to place a proposed project on a list developed pursuant to
 232 subsection (4). Any member of the council who by family or a
 233 business relationship has a connection with all or a portion of
 234 any proposed project shall declare the interest before voting on
 235 its inclusion on a list.

236 Section 4. Paragraph (b) of subsection (3) and subsection
 237 (6) of section 259.037, Florida Statutes, are amended to read:

238 259.037 Land Management Uniform Accounting Council.--

239 (3)

240 (b) Beginning July 1, 2009, each reporting agency shall
 241 also:

242 1. Include a report of the available public use
 243 opportunities for each management unit of state land, the total
 244 management cost for public access and public use, and the cost
 245 associated with each use option.

246 2. List the acres of land requiring minimal management
 247 effort, moderate management effort, and significant management
 248 effort pursuant to s. 259.032(11)(c). For each category created
 249 in paragraph (a), the reporting agency shall include the amount
 250 of funds requested, the amount of funds received, and the amount
 251 of funds expended for land management.

252 3. List acres managed and cost of management for each

253 park, preserve, forest, reserve, or management area.

254 4. List acres managed, cost of management, and lead
 255 manager for each state lands management unit for which secondary
 256 management activities were provided.

257 5. Include a report of the estimated calculable financial
 258 benefits to the public for the ecosystem services provided by
 259 conservation lands, based on the best readily available
 260 information or science that provides a standard measurement
 261 methodology to be consistently applied by the land managing
 262 agencies. Such information may include, but need not be limited
 263 to, the value of natural lands for protecting the quality and
 264 quantity of drinking water through natural water filtration and
 265 recharge, contributions to protecting and improving air quality,
 266 benefits to agriculture through increased soil productivity and
 267 preservation of biodiversity, and savings to property and lives
 268 through flood control.

269 (6) Beginning July 1, 2010 ~~Biennially~~, each reporting
 270 agency shall biennially ~~also~~ submit an operational report for
 271 each management area ~~along~~ with the ~~an approved~~ management plan
 272 that was approved by the board of trustees pursuant to ss.
 273 253.034(5) and 259.032(10). The report should assess ~~the~~
 274 progress toward achieving short-term and long-term management
 275 goals of the approved management plan, including all land
 276 management activities, and identify any deficiencies in
 277 management and corrective actions to address identified
 278 deficiencies as appropriate. This report shall be submitted to
 279 the Acquisition and Restoration Council and the division for
 280 inclusion in its annual report required pursuant to s. 259.036.

281 Section 5. Paragraphs (b), (e), (f), (g), and (h) of
 282 subsection (3) and subsection (13) of section 259.105, Florida
 283 Statutes, are amended to read:

284 259.105 The Florida Forever Act.--

285 (3) Less the costs of issuing and the costs of funding
 286 reserve accounts and other costs associated with bonds, the
 287 proceeds of cash payments or bonds issued pursuant to this
 288 section shall be deposited into the Florida Forever Trust Fund
 289 created by s. 259.1051. The proceeds shall be distributed by the
 290 Department of Environmental Protection in the following manner:

291 (b) Thirty-five percent to the Department of Environmental
 292 Protection for the acquisition of lands and capital project
 293 expenditures described in this section. Of the proceeds
 294 distributed ~~pursuant to this paragraph~~, it is the intent of the
 295 Legislature that ~~an~~ increased priority be given to those
 296 acquisitions which achieve a combination of conservation goals,
 297 including protecting Florida's water resources and natural
 298 groundwater recharge. At a minimum, 3 percent, and no more than
 299 10 percent, of the funds allocated pursuant to this paragraph
 300 shall be spent on capital project expenditures identified in the
 301 management prospectus prepared pursuant to s. 259.032(9)(d)
 302 during the time of acquisition, or in the management plan
 303 prepared pursuant to s. 259.032(10) within 1 year after
 304 acquisition. Such capital projects must ~~which~~ meet land
 305 management planning activities necessary for public access.

306 (e) One and five-tenths percent to the Department of
 307 Environmental Protection for the purchase of inholdings and
 308 additions to state parks and for capital project expenditures as

309 described in this section. At a minimum, 1 percent, and no more
 310 than 10 percent, of the funds allocated pursuant to this
 311 paragraph shall be spent on capital project expenditures
 312 identified in the management prospectus prepared pursuant to s.
 313 259.032(9)(d) during the time of acquisition, or in the
 314 management plan prepared pursuant to s. 259.032(10) within 1
 315 year after acquisition. Such capital projects must ~~which~~ meet
 316 land management planning activities necessary for public access.
 317 For the purposes of this paragraph, the term "state park" means
 318 any real property in the state which is under the jurisdiction
 319 of the Division of Recreation and Parks of the department, or
 320 which may come under its jurisdiction.

321 (f) One and five-tenths percent to the Division of
 322 Forestry of the Department of Agriculture and Consumer Services
 323 to fund the acquisition of state forest inholdings and additions
 324 pursuant to s. 589.07, the implementation of reforestation plans
 325 or sustainable forestry management practices, and for capital
 326 project expenditures as described in this section. At a minimum,
 327 1 percent, and no more than 10 percent, of the funds allocated
 328 for the acquisition of inholdings and additions pursuant to this
 329 paragraph shall be spent on capital project expenditures
 330 identified in the management prospectus prepared pursuant to s.
 331 259.032(9)(d) during the time of acquisition, or in the
 332 management plan prepared pursuant to s. 259.032(10) within 1
 333 year after acquisition. Such capital projects must ~~which~~ meet
 334 land management planning activities necessary for public access.

335 (g) One and five-tenths percent to the Fish and Wildlife
 336 Conservation Commission to fund the acquisition of inholdings

HB 1349

2009

337 and additions to lands managed by the commission which are
338 important to the conservation of fish and wildlife and for
339 capital project expenditures as described in this section. At a
340 minimum, 1 percent, and no more than 10 percent, of the funds
341 allocated pursuant to this paragraph shall be spent on capital
342 project expenditures identified in the management prospectus
343 prepared pursuant to s. 259.032(9)(d) during the time of
344 acquisition, or in the management plan prepared pursuant to s.
345 259.032(10) within 1 year after acquisition. Such capital
346 projects must ~~which~~ meet land management planning activities
347 necessary for public access.

348 (h) One and five-tenths percent to the Department of
349 Environmental Protection for the Florida Greenways and Trails
350 Program, to acquire greenways and trails or greenways and trail
351 systems pursuant to chapter 260, including, but not limited to,
352 abandoned railroad rights-of-way and the Florida National Scenic
353 Trail and for capital project expenditures as described in this
354 section. At a minimum, 1 percent, and no more than 10 percent,
355 of the funds allocated pursuant to this paragraph shall be spent
356 on capital project expenditures identified in the management
357 prospectus prepared pursuant to s. 259.032(9)(d) during the time
358 of acquisition, or in the management plan prepared pursuant to
359 s. 259.032(10) within 1 year after acquisition. Such capital
360 projects must ~~which~~ meet land management planning activities
361 necessary for public access.

362 (13) A majority vote ~~An affirmative vote of five members~~
363 of the Acquisition and Restoration Council is ~~shall be~~ required
364 ~~in order~~ to place a proposed project on the list developed

HB 1349

2009

365 pursuant to subsection (8). Any member of the council who by
 366 family or a business relationship has a connection with any
 367 project proposed to be ranked shall declare such interest before
 368 ~~prior to~~ voting for a project's inclusion on the list.

369 Section 6. Subsection (10) of section 253.12, Florida
 370 Statutes, is amended to read:

371 253.12 Title to tidal lands vested in state.--

372 (10) Subsection (9) does ~~shall~~ not ~~operate to~~ affect the
 373 title to lands which have been judicially adjudicated or which
 374 were the subject of litigation pending on January 1, 1993,
 375 involving title to such lands. Further, the provisions of
 376 subsection (9) do ~~shall~~ not apply to spoil islands or ~~nor~~ to any
 377 lands that ~~which~~ are included on an official acquisition list,
 378 on July 1, 1993, of a state agency or water management district
 379 for conservation, preservation, or recreation, ~~nor~~ to lands
 380 maintained as state or local recreation areas or shore
 381 protection structures, or to sovereignty lands that were filled
 382 before July 1, 1975, by any governmental entity for a public
 383 purpose or pursuant to proprietary authorization from the Board
 384 of Trustees of the Internal Improvement Trust Fund.

385 Section 7. Paragraph (c) of subsection (2) of section
 386 373.427, Florida Statutes, is amended to read:

387 373.427 Concurrent permit review.--

388 (2) In addition to the provisions set forth in subsection
 389 (1) and notwithstanding s. 120.60, the procedures established in
 390 this subsection shall apply to concurrently reviewed
 391 applications which request proprietary authorization to use
 392 board of trustees-owned submerged lands for activities for which

HB 1349

2009

393 | there has been no delegation of authority to take final agency
394 | action without action by the board of trustees.

395 | (c) Any petition for an administrative hearing pursuant to
396 | ss. 120.569 and 120.57 must be filed within 21 ~~14~~ days after ~~of~~
397 | the notice of consolidated intent to grant or deny. Unless
398 | waived by the applicant, within 60 days after the recommended
399 | order is submitted, or at the next regularly scheduled meeting
400 | for which notice may be properly given, whichever is latest, the
401 | board of trustees shall determine what action to take on a ~~any~~
402 | recommended order issued under ss. 120.569 and 120.57 on the
403 | application to use board of trustees-owned submerged lands, and
404 | shall direct the department or water management district on what
405 | action to take in the final order concerning the application ~~to~~
406 | ~~use board of trustees-owned submerged lands~~. The department or
407 | water management district shall determine what action to take on
408 | any recommended order issued under ss. 120.569 and 120.57
409 | regarding any concurrently processed permits, waivers,
410 | variances, or approvals required by this chapter or chapter 161.
411 | The department or water management district shall ~~then~~ take
412 | final agency action by entering a consolidated final order
413 | addressing each of the concurrently reviewed authorizations,
414 | permits, waivers, or approvals. Failure to satisfy these
415 | timeframes may ~~shall~~ not result in approval by default of the
416 | application to use board of trustees-owned submerged lands. Any
417 | provisions relating to authorization to use such ~~board of~~
418 | ~~trustees-owned submerged~~ lands shall be as directed by the board
419 | of trustees. Issuance of the consolidated final order within 45
420 | days after receipt of the direction of the board of trustees

421 regarding the application to use board of trustees-owned
 422 submerged lands is deemed in compliance with the timeframes for
 423 issuance of final orders under s. 120.60. The final order is
 424 ~~shall be~~ subject to ~~the provisions of~~ s. 373.4275.

425 Section 8. Paragraph (c) of subsection (2) of section
 426 403.0876, Florida Statutes, is amended to read:

427 403.0876 Permits; processing.--

428 (2)

429 (c) The failure of the department to approve or deny an
 430 application for an air construction permit for which a federally
 431 delegated or approved program requires a public participation
 432 period of 30 days or longer, or for an operation permit for a
 433 major source of air pollution, as provided ~~defined~~ in s.

434 403.0872, within the 90-day ~~time~~ period may ~~shall~~ not result in
 435 the automatic approval or denial of the permit and may ~~shall~~ not
 436 prevent the inclusion of specific permit conditions that ~~which~~
 437 are necessary to ensure compliance with applicable statutes and
 438 rules. If the department fails to approve or deny such ~~an~~
 439 ~~operation permit for a major source of air pollution~~ within the
 440 90-day period specified in this section or in s. 403.0872, as
 441 applicable, the applicant or a party who participated in the
 442 public comment process may petition for a writ of mandamus to
 443 compel the department to act.

444 Section 9. Paragraphs (b) and (f) of subsection (2), and
 445 subsections (3), (4), (5), and (9) of section 403.121, Florida
 446 Statutes, are amended to read:

447 403.121 Enforcement; procedure; remedies.--The department
 448 shall have the following judicial and administrative remedies

449 available to it for violations of this chapter, as specified in
 450 s. 403.161(1).

451 (2) Administrative remedies:

452 (b) If the department has reason to believe a violation
 453 has occurred, it may institute an administrative proceeding to
 454 order the prevention, abatement, or control of the conditions
 455 creating the violation or other appropriate corrective action.
 456 Except for violations involving hazardous wastes, asbestos,
 457 major sources of air pollution, or underground injection, the
 458 department shall proceed administratively in all cases in which
 459 the department seeks administrative penalties that do not exceed
 460 \$10,000 per assessment as calculated in accordance with
 461 subsections (3), (4), (5), (6), ~~and (7)~~, and (9). Pursuant to 42
 462 U.S.C. s. 300g-2, the administrative penalty assessed pursuant
 463 to subsection (3), subsection (4), or subsection (5) against a
 464 public water system serving a population of more than 10,000 may
 465 ~~shall be~~ not be less than \$1,000 per day per violation. The
 466 department may ~~shall~~ not impose administrative penalties greater
 467 than in excess of \$10,000 in a notice of violation. The
 468 department may ~~shall~~ not have more than one notice of violation
 469 seeking administrative penalties pending against the same party
 470 at the same time unless the violations occurred at a different
 471 site or the violations were discovered by the department after
 472 ~~subsequent to~~ the filing of a previous notice of violation.

473 (f) In any administrative proceeding brought by the
 474 department, the prevailing party shall recover all costs as
 475 provided in ss. 57.041 and 57.071. The costs must be included in
 476 the final order. The respondent is the prevailing party when a

477 final an order is entered which does not require the respondent
 478 to perform any corrective actions or award any damages or
 479 ~~awarding no~~ penalties to the department and such order has not
 480 been reversed on appeal or the time for seeking judicial review
 481 has expired. The respondent is ~~shall be~~ entitled to an award of
 482 attorney's fees if the administrative law judge determines that
 483 the notice of violation issued by the department seeking the
 484 imposition of administrative penalties was not substantially
 485 justified as defined in s. 57.111(3) ~~s. 57.111(3)(e)~~. An ~~No~~
 486 award of attorney's fees as provided by this subsection may not
 487 ~~shall~~ exceed \$15,000.

488 (3) Except for violations involving hazardous wastes,
 489 asbestos, major sources of air pollution, or underground
 490 injection, administrative penalties must be in accordance with
 491 ~~calculated according to~~ the following schedule:

492 (a) For a drinking water contamination violation, the
 493 department shall assess:

494 1. A penalty of \$2,000 for a maximum containment level
 495 ~~(MCL)~~ violation; plus \$1,000 if the violation is for a primary
 496 inorganic, organic, or radiological maximum contaminant level or
 497 ~~it is~~ a fecal coliform bacteria violation; plus \$1,000 if the
 498 violation occurs at a community water system; and plus \$1,000 if
 499 any maximum contaminant level is exceeded by more than 100
 500 percent.

501 2. A penalty of \$4,000 for failure to maintain the
 502 required minimum gauge pressure throughout the drinking water
 503 distribution system.

504 3. A penalty of \$3,000 for failure to obtain a clearance

HB 1349

2009

505 letter before ~~prior to~~ placing a drinking water system into
506 service if ~~when~~ the system would not have been eligible for
507 clearance, ~~the department shall assess a penalty of \$3,000.~~ All
508 other failures to obtain a clearance letter before placing a
509 drinking water system into service shall result in a penalty of
510 \$1,500.

511 4. A penalty of \$4,000 for failure to properly complete a
512 required public notice of violations, exceedances, or failures
513 that may pose an acute risk to human health. All other failures
514 to properly complete a required public notice relating to
515 maximum containment level violations shall result in a penalty
516 of \$2,000.

517 5. A penalty of \$1,000 for failure to submit a consumer
518 confidence report to the department.

519 6. A penalty of \$2,000 for failure to provide or meet
520 licensed operator or staffing requirements at a drinking water
521 facility.

522 (b) For wastewater violations, the department shall
523 assess:

524 1. A penalty of \$5,000 for failure to obtain a required
525 wastewater permit before construction or modification, other
526 than a permit required for surface water discharge.

527 2. A penalty of \$4,000 for failure to obtain a permit to
528 construct a domestic wastewater collection or transmission
529 system.

530 3. A penalty of \$1,000 for failure to renew ~~obtain~~ a
531 required wastewater permit, other than a permit required for
532 surface water discharge, ~~the department shall assess a penalty~~

533 ~~of \$1,000.~~

534 4. For a domestic or industrial wastewater violation not
 535 involving a surface water or groundwater quality violation, ~~the~~
 536 ~~department shall assess~~ a penalty of \$2,000 for an unpermitted
 537 or unauthorized discharge or effluent-limitation exceedance.

538 5. A penalty of \$5,000 for an unpermitted or unauthorized
 539 discharge or effluent-limitation exceedance that resulted in a
 540 surface water or groundwater quality violation, ~~the department~~
 541 ~~shall assess a penalty of \$5,000.~~

542 6. A penalty of \$2,000 for failure to properly notify the
 543 department of an unauthorized spill, discharge, or abnormal
 544 event that may impact public health or the environment.

545 7. A penalty of \$2,000 for failure to provide or meet
 546 requirements for licensed operators or staffing at a wastewater
 547 facility.

548 (c) For a dredge, ~~and~~ fill, or stormwater violation, the
 549 department shall assess:

550 1. A penalty of \$1,000 for unpermitted or unauthorized
 551 dredging, ~~or~~ filling, or unauthorized construction of a
 552 stormwater management system against the person or persons
 553 responsible; ~~for the illegal dredging or filling, or~~
 554 ~~unauthorized construction of a stormwater management system plus~~
 555 \$2,000 if the dredging or filling occurs in an aquatic preserve,
 556 Outstanding Florida Water, ~~conservation easement,~~ or Class I or
 557 Class II surface water; 7 plus \$1,000 if the area dredged or
 558 filled is greater than one-quarter acre but less than or equal
 559 to one-half acre; 7 and plus \$1,000 if the area dredged or filled
 560 is greater than one-half acre but less than or equal to one

HB 1349

2009

561 acre; and plus \$3,000 if the person or persons responsible
562 previously applied for or obtained authorization from the
563 department to dredge or fill within wetlands or surface waters.

564 2. A penalty of \$10,000 for dredge, fill, or stormwater
565 management system violations occurring in a conservation
566 easement.

567 3. The administrative penalty schedule does ~~shall~~ not
568 apply to a dredge or ~~and~~ fill violation if the area dredged or
569 filled exceeds one acre. The department retains the authority to
570 seek the judicial imposition of civil penalties for all dredge
571 and fill violations involving more than one acre. ~~The department~~
572 ~~shall assess~~

573 4. A penalty of \$3,000 for the failure to complete
574 required mitigation, failure to record a required conservation
575 easement, or for a water quality violation resulting from
576 dredging or filling activities, stormwater construction
577 activities, or failure of a stormwater treatment facility.

578 5. For stormwater management systems serving less than 5
579 acres, ~~the department shall assess~~ a penalty of \$2,000 for the
580 failure to properly or timely construct a stormwater management
581 system.

582 6. In addition to the penalties authorized in this
583 subsection, ~~the department shall assess~~ a penalty of \$5,000 per
584 violation against the contractor or agent of the owner or tenant
585 that conducts unpermitted or unauthorized dredging or filling.
586 For purposes of this paragraph, the preparation or signing of a
587 permit application by a person currently licensed under chapter
588 471 to practice as a professional engineer does ~~shall~~ not make

589 that person an agent of the owner or tenant.

590 (d) For mangrove trimming or alteration violations, the
591 department shall assess:

592 1. A penalty of \$5,000 per violation against any person
593 who violates ss. 403.9321-403.9333 ~~the contractor or agent of~~
594 ~~the owner or tenant that conducts mangrove trimming or~~
595 ~~alteration without a permit as required by s. 403.9328.~~ For
596 purposes of this paragraph, the preparation or signing of a
597 permit application by a person currently licensed under chapter
598 471 to practice as a professional engineer does ~~shall~~ not make
599 that person an agent of the owner or tenant.

600 2. For second and subsequent violations of subparagraph
601 1., an additional penalty of \$100 for each mangrove illegally
602 trimmed and \$250 for each mangrove illegally altered, not to
603 exceed a total of \$10,000.

604 3. For second and subsequent violations of subparagraph 1.
605 by a professional mangrove trimmer, an additional penalty of
606 \$250 for each mangrove illegally trimmed or altered, not to
607 exceed a total of \$10,000.

608 (e) For solid waste violations, the department shall
609 assess:

610 1. A penalty of \$2,000 for the unpermitted or unauthorized
611 disposal or storage of solid waste; plus \$1,000 if the solid
612 waste is Class I or Class III ~~(excluding yard trash)~~ or ~~if the~~
613 ~~solid waste~~ is construction and demolition debris in excess of
614 20 cubic yards; ~~;~~ plus \$1,000 if the solid waste is disposed of
615 or stored in any natural or artificial body of water or within
616 500 feet of a potable water well; ~~and~~ plus \$1,000 if the solid

HB 1349

2009

617 waste contains PCB at a concentration of 50 parts per million or
618 greater; untreated biomedical waste; more than 1 cubic meter of
619 regulated friable asbestos material that ~~greater than 1 cubic~~
620 ~~meter which~~ is not wetted, bagged, and covered; more than 25
621 gallons of used oil ~~greater than 25 gallons~~; or 10 or more lead
622 acid batteries.

623 2. A penalty of \$5,000 for failure to timely implement
624 evaluation monitoring or corrective actions in response to
625 adverse impacts to water quality at permitted facilities. The
626 ~~department shall assess~~

627 3. A penalty of \$3,000 for failure to properly maintain
628 leachate control; unauthorized burning; failure to have a
629 trained spotter or trained operator on duty as required by
630 department rule ~~at the working face when accepting waste;~~
631 failure to apply and maintain adequate initial, intermediate, or
632 final cover; failure to control or correct erosion resulting in
633 exposed waste; failure to implement a gas management system as
634 required by department rule; or failure to dispose of or process
635 unauthorized waste ~~failure to provide access control for three~~
636 ~~consecutive inspections. The department shall assess~~

637 4. A penalty of \$2,000 for failure to construct or
638 maintain a required stormwater management system; failure to
639 compact and slope waste as required by department rule; or
640 failure to maintain a small working face as required by
641 department rule.

642 5. A penalty of \$1,000 for failure to timely submit annual
643 updates required for financial assurance.

644 (f) For an air emission violation, the department shall

HB 1349

2009

645 assess a penalty of \$1,000 for an unpermitted or unauthorized
646 air emission or an air-emission-permit exceedance; ~~plus \$1,000~~
647 ~~if the emission results in an air quality violation,~~ plus \$3,000
648 if the emission was from a major source and the source was major
649 for the pollutant in violation; and plus \$1,000 if the emission
650 was more than 150 percent of the allowable level.

651 (g) For storage tank system and petroleum contamination
652 violations, the department shall assess:

653 1. A penalty of \$5,000 for failure to empty a damaged
654 storage system as necessary to ensure that a release does not
655 occur until repairs to the storage system are completed; if ~~when~~
656 a release has occurred from that storage tank system; for
657 failure to timely recover free product; for failure to submit a
658 complete site assessment report; or for failure to conduct
659 remediation or monitoring activities until a no-further-action
660 or site-rehabilitation completion order has been issued. ~~The~~
661 ~~department shall assess~~

662 2. A penalty of \$3,000 for failure to timely upgrade a
663 storage tank system or to timely assess or remediate petroleum
664 contamination. ~~The department shall assess~~

665 3. A penalty of \$2,000 for failure to conduct or maintain
666 required release detection; failure to timely investigate a
667 suspected release from a storage system; depositing motor fuel
668 into an unregistered storage tank system; ~~failure to timely~~
669 ~~assess or remediate petroleum contamination;~~ or failure to
670 properly install a storage tank system. ~~The department shall~~
671 ~~assess~~

672 4. A penalty of \$1,000 for failure to properly operate,

673 maintain, repair, or close a storage tank system.

674 (h) For waste cleanup violations, the department shall
 675 assess:

676 1. A penalty of \$5,000 for failure to timely assess or
 677 remediate contamination; failure to provide notice of
 678 contamination beyond property boundaries or complete an offsite
 679 well survey; the use or injection of substances or materials to
 680 surface water or groundwater for remediation purposes without
 681 prior department approval; or for operation of a remedial
 682 treatment system without prior approval by the department.

683 2. A penalty of \$3,000 for failure to timely submit a
 684 complete site assessment report.

685 3. A penalty of \$500 for failure to timely submit any
 686 other plans, reports, or other information required by a
 687 department rule or order.

688 (4) In an administrative proceeding, in addition to ~~the~~
 689 any penalties that may be assessed under subsection (3), or for
 690 violations not otherwise listed in subsection (3), the
 691 department shall assess administrative penalties according to
 692 the following schedule:

693 (a) For failure to satisfy financial responsibility
 694 requirements or for violation of s. 377.371(1), \$5,000.

695 (b) For failure to properly install, operate, maintain, or
 696 use a required pollution control, collection, treatment, or
 697 disposal system or device, or failure to use appropriate best-
 698 management practices or erosion and sediment controls, \$4,000.

699 (c) For failure to obtain a required permit or license
 700 ~~before construction or modification~~, \$3,000 if the facility is

701 constructed, modified, or operated in compliance with applicable
 702 requirements; or \$5,000 if the facility is constructed,
 703 modified, or operated out of compliance with applicable
 704 requirements.

705 (d) For failure to conduct required monitoring or testing;
 706 failure to conduct required release detection; or failure to
 707 construct in compliance with a permit, \$2,000.

708 (e) For failure to maintain required staff to respond to
 709 emergencies; failure to conduct required training; failure to
 710 prepare, maintain, or update required contingency plans; failure
 711 to adequately respond to emergencies to bring an emergency
 712 situation under control; or failure to submit required
 713 notification to the department, \$1,000.

714 (f) Except as provided in subsection (2) with respect to
 715 public water systems serving a population of more than 10,000,
 716 for failure to prepare, submit, maintain, or use required
 717 reports or other required documentation, \$1,000 ~~\$500~~.

718 (5) Except as provided in subsection (2) with respect to
 719 public water systems serving a population of more than 10,000,
 720 for failure to comply with any other departmental regulatory
 721 statute or rule requirement not otherwise identified in this
 722 section, the department may assess a penalty of \$1,000 ~~\$500~~.

723 (9) The administrative penalties assessed for any
 724 particular violation may ~~shall~~ not exceed \$5,000 against any one
 725 violator, unless the violator has a history of noncompliance,
 726 the violator received economic benefit from ~~of~~ the violation ~~as~~
 727 ~~described in subsection (8) exceeds \$5,000~~, or there are
 728 multiday violations. The total administrative penalties may

729 ~~shall~~ not exceed \$10,000 per assessment for all violations
 730 attributable to a specific person in the notice of violation.

731 Section 10. Subsection (9) is added to section 712.03,
 732 Florida Statutes, to read:

733 712.03 Exceptions to marketability.--Such marketable
 734 record title shall not affect or extinguish the following
 735 rights:

736 (9) Any right, title, or interest held by any governmental
 737 entity, including, but not limited to, the Federal Government,
 738 the state, any state agency, the Board of Trustees of the
 739 Internal Improvement Trust Fund, any water management district
 740 created pursuant to chapter 373, any county, any municipality,
 741 any school district, any special district, or any other
 742 political subdivision.

743 Section 11. Section 712.04, Florida Statutes, is amended
 744 to read:

745 712.04 Interests extinguished by marketable record
 746 title.--Subject to the matters stated in s. 712.03, a ~~such~~
 747 marketable record title is ~~shall be~~ free and clear of all
 748 estates, interests, claims, or charges whatsoever, the existence
 749 of which depends upon any act, title transaction, event or
 750 omission that occurred before ~~prior to~~ the effective date of the
 751 root of title. All such estates, interests, claims, or charges,
 752 however denominated, whether such estates, interests, claims, or
 753 charges are or appear to be held or asserted by a person sui
 754 juris or under a disability, whether such person is within or
 755 without the state or, ~~whether such person~~ is natural or
 756 corporate, ~~or is private or governmental,~~ are hereby declared to

HB 1349

2009

757 | be null and void, ~~except that this chapter shall not be deemed~~
758 | ~~to affect any right, title, or interest of the United States,~~
759 | ~~Florida, or any of its officers, boards, commissions, or other~~
760 | ~~agencies reserved in the patent or deed by which the United~~
761 | ~~States, Florida, or any of its agencies parted with title.~~

762 | Section 12. This act shall take effect July 1, 2009.